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Report of the Law Commission (No. 10D)**

LAW COMMISSION REPORT NO. 15

CONSTITUTION OF MALAWI

REPORT OF THE LAW COMMISSION ON THE REVIEW
OF THE LAND-RELATED LAWS

The Report of the Law Commission on the Review of the Land Related Laws is hereby published and shall be laid in Parliament pursuant to section 135 (d) of the Constitution.

Dated this thirtieth day of March, 2010

(FILE NO. LC/01/07)

PROF. PETER MUTHARIKA
Minister of Justice

REPORT OF THE LAW COMMISSION ON THE REVIEW OF THE
EDUCATION ACT

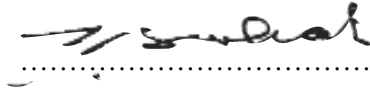
TO: HONOURABLE, PROFESSOR PETER MUTHARIKA, MINISTER OF JUSTICE

This is the Report of the Law Commission which was appointed under section 133 of the Constitution to review land-related laws in Malawi.

The Commission hereby submits the Report pursuant to section 135 (d) of the Constitution and commends the recommendations contained in this Report to the Government, Parliament and people of Malawi.

MEMBERS

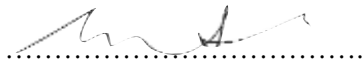
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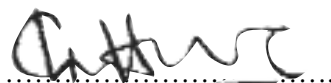
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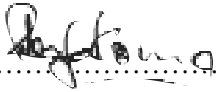


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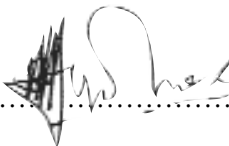
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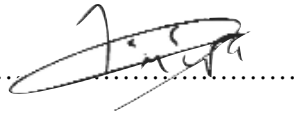
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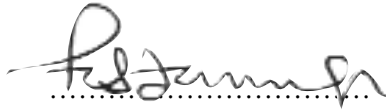
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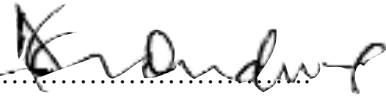

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Dated .30th March 2010

Programme Officers

The programme officers for this programme were Mrs. Janet Banda and Messrs Chikosa Moses Silungwe, William Yakuwawa Msiska and Bright S. Mando from the Law Commission; and Mrs. Irene Chikapa and Messrs. Highton Jiya, Isidore Kapito and Felix Tukula from Ministry of Lands, Physical Planning and Surveys.

Changes in the team of Programme Officers

Mr. John Ngwira from Ministry of Lands, Housing and Surveys, who was one of the programme officers under the Programme, passed away during the tenure of the Commission.

Acknowledgements

Funding for this Programme was initially provided under the Government of Malawi/European Union Rule of Law Programme. After depletion of those funds in late 2004, the Malawi Government and other donors such as World Bank and European Union provided support to enable completion of the work under the Programme.

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1.0 INTRODUCTION

In October, 2002, the Law Commission received a submission from the Ministry of Lands, Physical Planning and Surveys requesting for the review of existing land legislation and the formulation of a new legislative framework for land matters which would articulate the principles of the Malawi National Land Policy as approved by Government on 17th January, 2002.

Pursuant to the submission, a special Law Commission on the Review of Land-related Laws was empanelled in January, 2003 in terms of section 133(b) of the Constitution. The special Law Commission commenced its work in earnest in March, 2003.

2.0 TERMS OF REFERENCE OF THE COMMISSION

In accordance with its mandate, the Terms of Reference for the Commission were as follows—

(a) to review existing land-related legislation with a view to developing a new legislative framework for land matters that articulates the principles of the National Land Policy;

(b) the examination of existing statutes on land matters, especially (but not limited to) the Land Act (Cap.57:01), the Registered Land Act (Cap. 58:01), the Deeds Registration Act (Cap. 58:02), the Conveyancing Act (Cap. 58:03), the Land Acquisition Act (Cap 58:04), the Adjudication of Titles Act (Cap. 58:05), and the Customary Land (Development) Act (Cap. 59:01);

(c) to conduct a comparative survey of provisions governing land matters in other common law jurisdictions;

(d) to receive submissions, oral or written, from interest groups and the general public;

(e) to review existing land-related legislation to bring it into conformity with the Constitution and international law;

(f) to develop new legislation for the effective administration of land, such as, legislation regulating the relationship of landlord and tenant;

(g) to codify customary land laws so as to streamline customary land procedures;

(h) to define the role of traditional leaders and local government in land administration;

(i) to consult with stakeholders with a view to eliciting their views on the findings and recommendations of the Commission; and

(j) to recommend any other matters relating to land law and policy.

3.0 WORK METHODOLOGY

The Commission considered some twenty-two (22) statutes relating to land matters and divided its work into three thematic areas based on the categories of land under the Land Act as follows—

- (a) customary land;
- (b) public land; and
- (c) private land.

The Commission further split itself into four Committees in accordance with the issues as identified under the three thematic areas. These Committees were as follows—

- (a) Land Administration and Management Committee;
- (b) Land Markets Committee;
- (c) Surveying, Titling and Registration Committee; and
- (d) Land Use Planning and Development Committee.

Each Committee developed a work plan and identified various statutes for review. The Committees reported their work at plenary once each month for the endorsement of the full Commission.

4.0 BACKGROUND

Any discussion of land law and policy in Malawi is out of perspective without a fleeting discussion of the coming of the missionaries and the ultimate colonization of the country by the British. It is important therefore to trace the present land law and policy in Malawi at least to the initial expeditions of David Livingstone and through the formal declarations of British authority over Central Africa by the Africa Orders in Council of 1889, 1892 and 1893 with the latter formally proclaiming British Protectorate status over Malawi (then Nyasaland).¹ It has been argued that the general thrust of colonial land policy was to appropriate all land to the British Sovereign for the ultimate occupation and ownership of the white and caucasian settler community under private land tenure. The natives could only acquire “occupational rights” which ensured cheap labour for the white and caucasian settler community.² A growing number of the white and caucasian settler community had acquired land by the authority of the Commissioner for British Central Africa pursuant to the Africa (Acquisition of Lands) Order, 1898 and also the Nyasaland Order in Council, 1907. As these initial acquisitions were not clearly ascertainable, the Secretary of State issued “certificates of claim” as an acceptable basis of occupation of land. These certificates were the first attempt at formalizing land rights before the system of land ownership under the Land Ordinance, 1951.

¹. See also B. Pachai, Malawi: *The History of the Nation*, (London, Longman, 1973).

². See JDA Brooke-Taylor, *Land Law in Malawi*, (Chancellor College, Zomba, 1977) (unpublished), pp. 5-9.

It has been noted however that land covered by the certificates was not devoid of indigenous African communities. The hitherto land rights of these communities were not clear in the context of the certificates. While the certificates themselves proclaimed that the land rights of these communities were not to be disturbed or removed without the consent of the Commissioner, the opposite was true in practice. The colonial government tried to avoid the permanent alienation of indigenous land rights by law with the passing of the Land (Native Locations) Ordinance, 1924, which is a precursor to the Africans on Private Estates Ordinance, 1928, these measures were still ignored and were flouted with impunity and impulse. In the end, the natives lost ownership and control of land under the ambit of certificates of claim and under the fiction that all land vested in the British Monarch.

In 1951, a Land Ordinance was passed which purported to formalize the consequences as to land ownership by the proclamation of the British Central Africa Order-in-Council, 1902. The Ordinance defined land as public, private or customary. Customary land was however a “species” of public land in the sense that such land did not come under the legal control or ownership of the indigenous communities; rather, it remained under the control and management of the Governor. It should be said at this point that the Land Ordinance, 1951 was later superseded by the Land Act³ which came into force in 1965.

In 1967, a first attempt was made to develop a comprehensive body⁴ of land law for independent Malawi. In that year, the Registered Land Act⁵, the Customary Land (Development) Act⁶ and the Local Land Boards Act⁷ were enacted. The present land law had been in application close to twenty-five years when the Presidential Commission of Inquiry on Land Policy Reform (the “Presidential Commission”) was set up in 1996.⁸ The mandate of the Presidential Commission was to “undertake a broad review of land problems throughout Malawi, and recommend the main principles of a new land policy that will foster a more economically efficient, environmentally sustainable and socially equitable land tenure system.”⁹ The Presidential Commission produced its Report (in three volumes) in March, 1999. Work of the Presidential Commission fed, among other works, into the development of the National Land Policy.

In a nutshell, the Policy makes the following recommendations:

- A new system of classifying land be introduced to classify land into Government Land, Public Land and Private Land.
- Customary landholding shall be registered as private customary estates for entire communities, families or individuals.

³. Cap. 57:01.

⁴. The Registered Land Act is a clone of a Kenyan statute of the same name enacted in 1963.

⁵. Cap. 58:01.

⁶. Cap. 59:01.

⁷. Cap. 59:02.

⁸. See the Report of the Presidential Commission, Vol. 1 (March, 1999).

⁹. *ibid*, pp. 3-4.

- Freehold tenure shall be the exclusive purview of citizens of Malawi. Non-citizens owning freehold land are limited to the free hold interest registered in their name as at 17th January, 2002. Non-citizens owning freehold land will be encouraged to obtain Malawi citizenship to retain their rights in the land.
- The whole of Malawi shall be a planning area. However, the declaration of a planning area will not automatically require the conversion of all customary land to public land.
- Urban physical planning and development controls will be enforced to discourage speculation.
- Land administration responsibilities will be decentralised and District Land Registries established in each district to record all land transfers, conveyance, and title registration, and to offer surveying and land management services.
- Land administration role and responsibilities of Chiefs, Clan Leaders, Headpersons and Family heads will be formalized, made more democratic and transparent.
- Government shall install special protection of land rights of minors and create a legal duty on Chiefs, Headpersons and adult members of a family to protect land rights of a surviving spouse and children in both matrilineal and patrilineal inheritance areas throughout Malawi.

5.0 STRUCTURE OF REPORT

The ensuing structure of this Report follows the review of various legislation relating to land by sequence of Parts and sections. All matters recommended to be incorporated into the various legislation as new provisions or in substitution of some parts of the existing text have been indicated in bold. Where repeal has been recommended and new legislation proposed, the Commission has drafted Bills to that effect.

6.0 DRAFT LEGISLATION

As required by section 7(1) (g) of the Law Commission Act (Cap. 3:09), draft amendment Bills and new Bills for the enactment of the recommendations of the Commission are attached as part of this Report.

7.0 SPECIFIC FINDINGS AND RECOMMENDATIONS

A. LAND ACT (Cap.57:01)

GENERAL

Categories of Land

The Land Act provides for three categories of land under separate Parts, namely public land, private land, and customary land. The Act further defines "Government land" as 'all public land other than public roads'. Implicitly, this makes all public land, with the exception of public roads, the property of Government. To underscore this intention, the Act defines "public land" as "all land which is occupied, used or acquired by Government and any other land not being customary land or private land." The Commission considered this arrangement dissatisfactory and considered that only public land that is occupied, used or acquired by the Government should be Government land, essentially recommending that Government land should be a class of public land rather than the other way round. The Commission considered that this distinction should succeed in separating land held in trust by the Government from land acquired by Government for which ownership is actually transferred to Government. This is in line with the recommendation of the National Land Policy that seeks to distinguish between Government land and public land generally. The Commission however observed that the Land Policy proposes the introduction of Government land as a separate category of land in pursuit of making Government's acquisition plans more transparent and removing the perception by the public that the designation of public land is used to effectively expropriate customary land without compensation. Whilst agreeing with the reasoning, the Commission found the proposal to turn Government land into a separate category flawed and rejected the proposal on the basis that Government land is a class of public land. The Commission concedes that all land deemed necessary for national development purposes in Malawi shall be acquired and vested in the State as "Government land" to be managed on behalf of the nation by the Minister responsible for lands, or by other designated agents of the Government. The Commission however recommends that such Government land should constitute a class of public land rather than a new category of land as proposed by the Land Policy and recommends adoption of the following new definition of "Government land": **"land acquired and privately owned by the Government and dedicated to a specified national use or made available for private use at the discretion of the Government."**¹⁰

In its further discussion of the issue of categories of land, the Commission considered the Land Policy's recommendation to have four categories of land dissatisfactory partly because of the issues discussed in the preceding paragraph. The Commission also observed that the Land Policy recommends the privatization of customary interests in land in the form of customary estates facilitated by titling and registration under the Registered Land Act. Technically, this shall result in the transformation of such interests into private land thereby moving such land away from the customary category.¹¹ Consequently, the only

¹⁰ Government of Malawi, National Land Policy, Page 12.

¹¹ See *Obiero vs Opiya* (1972) E.A 227; *Esiroyo vs Esiroyo* (1972) E. A 388.

land that shall remain in the category of customary land shall be the unallocated land and communal spaces within the jurisdiction of traditional authorities. The Commission considered such land as properly falling within the ambit of public land and within the confines of the jurisdiction of traditional authorities. This is evidenced by the Land Policy's recommendation to reserve common access and unallocated customary land as a genre of public land under the authority of traditional authorities. Such unallocated customary land shall include dambos, grazing areas and graveyards. With this understanding of the impact of the recommendations in the Land Policy concerning customary land, the Commission recommends retention of only two categories of land namely "**public land**" and "**private land**."¹² These two should have classes. Public land is to constitute "Government land" and "unallocated customary land used for the benefit of the community as a whole". Private land, on the other hand shall constitute of "leasehold land," "freehold land"¹³ and "customary estates." The latter follows the land tenure categories proposed by the Land Policy.

PART I—PRELIMINARY

SECTION 2 [*Interpretation*]

"authorized officer"

The Commission recommends that references to "**local government authority**" and "**Traditional Authority**" should be inserted in the definition in view of the anticipated devolution of administration of land to local government authorities and traditional leaders. The definition shall therefore read—

"authorized officer" means an officer duly authorized by the Minister, a local authority or a Traditional Authority for the purposes of this Act or any part thereof;".

New Definition of "customary estate"

The Commission recommends adoption of the following new definition of "customary estate" as proposed by the National Land Policy in pursuit of promoting private ownership of customary land—

"customary estate" means any customary land, which is owned, held, or occupied as private land within a Traditional Land Management Area and is registered as such under the Registered Land Act;".

Cap. 58:01

¹² At the Regional workshops held in Blantyre, Lilongwe and Mzuzu participants found this recommendation confusing and recommended the retention of the status quo, specifically, the category of customary land to reflect the authority of the Chiefs over such land. The Commission however found the participants concerns invalid and easily remediable by civic education. Chiefs dominated the workshops.

¹³ At the workshop organised for Parliamentarians held at the Malawi Institute of Management in Lilongwe on 7th September 2005 participants queried the justification for granting freehold land as a subcategory of private land and could not appreciate the Commission's insistence to stick to feudal land laws which allegedly only benefit the rich.

“Customary Land”

The Act defines customary land¹⁴ as “all land which is held, occupied or used under customary law but does not include public land.” The Land Policy on the other hand defines customary land as “all land falling within the jurisdiction of a recognised Traditional Authority, which has been granted to a person or group of persons and used under customary law¹⁵.” In discussing the Policy’s definition of customary land, the Commission considered it misleading in as far as it fails to recognise that customary land granted to individuals or group of persons shall constitute customary estates and consequently private land by reason of its integration into the statutory system. Such estates once registered under the Registered Land Act are outside the ambit of customary law. Further, the definition, while embracing communal land, leaves out unallocated customary land within a Traditional Land Management Area. The Commission thus considers the Land Policy’s definition of customary land unhelpful. In considering the definition provided under the Act, the Commission recalled its recommendation to create a class of public land from unallocated and communal customary land and recommends amendment to delete the words that purport to exclude such land from the category of public land in the definition. The Commission thus recommends the following new definition of customary land.

““customary land” means all land used for the benefit of the community as a whole and includes unallocated land within the boundaries of a Traditional Land Management Area;”.

“Traditional Court”

The Commission observed that the Land Policy recommends a new institutional framework for the settlement of customary land disputes in the style of tribunals. The Commission considered that the framework for the proper functioning of such tribunals should be provided in a separate statute regulating customary land. The Commission thus recommends deletion of the definition.

¹⁴ In Protectorate times, what is now customary land was known as “tribal trust land” and was vested in the Secretary of State for the benefit of the African population. Although the Secretary of State had power to grant leases of such land, he did not have power to alienate the freehold. The tribal trust land itself continued to be cultivated and used according to customary law and was subject to various customary rights which are quite as unimpeachable as any known to the common law. The trusteeship of the Secretary of State can be said to embody two things, first the sense of the Protectorate, and second a feeling in the common law introduced into Malawi that everyone must hold their land of someone else, however nominally, for the satisfaction of tenure and the concept of eminent domain.

¹⁵ Customary law comprises rules grounded in prevailing customs that are applicable to particular communities. As a result, customary tenure is the right to own, use or dispose of land rights not based on documentary evidence guaranteed by statute, but based on customary laws and on the fact that they are recognized as legitimate by the community, enforced in the customary courts, or even merely by social pressure and normally not recorded in writing. Customary law restricts customary allocations to usufructuary rights because, in principle, customary title is vested in traditional leaders on behalf of the people. Total alienation of any of this land, such as by granting freehold title to non-citizens, diminishes the land assets of the community specifically affected, and by extension the nation as a whole.

New definition of “Traditional Land Management Area”

The Commission observed that the Land Policy proposes the demarcation of all customary land under the jurisdiction of traditional authorities into Traditional Land Management Areas. The Commission thus recommends adoption of the following new definition of a “Traditional Land Management Area” under the Act—

““Traditional Land Management Area” means an area demarcated and registered as falling within the jurisdiction of a recognized Traditional Authority;”

New Definition of “land”

The Commission observed that the Act does not define “land”. However other statutes such as the Local Land Boards Act¹⁶, the Customary Land (Development) Act,¹⁷ and the Registered Land Act¹⁸ define ‘land’. The Commission found this position unsatisfactory and recommends that the Land Act as the basic law on land should provide a definition of ‘land’. Further, the Commission observed that these other statutes define land as “including land covered with water, all things growing on land, buildings and other things permanently affixed to land.” The Commission considers this definition inadequate and recommends adoption of the following comprehensive definition of “land” under the Land Act—

““land” means the material of the earth, whatever may be the ingredients of which it is composed, whether soil, rock or other substance, and includes the surface covered with water, all things growing on that surface, buildings, other things permanently affixed to land and free or occupied space for an indefinite distance upwards as well as downwards, subject to limitations upon the airspace imposed, and rights in the use of airspace granted, by international law;”

“private land”

The Commission recommends amendment to include the term “customary estate” in view of earlier recommendation to recognize such customary estate as private land.

The new definition to read as follows—

““private land” means all land which is owned, held or occupied under a freehold title, or a leasehold title or as a customary estate and is registered as such under the Registered Land Act;”

“Public land”

In view of the recommendation to have two classes of public land namely Government and unallocated customary land, and the importance of underscoring

¹⁶ Cap. 59:02 of the Laws of Malawi

¹⁷ Cap. 59:03 of the Laws of Malawi

¹⁸ Cap. 58:01 of the Laws of Malawi

the trusteeship arrangement for the vesting of public land, the Commission recommends amendment of the definition of “public land” to read as follows—

““public land” means land held in trust for the people of Malawi and managed by Government or a Traditional Authority and includes—

(a) any land held by the Government or local government authority consequent upon a reversion thereof to the Government or local government authority, as the case may be, on the termination, surrender or falling in of any freehold or leasehold estate therein pursuant to any covenant or by operation of law;

(b) land acquired and privately owned by Government or a local government authority used for dedicated purposes such as government buildings, schools, hospitals and public infrastructure;

(c) land gazetted for national parks, recreation areas, forest reserves, conservation areas, historic or cultural sites;

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

(e) unallocated and communal land within the boundaries of a Traditional Land Management Area;”.

PART II—GENERAL

Access to land by non-citizens

The National Land Policy prohibits the granting of freehold tenure to non-citizens and reserves the privilege of freehold ownership to Malawians. Non-citizens and foreign companies may lease land from Government or directly from private owners for investment purposes in accordance with their residential, investment and profit objectives. The Policy further provides that any freehold interest held by a non-citizen should be converted to leasehold unless the holder acquires Malawian citizenship within a period of seven years.¹⁹

The Commission observed that the Policy is generally in line with regional practice which discourages the allocation or grant of land to non-citizens unless for the purposes of investment.²⁰ However, the Commission was aware that the Constitution, under section 20 prohibits discrimination, among other things, on the basis of nationality. The Commission recognized that this is a strange provision and it does not accord with international human rights practice. The Commission considered that Government priority should be the protection of the interests of its citizens as opposed to that of foreigners. The Commission further took note of the recommendation by the special Law Commission on the

¹⁹ Participants at the Mzuzu Regional Workshop found the offer of citizenship to foreigners awkward and supported only the proposal to convert the freehold interest to leasehold interest.

²⁰ The Commission had recourse to practice in Kenya, Tanzania, Botswana and Ghana.

Technical Review of the Constitution in its Report²¹ published in 1998 urging the amendment of this provision by replacing the word “nationality” with the term “**national origin**” which is different from citizenship.²²

The Commission also conceded that it is not necessary to place undue emphasis on section 20 when dealing with property rights in Malawi.²³ The section should be read together with section 28, which empowers every person to acquire property alone, or in association with others. The latter can be limited in its application subject to prescriptions by a law of general application, which is reasonable, recognized by international human rights practice and necessary in an open and democratic society. Thus, granting non-citizens leasehold as opposed to freehold tenure can hardly qualify as discrimination.²⁴

In concluding this matter, the Commission first recommends amendment of the Constitution as recommended in the 1998 Law Commission Report on the Technical Review of the Constitution. Secondly, the Commission recommends introduction of the following new section ... in the Act to give legislative effect to the aspirations of the Policy and ensure that citizens are not deprived of land.

The new section is to read as follows—

Occupation
of land by
non-citizens
Cap. 39:05

... (1) A person who is not a citizen of Malawi shall not be allocated or granted freehold land unless it is for investment purposes under the Investment Promotion Act and that such investor has formed a partnership or a joint venture with a Malawian.

(2) Land designated for investment purposes under subsection (1) shall be identified, gazetted and allocated to the Malawi Investment Promotion Agency, which shall create derivative rights to investors.

Cap. 15:01

(3) Freehold land acquired by a person who is not citizen prior to the amendment of this Act shall be converted to leasehold interest unless the person currently in possession of such land shall have acquired Malawian citizenship in accordance with the Malawi Citizenship Act within a period of seven (7) years.

Cap. 39:05

(4) For the purposes of this section, the Malawi Investment Promotion Agency means the Agency established in accordance with section 5 of the Investment Promotion Act.”

²¹ Malawi Government *Gazette* dated 16th November, 1998.

²² This recommendation stemmed from the position in the Universal Declaration of Human Rights i.e. Article 2.

²³ i.e. See the submission of the Civil Society Task Force on Land Reforms.

²⁴ The Malawi approach is milder compared to countries such as Tanzania and Zimbabwe where non-citizens cannot access any land except for purposes of investment. Further, in Tanzania, all land acquired by non-citizens prior to the Land Act of 1999 is deemed to have no value except for the unexhausted interests for which compensation may be paid. Further, there is no freehold land in Tanzania and foreclosure was abolished but this has not affected the levels of investment.

The Commission also considered a situation where a body corporate owning freehold land may sell its shares to foreigners at the stock exchange market resulting in its transformation into a foreign company overnight. To provide oversight for such transformations, the Commission recommends that the law should require the Registrar of Companies to furnish the Minister responsible for Lands with information regarding status of shareholding in companies in Malawi to facilitate easy policing of this aspect of the Act.

The Commission thus recommends introduction of the following new provision in the Companies Act as a new section 49A to implement this recommendation—

“Registrar to furnish Minister for Lands with information on status of shareholdings of companies in Malawi **49A.—(1) The Registrar shall furnish the Minister responsible for land matters with information regarding the status of shareholding of companies in Malawi at the beginning of each calendar year.**

(2) The information under subsection (1) shall include the following—

(a) membership of the company;

(b) nationality of the members of the company; and

(c) whether the company is Malawian or foreign owned.

SECTION 4 [*Powers of corporation to hold lands*]

The section provides that no land shall be assured to or for the benefit of, or acquired by or on behalf of any body corporate, unless such body corporate is authorized by a licence issued by the President to hold land in Malawi. The exception to this rule is a body corporate incorporated in accordance with the Companies Act or the Companies (Consolidation) Act, 1908 of the United Kingdom or established by or under any written law, which empowers it to hold land. The President is empowered to use his absolute discretion in the exercise of the powers under the section and his decision is not subject to judicial review.

First, the Commission recommends the deletion of the reference to the Companies (Consolidation) Act, 1908 of the United Kingdom in subsection (1) for irrelevancy. Second, the Commission considered the powers conferred on the President too extensive and prone to abuse, hence requiring limitation. Further, the Commission considered the barring of judicial review respecting the decisions of the President under the section unconstitutional and recommends that this aspect should be removed.

The Commission hence recommends amendment of subsection (4) as follows—

“(4) The President may issue a licence pursuant to subsection (1) and where the President declines to issue a licence, he shall give reasons, in writing, for the refusal and the decision of the President may be subject to judicial review.”

SECTION 5 [*Minister's power to dispose of public land or customary land*]

The section deals with the powers of the Minister to dispose of public land or customary land by making and executing grants, leases or other dispositions. The Commission was aware that the Policy anticipates the devolution of the Minister's powers in relation to disposition of customary land to Traditional Authorities. This followed the recommendation of the Presidential Commission of Inquiry requiring "abolishing the authority of the Minister to effect any transactions in respect of customary land" and also "specifying very clearly the nature of obligations of trust which Traditional Authorities owe to their people in respect of the land vested in them and the legal and political options available for them in enforcing those obligations".²⁵ The Commission therefore recommends amendment of section 5 to restrict the powers of the Minister to the disposal of public land classified as Government land. The Commission further recognizes the role of the local government authorities in administering public land classified as Government land and recommends that this role should be incorporated under this section.

The amended section 5 shall read as follows—

Minister or
local
authority's
power to
dispose off
public land

... **(1) The Minister or a local government authority may make and execute grants, leases or other dispositions of public land classified as Government land for any such estates, interests or terms, and for such purposes and on such terms and conditions, as he may think fit.**

(2) (2) The Minister or a local government authority shall, in every grant of a lease of Government land, reserve a rack rent in respect thereof:

Provided that—

(a) the Minister or the local government authority may reserve a rent which is less than a rack-rent in leases granted under this section to public utility bodies, statutory corporations, missions or religious bodies, scientific and philanthropic bodies, or any other organizations, associations, bodies or undertakings;

(b) where, having regard to all the circumstances of the case the Minister or local government authority is satisfied that it is neither expedient, equitable nor necessary to reserve a rack-rent in any lease granted, or to be granted, under this section, the Minister or local government authority, may reserve in any such lease a rent which is less than a rack-rent.

²⁵ Report of the Presidential Commission of Enquiry on Land Policy Reform, Vol. 1, page 62

SECTION 6 [*Financial penalty for delay in Payment of rent*]

The section makes provision for a penalty where moneys are due to Government in respect of rent. The provision states that in such a situation, if the moneys remain unpaid at the end of ninety days after the same became due and payable, the amount so remaining unpaid shall attract a penalty equal to one tenth of such sum or by a penalty of ten shillings whichever is greater. The Commission observed that the provision could not be faulted. However, the Commission recommends that the phrase, “or by a penalty of ten shillings whichever is greater” be deleted for irrelevancy. The Commission further recommends incorporation of the role of local government authorities in view of its earlier recommendations.

SECTION 7 [*Minister may appoint duly Authorized Officers*]

The Commission recommends the retention of the provision subject to insertion of the phrase “**a local government authority**” after the word “Minister” in lines 1 and 3 respectively.

PART III—PUBLIC LAND

SECTION 8 [*Vesting of Public Land*]

The provision states that all public land is vested in perpetuity in the President. The Commission observed that under the Constitution²⁶ all land is vested in the Republic. The Commission therefore recommends that all public land should vest in the Republic accordingly.

The new section 8 is to read as follows—

8. All public land is vested in perpetuity in the Republic.

SECTION 10 [*Unlawful use of public land to be an offence*]

The section prohibits unlawful use or occupation of any public land. It further stipulates that a person found guilty of this offence is liable to a fine of ₦100 and to imprisonment for six months, and, in case of a continuing offence, to a further fine of ₦5 in respect of everyday during which the offence continues. In keeping with contemporary drafting style regarding creation of offences, the Commission recommends deletion of the words “shall be liable” and replacement with “**commits an offence and shall be liable**”. The Commission further considered that the fines and the term of imprisonment imposed by the provision are on the lower side and recommends enhancement to deter would be offenders from ₦100 to **K200,000** and to imprisonment for **twelve months**. Furthermore, the Commission recommends enhancement of the daily fine from ₦5 to “**K1000**”.

The Commission was also aware that public land, proposed to be classified as Government land, shall be the subject of this provision. The Commission thus recommends the incorporation of local government authorities in view of their anticipated role regarding management and administration of such land.

²⁶ See section 207 of the Constitution

PART IV—PRIVATE LAND

SECTION 11 [*Minister may accept surrenders*]

The provision empowers the Minister to accept the surrender of any lease made under the Act or any existing laws, or any amendments made to the lease. The Minister has discretion to accept the surrender or amendments on such terms and conditions as he may think fit.

The Commission observed that as land administration and management will be decentralized to local government authorities, the provision should be amended by inserting the phrase “**or a local government authority**” immediately after the word Minister. The marginal note should be amended accordingly. The Commission further recommends deletion of the words “may think fit” as they promote subjectivity and replacement with the words “**the Minister or the local government authority may consider appropriate**”.

Further, the Commission observed that the provision makes reference to the acceptance of leases made under the existing laws or any amendments made to such laws, implicitly referring to laws made during the colonial period. The Commission considered it neater to simply refer to “**any other written law**” to capture all the relevant applicable statutes and recommends accordingly.

The provision is to read as follows—

<p>“Minister or local government authority may accept surrenders</p>	<p>... The Minister or a local government authority may accept the surrender of any lease made under this Act or any other written law on such terms and conditions as the Minister or the local government authority may consider appropriate.”</p>
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SECTION 12 [*Minister may relieve from liability to perform covenants, etc.*]

The section empowers the Minister in his discretion to relieve any persons from performing or observing any covenants, agreement or any grant, lease or other disposition made under the Act or any existing laws and may extend the time for the performance of any such covenant, condition or stipulation. The Commission recommends insertion of the phrase “**or a local government authority**” immediately after the word “Minister”.

SECTION 13 [*Implied covenants in leases*]

The section provides for implied covenants with the Minister or on behalf of the lessee in every lease granted under the Act, which shall continue in force throughout the term granted. Subsection (2) requires that a Planning Committee for the area within which the leased land is situated to sanction any development. The Commission recommends that the phrase “**or a local government authority**” should be inserted immediately after the word “Minister” wherever it appears in the section.

SECTION 14 [*Minister's power of entry*]

The provision empowers the Minister to determine the lease, or re-enter land where the lessee has breached or is not observing covenants or conditions contained or implied in his lease. The Commission recommends insertion of the phrase **“or a local government authority”** immediately after the word “the Minister” and by inserting the phrase **“or such local government authority”** after the word “he”.

SECTION 16 [*Revision of rent*]

The section empowers the Minister to revise any rent reserved for the purpose of this Act. Such revision of the rent shall be by order published in the *Gazette*. The revision shall be made at the intervals of three years. First, the Commission recommends that the phrase **“or a local government authority”** should be inserted immediately after the word “Minister” wherever that word appears in the provision. Consequently, subsection (2) which provides for the revision of rent by the Minister by order published in the *Gazette*, should accordingly be amended by inserting the words **“or by-laws, as the case may be”** immediately after the words ‘by order’. Second, the Commission recommends adoption of the following proviso to subsection (2) to cover situations of leases granted by authorities other than a minister or a local government authority—

“Provided that where an authority, other than the Minister or a local government authority, grants a lease, there shall be no need to publish such revision of rent in the *Gazette*.”

Subsection (3) provides for the procedure for levying rentals payable for agricultural leases. The Commission observed that the provision does not give guidance as to how such rentals should be determined. The Commission was of the view that ground rent for agricultural estates is a policy issue, which should be determined at national level rather than leaving it to the Minister alone. The Commission thus recommends that the formula for revision of rent should be captured in a schedule and recommends that rentals should be calculated as follows: for agricultural leases, the equivalent of the prevailing official market price of one bag of maize per hectare. For other leases, the Commission recommends that the formula for the rent should be seven and half of the open market value of the unimproved site. The Commission thus recommends adoption of the following new subsection (4) to provide for the determination of rentals pertaining to leases—

“(4) Any rent payable for the purposes of any lease pursuant to this section shall be calculated in accordance with the formula provided in the First Schedule.”

SECTION 17 [*Matters not to be taken into account*]

The section prohibits the Minister from taking into account any enhanced value of property attributable to improvement effected by the lessee when

revising rents. The Commission considered this position unsatisfactory and recommends that ground rent should be revised in terms of the market value of the property in question. The marginal note should thus be amended to delete the word “not”. Further, in view of earlier recommendations pertaining to the role of local government authorities, the Commission recommends incorporation of the phrase “**or a local government authority**”.

The amended provision is to read as follows—

“Matters to be taken into account ... **In revising any rent, the Minister, or a local government authority shall take into consideration any enhanced value of the demised premises attributable to improvements effected thereon by the lessee during the term of the lease.**”

SECTION 18 [*Procedure on alteration of rent*] and section 19 [*Surrender in lieu of revision of rent*]

The Commission recommends insertion of the phrase “**or a local government authority**” in both provisions in view of earlier recommendations.

SECTION 20 [*Compensation for improvements on surrender*]

The section provides that in the event the lessee surrenders the lease, such lessee shall be entitled to compensation in respect of the improvements effected upon the demised premises during the term as the Minister may determine. It was noted that such right to compensation should arise upon registration of a Deed of Surrender in the Deeds Registry. The Commission was of the opinion that since the deed shall no longer be at the centre stage in land transaction, such term be deleted from the section. The Commission further observed that the Minister is empowered to determine the compensation. To avoid abuse of powers by the Minister with respect to compensation, the Commission recommends that the determination of compensation should be based on the unexhausted value of the improvements.

The Commission thus recommends that the provision should be amended to read as follows—

“Compensation for improvements on surrender ... **If the lessee surrenders his lease in accordance with section ..., he shall, upon registration of the surrender in the Land Registry be entitled to such compensation in respect of any improvements effected by him upon the demised premises during the term, and such compensation shall be based on the unexhausted value of the improvements thereon.**”

SECTION 21 [*Acceptance of rent not to waive breach of covenant*]

The Commission recommends retention of the provision subject to insertion of the words “**or a local government authority**” immediately after the word “Minister”.

SECTION 24 [*Fees*]

The section provides that prescribed fees shall be payable in respect of such matters as may be prescribed and exempts some special cases from paying the fees as prescribed. The Commission recommends incorporation of the phrase “or a local government authority” in the proviso.

SECTION 24A [*Prior written notification to Minister of intention to sell, etc., private land*]

The section provides that before any sale, conveyance, lease, transfer or assignment of any private land is made, notice should be given to the Minister of the intended action. It further provides that the notice period should not be less than thirty days. This is intended to give Government, the first option in case it may require such parcel of land. Subsection (2) creates an offence for breaching the requirements of the provision. A person may be liable to a fine of K1,000 and imprisonment for a term of twelve months. The Commission considered the penalty grossly inadequate for the purpose of ensuring compliance. The Commission therefore recommends that the figure “K1,000” should be adjusted upwards to “K100,000”. However the term of imprisonment is to be retained.

The Commission further recommends incorporation of the words “**or a local government authority**” in view of its earlier recommendations.

SECTION 24B [*Grants of private land to persons who are not citizens of Malawi*]

The section prohibits the granting of any private land by way of sell, conveyance, assignment, lease, transfer or other transaction to a person who is not a citizen of Malawi for an estate greater than 50 years unless a greater estate is required for the realization of investment. The Commission observed that this provision was recently enacted²⁷ to legislate for the aspirations of the Land Policy²⁸ that seek to ensure that citizens are prevented from becoming landless in their own country²⁹. The Commission considered this a good safeguard and recommends retention of the provision.

SECTION 24C [*Restriction of sale of private land to persons who are not citizens of Malawi*]

The section prohibits the selling of any private land to a non-citizen whether by private transaction, tender, auction or other means unless the intention to sell is published for transparency to avail citizens of Malawi an opportunity to access such land transfers.

The Commission considered the argument by some stakeholders that this provision may work to the detriment of a market economy that the Constitution advocates.³⁰ The Commission however was mindful of the philosophy behind the

²⁷ Act No. 6 of 2004.

²⁸ See paragraphs 4.12 and 4.13.1 of the National Land Policy.

²⁹ Similar provisions exist in countries such as Ghana and Zimbabwe.

³⁰ See section 13 (n) of the Constitution.

provision that seeks to promote access to land by Malawians. The Commission also conceded that Government's priority concerning land rights is first and foremost to its citizens. To that end, the Commission considered the restriction reasonable and justifiable in view of the problem of land pressure experienced in urban areas in Malawi. Accordingly, the Commission recommends retention.

SECTION 24D [*Freehold land held by non-resident who are not citizens of Malawi*]

The section empowers the Minister to acquire private land under freehold title held by non-citizens who are not ordinarily resident in Malawi for a continuous period of two years and who have not shown or effected any intention to develop the land, dispose of it or use or own the land jointly with Malawians. The Minister may acquire the land under the Land Acquisition Act³¹ or use the powers under section 55 of the Town and Country Planning Act³². The Commission was aware that the provision was prompted by the findings in the Final Report of the Presidential Commission of Enquiry on Land Policy Reform³³ that there is a significant amount of urban freehold land which is undeveloped, particularly in Blantyre and that this is a contributing factor to the emergence of squatter settlements. In conceding the importance of addressing historical wrongs which led to the situation of foreigners owning large tracks of idle freehold land in urban centres, probably for speculation and, in realizing the importance of providing a legal basis for effective supervision of land use in the country, the Commission recommends retention of section 24D.

SECTION 24E [*Gifts of private land between persons who are not citizens of Malawi*]

The section prohibits the passing of title to private land between non-citizens by way of gift or inter vivos. The Commission was aware that the provision seeks to reverse the practice that has developed among non-citizens of transferring title to private land by way of gifts to circumvent the full regulatory requirements of the law particularly where the land is of substantial value. The Commission considered this provision a good safeguard and recommends retention.

PART V—CUSTOMARY LAND

SECTION 25 [*Vesting of customary land*]

Section 25 vests customary land in perpetuity in the President. In discussing the section, the Commission observed that the Report of the Presidential Commission of Inquiry on Land Policy Reform recommended divesting the President of title in respect of customary land and vesting the same, in perpetuity in Traditional Authorities as trustees for their respective communities to secure the legal foundation of customary land.³⁴ While conceding the proposal to divest the President of title, the Commission did not subscribe to the view to vest

³¹ Cap 58:04 of the Laws of Malawi.

³² Cap 23:01 of the Laws of Malawi.

³³ *Supra*, note 25

³⁴ *See* page 62.

customary land in Traditional Authorities. The Commission considered the position that appears to have been taken by Traditional Authorities over the years in dealings with customary land which projects such land as owned by such leaders rather than held in trust for their communities. The Commission considered that this places customary land rights in a most precarious position. The Commission further noted that the Constitution vests all public land in the Republic. Accordingly, the Commission recommends that customary land should vest in the Republic and recommends amendment of the provision to that effect. Furthermore, the provision should be inserted under the part dealing with public land. The amended provision is to read as follows—

**Vesting of
customary
land** **... All customary land is vested in perpetuity in the Republic.**

SECTION 26 [*Minister to administer and control customary land*]

The section empowers the Minister to administer and control customary land including all minerals in or upon any customary land. The section further empowers Chiefs to authorize the use and occupation of customary land subject to the general or special direction of the Minister. In view of the recommendations that the administration of customary land should be under customary land committees, which have been established under the proposed customary land legislation, the Commission recommends the repeal of the section.

SECTION 27 [*Acquisition of customary land for public purposes*]

This section provides for situations where the Minister may acquire customary land. The Commission was aware that the unallocated and open access customary land which the Commission has recommended to be classified as public land would be the target of this provision. Hence, the provision should properly be placed under the part dealing with public land and should read as follows—

**“Acquisition
of customary
land for
public utility** **... (1) Where it appears to the Minister or local government authority, that any unallocated customary land is needed for public utility, the Minister or local government authority, as the case may be, shall serve notice upon the Traditional Authority within whose Traditional Land Management Area the customary land is situated:**

Cap.69:02 **Provided that this subsection shall not apply to any customary land required for use as a public road or for the widening or diversion thereof, but such land shall be acquired for such purpose in accordance with the Public Roads Act.**

(2) Wherever any customary land is required for temporary use for a public utility, such use not being in the

opinion of the Minister or local government authority likely to necessitate occupation for a period in excess of seven (7) years, the Minister or local government authority may authorize the temporary use and occupation of the land for such public utility, and such land shall remain customary land throughout the period of temporary use and occupation:

Provided that, on the expiry of such a period, the Minister or local government authority may authorize such temporary use and occupation for a further period of three (3) years.

(3) Every notice under this section shall—

(a) as soon as practicable be published in the *Gazette*; and

(b) invite any person claiming to be entitled to any interest in the land to which the notice relates to submit particulars of his claim to the Minister or local government authority within two months of the date of the publication of such notice in the *Gazette*.

(4) For the purposes of this section “public utility” means utility which is for the direct or indirect benefit of the community as a whole, or a part of the community within a Traditional Land Management Area.”

SECTION 28 [*Compensation to individuals for loss, damage or disturbance*]

The section provides for the payment of compensation for loss of customary land through any grant by the Minister; any declaration that such land is public land; and temporary use and occupation of customary land for public purposes. The Commission recommends amendment in view of earlier recommendations to restrict the powers of the Minister regarding customary land. The new section 28 is to read as follows—

“Compensa- ... Any person who, by reason of—
tion to
individuals for
loss, damage
or disturbance
(a) any acquisition made under section ...; or
(b) the temporary use and occupation of customary
land under section ...,

suffers any disturbance of, or loss or damage to any interest which he may have or, immediately prior to the occurrence of any of the events referred to in this section, may have had in such land, shall be paid such compensation for such disturbance, loss or damage as is reasonable.”

SECTION 29 [*Land no longer needed for public purposes*]

The section requires the Minister, where any public land becomes surplus to the needs of Government, to so declare by notice published in the Gazette and thereupon such land becomes customary land. Further, subsections (2) and (3) empowers the Minister to give directions to any chief regarding the disposition of customary land. The Commission considered the Minister's powers in subsections (2) and (3) inappropriate in view of the Land Policy's aspiration to empower chiefs working with Customary Land Committees to carry out the functions of customary land management and control. The Commission thus recommends amendment of the section to read as follows—

“Land no longer needed for public purpose ... **Whenever it appears to the Minister or a local government authority that any public land is surplus to the requirements of the Government, the Minister or local government authority shall so declare by notice published in the Gazette, and thereupon such land shall become customary land.**”

SECTION 30 [*Conversion of customary land to registered land*]

The section provides that the Act shall not be construed as preventing the application of the Customary Land (Development) Act to any customary land and the subsequent registration of such land under the Registered Land Act. The Commission recommends deletion of the reference to the Customary Land (Development) Act in view of its recommendation in this Report to adopt a new statute to regulate customary land. The amended section 30 is to read as follows—

Conversion of customary land to registered land
Cap. 58:01 ... **Nothing in this Act shall be construed as preventing the registration of customary land under the Registered Land Act as private land in the form of customary estates.**”

PART VI—USER OF LAND

SECTION 31 [*Minister's power to regulate, manage or control the user of land*]

The section spells out the Minister's powers in relation to the regulation, management, and control of the user of any land other than public land and private land situated in a Municipality or Township. The Commission observed that cities are omitted in the provision for the reason that they were not in existent in Malawi at the time of the enactment of the statute. The Commission thus recommends insertion of the word “City,” immediately before the word “Municipality” in subsection (1). Further, in anticipation of eventual devolution of administration of customary land to the grassroots, the Commission considered that traditional leaders shall have the primary responsibility to control user of customary land in Traditional Land Management Areas.³⁵ The Commission

³⁵ See the Customary Land Bill, attached hereto.

therefore recommends that the limitation regarding the powers of the Minister under subsection (1) should extend to customary land in Traditional Land Management Areas.

The Commission also observed that the penalty for contravening the section provided in the present subsection (3) is K200 and imprisonment for six months and K10 for a continuing offence grossly inadequate compared to similar offences in comparable statutes³⁶. The Commission therefore recommends enhancement of the penalties under the provision to promote compliance with conditions for user of land. In the case of a first offence by a legal person, the Commission recommends enhancing the fine to “**K1,000,000**” or the reasonable estimate of the cost of restoring the land. In the case of a continuing offence by a legal person, the directors shall be liable to “**one year imprisonment with no option of a fine.**” In the case of a first offence by a natural person, the Commission recommends enhancing the penalty to a fine of “**K100,000 and to imprisonment for six months**”. In the case of a continuing offence by a natural person, the Commission equally recommends a penalty of “**one year imprisonment with no option of a fine**”.

SECTION 32 [*Failure to comply with regulations, directions or instructions*]

This section empowers the Minister to enforce orders, regulations, directions or instructions made by him under section 27 (1) in respect of acquisition of customary land for public utility. The Commission recalled its recommendation under section 27 (1) to equally vest such powers in local government authorities. The Commission thus recommends insertion of the words “**or a local government authority**” after the word “Minister” in both subsections (1) and (2) of this provision.

SECTION 34 [*Obstructions and penalties*]

The section seeks to ensure that persons performing functions or lawfully exercising powers under this Part are not necessarily obstructed and stipulates that the penalties applicable for obstructing such persons are those provided in section 31 (3) and (4). The Commission was aware that these subsections deal with penalties for non-compliance with conditions attached to user of land while as the present section creates a slightly different offence of “obstruction” which ought to require lower penalties. The Commission therefore recommends deletion of any reference to penalties under section 31 subsection (3) and (4) and replace the same with a fine of “**K100,000**” for a legal person and “**K50,000 and imprisonment for three months**” for a natural person.

SECTION 35 [*Vesting of land after termination of right to occupy*]

The section makes provision for the vesting of land after termination of right to occupy. If the land is public or customary land and it is held by a person directly under a grant, lease or other disposition it reverts to the President as

³⁶ The Environment Management Act, Cap. 60:02 and the Forestry Act, Cap. 63:01 of the Laws of Malawi.

public land. Where the land is private land and is held by a person under lease, licence or other disposition, it reverts in the person entitled to the land on the termination of the transaction.

The Constitution has vested all lands and territories of Malawi in the Republic. The Commission thus recommends amendment of the section to conform with section 207 of the Constitution by deleting the reference to “President” and replacing therewith “**Republic**”.

PART VII—TRESPASS OR ENCROACHMENT UPON, OR UNLAWFUL
OCCUPATION OF LAND

SECTION 36 [*Summons in a Magistrate Court for trespass, encroachment or unlawful occupation*]

The section provides for the responsible courts and the process to be followed where trespass, encroachment or unlawful occupation of land occurs. In relation to customary land, the designated court for handling such matters is the Traditional Court. The Commission observed that although the Traditional Courts Act³⁷ has not been repealed, the traditional courts established under that Act are no longer functional since 1994. These courts have been subsumed under the High Court system as courts of the magistrate of the third and fourth grade. Further, the Policy recognizes that this function should be properly assigned to Land Tribunals. This arrangement seeks to promote transparency, accountability, and flexibility in the handling of customary land disputes. The Commission was aware that presently, in most traditional areas there are committees established by traditional authorities, which handle the function of dispute settlements. Consultations with stakeholders however, revealed that these committees lack guidelines within which to operate which has resulted in perceptions of abuse of power and corruption. The Commission hence conceded that the issue goes beyond availability of democratic institutional structures but rather the absence of rules guiding such institutions. The Commission thus recommends that rules should be promulgated to regulate the functioning of institutional structures established for resolving customary land disputes and that such structures should be tribunals as recommended by the Land Policy rather than courts. Additionally, that the tribunals should be administrative in nature and should focus on mediation in customary land disputes.

The Commission further considered that the tribunals proposed by the National Land Policy can operate meaningfully from the Traditional Authority level rather than the village level since the function of land allocation shall be implemented at the Group Village level. The Commission thus recommends that the Tribunals should be established from the level of Traditional Authority and that these should comprise seven members as opposed to the five proposed by the National Land Policy. The criteria for the selection should be based on familiarity and knowledge of the local area and its customary law, experience in handling

³⁷ Cap. 3:03.

social issues and consideration should be given to the integrity of the individual concerned. The Commission further recommends that members of Customary Land Allocation Committees should be disqualified from membership of the tribunals.

Furthermore, the Commission considers that the legal framework to regulate these structures and their operational guidelines should be provided in a comprehensive statute to regulate all aspects of customary land rather than in a separate statute as is envisaged by the National Land Policy. To that end, the Commission recommends adoption of a new law to be titled “**Customary Land Act**” for this purpose. Accordingly, subsection (2) should be deleted and subsection (3) should be amended to delete the references to “Traditional Court”.

SECTION 37 [*Procedure*]

The section provides for the practice and procedure to be observed in proceedings in either a magistrate’s court or in a Traditional Court. In view of its recommendations under section 36, the Commission recommends deletion of references to “Traditional Courts” and “Traditional Courts Act”.

PART VIII—MISCELLANEOUS

SECTION 38 [*Minister to act subject to the direction of the President*]

The section provides that the Minister shall exercise his functions under the Act subject to the directions of the President. The Commission was aware that this provision is pursuant to section 8 of the Act which vests public land in perpetuity in the President. The Commission recommends deletion of this section in view of its recommendation regarding the vesting of public land.

SECTION 39 [*Minister empowered to make regulations*]

The section empowers the Minister to make regulations for the purposes of the Act and goes further to specify some of the purposes that may influence the making of regulations by the Minister. The Commission considered this approach dissatisfactory and recommends adoption of a new provision conferring general rule-making power on the Minister as follows—

“Minister to
make
Regulations ... **Subject to this Act, the Minister may, from time to time,
make regulations for any of the purposes of this Act.”**

SECTION 40 [*Certificate of Minister to be prima facie proof*]

This provision stipulates that production of the certificate signed by the Minister shall be prima facie proof of category of land in any proceedings before a court where the category of land has to be determined. In view of the recommendation to categorize land into public and private land, the Commission recommends retention of the provision subject to deletion of any reference to “customary land” in the section. Further, the Commission recommends the

insertion of the words “ **or local government authority**” immediately after the word “Minister”.

SECTION 41 [*Minister’s powers of delegation*]

Subsection (1) empowers the Minister to delegate specified powers under the Act to any authorized officer. The Minister is required to specify the powers so delegated in the notice of the delegation. Subsection (2) obliges the authorized officer to consult the Commissioner for Town and Country Planning in the execution of his powers under this subsection. Having recommended that local government authorities should also exercise some of the powers generally exercised by the Minister under this Act, the Commission recommends that local government authorities should also be given discretion to delegate powers to officers. The words “**or a local government authority**” should thus be incorporated in both subsection (1) and (2).

SECTION 42 [*Minister’s power to adapt or modify other laws*]

The provision states that the Minister may publish a notice in the Gazette stating that any other Act or any subsidiary legislation shall be read with the necessary adaptations or modifications for conformity with the Land Act. The Commission observed that the section purports to empower the Minister to override an Act of Parliament by a notice published in the *Gazette*. This is against the principal of separation of powers as provided in the Constitution, which entrusts Parliament with the power to make laws. The Commission recommends repeal on that basis.

In view of the extensive amendments to the Land Act, the Commission recommends repeal and adoption of a new Land Act, the Bill of which is attached to this Report.

B. CUSTOMARY LAND (DEVELOPMENT) ACT (Cap.59:01)

The Act makes provision for the ascertainment of rights and interest in customary land and for the better development of customary land. The Commission recommends the repeal of the Act and recommends that the aspects of the new system of titling customary land as advocated by the National Land Policy should be incorporated under a new law specifically to regulate the management of customary land. The law should further provide for the creation and empowering of committees and tribunals to carry out the function of land allocation, management and dispute settlement respectively as is envisaged under the National Land Policy. As indicated earlier, the Bill entitled “Customary Land Act” to put into effect such a law has been attached as part of this Report.

C. LOCAL LAND BOARDS ACT (Cap.59:02)

The Act seeks to protect customary land which has been turned into private land against unwise dispositions by requiring the consent of Local Land Boards

in any transaction involving such land. In view of the recommendation to introduce a new legal framework to regulate the management of customary land, the Commission recommends that the Act should be repealed.

D. REGISTERED LAND ACT (Cap. 58:01)

PART I—PRELIMINARY

SECTION 2 [*Interpretation*]

“Allocation Officer”

The Commission recommends deletion of the definition of “Allocation Officer” since the functions of such officer shall be implemented by a land clerk introduced under the proposed legislation on customary land. To that end the Commission recommends incorporation of the definition of “land clerk” in an appropriate place to read as follows—

““Land Clerk” bears the meaning as assigned to it in the Customary Land Act;”.

“Court”

The term “court” is defined to mean the High Court or a Resident Magistrate Court. The Commission considered this definition limiting more especially that the Constitution recognizes other subordinate courts presided over by lay persons.

The Commission therefore recommends that the term should be defined as follows—

““court” means any court of competent jurisdiction;”.

New definition of “customary estate”

The Commission recommends adoption of the following new definition of customary estate under the Act—

““customary estate” bears the same meaning as assigned to it in the Land Act;”.

“land”

In view of the recommendation in the proposed Land Bill to incorporate a comprehensive definition of land, the Commission recommends that the term should be defined as follows in anticipation of the adoption of that recommendation—

““land” bears the same meaning as assigned to it in the Land Act;”.

“to file”

The Act defines this expression to mean “to place in the relative piece file”. The Commission considered this definition inadequate in view of technological advances or development. The Commission recommends that the definition should include electronic files. The Commission further recommends that this

definition should be moved and be inserted immediately after the definition of the expression “the register” in keeping with good drafting practice. The amended definition is to read as follows—

““to file” means to place in the relative piece file or electronic file;”.

“registration district”

In view of the recommendation to repeal section 4, the Commission recommends the following new definition of “registration district”—

““registration district” means the area under the jurisdiction of a local government authority;”.

PART II—ORGANIZATION AND ADMINISTRATION

Division I—Land Registries and Officers

SECTION 4 [*Registration district*]

The section empowers the Minister to order the constitution of a part or parts of Malawi as a land registration district. The Commission observed that all land in Malawi after the implementation of the National Land Policy shall be liable to be registered for purposes of determination of ownership. Thus, reliance will no longer be placed on the power of the Minister to declare a registration district. Further, registration districts shall be decentralized.

The Commission, therefore, recommends repeal of this provision.

Division 2—The Land Register

SECTION 10 [*The Land Register*]

The provision stipulates the type of information to be contained or shown in a land register. The Commission recommends incorporation of ‘customary estates’ as a class of private land in subsection (1).

Subsection (2) (ii) requires that where the land is private land and the Adjudication Record prepared under the Adjudication of Title Act,³⁸ so records, the register shall show that the title is provisional. The Commission recommends deletion of subsection (2) (ii) on the basis that the National Land Policy requires that all land in Malawi shall go under an adjudication process and title to land thereafter shall be registered. The amended subsection (2) should therefore read as follows—

(2) Each register shall show whether the land is public land or private land and shall indicate the relevant class of such land.

In view of the recommended amendments to subsection (2), the Commission recommends amendment to subsection (3A) as follows—

³⁸ Cap. 58:05 of the Laws of Malawi.

“(3A) The property section, containing a brief description of the land, lease or customary estate, together with particulars of its appurtenances; and a reference to the registry map and filed plan, if any;”

SECTION 11 [*Compilation of Land Register*]

The section provides for a procedure in which a land register should be compiled. The Commission observed that in terms of customary land the procedure requires the satisfaction of the dictates of the Customary Land (Development) Act³⁹ which has been recommended for repeal by the Commission elsewhere. The Commission thus recommends deletion of the reference to “Customary Land (Development) Act” in subsection (1) and replacement with the proposed new Customary Land Act. The Commission further recommends that the expression “Allocation Officer” should be deleted and replaced with “**Land Clerk**” in view of the suggested amendment to section 2 concerning the definition of “Allocation Officer”.

SECTION 12 [*Manner of registration*]

The section provides for the manner in which title to a piece of land shall be effected. The Commission noted that the reference to Local Land Boards Act⁴⁰ and Local Control Division was in view of the requirement to obtain consent for any dealing in such land to prevent unwise disposition of customary land converted to private land. In view of the recommendation to repeal the Local Land Boards Act, the Commission considered that the functions of the Land Boards should be properly conferred on customary land committees to be constituted under the proposed law to regulate customary land. The Commission thus recommends replacement of subsection (3) with the following new subsection—

“(3) No subsequent registration shall be made with respect to a customary estate or a lease of customary land within a Traditional Land Management Area unless the Registrar is satisfied that the dealing in such land or lease, which requires registration, is with the written consent of a land committee responsible for the area and the Registrar shall file a copy of the consent given by the committee.”

Division 3—Maps, Parcels and Boundaries

SECTION 15 [*Registry map*]

The section empowers the Director of Surveys to prepare and maintain a map or series of maps to be called the Registry maps for every registration district.

The Commission recommends the retention of the provision subject to substitution of “Director of Surveys” for “**Surveyor General**” wherever the nomenclature appears in the provision and throughout this Part for consistency

³⁹ Cap. 59:01 of the Laws of Malawi.

⁴⁰ Cap. 59:02 of the Laws of Malawi.

with current title applicable to the head of the Department of Surveys in the Ministry responsible for Lands.

SECTIONS 16 TO 19

The Commission recommends deletion of the words “Director of Surveys” and substitute therefor with the words “**Surveyor General**” wherever the nomenclature appears in these sections.

SECTION 20 [*Maintenance of boundary features*]

The section makes provision that a proprietor of land must maintain in good order the fences, hedges, stones, pillars, walls, survey marks and other features that demarcate his boundaries. The provision further empowers the Registrar to order the demarcation within a specified time of any boundary in such manner as he may direct and that any person who fails to comply with such an order shall be liable to a fine of £10. The Commission recommends the retention of the provision subject to enhancement of the fine in subsections (2) and (3), respectively from “£10” to “**K100,000**”.

SECTION 21 [*Interference with boundary features*]

The section prohibits any interferences or impairing of any boundary feature or any part thereof unless there is express authority to do so from the Registrar. It further stipulates a fine of £100 and to imprisonment for 2 months for any person who fails to comply with this provision. The Commission recommends the retention of the provision subject to enhancing the fine from “£100” to “**K200,000 and to imprisonment for six months**”.

PART III—EFFECT OF REGISTRATION

SECTION 25 [*Rights of proprietor*]

The section provides that the rights of the proprietor shall be absolute and not liable to be defeated except as provided in the Act or the Land Act.⁴¹ It also states that the proprietor shall hold title free from other interests and claims, with exceptions. The Commission noted that paragraph (i) of the proviso makes reference to the term “family representative”. The Commission recommends deletion of the words “family representative” in view of the fact that the anticipated scheme of customary land ownership, as propagated by the National Land Policy, does not envisage ownership through a family representative, as is the case under the Customary Land (Development) Act.

The amended paragraph (i) of the proviso shall read as follows—

“(i) nothing in this section shall be taken to relieve a proprietor from any duty or obligation to which he is subject as a trustee;”

⁴¹ Cap. 57:01 of the Laws of Malawi.

SECTION 27 [*Overriding interests*]

The provision stipulates procedure to be followed for a person to apply to the Registrar to convert a provisional title to a non-provisional one. The Commission recommends retention of the provision subject to correcting an obvious error by deleting the word “country” and substituting therefor the word “**contrary**”.

PART V—DISPOSITIONS

*Division 1—General*SECTION 31 [*Subsequent dealings*]

This section provides that only the disposal of land, lease or charge which follows the Act and the Local Land Boards Act shall be effective. The Commission recalled its recommendation to repeal the Local Land Boards Act. The Commission therefore recommends deletion of the reference to the “Local Land Boards Act” and replacement with the proposed law to regulate administration and management of customary land.

SECTION 32 [*Protection of persons dealing in registered land*]

The Commission considered subsection (2) and recommended retention of the provision subject to deleting the words “or family representative”.

SECTION 34 [*Power to compel registration*]

The section empowers the Registrar to compel any person to register an instrument, which is supposed to be registered under the Act, if such person wilfully defaults or fails so to do. Non-compliance with the order of the Registrar attracts a fine of £25. The Commission considered the fine to be grossly inadequate especially in view of the provisions of section 15 (3) of the Decimal Currency Act⁴² on conversion of fines expressed in pounds. The Commission recommends the enhancement of the fine to “**K100,000**”.

Division 2—Leases

This division seeks to regulate the relationship between landlord and tenant. The Commission considered that there is a need to develop a separate law in this area and concluded that such an exercise cannot be the subject of the present reforms due to the extensive nature of the subject area and requires a separate exercise altogether.

The Commission therefore recommends that at the meantime sections 38 to 58 be retained but that an extensive review should be conducted later which shall come up with comprehensive provisions on the relationship between landlord and tenant under this Act or under a separate Act altogether.

⁴² Cap 45:02 of the Laws of Malawi.

*Division 3—Charges*SECTION 66 [*Right of Redemption*]

In subsection (4), the Commission observed that where the chargor has desired to repay the money secured by the charge, and the chargee is absent or cannot be found, or the Registrar is satisfied that the charge cannot be discharged otherwise, the chargor is supposed to deposit the money with the Registrar in trust for the person entitled thereto. This then entails that the obligation of the chargor under the charge ceases and the Registrar is mandated to cancel the registration of the charge. The Commission further observed that the trust created has a life span of six years from the date of the deposit and if the amount deposited is not paid over to the chargee, then it shall be paid into the Consolidated Fund.

The Commission considered the requirement to channel the deposited amount to the Consolidated Fund inappropriate for customary estates. In view of the anticipated devolution of management and administration of customary land to Traditional Authorities, the Commission recommends that in the case of customary estates, the money deposited which is the subject of the trust, should go to the District Development Fund, if it is not paid to the chargee. The Commission therefore recommends insertion of the following proviso to the subsection and a new subsection (5) to provide a definition for “District Development Fund”—

“Provided that where the subject of the charge is a customary estate, the amount payable shall be paid into the District Development Fund.

(5) For the purposes of this section “District Development Fund” means any fund of that title as contemplated under section 46 of Local Government Act.”

Cap. 22:01

*Division 4—Transfers*SECTION 80 [*Certificates as to payment of rates*]

The section provides that no instrument purporting to transfer or vest any land or lease of any land shall be registered unless a rating authority in the area in which the land is situated has produced to the Registrar a written statement that all rates and charges in respect of the land have been paid to the authority.

In discussing this provision, the Commission considered whether customary estates should be rateable. It was recognized that a rate is a local tax, which is normally associated with the provision of services such as roads, schools, health services, among others. The Commission was aware that such services are not normally available in areas where customary estates are envisaged to be located. It was further realized that imposing a tax on the category of people that are anticipated to own customary estates would be unfair and prohibit access to land for the rural masses, which are supposed to benefit from security of tenure of

customary land for their livelihood. The Commission therefore recommends that customary estates should not be rateable and considered that by referring to an area of “Rating Authority” the section implicitly excludes customary estates.

SECTION 83 [*Transfer of part*]

The section prohibits sectional transfers of property and requires subdivision first. The Commission was aware that in some countries such as South Africa,⁴³ sectional transfers are permissible allowing for the holding of sectional titles. The Commission observed that if Malawi were to introduce sectional titles, the first step should be to enact a new law to regulate sectional titles. The Commission therefore recommends that Government should seriously consider adoption of a new law in this area pursuant to its development agenda.

Division 5—Easements, Restrictive Agreements, Profits And Licences

SECTION 91 [*Profits*]

The section empowers any proprietor of land or lease to grant profits in his discretion by an instrument in the prescribed form. In subsection (1), there is a reference to the repealed Mining Act, which has been replaced with the Mines and Minerals Act⁴⁴. The Commission recommends amendment accordingly.

Division 6—Co-Proprietorship and Partition

SECTION 101 [*Partition of family land*]

The section provides that a family representative, an adult member of the family or the Minister may apply to the Registrar for the partition of family land. It also lays down the procedure to be followed by the Registrar when such an application is made. In light of the recommendation to repeal the Local Land Boards Act, the Commission considers this section superfluous and recommends repeal.

Division 7—Succession on Death

PART VI—INSTRUMENTS AND AGENTS

SECTION 108 [*Minors*]

The Commission considered that the age of “twenty one” for majority to be a proprietor of land was on the higher side since Malawians in rural areas marry at a slightly younger age, invariably eighteen or lower. The Commission thus recommends reduction of the age of majority for accessing private land to “**eighteen**” to widen the catchment area.

PART VII—TRANSMISSION, TRUST AND FAMILY REPRESENTATION

SECTION 119 [*Trusts*]

The section allows a person to acquire land or a lease or a charge in a fiduciary capacity. Such person may be described by that capacity in the

⁴³ See the Sectional Title Act, Act 95 of 1986 Laws of South Africa.

⁴⁴ Cap 61:01 of the Laws of Malawi.

instrument of acquisition and shall be registered as a trustee. The Registrar is not required to enter particulars of any trust in the register.

Subsection (3) exonerates any person dealing in good faith for valuable consideration in relation to any registered dealings pertaining to the trust. Such person shall not be deemed to have notice of the trust nor shall any breach of the trust create any right to indemnity under the Act. The Commission considered that the protection afforded to the third party in the provision is inappropriate because it operates to the detriment of the beneficiaries of the trust. The Commission was of the view that a fair approach is to require a person acquiring land to check the trust document to determine the nature of the trust rather than confining them to the Registrar's register that does not offer much information.

The Commission therefore recommends amendment of subsection (3) to read as follows—

“(3) Where the proprietor of land, a lease or a charge is a trustee, he shall hold the same subject to any unregistered liabilities, rights and interests to which it is subject by virtue of the instrument creating the trust, and for the purpose of any registered dealings, any person having dealings in such land shall be deemed to have notice of the trust and any breach of the trust shall create a right to indemnity under this Act.”

SECTION 121 [*Family representation*]

The section deals with land, which is family land or where the proprietor of such land is a family representative. The Commission was aware that the new scheme of ownership of land proposed by the National Land Policy does not anticipate a category of “family land” or “family representation.” The Commission recommends repeal accordingly.

SECTION 122 [*Replacement of family representation*]

The section builds on section 121 which has been recommended for repeal. The Commission similarly recommends repeal of this section.

PART IX—PRESCRIPTION

SECTION 134 [*Acquisition of land by prescription*]

The section allows acquisition of land by peaceable, open and uninterrupted possession for a period of twelve years without the permission of any lawfully entitled person to such possession. However, customary land and public land cannot be acquired through this mode.

In view of the proposal to introduce private ownership of customary land in the form of customary estates, the Commission considers that such estates should be introduced under the section to be acquired, where appropriate, by the mode prescribed thereunder. The reference to customary land in the proviso should

therefore be qualified as “**customary land, which is unallocated or communal**”. The Commission therefore recommends that the proviso to subsection (1) should read as follows—

“Provided that no person shall so acquire the ownership of public land, except unallocated or communal customary land”.

SECTION 137 [*Acquisition of easements and profits by prescription*]

The section provides for the acquisition of easements and profits by prescription but excludes application of such acquisition to customary or public land. The Commission adopts its earlier reasoning when dealing with acquisition of land by prescription and considers that the need to exclude customary land should only apply to communal and unallocated land falling within the purview of public land and recommends amendment accordingly.

PART X—RECTIFICATION AND INDEMNITY

SECTION 140 [*Right to indemnity*]

The section offers a right to indemnity by Government to any person suffering damage by reason of mistake or omission in the register, rectification of the register or any error in a certificate of official search issued by a registrar. The Commission recommends that local government authorities should be incorporated in the provision to provide an alternative avenue to indemnity in view of the anticipated land decentralisation. The Commission therefore recommends amendment of subsection (1) by inserting the words “**or a local government authority in whose jurisdiction that area falls**” immediately after the word “Parliament” at the end of the subsection.

SECTION 143 [*Recovery of indemnity paid*]

The section allows Government to recover by suit or otherwise the amount so paid by way of indemnity from any person who has caused or substantially contributed to the loss by fraud or negligence. In view of the recommendation in section 140 to incorporate local government authorities, the Commission recommends amendment of the section in the second line to insert the words “**or local government authority, as the case may be**”, immediately after the word “Minister”.

SECTION 144 [*Errors in survey*]

The Commission observed that the section makes reference to section 28(2) of the Customary Land (Development) Act which has been recommended for repeal. The Commission recommends deletion of this reference and amendment of subsection (1) to read as follows—

“(1) Subject to the Customary Land Act, as between the Government and a proprietor, no claim to indemnity shall arise and no suit shall be maintained on account of any surplus or deficiency in the

area or measurement of any land disclosed by a survey showing an area or measurement differing from the area of measurement disclosed on any subsequent survey or from the area or measurement shown in the register or on the registry map.”

PART XI—DECISIONS OF REGISTRATION AND APPEALS

SECTION 146 [*Appeals*]

The section allows any person dissatisfied with the refusal of the Deputy Chief Land Registrar or any Assistant Land Registrar to effect or cancel any registration to appeal within thirty days of the refusal to the Chief Land Registrar. An appeal from the decision of the Chief Land Registrar is to be lodged with the High Court.

The Commission observed that there may be a possibility of conflict of interest by the High Court if the matter appealed against involves an issue where the Registrar sought an opinion of the High Court under section 145. After some debate, it was conceded that the question of conflict of interest may not arise since the matter may be handled by a different Judge. As such the Commission recommends retention.

SECTION 148 [*Appeal Rules*]

The section empowers the Chief Justice to make rules of Court for regulating applications and appeals to the High Court under the Act and the applicable fees.

The Commission observed that no such rules have been made since the enactment of the Act. The Commission therefore recommends that the Chief Justice should make the rules for the smooth implementation of the Act.

PART XII—MISCELLANEOUS

SECTION 152 [*Offences*]

Subsection (1) creates offences of knowingly misleading or deceiving any person authorized under the Act who requires information in respect of any land or interest in land; fraudulently issuing or fraudulently procuring the issuing or making of any certificate, or other document, or any registration, or any erasure or alteration in any certificate or other document or in any register; fraudulently using, assisting in fraudulently using or is privy to the fraudulent use of any instrument or form purporting to be issued or authorized by the Registrar; or causing any defacement, obliteration, mutilation or unauthorized entry or alteration to be made on or in any register or filed instruments. The penalty of which is a fine of £200 and imprisonment of three years.

The Commission observed that the fine of £200 is grossly inadequate and out of touch with reality when one applies the provisions of the Decimal Currency Act (Cap. 45:02) to convert the fees expressed in pound sterling to Malawi Kwacha. The Decimal Currency Act requires the multiplication of any amount expressed

in pound sterling, in any written law by a prescribed multiplier number to get an equivalent in Malawi Kwacha. The prescribed multiplier number is 2. Thus, a penalty of £200 would translate as being equivalent to K400.

The Commission took notice of the enactment of the Fines (Conversion) Act, Act No. 10 of 2005. Section 5 (6) of that Act states that if a fine or the rate of fine is expressed in pounds, the penalty value of the fine shall be ascertained by multiplying the amount of the fine stated in the Act prescribing such fine by the multiplier number specified in Part II of the Schedule. Under Part II of the Schedule, the multiplier number for fines expressed in pounds is 1000. In light of the provision of the Fines (Conversion) Act, the Commission recommends that the section be amended by deleting “£200” and substituting therefor “K200,000”

Subsection (2) also creates offences of neglecting to attend or produce any document before the Registrar; or refusing without reason to attend in accordance with summons, or produce any document which is required by the summons to produce, or to answer upon oath or otherwise any question lawfully put to him by the Registrar. The penalty in the event of a finding of guilty is £20.

The Commission adopts the reasoning it reached when considering subsection (1). The Commission therefore recommends that subsection (2) be amended by deleting “£20” and substituting therefor “K20,000”

E. TOWN AND COUNTRY PLANNING ACT (Cap.23:01)

The Commission observed that the National Land Policy advocates for the making of the whole of Malawi a planning area.⁴⁵ This in itself requires the adoption of a comprehensive statute to encompass matters of physical planning, rural development, and district administration. After a careful consideration of the current Town and Country Planning Act, the Commission found it outdated and inadequate to encompass these matters effectively. The Commission thus recommends adoption of a new Act to be titled the “**Physical Planning Act**” of which the relevant Bill is attached to this Report.

Among other matters, the proposed new legislation makes provision for the following—

(a) Duties of the Commissioner for Physical Planning

The Commission observed that the current Town and Country Planning Act has no express provisions on duties of the Commissioner for Physical Planning. It was observed that the Commissioner is a principal officer for the administration of land in Malawi and therefore his duties must be clear in the proposed legislation. The Commission therefore recommends that the Commissioner for Physical Planning should be responsible for the following—

- (i) formulating national and regional physical development policies, guidelines and strategies;

⁴⁵ Government of Malawi, (2002) National Land Policy paragraph 6.3.2.

- (ii) preparing National Physical Development Plans;
- (iii) approving District and Local Physical Development Plans and ensuring that such plans are in line with the National Physical Development Plan;
- (iv) initiating, undertaking or directing studies and research into matters concerning physical planning from time to time;
- (v) advising the Commissioner for Lands and local government authorities on the most appropriate use of land;
- (vi) requiring local government authorities to properly execute physical development control and preservation orders; and
- (vii) carrying out any other duties pursuant to the objectives of the Act.

(b) Physical Planning Council

The Commission recommends the establishment of a new body to be known as the Physical Planning Council. Among other things, the Physical Planning Council shall be responsible for resolving disputes on matters of physical planning, advising Government on broad planning policies and planning standards, and to advise Government on National Physical Development Plans.

(c) Planning Committees

The Commission observed that the Town and Country Planning Act makes provision for the establishment of planning committees, but does not clearly stipulate the composition of the Committee. The Act only empowers the Minister to appoint a Committee where a Planning Area has been declared under the Act. The Commission observed that it is important for the law to provide guidelines for the composition of such committees so that only the relevant and critical persons are members of the Committee. The Commission noted that leaving the matter of composition in the hands of the Minister is not appropriate more so that the planning committee is the responsible planning authority for any planning area. The Commission further recommends that such a planning committee must be appointed by a local government authority of the area and not the Minister.

(d) Payment of Compensation

The Commission observed that while the Town and Country Planning Act recognizes payment of compensation where a person's right to property is negatively affected, it does not clearly outline occasions where compensation is payable.

The Commission noted that the absence of such provisions in the law has in some instances resulted into arbitrary decisions. The Commission therefore recommends that the new law should outline occasions where compensation may be payable. The Commission has therefore made recommendations, in the proposed legislation outlining circumstances in which compensation may be payable.

(e) Physical Planners Board

The Commission observed that in Malawi the profession of physical planning is not regulated. It was noted that internationally, physical planning is a profession that is regulated, a situation that has contributed to improved standards of the profession in those countries where the profession is regulated. The Commission resolved that Malawi must not lag behind the international practice and therefore recommends the establishment of a Physical Planners Board which shall be responsible for regulating the activities, conduct and qualification of physical planners in Malawi.

F. FORESTRY ACT (Cap. 63:01)

PART IV—FOREST RESERVES AND PROTECTED FOREST AREAS

SECTION 26 [*Declaration of protected forest areas*]

The section empowers the Minister to declare certain areas as protected forest areas after consultations with the Minister responsible for land matters, the Minister responsible for agriculture, the Minister responsible for irrigation and water development, the owner or occupier and in case of customary land, the Traditional Authority.

The Commission recommends that the list of the authorities consulted should include the Minister responsible for physical planning. The Commission therefore recommends that the provision should be amended accordingly.

PART V—CUSTOMARY LAND FOREST

SECTION 30 [*Demarcation of village forest areas*]

The Commission observed that the “unallocated customary land” falls within the ambit of public land under the new scheme of categories of land envisaged under the Policy. As under the Policy, such type of public land shall be managed by Customary Land Committees. The Commission recommends that a Customary Land Committee should be responsible, as a trustee, for the demarcation of village forest areas and not the village headmen.

SECTION 32 [*Minister may make rules*]

The Commission recommends that the reference to “District Council” should be deleted and replaced with “**local government authority**”.

SECTION 33 [*Approval of by-laws*]

The Commission recommends that the approval of any rules made by a Village Natural Resources Management Committee should be done by a local government authority and not the Minister in view of decentralization.

G. PUBLIC ROADS ACT (Cap. 69:02)

PART I—PRELIMINARY

SECTION 2 [*Interpretation*]

“Surface rights”

The Commission considered the definition of the expression “surface rights” and took the view that the latter part dealing with agricultural land shall be irrelevant in the framework proposed by the National Land Policy which seeks to attach some value even to agricultural customary land. The Commission therefore recommends that the latter part should be deleted and the new definition should read as follows—

““surface rights” in relation to land in respect of which compensation is claimed, means the rights of the claimant to any interest in the crops, structures and other improvements on the land;”.

The Commission retains the rest of the definitions.

PART I—ROADS AND ROAD RESERVES

SECTION 3 [*Classification and vesting of roads*]

The section provides for the various classifications of public roads in Malawi as main roads, secondary roads, tertiary roads, district roads, branch roads and estate roads. It further empowers the Minister to designate any road to be a public road by declaration published in the *Gazette*. Upon such designation, such road vests in the President as public land. The Commission was aware that the Land Act⁴⁶ equally vests public land in the President, and the Commission recalled its earlier recommendation to change this position.

The Commission reiterates its observation that the Constitution vests all land in the Republic. For consistency with the Constitution therefore the Commission recommends that subsection (2) should be amended to vest any road designated as a public road in the Republic as public land.

SECTION 4 [*Main roads*]

The section empowers the Minister to designate roads as main roads by notice published in the *Gazette*. The Commission observed that subsection (3) requires that any new construction, major improvements and maintenance activities should be communicated to the City Council, Municipal Council or Town Council concerned.

⁴⁶ Cap. 57:01 of the Laws of Malawi

The Commission however observed that the Constitution refers to “local government authorities” in respect of what was previously known as “Councils”. The Local Government Act defines “local government authorities” to mean “City Council, Municipal Council and Township”. The Commission therefore recommends amendment of subsection (3) to delete the reference to “Councils” and replacement with “**local government authorities**” for consistency with the Local Government Act⁴⁷ and the Constitution. Similarly, wherever the reference to “Councils” is made in the Act, amendments should be made accordingly.

SECTION 10 [*Width of road reserves and effects of reservation*]

Subsection (1) provides that the Minister shall have power to declare by notice published in the *Gazette* the width (not exceeding 60 metres) of any road reserve or class or classes of road reserve outside any City, Municipality or Township or any Planning Area declared under the Town and Country Planning Act.⁴⁸

The Commission recommends that in light of its recommendation regarding the review of the Town and Country Planning Act,⁴⁹ the local government authority should have the power to make the declaration as envisaged under this subsection.

Further, as the whole of Malawi shall be a planning area in light of the National Land Policy, the reference to a declaration of a planning area in the provision is superfluous and should be deleted.

The Commission recommends that the provision should now read as follows—

(1) A local government authority shall have power to declare by notice published in the *Gazette* the width, not exceeding sixty metres, of any road reserve or class or classes of road reserve in its area.

SECTION 11 [*Care, maintenance and construction of roads*]

Subsection (4) provides that if any public road is widened or diverted subject to the special or general direction of the Minister, the land occupied by the widened or diverted road shall vest in the President.

In light of the earlier recommendation under section 3 to vest all land in the Republic, the Commission recommends amendment of the subsection accordingly.

SECTION 12 [*Control points of access, structures, etc*]

The section empowers the Minister, to make regulations to control the number, location and design of points of access to all main or secondary roads.

⁴⁷ Cap. 22:01 of the Laws of Malawi.

⁴⁸ Cap. 23:01 of the Laws of Malawi.

⁴⁹ *ibid.*

The regulations may also require the owners of buildings and property to provide service roads to give access to such buildings or property and prohibit the erection of any buildings with direct frontage on to any road or road service.

Subsection (2) further stipulates that any powers conferred on the Controller of Roads or any other person by the regulations may only be exercised after consultation with the Commissioner for Town and Country Planning.

The Commission recommends that the reference to “Town and Country Planning” should be replaced by “**Physical Planning**” in light of the anticipated change of the name of the “Town and Country Planning Act” to “**Physical Planning Act**”.

SECTION 24 [*Power to Control Land for proposed roads*]

The section empowers the Minister to control land reserved for proposed roads. The Minister may do this through requests in writing to persons intending to do any act calculated to interfere with a proposed road and by publication of a notice in the *Gazette*.

In subsection (5), the Commission recommends deletion of the word “Deeds” and replacement with the word “**Land**” since the policy now is to move away from deeds registration to title registration.

SECTION 25 [*Reservation of land*]

Subsection (3) provides that if any strip of land has been reserved for road purposes, the highway authority shall lodge one copy of the plan showing the course of the proposed road with the Commissioner for Surveys and the Deeds Registrar.

The Commission recommends that the reference to “Commissioner of Surveys” should be deleted and be replaced by “**Surveyor General**” which is the present title to that office. Further, the word “Deeds” should be deleted and replaced with the word “**Land**” for reasons given under section 24.

SECTION 26 [*Withdrawal or modification of control or reservation*]

The section empowers the Minister to withdraw or modify any control or reservation made under sections 24 and 25 at any time. The Commission recommends that the word “Deeds” should be deleted and replaced with the word “**Land**”. Similarly, the phrase “Commissioner for Surveys” should be deleted and replaced with the phrase “**Surveyor General**”.

SECTION 28 [*Designation of new road and compensation*]

The section provides for the procedure of designation of a new road. It further provides that compensation shall be payable to the owner and occupier of the land affected by the construction and designation of the road.

The Commission recommends amendments to reflect that a road designated as a public road under this section shall vest in the Republic rather than the President in line with the recommendation under section 3.

SECTION 29 [*Power to take materials for road work*]

The section empowers the highway authority to enter upon any land and to take therefrom any material necessary for the construction, maintenance or repair of roads and stipulates that no compensation is payable except as provided in the section.

The Commission observed that the proviso to subsection (5) has listed exceptions to the payment of compensation so that if the land is unimproved land which is not customary land and does not exceed one per centum of the area of the total estate of the person who was the owner on the date of entry, compensation shall be paid for the value of any area so affected to the extent to which the area is rendered valueless for agricultural purposes. The Commission took the view that the provision will not augur well with the scheme proposed by the National Land Policy which anticipates registration and the attachment of value to all land whether improved or not and whether customary or not.

The Commission therefore recommends deletion of the proviso.

PART II—COMPENSATION

The Commission was of the view that the scheme of compensation under the Act was quite elaborate and with the necessary amendments in light of the Constitution could be a useful blueprint for the development of a regime of compensation under the Land Acquisition Act.⁵⁰

SECTION 44 [*Assessment of compensation generally and for surface rights*]

The section provides for the assessment of compensation payable under the Act where the owner or occupier of land is entitled to such compensation in respect of the exercise of powers conferred by the Act.

The Commission observed that subsection (2) (a) providing for compensation in respect of customary land, assigns such land different treatment and less value compared to private land. The Commission considered that this differential treatment cannot be tenable under the scheme advocated by the National Land Policy which anticipates registration of customary land and private ownership of such land as customary estates.

The Commission therefore recommends deletion of subsection (2) (a) to ensure that compensation of surface rights relating to customary land is assessed on the same basis as any private land.

⁵⁰ Cap. 58:04 of the Laws of Malawi.

SECTION 45 [*Compensation for land which becomes public land*]

Subsection (1) (a) provides that compensation for customary land shall be assessed in respect of disturbance only. In view of the recommendations in section 44 to treat customary land on equal footing with private land, the Commission recommends amendment to the subsection to reflect that recommendation. Subsection (1) (a) is to read as follows—

“(a) in the case of a customary estate, subject to subsection (2), the occupier shall be entitled to reasonable compensation in respect of disturbance and the amount of such compensation shall be assessed using open market value based on the loss suffered by the claimant arising from damage to or destruction of his interest in the land and surface rights on such land but may include the compensation for other disturbance;”

The Commission also observed that subsection (1) (a) (ii) deals with the issue of compensation through the giving of alternative land and confines the determination of value of such alternative land to agricultural or cultivation use. The Commission considered this approach limited and took the view that the provision should recognize other uses of land. The subparagraph should therefore be amended to read as follows—

“(ii) where no alternative land can be made available to him and the land remaining available to him for any purposes is not an economic unit;”

Similarly, subparagraph (iii) which requires assessment of compensation to take into account the cost of improving the alternative land to make it fit for cultivation, the Commission recommends an amendment to open up the provision to recognize other uses of land. The amended subparagraph (iii) is to read as follows—

“(iii) where alternative land is made available to him and the making of the alternative land equally as fit for use as the land of which he has been deprived is likely to involve a loss in terms of money, materials or work.”

In the proviso to subsection (1) (a), one of the factors to be taken into consideration in assessing compensation for disturbance is what would have been the value of the land in its improved condition at the valuation date less its value at such date in an unimproved condition if it had been freehold land. The Commission considers the reference to freehold tenure irrelevant and recommends that all tenure categories should be considered. Subparagraph (i) of the proviso should therefore read as follows—

“(i) what would have been the value of the land in its improved condition at the valuation date less its value at such date in an unimproved condition;”

And finally, in subsection (2) (b), the Commission observed that compensation is restricted to surface rights only in respect of land which was a road reserve before becoming public land. The Commission recommends that compensation should extend to the interest in the land itself since customary land is anticipated to be given value through registration and private ownership.

The Commission therefore recommends insertion of the words “**and to interest in the land itself**” immediately after the words “surface rights” appearing in the second line of paragraph (b).

SECTION 46 [*Matters to be taken into consideration in assessing compensation for alienated land*]

The section lists down the matters that should be taken into consideration in assessing the amount of compensation relating to private land under section 45 (1) (b).

One of the matters to be taken into consideration is whether in consequence of the alienation of the land the claimant is compelled to change residence or place of business resulting in the claimant incurring reasonable expenses. The Commission considers that in these circumstances good will should be a compensable claim. The Commission therefore recommends that in subsection (1) the words “**and goodwill**” should be inserted at the very end of paragraph (c).

Subsection (2) (a) seeks to prevent the deliberate improvement of any land earmarked for the purposes of the Act in order to increase its market value. The subparagraph therefore requires the disregard of any improvements made within two years before the valuation date unless it is proved that the improvements were made in good faith and not in contemplation of the construction of the road. The Commission took the view that the specific period of two years which is given prior to the valuation date is unreasonable since assessment of compensation is done after the notice to acquire. The Commission therefore recommends that the phrase “within two years before the valuation date” should be deleted and should be replaced by the phrase “**after the notice to acquire**”.

SECTION 47 [*Claims for compensation*]

The section provides for the procedure to be followed when pursuing claims for compensation under the Act. In the case of customary land, the claim may be made orally to the Chief of the area who is required to forward the claim to the officer responsible for land matters within the district who in turn would forward the claim to the relevant highway authority.

The Commission observed that the National Land Policy envisages the establishment of Customary Land Committees to be serviced by land clerks. The Commission therefore took the view that claims for compensation in relation to customary estates should be lodged with Customary Land Committees which should be recorded in writing by the land clerks.

The Commission therefore recommends amendment to the proviso of subsection (1) (a) to read as follows—

“(a) in the case of a customary estate, the claim may be made orally to a Customary Land Committee which shall be required to record the claim in writing through the assistance of the land clerk who shall forward the claim to the officer responsible for land matters within the local government area and such officer shall in turn forward the claim to the relevant highway authority; and”

The Commission further observed that the proviso to subsection (1) (b) makes reference to a compensation board which is non-existent. The Commission therefore recommends deletion of this reference and replacement by a **“Land Tribunal”**. Similar amendments should be made in subsection (3).

Subsection (4) provides for the composition of a compensation board which shall consist of a Resident Magistrate and two assessors appointed by the Minister. Two issues were raised on this subsection. The first issue relates to the composition of the Board itself which the Commission considers grossly inadequate. The Commission took the view that the composition should include a valuer as one of the assessors since the issue of compensation is technical in nature.

The second issue relates to the appointing authority since a board or tribunal of this nature performs quasi-judicial functions. This is evidenced by the inclusion of a Resident Magistrate. The Commission was of the view that members of the tribunal should be appointed by the Judicial Service Commission on recommendation from the Ministry responsible for the administration of the Act and recommends accordingly.

Subsection (5) deals with compensation relating to disturbance of the occupier of any customary land and requires the compensation board to consult the Chief of such land in assessing compensation. In view of earlier recommendations relating to compensation regarding customary land owned privately as customary estates, the Commission recommends deletion of the reference to “Chief” and replacement by **“Customary Land Committee”**.

SECTION 48 [*Procedure before compensation boards*]

The section empowers the Minister to make rules regulating the procedure to be followed before any compensation board and for constituting the board. The Minister is required to make such rules with the concurrence of the Chief Justice.

In view of the nature and functions of a Land Tribunal as recommended under section 47, the Commission considers it inappropriate for the Minister to make rules to regulate procedure of such a body and recommends that such rules should be made by the Chief Justice. The section should therefore be amended to read as follows—

“Procedure before Land Tribunals ... The Chief Justice may make rules to regulate the procedure to be followed before any Land Tribunal and for constituting the Land Tribunals.”

SECTION 49 [*Appeal to High Court*]

The section in subsection (1) provides that an appeal to the High Court lies where the amount of compensation awarded by a tribunal exceeds the sum of K2,000. The Commission could not see the relevance of specifying the level of award that may attract an appeal from either the claimant or the highway authority since cases vary.

The Commission therefore recommends deletion of the reference to K2,000 and amendment of the subsection to read as follows—

“(1) Where the claimant or the highway authority is not satisfied with the amount of compensation awarded, he or the authority, as the case may be, may apply to the High Court for a judicial review within one month from the date of the award by the Land Tribunal and in accordance with the rules made by the Chief Justice.”

SECTION 50 [*No further appeal*]

The section provides that there shall be no further appeal from the decision of the High Court. The Commission considers that this prohibition cannot stand in the present constitutional dispensation where the Supreme Court of Appeal under section 104 of the Constitution has been given the status of the highest appellate court and conferred jurisdiction to hear appeals from the High Court and such other courts and tribunals as an Act of Parliament may prescribe.

The Commission therefore recommends amendment of the section to read as follows—

“Appeals ... **An appeal from the decision of the High Court given under section ... shall lie to the Supreme Court of Appeal.”**

SECTION 51 [*How notices to be served*]

Subsection (1) provides that service of notices in respect of customary land shall be deemed to have been satisfied by service of notice on the Chief responsible for the area. In view of the anticipated privatization of customary land and the structures to regulate the same, the Commission recommends replacement of “customary land” with “customary estate” and “chief” with “**Customary Land Committee**” respectively.

In subsection (4) the word “Council” should be replaced with “**local government authority**”.

SECTION 53 [*General penalty for offences*]

The section provides the general penalty of a fine of “K500” and imprisonment of three months for offences having no specified penalties. The Commission considers the level of the fine absurd and therefore recommends enhancement of the fine to “K50,000”.

H. MINES AND MINERALS ACT (Cap. 61:01)

PART III—MINERAL RIGHTS

Division 2—Reconnaissance Licences

SECTION 16 [*Application for reconnaissance licence*]

Paragraph (b) states that the application for a reconnaissance licence shall be accompanied by a plan of the area over which the licence is sought, drawn in such manner and showing such particulars as the Minister may require.

The Commission observed that it is not clear from the wording of the provision whether the plan being referred to is the physical development plan for the area or a mere sketch plan.

The Commission recommends that the law should unequivocally state that the application shall be accompanied by a sketch plan for the area.

The Commission therefore recommends amendment of paragraph (b) by adding the word “**sketch**” immediately before the word “plan”—

“(b) shall be accompanied by a sketch plan of the area over which the licence is sought, drawn in such manner and showing such particulars as the Minister may require;”

Division 3—Exclusive Prospecting Licence

SECTION 25 [*Application for exclusive prospecting licence*]

Paragraph (c) states that an application for exclusive prospecting licence should be accompanied by the plan referred to in paragraph (b) of section 16 of the Act.

The Commission repeats its recommendation under section 16 of the Act.

Division 4—Mining Licences

SECTION 37 [*Application for mining licence*]

Under subsection (3) (h), the Commission recommends that the statement should be accompanied by a sketch plan as proposed under section 16 (b) and section 25 (c) of the Act respectively.

I. LAND SURVEY ACT (Cap. 59:03)

The Act makes provision for land surveys and the licensing and control of land surveyors. The Commission recommends numerous amendments to the Act to take into account developments in the field of land surveying. Due to the extensive nature of the amendments, the Commission recommends adoption of a new Act under the same title of “Land Survey Act” a Bill of which is attached to this Report. Below is a narrative of the review of the Act by sequence of Parts and sections.

PART I—PRELIMINARY

SECTION 2 [*Interpretation*]

This section basically provides for the definition of terms used in the Act. The Commission noted that after the review of the Act a number of new terminologies have been introduced into the profession of land surveying and that some existing terms have since changed meaning. The Commission therefore recommends incorporation of the following terms in the definition provision as follows—

“cadastre” means a methodically arranged public inventory of data concerning properties within a district, based on a survey of their boundaries;

“parcel” means a piece of land with defined boundaries on which a property right of an individual person or legal entity applies;

“general plan” means a document containing geometrical, numerical and verbal representations of a piece of land, which has been signed by a surveyor and which has been approved or certified by the Surveyor General or copy thereof prepared in the office of the Surveyor General and approved or certified as aforesaid, or a document which has at any time prior to the commencement of this Act been accepted as a diagram in the Deeds Registry or Land Registry;

“Registrar” means a registrar appointed under section...;

“surveying technician” means a person registered as such under this Act;

“surveyor” means a person registered under section ... of this Act;”.

PART II—ADMINISTRATION

SECTION 3 [*Appointment of other officers*]

The section makes provision for the appointment of a Commissioner of Surveys vested with the responsibility of administering the Act. It further makes provision for the appointment of other officers as the Minister may deem necessary and empowers the Commissioner in the exercise of his discretion to delegate to such officers any duties he may deem fit.

The Commission observed that there is an omission in the marginal note since the appointment of the Commissioner of Survey is not mentioned. The Commission was further aware that in practice the Controlling Officer in the Department of Surveys is presently called the Surveyor General and recommends amendment accordingly.

The Commission also considers that persons appointed to the office of Surveyor General should be licensed surveyors to ensure professionalism and recommends accordingly.

The amended section 3 is to read as follows—

“Surveyor
General and
other officers ... — (1) There shall be a Surveyor General who shall be responsible for the administration of this Act.

(2) No person shall be appointed as Surveyor General unless he is licensed and registered as a surveyor under this Act.

(3) There shall be such other officers, being qualified surveyors, employed in the surveyor general’s office who may, if so authorized by the Surveyor General, either generally or specially, perform any of the duties or do any of the acts or things required or authorized by this Act to be done by the Surveyor General.”

SECTION 4 [Rules]

The provision gives power to the Minister to make rules for the purposes of carrying the Act into effect. The rules may be made prescribing for several matters as they relate to surveys.

Firstly, it is standard practice in drafting to position the rule making power of the Minister towards the end of a statute. The Commission therefore recommends the shifting of this provision to the relevant Part in the proposed law.

Secondly, the Commission observed that the National Land Policy advocates for the use of modern technology in field surveys and data processing and production. The Commission was further aware that the use of modern technology in other parts of the Region, in particular Botswana, has improved efficiency in the profession. The Commission therefore recommends the use of modern technology which should be incorporated under the Land Survey Rules.

Thirdly, the Commission took issue with the making of rules prescribing the method of surveying land in any Municipality, Township or Planning Area or any part thereof. The Commission noted that methods of surveying should not only be prescribed with reference to Municipalities, Townships or Planning Areas or part of it, but that these should apply to the whole Malawi since the National Land Policy calls for registration of all land including customary land throughout Malawi which will necessitate the survey of the whole country.

The Commission therefore recommends that paragraph (e) should be redrafted to read as follows—

“(e) the method of surveying land including general boundaries;”

Lastly, the Commission observed that professional fees to be paid in respect of the licensing and registration of licensed surveyors and the annual fee for the renewal of a licence are determined by the Minister under paragraph (o). The Commission considers that the appropriate authority in this regard is the Land Surveyors Registration Board and recommends deletion of paragraph (o).

The Commission further recommends that paragraphs (p) to (u) should be renumbered accordingly.

SECTION 4B [*Composition of the Board*]

The section makes provision for the composition of the Land Surveyors Registration Board in that it shall comprise the Commissioner, who shall be Chairperson of the Board but also an *ex-officio* member, two licensed surveyors, one licensed surveyor in private practice nominated by the Surveyor Institute of Malawi and one member being a person who is a full member of the Surveyors Institute of Malawi in good standing and nominated by the Institute from amongst land surveyors. All these shall be appointed by the Minister.

The Commission was aware that the Board is not functioning properly in serving the surveyors profession. One of the problems identified as contributing to this state of affairs is the lack of regular meetings which would help to spearhead the activities of the profession. Further, the Commission was of the view that the Board's structure and composition and the inadequate financial resources for running affairs of the Board are other bottlenecks which stifle the operations of the Board.

In view of the foregoing, the Commission recommends a change in the composition and duties of the Board. The Commission further recommends that there should be an autonomous secretariat to support the activities of the Board.

The Commission has therefore incorporated these changes in the proposed new Land Survey legislation.

SECTION 4E [*Secretary*]

The section makes provision for the designation of the Secretary to the Board by the Minister and that such person should be a public officer serving with the Department of Surveys. The duties of the Secretary are to keep records of all the proceedings of the Board and also to perform other duties as may be assigned to him by the Board.

The Commission observed that by appointing a public officer serving in the Department of Surveys, it undermines the independence and operations of the Board as the Secretary devotes most of the time serving the Department leaving the Board's business to suffer. Therefore, in keeping with the recommendations in section 4B above the Commission recommends that the section be deleted and replaced with the following comprehensive provision—

- “Registrar ... — (1) There shall be a Registrar of the Board (in this Act otherwise referred to as “Registrar”) who shall be appointed by the Board with the approval of the Minister on such terms and conditions as the Board shall determine.
- (2) The Registrar shall be the chief executive officer of the Board.

(3) Where no Registrar is appointed by the Board in accordance with subsection (1), the Minister may, in consultation with the Board, designate as Secretary to the Board a public officer serving in the Department of Surveys.

“Duties of Registrar

... — (1) Subject to the general and special directions of the Board, the Registrar shall be responsible for the day to day management of the Board and supervision over the work and staff of the Board.

(2) Minutes of every meeting of the Board shall be taken and kept by the Registrar or by such other officer of the Board as the Registrar may designate in that behalf and shall be subject to confirmation by the Board at the succeeding meeting.”

SECTION 4G [*Committees*]

The section gives power to the Board to establish Committees to which it may assign some of its functions and powers. Further, in the exercise of its powers, the Board may request any surveyor or other person to attend any meeting of the Board but such person shall not be entitled to vote.

The Commission recommends that the section should read as follows—

“Committees of the Board

... — (1) The Board may establish such number of its own committees as it considers necessary for the performance of its functions and for the exercise of its powers and may assign to such committees any of its functions without prejudice to the power of the Board itself to perform the functions.

(2) Every committee of the Board shall be chaired by a member of the Board and may include persons who are not members of the Board but shall not include members of staff of the secretariat of the Board.

(3) The Board or the Chairperson may, at any time, direct the chairperson of any committee to convene a meeting of such committee and such a chairperson shall, as soon as is practicable, comply, with such direction.

(4) Every committee shall keep minutes of its meetings and shall inform the Board of its activities and conduct its proceedings in such manner as the Board may direct.

(5) A member of a committee shall, in respect of expenses incurred by him in travelling and subsistence while discharging his duties as such member, be paid out of the funds of the Board, such allowances as may be prescribed.

(6) Subject to any general or special directions of the Board, every committee of the Board shall have power to determine its own procedure.'

The Commission observed that subsection (2) deals with the issue of co-opted members to the Board and considers that similar provision should be made for committees. The Commission therefore recommends adoption of the following new stand alone provision—

“Invited persons ... — (1) The Board, or any committee of the Board may invite any person to attend any meeting of the Board or committee for the purpose of assisting or advising the Board or the committee in respect of any matter under consideration by the Board or committee.

(2) Any person invited pursuant to subsection (1) may take part in the deliberations of the Board or committee at any meeting but shall not be entitled to vote on any matter at that meeting.”

SECTION 4H [*Powers and duties of the Board*]

The section states that the Board shall be the only authority for licensing and registering surveyors in Malawi and stipulates powers and duties which the Board can exercise. The duties and powers include to approve minimum qualifications acceptable for registration as a surveyor; to set up and conduct test required for the purposes of section 5 (2); to grant licences; to keep and maintain a register of licensed surveyors and graduate surveyors; to advise the Minister on policies relating to technical and professional matters within the scope of the Act; to advise the Minister as to the professional fees and other charges to be prescribed under section 4 paragraph (m); from time to time, to prescribe principles of conduct and ethics to be followed by surveyors in the course of their practice as surveyors; and to exercise disciplinary control over surveyors and to prescribe and impose disciplinary measures against such surveyors.

The section further mandates the Board to publish in the *Gazette* a list of registered surveyors once every year.

The Commission noted that subsection (1) is not capturing issues of surveyors qualifications and the surveying-technician category of surveyors. The Commission therefore recommends insertion of the words “*and training*” in paragraph (a).

The Commission further recommends the insertion of a new paragraph (b) to read as follows—

“(b) to approve educational and training institutions within and outside Malawi as approved institutions with recognized training in land surveying;”

In the present paragraph (d) the Commission recommends insertion of the words “**survey technician**” immediately after the words “licensed surveyors”.

The Commission noted that the Board has no powers to determine fees payable in respect of licensing and registering surveyors and recommends adoption of the following new paragraphs-

- “(i) **to determine fees payable in respect of the licensing and registration of a surveyor, and the annual fee payable for the renewal of any such licence;**
- (j) **to determine other methods, apart from examinations to be used in assessing suitability of an applicant for licensing and registration under section ...”**

Further, the Commission observed that the Board is given discretion under section 5 to carry out such tests, examinations and trial surveys, where necessary, to determine the suitability of an applicant. The Commission considers that this power should be highlighted under this section and recommends adoption of the following new paragraph—

“to set up and conduct such tests, examinations and trial surveys as may be required for the purposes of section ...”

The Commission noted that the Board or its members are not protected while performing their duties in good faith. It was the view of the Commission that the Board members should be protected while performing their duties in good faith.

The Commission therefore recommends the introduction of the following new provision—

“Board not liable for acts done in good faith ... The Board or any member of the Board shall not be liable for any act or omission done in good faith in the exercise of or purported exercise of the functions and duties under this Act.”

The Commission further recommends that Parliament should make available funds for the activities of the Board. Government funding shall be supplemented by sums of money collected through certain fees and charges. The Commission therefore considers that the Board should be accountable for these monies.

The Commission therefore proposes that there should be introduced new provisions for finance and accounting in the Act to regulate this aspect as follows—

“Funds of the Board ... The funds of the Board shall consist of—

- (a) such sums as may be payable to the Board from moneys appropriated by Parliament for that purpose;**
- (b) such moneys or other property as may be payable to or vest in the Board pursuant to this or any other written law or pursuant to any trust or gift.**

“Investment of surplus sums	... The Board may invest any sums which are not immediately required for its objects in such manner as the Minister may approve.
Borrowing powers Act No. ... of 2003; Act No. ... of 2003	... Subject to the provisions of the Public Finance Management Act and the Public Audit Act, the Board may borrow, either temporarily, by way of overdraft or otherwise, such sums as it may require for meeting its obligations or discharging its functions under this Act.
Financial year of the Board	... The financial year of the Board shall be a period of twelve months ending on 30th June every year.
Books of accounts, audits and reports	<p>... — (1) The Board shall cause to be kept proper books of accounts and other records in relation to all moneys and other property vested, received or otherwise obtained, and of all moneys expended or other property sold or otherwise disposed of, by the Board.</p> <p>(2) The accounts of the Board shall be audited annually by professional auditors appointed by the Board.</p> <p>(3) The expenses of, and incidental to, any audit shall be payable out of the funds of the Board.</p>
Annual Report	<p>... — (1) The Board shall as soon as is practicable but not later than six (6) months after the end of each financial year, submit to Parliament an annual report of its work and operations.</p> <p>(2) The annual report shall be laid in Parliament by the Minister and shall include a balance sheet, an income and expenditure account and the annual report of auditors.”</p>

PART III—LICENSING, REGISTRATION AND DUTIES OF SURVEYORS

SECTION 5 [*Qualifications of licensed Surveyors*]

The section sets down the minimum requirements for eligibility for licensing and registration of surveyors under the Act.

The Commission considered that it may be necessary in some cases to allow surveyors licensed and registered in other jurisdiction with similar practices in land surveying to practice the profession in Malawi. To that end, the Commission recommends the adoption of a new provision on qualification of licensed land surveyors as follows—

“Qualifications of licensed surveyors	<p>... — (1) No person shall be licensed as a surveyor unless he—</p> <p style="padding-left: 40px;">(a) (i) furnishes testimonials or other evidence of good character to the satisfaction of the Board;</p>
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(ii) produces a certificate that he has served at least one (1) year as an assistant in practical field surveys under the direct personal supervision of a licensed surveyor practising as such under the Act or in any country listed in the First Schedule:

Provided that no less than half such period he shall have been doing title surveys, the nature of which shall be approved by the Board;

(iii) holds a degree in land surveying from a university approved for the purposes of this subsection;

(iv) possesses a commission or a licence entitling him lawfully to practise as a land surveyor in any country listed in the First Schedule;

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

(vi) has successfully passed any examination which the Board has declared to confer a qualification equivalent to any of the qualifications referred to in subparagraphs (iii), (iv) and (v); and

(b) satisfies the Board by examination, or by other method prescribed by the Board, that he is familiar with the provisions of this Act and all other written laws of Malawi relating to land survey.

(2) Notwithstanding subsection (1), the Board may, in its discretion, require any person who applies to be licensed as a surveyor to satisfy the Board, either by carrying out, to the satisfaction of the Board a trial survey, or by such other evidence as the Board may think fit, that he is capable of conducting surveys in accordance with this Act.

(3) If a person has undergone training which, in the opinion of the Board is equivalent to serving as an assistant in practical field survey as provided for under subsection (1) (a) (ii), he may be granted exemption from such portion of the period of service as the Board may determine:

Provided that no such exemption shall—

(a) reduce the requisite period of training to less than one (1) year; and

(b) be granted in respect of training served before the completion of the first year of study.

(4) The certificate indicating proof of service as an assistant to a licensed surveyor under subsection (1) (a) (ii) shall be in the form as may be prescribed and shall be accompanied by an annexure in the form of a diary, signed by the surveyor and the employee containing detailed particulars of all survey work carried out.

(5) The Minister may by order amend the First Schedule.”

The Commission observed that there is a gap as to who should administer the trial survey or the production of other evidence. The Commission observed that in other countries such as Botswana, the law provides for the appointment of officers for such purposes. In light of this observation, the Commission recommends the introduction of a paragraph (d) under the section listing the powers of the Board.

“(d) from time to time, appoint such examiners and invigilators as may be necessary for the purpose of administering any examinations under section ...”

SECTION 7 [*Registers*]

The section makes provision for the Board to keep and maintain a register of all licensed surveyors, a register of all graduate surveyors which should contain names, addresses and qualifications and the respective dates of registration and any other particulars which may be prescribed.

The Commission recommends incorporation of a new category of survey practitioners, which is the “**Surveying Technician**” to accommodate people who are not graduates but have the requisite skills in this field. The Commission considers that the registration of surveying technicians shall beef up the numbers of practitioners in a field which already suffers from manpower shortage. Further, the Commission observed that issues such as the authority responsible to maintain the Register, where it is kept and payment of fees by survey practitioners are not addressed.

The Commission further observed that the Act is silent on the methodology for application for registration with the Board and corrections thereafter. The Commission therefore recommends the introduction of new provisions in the proposed legislation as follows—

“Application for a licence and registration	... Any application for a licence and registration under this Act shall be made to the Board in the prescribed manner and shall be accompanied by a prescribed fee.
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Qualifications
for
registration
as a licensed
surveyor

... Any person may, upon making application for registration, be registered as a licensed surveyor if he—

(a) has passed a qualification approved by the Board or has satisfied the Board that he possesses a qualification which, in the opinion of the Board, furnishes a sufficient guarantee of the possession of the requisite knowledge and skill for the efficient practice of the work of a surveyor in terms of section ...;

(b) is a full member of the Surveyors Institute of Malawi or such other institution or society as the Minister may, by notice published in the Gazette, declare to be of adequate standing; and

(c) proves to the satisfaction of the Board that his professional and general conduct has been such as not, in the opinion of the Board, to debar him from registration.

Qualifications
for
registration
as a graduate
surveyor

... — (1) Any person shall be entitled to make application for registration as a graduate surveyor under this Act, if he has as consequence of an examination obtained, from an approved institution, a degree or other qualifying certification which the Board considers acceptable for registration.

(2) Every graduate surveyor registered pursuant to this section shall be entitled to practice land surveying as a surveyor in training, by agreement with and under the direction or control of a registered licensed surveyor.

Qualifications
for
registration of
surveying
technician

... — (1) Any person shall be entitled to make an application for registration as a surveying technician under this Act if—

(a) he has obtained a diploma or certificate in land surveying from an approved institution or other qualifications approved by the Surveyors Institute of Malawi which the Board considers acceptable for registration; and

(b) subsequent to his qualifying certificate, has received practical training from approved employment as a technician for a period of not less than two (2) years.

(2) The Board may direct the Registrar to register an applicant under this section if it is satisfied that the applicant—

(a) is of good character and is a fit and proper person; and

(b) has complied with all the relevant requirements of this section.

Certificate of registration ... The Registrar shall issue to every person registered as a licensed surveyor, graduate surveyor, surveying technician, as the case may be, under this Act, a certificate of registration in the form as may be prescribed.

Correction of registers ... — (1) The Registrar may, with the prior approval of the Board, make necessary alteration or correction in any Register in relation to any entry therein.

(2) The Registrar shall remove from a Register the name of any deceased person, and shall, when directed by the Board so to do, remove from a Register any entry which has been incorrectly or fraudulently made therein.

(3) The Registrar may, with the consent, in writing, of the person concerned, remove from a Register the name of any person who has ceased to practise land surveying in Malawi.

(4) Any name removed from a Register pursuant to subsection (3) shall, at the request in writing of the person concerned, and approval of the Board be reinstated by the Registrar.”

The Commission also noted that the Act is silent on registration of surveyors. The Commission therefore proposes the insertion of a new section which shall read as follows—

Surveyor must be registered ... — (1) Save as otherwise provided in this Act, no person shall engage in the practice of land surveying in Malawi, or hold himself out as being entitled so to do, unless he is registered under this Act.

(2) Any person who engages in the practice of land surveying in contravention of this Act commits an offence.”

SECTION 8 [Surveying instruments and measuring tapes to be accurate]

The section bestows a duty on every surveyor to make sure that all surveying instruments in use are in a proper state of adjustment and that the measuring tapes have been properly standardized. The surveyor is further required to produce such instruments for testing when called upon by the Commissioner.

In the event that the Commissioner finds the instruments or measuring tape defective or inaccurate he may order such surveyor to remedy the defect or rectify such inaccuracy and the surveyor shall not use such surveying instrument or measuring tape until the defect is remedied or the inaccuracy rectified. Where it

is not possible to remedy the defect or rectify the inaccuracy, the Commissioner may either condemn the instrument or specify by order in writing the class of work upon which such instrument or tape may be used.

The Commission noted that in the past the only distance measuring equipment available were tapes and chains. However, with technological advances, there are other instruments other than tapes and chains used for distance measurement. The Commission therefore recommends that wherever the phrase “measuring tape” appears in the provision, it should be replaced with “**distance measuring instrument**”.

SECTION 9 [*Duties of surveyor*]

The section mandates every surveyor to carry out every survey undertaken by him in accordance with the Act in such a manner that will ensure the accuracy of such survey including any plan, survey data, or other record of the survey. It further obliges a surveyor to deposit with the Commissioner for filing with the Commissioner’s office such plans, survey data and records of survey.

Further, the Commissioner may require that the surveyor corrects any inaccuracy or error in a plan, survey data or other record where such error or inaccuracy is in greater proportion than required by the law to be allowed in the execution of surveys and the preparation of plans, survey data or other records.

Firstly, the Commission observed that a surveyor is not responsible for survey, plan, survey data or other records of survey deposited with the Commissioner as is the case worldwide. In view of this observation the Commission recommends that a new paragraph (c) be introduced which shall read as follows—

- “(c) (i) be responsible to the Surveyor General for the corrections of every survey carried out by him or under his supervision and for the correctness of any plan and diagram which bears his signature;**
- (ii) when required by the Surveyor General, without delay, adjust the position of any survey mark which has been fixed, placed or set up in accordance with any incorrect survey.”**

Current paragraphs (b) and (c) should be numbered as (c) and (d) respectively.

Secondly, the Commission noted that there is no provision for action on a surveyor who has falsely signed for survey work which he did not do or supervise, or only did it in part, or supplies false information to the Commissioner. The Commission therefore recommends such provisions should be introduced under section 11(1) and should read as follows—

“Duties of
surveyor

... — (1) A surveyor shall—

(a) carry out every survey undertaken by him in accordance with this Act and in such manner which will

ensure the accuracy of such survey and of any plan, survey data, or other record of such survey; and

(b) deposit with the Surveyor General, for filing in the Surveyor General's office, such plans, survey data and records of survey as he may be required to do under this Act;"

The Commission noted that when a survey is returned by the Surveyor General for corrections, there is no specific period put in place for corrections to be done. This retards development since by that time the surveyor will have collected his fees. The Commission therefore recommends adoption of a new subsection (2) to cater for this and to read as follows-

“(2) The Surveyor General may require any surveyor, within ninety (90) days, to correct, in conformity with this Act, any inaccuracy or error in any plan, survey data or other record where such error or inaccuracy exceeds the limit of error prescribed under this Act to be allowed in the execution of surveys and the preparation of plans, survey data and other records.”

SECTION 11 [*Power of Board to deal with offences by surveyor*]

The section gives power to the Board to deal with offences committed by a surveyor. The powers can only be exercised upon a complaint duly made and after inquiry under section 10. Thus, if it is shown beyond reasonable doubt to the satisfaction of the Board that the surveyor has committed an offence complained of, the Board may caution such surveyor in writing or suspend such surveyor from practice for any period not exceeding three years and the reasons for suspension shall be entered in the register or the Board may remove the name of such surveyor from the register. Further, the Board may order any surveyor found guilty of culpable negligence to pay the cost of any corrections which his negligence may have necessitated.

The law also empowers the Board to reinstate a surveyor whose name has been removed from the register and also to terminate or reduce the period of suspension of a surveyor who has been suspended.

The Commission noted that the Board's powers in this regard only extend to registered surveyors. The Commission therefore recommends that the last words in subsection (1), should read “**any registered surveyor**”.

SECTION 12 [*Persons other than surveyors forbidden to survey*]

The provision prohibits persons who are not surveyors to carry out several acts which fall within the purview of the profession of survey. It further creates offences that whoever indulges himself in the prohibited acts shall be guilty of an offence and shall be liable to pay a fine of K200 or, in default of payment to imprisonment for six months.

The Commission recommends adjustment of the fine from “K200” to “**K100,000**”.

The Commission also noted that the section does not show emphasis that the only person who can carry out land survey work is a surveyor registered under the Act. The Commission further noted that the provision in subsection (1) was put in place due to lack of qualified surveyors in Government and also non-recognition of survey technicians to carry out certain land surveying tasks. The Commission was aware that the National Land Policy calls for capacity building for the surveyors to fill the gap in Government, all local government authorities and private sector.

The Commission therefore recommends insertion of the words “**registered under this Act**” immediately after the word “surveyor”.

The Commission further recommends that the proviso in subsection (1) should be removed entirely for redundancy in view of the fact that the Act shall recognize different categories of surveyors.

SECTION 13 [*Survey plans to be deposited with Commissioner and become property of Government*]

Reference to “Commissioner” should be replaced with “**Surveyor General**”.

The punishment shall be enhanced to “**a fine of K100,000 or, in default of payment, to imprisonment for six months**”.

SECTION 14 [*Aerial surveys*]

The section requires any person responsible for the making of an aerial survey to notify the Commissioner in writing at least one month before the exercise is carried out. After the conclusion of the aerial survey, such person is mandated to supply the Commissioner with one contact print of every photograph together with one copy of any plan made. Failure to comply with this provision is an offence punishable with a fine of K1,000 or, in default, to imprisonment for three months.

The Commission noted that while aerial surveys are deposited with the Surveyor General’s office, topographic surveys are not. It was further observed that the Surveyor General does not follow copyright provisions in the use of information. The Commission therefore recommends the introduction of the following new subsections to address this anomaly—

“(3) Within thirty (30) days of the completion of any topographical mapping in Malawi by any surveyor, copies of all data and subsequent maps and plans shall be submitted to the Surveyor General for quality control and archiving.

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

(5) The Surveyor General shall from time to time compile non-existing maps and amend existing plans and

Cap. 49:03 **maps, and sell information taking into account the provision of the Copyright Act.”**

Accordingly the current subsection (3) shall become subsection (6).

Finally, the punishment under the current subsection (3) shall be enhanced to **“a fine of K250,000 and to imprisonment for twelve months”**.

SECTION 15 [*Commissioner may cancel approval of plan*]

The section empowers the Commissioner to cancel any plan which he has approved if it is found to be incorrect by reason of any error or omission and shall require to be made and deposited a corrected plan. The Commissioner is also obliged to notify in writing the owner of land to which the plan relates or the Minister in case of customary or public land. The Commissioner is further required to notify the appropriate registrar, if any.

The Commission observed that the Act in a number of sections assumes that survey plans and diagrams are approved by the Surveyor General even though there is no explicit provision to that effect. The Commission therefore recommends adoption of the following new provision to precede the section that gives power to the Surveyor General to approve the plans and diagrams.

“Approval of surveys by Surveyor General **... The Surveyor General shall examine all data, plans and diagrams of surveys of land and approve all such plans and diagrams if he is satisfied that such surveys have been properly carried out.”**

The Commission also recommends amendment of section 15 (2) (a) to read as follows—

“(a) the owner of land to which such plan relates, or Traditional Authority in case of customary or public land and a local government authority or Minister in case of public or Government land.”

PART IV—SURVEY MARKS AND BOUNDARIES

SECTION 18 [*Blasting of rock within area reserved for a fundamental benchmark prohibited*]

The section prohibits blasting of rocks within an area reserved for fundamental benchmark and anybody contravening the section, commits an offence and is liable to a fine of K4,000 and to imprisonment for twelve (12) months.

The Commission recommends that the punishment under subsection (2) should be enhanced to **“a fine of K250,000 and to imprisonment for twelve months.”**

SECTION 20 [*Preservation and maintenance of survey marks*]

The Commission recommends that the punishment under subsection (2) should be enhanced to a fine of “**K250,000**” and any second offence thereafter, the fine should be “**K300,000 and to imprisonment for “twelve months”**”.

The Commission further observed that the Land Policy advocates for the creation of Traditional Land Management Areas.

The Commission recognized that once the Traditional Land Management Areas are surveyed, there will be a need to survey district boundaries as well. In its further consideration of the matter, the Commission noted that there is no provision for the survey of boundaries for Townships, Traditional Authority Areas (Traditional Land Management Area) and even Districts.

In light of the above, the Commission recommends introduction of a new provision under Part IV to read as follows—

“Survey of Traditional Land Management Areas and Townships	... The boundaries of any area declared as a Traditional Land Management Area or a local government area shall be surveyed and registered in the Land Registry under the Traditional Authority or local government authority of the area.
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(2) Where a Traditional Land Management Area is registered, all the villages and the public land within such area shall be surveyed and registered.”

Accordingly, the present sections 24 to 26 inclusive shall be renumbered.

GEOGRAPHICAL INFORMATION COUNCIL

The Commission observed that geographical information is becoming an increasingly important component of business, healthcare, security, trade, media, transportation, tourism and many more industries in the world. Among other things, geographical information includes information relating to land surveying, aerial photography, photogrammetric and geography. In Malawi geographical information is primarily captured and kept by city assemblies within their areas of jurisdiction. The Commission observed that considering the importance of geographical information, the country needs a one-stop geographical information centre, which among other things should be responsible for establishing and enforcing national geographical data standards, establishing and maintaining centralized geographical data access points and other functions.

The Commission therefore recommends the establishment of a council as follows—

“Establishment of the Council	... There is hereby established a Malawi Geographic Information Council (hereinafter referred to as the
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	<p>“Council”) for the purpose of performing the functions assigned under this Act.</p>
“Composi- tion of the Council	<p>... The Minister shall appoint members of the Council on recommendation from bodies comprising users and producers of geographic information as follows—</p> <p>(a) the Surveyor General as the Chairperson of the Council;</p> <p>(b) two members representing the user and producer community from the public sector;</p> <p>(c) two members representing the user and producer community from the private sector;</p> <p>(d) one member from the academic community;</p> <p>(e) one member from civil society; and</p> <p>(f) one member from the Surveyors Institute of Malawi.</p>
Secretary of the Council	<p>... The Surveyor General shall appoint a public officer to serve as Secretary to the Council.</p>
Nature of service of Council member	<p>... — (1) A member of the Council shall not, by virtue only of his appointment to the Council be deemed to be an officer in public service or hold a public appointment.</p> <p>(2) A member of the Council or committee of the Council shall serve on part time basis.</p>
Disqualifica- tion	<p>... Any person who—</p> <p>(a) is an undischarged bankrupt; or</p> <p>(b) has been convicted, at any time, of an offence under this Act,</p> <p>shall be disqualified from appointment to, or continuing to hold office as a member of the Council.</p>
Tenure	<p>... A member of the Council, not being the Surveyor General, shall hold office for two (2) years and shall be eligible for re-appointment to only one second term immediately following the expired term.</p>
Vacancies	<p>... (1) The office of a member of the Council, not being the Surveyor General, shall become vacant—</p> <p>(a) if the member dies;</p> <p>(b) if the member resigns by notice in writing to the Minister; or</p>

(c) if, in accordance with section ... he becomes disqualified from continuing to hold office.

(2) A vacancy in the Council shall be filled by a person appointed in accordance with section

Proceedings of ... (1) The Council shall meet at least three (3) times every
the Council year but the Chairperson may, upon application in writing by at least three (3) members of the Council, at any time convene an extraordinary meeting of the Council.

(2) The Chairperson shall preside at meetings of the Council, but in the absence of the Chairperson, the members shall elect one of their number to perform the functions of the Chairperson at that meeting.

(3) Minutes of proceedings of every meeting of the Council or any committee of the Council shall be taken and kept by the Secretary and shall be subject to confirmation by the Council or committee, as the case may be, at the succeeding meeting.

(4) The quorum of the Council shall be a simple majority of the total number of members.

(5) Decisions of the Council on any matter shall be in accordance with the vote of the majority of members present and voting thereon, but in the event of an equality of votes, the Chairperson or the presiding member at the meeting concerned, shall have a casting vote in addition to his deliberative vote.

(6) The Council shall have power to regulate its own procedures.

Committees of the Council ... — (1) The Council may establish such number of its own committees as it considers necessary for the performance of its functions and exercise of its powers and may assign to such committees any of its functions without prejudice to the power of the Council itself to perform the functions.

(2) Every committee of the Council shall be chaired by a member of the Council and may include persons who are not members of the Council.

(3) The Council or the Chairperson may, at any time, direct a chairperson of any committee to convene a meeting of such committee and the chairperson shall, as soon as is practicable, comply, with such direction.

(4) Every committee shall keep minutes of its meetings and shall inform the Council of its activities and conduct its proceedings in such manner as the Council may direct.

(5) A member of a committee who is not an officer in the public service shall, in respect of expenses incurred by him in travelling and subsistence while discharging his duties as such member, be paid out of the funds of the Council, such allowances as may be prescribed.

Invited
persons

... (1) The Council or any committee of the Council may, invite any person to attend any meeting of the Council or of the committee, as the case may be, for the purpose of assisting or advising the Council or the committee in respect of any matter under consideration by the Council or committee.

(2) Any person invited pursuant to subsection (1) may take part in the deliberations of the Council or committee at any meeting but shall not be entitled to vote on any matter at that meeting.

Powers and
duties of the
council

... The Council shall be the sole authority for licensing and registering spatial data in Malawi and shall have the following powers and duties—

(a) to establish and enforce national spatial data standards;

(b) to establish and maintain centralized and decentralized spatial data access points and nodes;

(c) to grant memoranda of understanding and data user licences for spatial data transfer;

(d) to act as an advisory body on policies and technical issues relating to spatial data development and management;

(e) to advise the Minister on fees payable for data development, update, management and transfer;

(f) to assist in the development and maintenance of a national spatial data infrastructure;

(g) to regularly audit the quality of metadata provided to the major access point;

(h) to regularly audit availability and quality of framework data; and

(i) to perform any other function pursuant to the objectives of this Act.”

LAND SURVEY RULES

The Land Survey Rules are made under section 4 of the Act. The Commission considers that the Rules are not in tandem with the technological advances made in the field of surveying. The Commission further observed that the Policy advocates for the use of modern technology in data capture, processing, publication and storage. The Commission therefore recommends adoption of new Land Survey Rules.

J. LANDS ACQUISITION ACT (Cap.58:04)

Background

The Lands Acquisition Act empowers the Minister to acquire land where he considers it desirable or expedient in the interests of Malawians to do so. The Minister may acquire the land either compulsorily or by agreement after negotiation. The Commission generally considers that the Act does not provide an adequate framework for the compensation of persons affected by acquisitions under the Act and recommends comprehensive provisions to regulate this aspect. Further, the Commission recommends that the Act should be titled **“Lands Acquisition and Compensation Act”** to reflect that any acquisition under the Act shall be accompanied by appropriate compensation. The long title should accordingly be amended.

PART I—PRELIMINARY

SECTION 2 [*Interpretation*]

The section provides definitions of words and expressions used in the Act. In relation to the definition of “land” the Commission recommends deletion and substitution with the following—

““land” has the same meaning assigned under section 2 of the Land Act;”.

The Commission also recommends the insertion of the following definition—

““acquiring authority” means any authority that is empowered to compulsorily acquire land for public utility under this Act;”.

The Commission further recommends insertion of a new definition of the word “court” which has also been used in the proposed legislation as follows—

““court” means a court of competent jurisdiction;”.

PART II—ACQUISITION

SECTION 3 [*Power to acquire land*]

The section empowers the Minister to acquire land, which in his opinion, it is desirable or expedient in the interest of Malawi. The acquisition may be either compulsorily or by agreement, paying such compensation as may be determined.

The Commission considered the provision in light of section 44(4) of the Constitution which lays down the guidelines to be followed when expropriating property. The Commission considered the Minister's discretion too wide and liable to abuse. The Commission recommends adoption of the constitutional language to give guidance to the expropriating authority.

Further, in view of the on-going decentralization process, the Commission recommends that the power under this section should devolve to local government authorities. The section should therefore be amended accordingly. Similar amendments should be made throughout the Act.

The Commission further observed that the National Land Policy anticipates entrusting traditional leaders with the function of administering and managing customary land, which also includes acquisition. Further, the Commission considered that there is need to create a new subsection to regulate acquisition of land by Chiefs for public purposes such as graveyards.

The Commission therefore recommends adoption of the following provision—

“Power to acquire land ... — **(1) Subject to the provisions of this Act, the Minister or a local government authority may acquire land for public utility, either compulsorily or by agreement, paying compensation therefor as may be agreed or determined under this Act.**

(2) A Chief may acquire land situated within the area of his jurisdiction for public utility and the person so deprived shall be entitled to an alternative allocation of a customary estate.”

SECTION 4 [*Preliminary Investigation*]

The section provides a procedure for verifying the suitability of land acquired for the purposes of the Act. The procedure includes entering the land, surveying and taking levels, digging or boring under the subsoil and also clearing, marking boundaries, etc. The Commission recommends redrafting of subsection (1) and (2) to take into account its earlier recommendation in view of the fact that there will be several acquiring authorities including local authorities and chiefs, the two subsections should only make reference to “**acquiring authority**” and not only the “Minister” and “Government” as it is at the moment.

The Commission noted that the Minister may enter upon any land earmarked for acquisition, without notice, except buildings and enclosed gardens where a seven days notice should be given. The Commission recommends that due notice to the owners must be given upon entry on any land. The Commission therefore recommends the adoption of a new provision to take into account the recommendation of giving notices to the land owner as well as the recommendation to include other authorities in the acquisition process.

The new provision shall read as follows—

‘Preliminary investigation ... — (1) Where there is need to acquire any land under this Act for public utility, it shall be lawful for any person authorized by the acquiring authority under section 3 in that behalf and for his servants and agents to—

(a) enter upon any land in question or any land in the vicinity thereof and survey and take levels;

(b) dig or bore under the subsoil;

(c) do all other acts necessary to ascertain whether the land is or may be suitable; or

(d) clear, set out and mark the boundaries of the land proposed to be acquired and the intended line of the work, if any, proposed to be done thereon.

(2) Any entry upon land under this section shall be preceded by a notice to the occupier or owner thereof of not less than seven (7) days.

(3) The acquiring authority shall pay for any damage done by persons entering any land pursuant to this section.”

SECTION 5 [*Notice of intention to acquire*]

The section provides the procedure to be followed where the Minister is satisfied that a certain piece of land should be acquired for the purposes of the Act and requires that a notice should be served upon the persons possessed or having an interest in the land. Such a notice should be published in the *Gazette* to enable any person claiming to be entitled to any interest in the land to submit particulars of the claim to the Minister within a period of two months of the publication of the notice in the *Gazette*.

With regard to this provision, the Commission recommends adoption of the changes effected to sections 3 and 4.

Further, the Commission recommends adoption of the following proviso to subsection (3)—

“Provided that no compensation shall be payable to interests created after publication of the notice to acquire.”

SECTION 6 [*Notice to yield up, and power to take possession*]

The section provides that the notice under section 5 may contain a directive that persons in possession of the land should yield up possession. Ordinarily, the notice should specify the period upon whose expiration the person in possession should yield possession. However, such a period shall not be less than two months from the date the notice was served. Further, the section provides that the urgency of the matter may require abridgement of time of notice.

The Commission recommends the deletion of the word “Minister” and replacing it with the words **“acquiring authority”** in view of earlier recommendations. The Commission also considers that possession of the land should only be taken after payment of compensation and recommends insertion of the phrase **“after paying compensation”** at the very end of subsection (2).

SECTION 8 [*Acquisition of portion of house or other building*]

This section disallows yielding up possession to the Minister of a part only of any house or other building, where the person who is supposed to do so is willing and able to yield the whole thereto. The Commission recommends the amendment of the section by deleting the words “Minister” and replacing with the words **“acquiring authority”**.

At this juncture, the Commission recommends that sections 9, 10 and 11 which deal with issues of compensation should comprise a stand-alone **“Part”** to highlight the importance of the issue of compensation where land is expropriated.

The Commission recommends that the new Part ... should be titled **“COMPENSATION”**.

SECTION 9 [*Compensation*]

The section provides that the Minister on behalf of Government shall pay fair compensation agreed or determined under the Act. Further, the payment can be made either in one lump sum or in such instalments and at such times, and rates of interest on the balances as the Minister in the exercise of discretion would specify. The Commission was aware that section 44 (4) of the Constitution which provides for compensation in relation to expropriated property refers to “appropriate compensation” as opposed to “fair compensation”. The Commission therefore recommends that for consistency and uniformity with the Constitution, the words “fair compensation” be deleted and substituted therefor with the words **“appropriate compensation”**. Consequently, wherever the words “fair compensation” appear in the Act, they should be replaced with **“appropriate compensation”**.

Further, the Commission recommends that the words “shall on behalf of Government” be deleted. The Commission also observed firstly, that it is not proper to pay compensation by instalments, as the damage caused by the acquisition would take time to repair. Secondly, such instalments or payments being made on the discretion of the Minister could also create room for abuse. The Commission therefore recommends that subsection (2) should be repealed and replaced by a new subsection (2). The amended section 9 is to read as follows—

Compensation ... — (1) Subject to the provisions of this Act, where any land is acquired by the Minister or a local government authority, as the case may be, under this Act, the Minister or local government authority shall pay in respect thereof

appropriate compensation agreed or determined in accordance with the provisions of this Act.

(2) Any compensation payable under this section shall be paid in one lump sum.

SECTION 10 [*Assessment of fair compensation*]

The section provides for the procedure on how compensation is to be assessed. The Commission observed that the Minister is the one mandated to assess compensation. The Commission considered this state of affairs unhealthy and prone to abuse. The Commission therefore recommends that the Minister or local government authority should appoint an independent valuer.

The Commission further observed that the present formula for assessing compensation as provided in subsection (2) is outdated and often invoked by District Commissioners without regard to the open market value of the property. Further, the formula is rigid and inadequate and has resulted in a number of civil suits against Government. The Commission therefore recommends that the valuer should assess value on the basis of the outlined grounds to ensure flexibility and consistency in the application of this section. The amended subsections (1) and (2) shall read as follows—

“Assessment of appropriate compensation ... — **(1) Unless otherwise agreed between the parties, appropriate compensation shall be assessed by an independent valuer appointed by the Minister or a local government authority, as the case may be.**

(2) An assessment of compensation shall be calculated based on the following grounds, as applicable—

(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) injurious affection;

(i) nuisance;

(j) loss or reduction of tenure; or

(k) disturbance, if it is not too remote and is a natural and reasonable consequence of the disposition of the land.”

Subsection (7) provides that any assessment of compensation made by the Minister shall be final and that no appeal can be brought on it or a review sanctioned in any court. The Commission was aware that the Constitution has made the courts the final arbiter of all disputes.⁵¹ The Commission therefore, concluded that subsection (7) is unconstitutional and recommends repeal thereof.

Subsection (8) provides that proceedings in any court shall not constitute grounds for delay in yielding up possession of any land. The Commission observed that the provision is more in favour of the acquiring authority. The Commission therefore recommends repeal of the subsection as it does not afford parties equal treatment.

The Commission further recommends adoption of a new subsection (7) to cater for any complications that may arise after acquisition. The subsection is to read as follows—

“(7) Where there is an indication that a property shall be acquired compulsorily and that this has the effect of reducing the market value of the property, the valuation of the said property shall ignore the blighting effect.”

Furthermore, the Commission recommends adoption of the following new provisions under the new Part ...

“Matters to be taken into consideration in assessing compensation for alienated land ... — **(1) In assessing the amount of compensation under section 10 the following matters and no others shall be taken into consideration in assessing—**

(a) the market value of the land or interest therein of the claimant at the valuation date;

(b) the damage, if any, sustained by a person interested, at the valuation date, by reason of the severance of such land from his other land or other injurious affection of his other property moveable or immovable by reason of the exercise of the powers conferred by this Act;

(c) if, in consequence of the matters giving rise to the claim, the claimant is compelled to change his residence or place of business, the reasonable expenses, if any, incidental to such change;

(d) any increase in the value of the other land or other benefit of the person interested at the valuation date likely to accrue from the proposed development; and

(e) the relief obtained by the claimant as a result of the taking of the land from the necessity of carrying out

⁵¹ See sections 108 and 199

in whole or in part any order or direction against the land taken made under any law for the time being in force relating to the use and protection of land when the work required by the order or direction has not been commenced or completed at the valuation date.

(2) For the purposes of subsection (1) (a)—

(a) if the market value has increased by means of any improvement made by the claimant or his predecessor in interest within two (2) years before the valuation date, such increase shall be disregarded unless it be proved that the improvement was made in good faith and not in contemplation of the acquisition;

(b) the following matters shall be disregarded—

(i) any enhancement of the market value due to the proposal to change use of the land;

(ii) any increased value thereof due to use of the land or any premises thereon which is contrary to law or could be restrained by a court;

(iii) any damage sustained by the claimant which, if caused by a private person, would not be a good cause of action;

(iv) the special suitability or adaptability of the land for the proposed development;

(v) the degree of urgency which has led to the taking of the land; and

(vi) any disinclination of the claimant to part with his interest in the land.

(3) For the purposes of subsection (1) (d) the increase in value of the other land and the other benefit likely to accrue shall, where the land forms part of an estate—

(a) not less than one hundred and sixty (160) hectares and not more than four hundred (400) hectares in extent, be deemed equal in value to two per centum (2%) of the total area of the estate;

(b) exceeding four hundred (400) hectares in extent, be deemed equal in value to four per centum (4%) of the total area of the estate:

Provided that—

(i) where the land taken is improved land, this subsection shall not operate to deprive the person

interested of compensation in respect of damage to or destruction of surface rights existing at the valuation date on the land taken; and

(ii) where the land taken forms part of an estate less than one hundred and sixty (160) hectares in extent it shall not, in the absence of evidence, be assumed that there is any increase in the value or other benefit to be taken into consideration.

(4) For the purposes of this section, “estate” means an undivided area of land for commercial agriculture purposes or otherwise, the legal right to occupy which is vested in some person other than the Government.

Injurious
affection

... — (1) Notwithstanding any other provisions of this Act, the assessment of compensation shall take into account injurious affection in the following circumstances—

(a) where no land is taken but value of the land is depreciated; and

(b) where part of the claimant’s land is taken and there is loss of value to the remainder due to the taking of the other part.

(2) Where the effects of acquiring a portion of land or property is drastic on the remaining portion, the claimant may force the acquiring authority to acquire the whole property at the original fair market price or value.

(3) Compensation under this section shall include compensation for any loss where no land is involved.

Compensa-
tion to take
into account
environme-
ntal impact

... Compensation shall take into account the environmental impact on the property arising out of a proposed development scheme, though the subject property remains untouched.

Compensa-
tion for
depreciation

... Where the claimant has suffered depreciation in the value of land caused by the discharge on land of any solid or liquid substance, appropriate compensation shall depend on—

(a) the depreciation suffered as a result of physical factors such as noise, vibration, smell, dust, fumes, smoke or artificial lighting;

(b) the depreciation occasioned as a result of the works;
or

(c) the interest in the land where the property is not residential:

Provided that—

(i) where the property is residential, the interest in the land must be freehold, customary estate or leasehold with a minimum of an unexpired period of three (3) years and the person entitled to occupy must do so; and

(ii) where the premises are business premises, other than residential or agricultural, the value shall not exceed seventy per centum (70%) of market value.”

PART III—TRANSFER

SECTION 12 [*Transfer to the President*]

The section stipulates that any land acquired under this Act shall be transferred to the President as public land. The Commission recognized that this arrangement was in furtherance of the law which vested all public land in the President prior to the 1994 Constitution. The Commission further observed that the vesting of land in the President as public land shall be effected within two months of the notice of transfer even in situations where there is a court order to the contrary.

However, in line with the Constitution, the Commission recommends that public land should vest in the Republic; and rent any interest in any acquired land for the purposes of the Act should revert to the Government.

Further the Commission was of the view that in the face of a court order to the contrary, a reversion need not be effected since such a scenario would deny an applicant the right of access to justice.

The Commission therefore recommends amendment of section 12 to read as follows—

“Reversion to the Government ... — (1) Where a notice to acquire any land under this Act has been published in terms of section ..., such land shall revert to the Government as public land within two (2) months of the publication of such notice.

(2) Notwithstanding subsection (1), where a person possessed of an interest in the land obtains a court order against the notice to acquire land, such land shall not revert to the Government until the court order is vacated or the court decides in favour of the acquiring authority.”

SECTIONS 13 AND 14

In view of the recommendations under section 12, sections 13 and 14 fall away. Further, the title to this Part should read “**REVERSION**” and not transfer.

SECTION 15 [*Minister may withdraw from acquisition*]

This section provides that nothing in the Act should be construed as requiring the Minister to complete acquisition of any property unless he has taken possession thereof. This means that the Minister may withdraw the acquisition.

The Commission is mindful of its recommendation that the mandate of the Minister under this Act should also, where applicable, be exercised by a local government authority. Therefore the Commission recommends that the section should be amended accordingly to reflect the said recommendation.

SECTION 16 [*Service of notice not an admission*]

The section provides that any notice served or published in accordance with the Act shall not be construed as an admission by the Minister that a person named in any said notice or on whom such notice was served has any interest in the land specified in the notice or any part thereof. It further stipulates that the notice shall not be construed as to prevent the Minister from alleging in any proceedings under the Act that all rights are or in relation to such land are vested in the President.

In view of its earlier observations and recommendations, the Commission recommends that after the word “Minister” the words “**or local government authority**” be inserted and the word “President” be replaced with “**Republic**”.

PART IV—MISCELLANEOUS AND GENERAL

SECTION 17 [*Penalty for hindering or obstructing*]

This section creates an offence for a person who willfully fails to comply with a notice to yield up possession, or who willfully hinders or obstructs any duly authorized person taking possession. If found guilty such person shall be liable to a fine of K200 and to imprisonment for six months. The Commission considered the fine inadequate to attract compliance and recommends enhancement to “**K20,000.00**”.

Under subsection (2) the Commission observed that the Minister may issue an order of ejectment to be executed by an officer of the Court or any Police Officer. The Commission considered this arrangement inappropriate since the Executive cannot exercise judicial powers. The Commission was of the view that an order of ejectment should be issued by the court, after finding the person guilty of an offence or on an application being made to the court by an acquiring authority. The Commission therefore recommends that subsection (2) should be repealed and should be replaced with a new subsection (2) to read as follows—

(2) The court may issue an order of ejectment in addition to penalties under subsection (1) or upon application to such court.

K. ADJUDICATION OF TITLE ACT (Cap. 58:05)

The Adjudication of Title Act provides for the adjudication of rights and interests in land, other than customary land. This Act is the equivalent of the Customary Land (Development) Act⁵² with the exception that it applies to private land. The Act empowers the Minister whenever he deems it expedient to declare any area as an Adjudication Area. It is merely a procedural Act and deals with land already registered under the Deeds Registration Act.⁵³ The Commission recommends retention of the Act.

L. WILLS AND INHERITANCE ACT (Cap. 10:02)

PART V—INTESTACY

SECTION 16 [*Inheritance of intestate property in certain cases*]

The Commission observed that the provision does not provide for the inheritance of customary land in case of intestacy. However, the National Land Policy makes it very clear that even customary land shall be registered in the name of the family as owners. The Commission also noted that rules of survivorship and inheritance in cases of joint ownership and owners in common are also very clear, in that a share in joint ownership is not divisible while the opposite is true for owners in common.

The Commission was of the view that such rules would also apply to customary land in situations of intestacy i.e. if customary land is registered in the name of a family as joint owners, the survivors would automatically inherit. Therefore, to avoid problems created by the rules governing the inheritance by owners in common, the Commission recommends that joint proprietorship be adopted.

The Commission also observed that two issues also arise from the consideration of the provision in so far as customary land is concerned. The two issues are where a surviving spouse remarries and where the deceased left no spouse or issue.

It was noted that problems in this area are as a result of cultural practices and customs obtaining in different areas of the country. The Commission recommends that on remarriage the surviving spouse should relinquish his/her share to the children. Where the deceased left no spouse nor issue, the property shall be transferred to the heirs in accordance with customary law prevailing in that area. The Commission has therefore incorporated this under the proposed law to regulate customary land.

M. LOCAL GOVERNMENT ACT (Cap. 22:01)SECTION 15 [*Delegation to Committees, etc.*]

The section empowers an Assembly to delegate some of its functions to a Committee or sub-committee or an officer of the Assembly. Subsection (1)

⁵² Cap. 59:01 of the Laws of Malawi.

⁵³ Cap. 58:02 of the Laws of Malawi.

excludes the exercise of this power in relation to borrowing money, making Standing Orders and levying a rate.

The Commission recommends introduction of the following new paragraph (d) to exclude the power to acquire and dispose land from delegation—

(d) acquire and dispose of land.

SECTION 34 [*Acquisition of land by agreement*]

The section empowers the Assembly to acquire land whether by way of purchase, lease, exchange or gift for the benefit, improvement or development of its area. The acquisition may also be for any functions of the Assembly under the Act or any other law. The Commission observed that National Land Policy advocates that all land within the jurisdiction of each Assembly should be managed by such Assembly. The Commission therefore recommends the adoption of the procedure under the Lands Acquisition Act.⁵⁴ This can be done by making the section subject to the Lands Acquisition Act⁵⁵ for consistency and uniformity.

SECTION 35 [*Disposal of land*]

The section empowers the Assembly to dispose of land held by it in any way it wishes. The disposal of land by way of a short tenancy or a consideration not less than the market value will not require consent of the Minister responsible for land matters. In all other transactions the consent of the Minister responsible for land matters is required.

Firstly, the Commission considers that to allow a local government authority to dispose of land in any manner may lead to asset stripping and recommends that this should be done in accordance with the Land Act and Registered Land Act.

Secondly, since the National Land Policy anticipates the vesting of land within the jurisdiction of an Assembly in the Assembly, the consent of the Minister becomes irrelevant and should be removed. The Commission therefore recommends deletion of subsections (2) and (3).

SECTION 36 [*General provisions on land transactions*]

The section deals with situations where consent of the Minister may be required and how such consent may be given.

The Commission recommends repeal in view of the findings and recommendations made in respect of sections 34 and 35.

PART VII—VALUATION AND RATING

SECTION 61 [*Application*]

The section provides for the application of this Part to areas or parts which the Minister shall designate by notice published in the *Gazette* as rateable areas.

The Commission observed that the provision does not provide for the criteria or procedure to be followed for an area to be declared a rateable area.

⁵⁴ Cap. 58:04 of the Laws of Malawi.

⁵⁵ *ibid.*

The Commission therefore recommends adoption of the following new subsection (2)—

“(2) The Minister shall, before designating an area as a rateable area, be satisfied that—

(a) the following aspects are such that they justify an area to be designated a rateable area—

- (i) physical size of the area;**
- (ii) population size of the area;**
- (iii) economic activities;**
- (iv) available infrastructure; and**
- (v) potential to generate revenue locally;**

(b) the assembly has the capacity and ability to provide basic essential services; and

(c) there is rateable property in the area.”

SECTION 62 [*Definitions*]

The provision defines some expressions used under this Part. The Commission noted that there is a gap as to how disputes arising from valuation are to be settled. In spite of the Constitution making provision for ordinary courts to deal with all matters, the Commission was of the view that to ensure speedy resolution of “evaluation” disputes under the Act, it was appropriate to set up a **Valuation Tribunal**. Thus the Commission recommends that the expression “**Valuation Tribunal**” should be defined under this section as follows—

“Valuation Tribunal” means a Tribunal appointed under section ...”

SECTION 63 [*Assessable property*]

The section provides that all land within a local government area shall be assessable with the exception of streets, sewers, sewage disposal works, cemeteries, crematorium, burial ground, railway lines and land improvements used as a public open space.

The Commission made a number of observations on this provision. Firstly, the Commission was aware that some individuals and organizations have opened up private graveyards where members of the public bury the dead at a fee. The Commission considers that this type of property should be assessed and recommends insertion of the following phrase at the end of paragraph (c)—

“... but shall not include those which are privately owned”.

Secondly, the Commission recommends that the restriction on railway lines should be limited to public railway lines to the exclusion of those privately owned and recommends insertion of the word “**public**” at the beginning of paragraph (e).

Lastly, the Commission recommends that rivers, streams and buffer zones unless privately owned should be excluded from assessable property. Therefore the Commission recommends adoption of a new paragraph (f)—

“(f) rivers, streams and buffer zones except those which are privately owned.”

SECTION 66 [*Supplementary valuations*]

The section provides for continuous supplementary valuation of any assessable property in a local government area for frequencies of not less than twelve months.

The Commission observed that the section does not indicate the mode of effecting adjustments to the amounts paid or what would happen when the property is eventually assessed in a valuation.

Further, the Commission considers that the basis for arriving at the value of property in issuing a Certificate of Completion in subsection (3) is subjective and recommends that the Assembly should use the estimated value of the property on the Certificate as an interim measure for rating purposes until the Supplementary Valuation Roll is done. The Commission therefore recommends amendment of the provision accordingly.

SECTION 67 [*Valuer*]

The section requires that every valuation and preparation of a valuation roll and supplementary valuation rolls shall be undertaken by a valuer registered under the Land Economy Surveyors, Valuers, Estate Agents and Auctioneers Act.⁵⁶ The Commission recommends adoption of a new subsection (2) to provide for the payment of expenses of the valuer. The subsection is to read as follows—

(2) A local government authority shall pay fees and expenses incurred by a valuer in respect of his duties under this Act together with such remuneration and other expenses as may be agreed upon between the local government authority and the valuer.

SECTION 68 [*Method of Valuation*]

The section provides for the method of valuing property and requires that every valuation roll and supplementary valuation roll should show separately the total valuation of the assessable property, the value of the assessable land and the value of the assessable improvements situated on the land.

The Commission observed that the basis of valuation for rating purposes in this section is capital value and considered that it has contributed to non-compliance of payment of rates due to its complexity. The Commission considers this position unsatisfactory since most properties are residential and not likely to be sold. The Commission was also aware that values of properties in Lilongwe are extremely high compared to other cities. Further the Commission was also advised that valuers have difficulties to make rate payers understand this

⁵⁶ Cap. 53:08 of the Laws of Malawi

method of valuation. The Commission considers that the best approach would be the income approach where the rent paid on the property is to be capitalized. It was conceded that the advantage of this method is that it is user friendly, simple, and the rates will remain the same.

The Commission further recommends that rates for residential properties should be categorized into two: rented properties and owner occupied properties. For the latter, the approach would be to use a hypothetical tenant.

The Commission also observed that subsection (2) proceeds on the assumption that every land is held under freehold title. The Commission considers this unfair as it penalizes title holders of lesser interest at the convenience of valuers. The Commission recommends amendment of subsection (2) to delete the assumption of freehold. Further, where tenure cannot be ascertained, the Commission recommends that it should be assumed that the land is freehold.

The Commission therefore recommends adoption of the following new subsection (2)—

“(2) The total valuation of an assessable property shall represent the fair amount of income in rental which the property is likely to realize at the time of the valuation if the property were in a reasonable state of repair, having regard to the type of property and the area in which it is situated.”

SECTION 73 [*Powers of entry*]

The section empowers a valuer authorized for the purposes of the Act to enter any property within the local government area without being liable to any action on account thereof. The penalty for obstructing such a valuer is MK5,000.00. The Commission considers the penalty inadequate to deter would be perpetrators of such practice and recommends enhancement to “**MK50,000.00**”. Further, where the offence continues the Commission recommends that the fine should be enhanced to “**MK10,000.00**” for each day that the offence continues.

SECTION 75 [*Deposit of valuation roll*]

Subsection (2) requires the Chief Executive Officer of an Assembly to publish a valuation roll in the Gazette and at least in one newspaper circulating in the local government area. The Commission recommends that the Chief Executive Officer should publish in at least two newspapers as opposed to a minimum of one to ensure wider distribution of information.

SECTION 76 [*Objections to valuation roll*]

The section provides that any person aggrieved by a value ascribed to his property may object to the valuer at any time before the expiry of twenty-eight days from the first day which the rate is payable.

The Commission recommends that objections to the value of property should go to the Assembly because the valuer is just an agent or employee. The Assembly should then advise the valuer of the objection and the grounds upon which the objection is based in writing on a prescribed form. The Commission therefore recommends amendment of the proviso accordingly.

NEW SECTION 76A [*Uncontested valuation roll*]

The Commission recommends introduction of a new provision to require the certification of valuation roll as an indication that all objections raised under section 76 have been addressed.

The Commission further recommends that provision should be made in the law to require the Assembly to inform rate payers of the publication of the valuation roll since it has been established that a very small percentage of the rate payers have access to the Government Gazette and the daily newspapers.

The provision is to read as follows—

Signing and certification of valuation rolls ... — **(1) The Chief Executive Officer or District Commissioner, as the case may be, shall endorse a valuation roll or supplementary valuation roll and sign a certificate to that effect where—**

(a) on the expiry of the twenty-eight days referred to in section 76, no objection has been received; and

(b) all objections duly received shall have been withdrawn prior to the date fixed for the sitting of the Valuation Tribunal.

(2) The Chief Executive Officer or District Commissioner, as the case may be, shall publish a notice in the Gazette and at least two (2) newspapers circulating in the local government area that the valuation roll or supplementary valuation roll has been signed and certified under this section.”

VALUATION TRIBUNAL

Having made a recommendation to define the expression “Valuation Tribunal” under section 62, the Commission therefore recommends adoption of the following new provision to cater for the regulation of the proposed Valuation Tribunal as follows—

“Valuation Tribunal ... — **(1) The Minister shall appoint a valuation tribunal for each local government authority, which shall consist of—**

(a) a Resident Magistrate or a legal practitioner of not less than five (5) years experience recommended by the Judicial Service Commission who shall be the Chairperson of the valuation tribunal;

(b) two (2) valuers recommended by the body regulating that profession in Malawi; and

(c) a person conversant with issues of land economy.

(2) A local government authority having jurisdiction in the area where an issue arises for the consideration of the valuation tribunal shall be responsible for the payment of such expenses, fees and allowances for the members of the valuation tribunal as may be prescribed.

(3) A member of the valuation tribunal shall not, by reason only of the payment to him of a fee or allowance under this Act, be deemed to be an officer of the local government authority or to have a pecuniary interest in any contract or proposed contract or other matter.

“Proceedings
of a Valuation
Tribunal

... — (1) The Chief Executive Officer or the District Commissioner, as the case may be, or other person appointed by a local government authority, shall act as clerk to the valuation tribunal.

(2) At every sitting of a valuation tribunal, three (3) members present shall constitute a quorum, and all decisions of such valuation tribunal shall be arrived at by a vote of a majority of the members present; and, in case of an equality of votes, the Chairperson or the member acting as such shall have a casting vote.

(3) No member of a valuation tribunal shall sit on the hearing of any matter in which he is directly interested or concerned as being liable to pay the rates in question or any part thereof.

(4) In the case of a vacancy in the valuation tribunal or incapacity to act, so that a quorum cannot be formed, the local government authority may at once, appoint a suitable person temporarily or otherwise to fill up such vacancy or the place of any member incapable of sitting.

(5) Not less than seven (7) days before the fixed date for the first sitting of a valuation tribunal, the clerk shall publish notice of the sitting.

(6) The valuation tribunal shall determine its own procedures.

(7) Proceedings before the valuation tribunal shall be deemed to be judicial proceedings as defined under section 4 of the Penal Code.

“Consideration of objections by the Valuation Tribunal

... — (1) A valuation tribunal shall, at a sitting duly called by the clerk, consider the objections made under section 76.

(2) Not less than seven (7) days before the day fixed for the consideration by a valuation tribunal of any objection, the clerk shall send notice of the date to the persons mentioned in subsection (3); but it shall be lawful for the valuation tribunal to hear any objection at shorter notice if all the persons entitled to be heard on the objection consent.

(3) On the consideration of an objection, the local government authority and the persons who lodged the objection and the rateable owner of the property which is the subject of the objection, may appear and be heard, either in person or by an advocate or accredited representative, and may examine any witness before the valuation tribunal, and may call witnesses.

(4) After hearing the persons mentioned in subsection (3), or such of them as desire to be heard, the valuation tribunal shall confirm or may amend the draft valuation roll or draft supplementary valuation roll, by way of reduction, increase, addition or omission, as it may deem just.

(5) Where a valuation tribunal has amended a draft valuation roll or draft supplementary valuation roll in accordance with subsection (4), it shall be lawful for the valuation tribunal to make any further amendment of the roll, as it may seem proper, in consequence of such first amendment:—

Provided that—

(a) no such further amendment by way of increase or addition shall be made unless any rateable owner concerned has been given at least fourteen (14) days' previous notice of the proposed amendment and of the date of the sitting of the valuation tribunal at which such further amendment will be considered; and

(b) every such rateable owner may lodge an objection to such further amendment in writing, and submitted to the clerk not less than three days before such date.

(6) The valuation tribunal shall consider the objections made under paragraph (b) of the proviso to subsection (5), and the provisions of subsection (3) shall apply, *mutatis mutandis*, in respect of those objections.”

SECTION 79 [*Duty to Levy rates*]

The section provides that in every financial year a rate shall be made and levied by the Assembly to meet all liabilities falling to be discharged out of the general fund for which provision is not otherwise made.

The Commission observed that the section implies wrongly that property rates are the only source of revenue for Assemblies to be utilized for all unbudgeted liabilities. The Commission was aware that there are only twelve rateable areas in Malawi and the rest of the Assemblies have to rely on additional sources of revenue as indicated in the Third Schedule. The Commission therefore recommends that in subsection (1) the word “all” appearing in the second line should be replaced with “**some**” to indicate that there are other sources of revenue for Assemblies. The Commission was also aware that there is a low compliance rate of rate payers, therefore relying on this one source may victimize a few law abiding citizens.

SECTION 83 [*Remission of rates*]

The section provides situations and institutions to which an Assembly shall remit the payment of rates in full.

The Commission observed that an Assembly shall remit the payment of rates for land and improvement owned by a hospital or other institution for the treatment of the sick and similarly for land and improvements owned by an educational institution. The Commission was aware that, presently, there are so many hospitals and schools operating on a commercial basis as opposed to exclusively providing a social service. The Commission therefore recommends that hospitals and schools in this category should be required to pay rates fully.

Paragraphs (d) and (e) should therefore be amended to read as follows—

“(d) land and improvements owned by a hospital and other institution for the treatment of the sick, that is not operating on a commercial basis;

(e) land and improvements owned by an educational institution that is not operating on a commercial basis;”

The Commission further considers that civil society organizations deserve to be exempted from paying rates since they provide a social service and recommends that a separate provision should be introduced to require civil society organizations to pay only 50% of the property rates where appropriate. The provision is to read as follows—

“Civil society organization to pay rates ... **A local government authority may allow a civil society organization to pay to only fifty (50%) per centum of the amount of rates on its assessable property.”**

SECTION 84 [*Exempted properties*]

The section exempts diplomatic missions from paying rates on assessable property owned by them on approval by the Minister of Foreign Affairs. The Commission considered that the exemption should be on reciprocal basis other than on approval by the Minister of Foreign Affairs alone since this may be subjective and liable to abuse. The Commission therefore recommends introduction of a new subsection (2) to read as follows—

“(2) The decision of the Minister shall be based on existing reciprocal agreement with the State of the relevant diplomatic mission.”

SECTION 85 [*Government to pay-rates*]

The section requires Government to pay to Assemblies fifty per centum of the amount of rates on its assessable property.

The Commission was aware that Government does not pay any rates despite this provision and recommends that mechanisms should be put in place to ensure that Government complies with the law.

N. MALAWI HOUSING CORPORATION ACT (Cap. 32:02)SECTION 12 [*Acquisition of land*]

The section empowers the Corporation to apply for a grant, lease or other disposition of land in accordance with section 5 of the Land Act where it requires any customary land for the purposes of carrying into effect any of the provisions of this Act.

In view of the fact that the Commission has recommended a new regime to regulate the administration and management of customary land, the Commission recommends that the section should be amended to read as follows-

“Acquisition of customary land 12. If the Corporation requires any customary land for the purposes of carrying into effect any of the provisions of this Act, it may apply for grant, lease or other disposition in accordance with the Customary Land Act.”

P. INVESTMENT PROMOTION ACT (Cap. 39:05)

In the Schedule to the Act there is a policy statement on Transfer of Land which commits Government to ensure that land for industrial and commercial uses is readily available to investors. Government is therefore required to accelerate land transfer procedures to expedite granting of approvals and consents. Government is further required to develop industrial sites to better provide serviced land to investors. Government is also under an obligation to provide the necessary framework to enable private investors to develop industrial sites, including subleasing to other investors.

The Commission considers that the policy statement places a heavy burden on Government in as far as the development and management of industrial sites is concerned. The Commission was of the view that it would be in the interest of Government to shed off matters that are not core business of Government especially in the light of economic liberalization. This would prevent delays occasioned by Government bureaucracy which frustrate foreign investors.

The Commission was however aware that in certain instances, Government took the initiative to develop certain industrial sites such as Chirimba in Blantyre and Area 28 in Lilongwe but investors were slow to come forward. Factors such as quality of land, prohibitive prices for either the purchase or leasing of the developed sites were some of the reasons that contributed to the lack of interest by investors.

In view of the fact that the focus of the Government is on economic growth⁵⁷, the Commission considers that there is need to empower the Malawi Investment Promotion Agency (MIPA) to have control of designated areas for investment. In other jurisdictions such as Tanzania, agencies such as MIPA are given the responsibility of managing such areas⁵⁸. The Commission has therefore made a recommendation to this effect in the Land Act.

The Commission further recommends that the policy statement should be amended to reflect that MIPA shall have the responsibility of developing the sites or subleasing to other private sector developers. Thus, any ground rentals should accrue to MIPA.

The policy statement should also reflect the position under the Land Policy regarding freehold ownership of land by foreign investors.

⁵⁷ Malawi Economic Growth Strategy.

⁵⁸ See section 20(2) of the Land Act of Tanzania of 1999

LAND BILL, 20...

LAND BILL, 20...

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SCHEDULE

A B I L L

entitled

An Act to make provision for land in Malawi and for all matters incidental or connected thereto

ENACTED by the Parliament of Malawi as follows—

PART I—PRELIMINARY

- | | |
|----------------|---|
| Short title | 1. This Act may be cited as the Land Act, 20... |
| Interpretation | 2. In this Act, unless the context otherwise requires—
“authorized officer” means an officer duly authorized by the Minister, a local government authority or a Traditional Authority for the purposes of this Act or any part thereof; |

“customary estate” means any customary land which is owned, held or occupied as private land within a Traditional Land Management Area and which is registered as such under the Registered Land Act;

Cap. 58:01

“customary land” means all land used for the benefit of the community as a whole and includes unallocated land within the boundaries of a Traditional Land Management Area;

“customary law” means the customary law applicable in the area concerned;

“freehold” means an estate in land, inherited or held for life;

“Government land” means land acquired and privately owned by the Government and dedicated to a specified national or public use or made available for private uses at the discretion of Government;

“land” means the material of the earth, whatever may be the ingredients of which it is composed, whether soil, rock or other substance, and includes the surface covered with water, all things growing on that surface, buildings, other things permanently affixed to land and free or occupied space for an indefinite distance upwards as well as downwards, subject to limitations upon the airspace imposed, and rights in the use of airspace granted by international law;

“lease” includes an agreement for a lease, and any reference to a lease shall be construed as a reference to a lease granted under this Act or any other written law;

“magistrate” means a Resident Magistrate or other grade magistrate exercising jurisdiction of the area concerned;

“magistrate’s court” means any subordinate court constituted under section 54 of the Courts Act;

Cap. 3:01

“person who is not a citizen of Malawi” includes a company or other corporate or unincorporated body with majority ownership or control in the persons who are not citizens of Malawi;

“private land” means all land which is owned, held or occupied under a freehold title, or a leasehold title, or as a customary estate or which is registered as private land under the Registered Land Act;

Cap. 58:01

“public land” means land held in trust for the people of Malawi and managed by Government, a local government authority or a Traditional Authority and includes—

(a) any land held by the Government or a local government authority consequent upon a reversion thereof to the

Government or local government authority, as the case may be, on the termination, surrender or falling in of any freehold or leasehold estate therein pursuant to any covenant or by operation of law;

(b) land acquired and privately owned by Government or a local government authority used for dedicated purposes such as Government buildings, schools, hospitals and public infrastructure;

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

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

(e) unallocated and communal land within the boundaries of a Traditional Land Management Area;

Cap. 69:02

“public road” bears the same meaning as assigned thereto in the Public Roads Act;

“rules of good husbandry” means, due regard being given to the character and situation of the land in question—

(a) the maintenance of the land (whether arable, woodland or pasture) free from harmful weeds, clean and in a good state of cultivation and fertility and in good condition;

(b) the maintenance and clearing of drains, earthworks and access roads;

(c) the maintenance and proper repair of fences, hedges and field boundaries;

(d) the execution of repairs to any building upon the land; and

(e) such rules of good husbandry as may be prescribed or required under this Act or under any other written law;

“Traditional Land Management Area” means an area demarcated and registered as falling within the jurisdiction of a Traditional Authority.

PART II—GENERAL

Protection
of
authorized
officer

3. No suit, prosecution or other legal proceeding shall lie in his personal capacity against any authorized officer, or against any person acting under his authority, for anything in good faith done or omitted or intended to be done under this Act.

Occupation of
land by
non-citizens

4. — (1) A person who is not a citizen of Malawi shall not be allocated or granted freehold land unless it is for investment purposes

in accordance with the Investment Promotion Act and that such investor has formed a partnership or a joint venture with a Malawian. Cap. 39:05

(2) Land designated for investment purposes under subsection (1) shall be identified, gazetted and allocated to the Malawi Investment Promotion Agency which shall create derivative rights to investors.

(3) Freehold land acquired by a person who is not a citizen of Malawi prior to the enactment of this Act shall be converted to leasehold interest unless the person currently in possession of such land shall have acquired Malawian citizenship in accordance with the Malawi Citizenship Act within a period of seven (7) years. Cap. 15:01

(4) For the purposes of this section, the Malawi Investment Promotion Agency means the Agency established in accordance with the Investment Promotion Act. Cap. 39:05

5. —(1) Land shall not be assured to or for the benefit of, or acquired by or on behalf of any body corporate, unless such body corporate is authorized by a licence issued by the President to hold lands in Malawi: Powers of corporations to hold land

Provided that this section shall not apply to a body corporate incorporated in Malawi in accordance with the Companies Act or a body corporate established by or under a written law which empowers it to hold land in Malawi. Cap. 46:03

(2) A disposition of any estate or interest in land in Malawi to or for the benefit of a body corporate shall, unless such body corporate is authorized in accordance with subsection (1) to hold lands in Malawi, be of no effect and unenforceable in any court, and any documents of title relating to such unenforceable disposition shall not be registrable in Malawi.

(3) The Minister may make rules prescribing the particulars to be furnished, the forms to be used and the fees to be paid in relation to applications for and grants of licences for the purposes of subsection (1).

(4) The President may issue a licence pursuant to subsection (1) and where the President declines to issue a licence, he shall give reasons, in writing, for the refusal and the decision of the President may be subject to judicial review.

6. —(1) The Minister or a local government authority may make and execute grants, leases or other dispositions of public land classified as Government land for any such estates, interests or terms, and for such purposes and on such terms and conditions, as he may think fit. Minister or local authority's power to dispose of public land

(2) The Minister or a local government authority shall, in every grant of a lease of Government land, reserve a rack rent in respect thereof:

Provided that—

(a) the Minister or the local government authority may reserve a rent which is less than a rack-rent in leases granted under this section to public utility bodies, statutory corporations, missions or religious bodies, scientific and philanthropic bodies, or any other organizations, associations, bodies or undertakings;

(b) where, having regard to all the circumstances of the case the Minister or local government authority is satisfied that it is neither expedient, equitable or necessary to reserve a rack rent in any lease granted, or to be granted, under this section, they may, reserve in any such lease a rent which is less than a rack-rent.

Prohibition
against
disposal of
state and
official
residences

7. Notwithstanding section 6 and any other written law, the Minister shall not make or execute grants, leases or other disposition of public land comprising a state residence or an official residence of the President or a Vice President, or of a Minister or Deputy Minister of the Government, or of the Speaker of the National Assembly, in favour of the President, a Vice President, a Minister or Deputy Minister, or the Speaker, and no President, any Vice President, Minister or Deputy Minister, and no Speaker, shall acquire, as a personal possession, any such land.

Financial
penalty
for delay in
payment
of rent

8. — (1) If any moneys due to the Government in respect of any rent payable under any lease or right to occupancy of land or any other agreement relating to the occupation or use of land made under this Act or any other law remain unpaid at the end of a period of ninety (90) days after the same became due and payable, the amount so remaining unpaid shall, at the end of such period, be increased by a penalty equal to one-tenth of the sum so remaining unpaid, and the penalty imposed under this section shall be deemed to be part of such moneys and shall be recoverable by the Government in the same manner as such moneys are recoverable.

(2) The imposition of a penalty under this section shall not affect the powers conferred upon the Minister or a local government authority by section 20 to enforce forfeiture of a lease and to re-enter upon land on the breach, or non-observance by a lessee of any of the covenants or conditions contained or implied in the lease.

(3) The exercise by the Minister or a local government authority of the powers conferred by section 20 to enforce a forfeiture and re-enter upon land shall not affect the right of the Government to recover rent or any moneys due to the Government under subsection (1).

(4) The Minister or a local government authority, may in any case or class of cases, if he considers that the circumstances so warrant, exempt the lessee from payment of any penalty due by the lessee under subsection (1).

9. The Minister or a local government authority, as the case may be, may appoint such authorized officers for the administration of this Act as he or it shall think fit, which officers shall be known by such styles or titles as the Minister or the local government authority may direct, and shall undertake such duties and exercise such powers as are specified in this Act or in any regulations made hereunder or by laws made by the local government authority, as the case may be.

Minister or local government authority may appoint duly authorized officers

PART III—PUBLIC LAND

10. All public land is vested in perpetuity in the Republic.

Vesting of public land

11. No right of entry into any Government land shall be implied in favour of any person and the use and occupation of all Government land other than Government land reserved for the use and occupation of the President, shall be controlled by the Minister.

Use and occupation of Government land

12. All customary land is vested in perpetuity in the Republic.

Vesting of customary land

13. — (1) Where it appears to the Minister or local government authority, that any unallocated customary land is needed for public utility, the Minister or local government authority, as the case may be, shall serve notice upon the Traditional Authority within whose Traditional Land Management Area the customary land is situated:

Acquisition of customary land for public utility

Provided that this subsection shall not apply to any customary land required for use as a public road or for the widening or diversion thereof, but such land shall be acquired for such purpose in accordance with the Public Roads Act.

Cap. 69:02

(2) Whenever any customary land is required for temporary use for a public utility, such use not being in the opinion of the Minister or local government authority likely to necessitate occupation for a period in excess of seven (7) years, the Minister or local government authority may authorize the temporary use and occupation of the land for such public utility, and such land shall remain customary land throughout the period of temporary use and occupation:

Provided that, on the expiry of such a period, the Minister or local government authority may authorize such temporary use and occupation for a further period of three (3) years.

(3) Every notice under this section shall—

(a) with all reasonable dispatch be published in the *Gazette*; and

(b) invite any person claiming to be entitled to any interest in the land to which the notice relates to submit particulars of his claim to the Minister or local government authority within two (2) months of the date of the publication of such notice in the *Gazette*.

(4) For the purposes of this section “public utility” means the utility which is for the direct or indirect benefit of the community as a whole, or a part of the community within a Traditional Land Management Area.

Compensation to individuals for loss, damage or disturbance

14. Any person who, by reason of—

(a) any acquisition made under section 13 (1); or

(b) the temporary use and occupation of customary land under section 13 (2),

suffers any disturbance of, or loss or damage to any interest which he may have or, immediately prior to the occurrence of any of the events referred to in this section, may have had in such land, shall be paid such compensation for such disturbance, loss or damage as is reasonable.

Land no longer needed for public purposes

15. Whenever it appears to the Minister or a local government authority that any public land is surplus to the requirements of the Government, the Minister or the local government authority shall so declare by notice published in the *Gazette*, and thereupon such land shall become customary land.

Conversion of customary land to registered land

16. Nothing in this Act shall be construed as preventing the registration of customary land under the Registered Land Act as private land.

Unlawful use of public land an offence, etc.

17. Any person who uses or occupies any public land and is not entitled to such use or occupation by virtue of a valid grant, lease or other disposition made by the Minister or a local government authority, under any law for the time being in force at the date of such grant, lease or disposition, commits an offence and upon conviction shall be liable to a fine of two hundred thousand Kwacha (K200,000) and to imprisonment for twelve (12) months, and, in the case of a continuing offence, to a further fine of one thousand Kwacha (K1,000) in respect of every day during which the offence continues.

PART IV—PRIVATE LAND

Minister or local authority may accept surrenders

18. The Minister or a local government authority may accept the surrender of any lease made under this Act or any other written law on such terms and conditions as the Minister or the local government authority may consider appropriate.

19. The Minister or a local government authority, may, in his or its discretion, wholly or partially relieve any person from the liability to perform or observe any covenant, condition, agreement or stipulation binding on such person by virtue of any grant, lease or other disposition made under this Act or the existing laws, and may extend the time for the performance or observance of any such covenant, condition, agreement or stipulation.

Minister or local government authority may relieve from liability to perform covenants, etc.

20. — (1) In every lease granted under this Act there shall be implied such covenants with the Minister or a local government authority by or on behalf of the lessee as may be prescribed to the extent that such covenants shall continue in full force and effect, save where earlier satisfied, throughout the term granted:

Implied covenants in leases

Provided that any such implied covenant may, in the Minister's or the local government authority's discretion, be expressly exempt from any such lease by the terms thereof, or may be expressly modified or varied thereby to such extent as the Minister or the local government authority may direct.

(2) In every lease granted under this Act there shall be implied such covenant with the Minister or the local government authority by or on behalf of the lessee that the lessee shall not undertake any development of the leased land without first obtaining a grant of development permission from the Planning Committee for the area within which the leased land is situated or, where there is no Planning Committee, the Commissioner for Physical Planning where such grant is required under the Physical Planning Act.

21. Where—

(a) a lessee is in breach or does not observe any of the covenants or conditions contained or implied in his lease, and on behalf of the lessee to be performed or observed;

(b) the lessee fails or neglects to comply with any orders, directions or instructions made or given under this Act; or

(c) the lessee, becomes bankrupt or makes any assignment for the benefit of his creditors or enters into an agreement or makes any arrangement with his creditors or enters into an agreement or makes any arrangement with his creditors for the liquidation of his debts by composition or otherwise, or shall suffer any execution to be levied on his effects, or, in the case of a lessee being a company, goes into liquidation whether voluntary (save for the purpose of amalgamation or reconstruction) or compulsory,

then and in any of the said cases, the Minister or a local government authority may, without prejudice to any other right which he or it may have in law or in equity, determine the lease by notice in

Minister's or local government authority's power of re-entry

writing to the lessee or by re-entry on any part of the demised premises in the name of the whole.

Exceptions
and
reservations

22. — (1) Unless otherwise expressly stated in the lease, there shall be implied in every lease exceptions and reservations of the following in favour of the Minister-

(a) all mines, royal and base minerals, mineral substances of every description, mineral oil deposits, quarries, gravel, stone, flints, chalk, sand, clay and other valuable earth upon, in or under any part of the demised premises with liberty to the Minister and any duly authorized officer to enter, search for, dig, win, take, dress, make merchantable and carry away the same at his pleasure and to sink necessary pits and shafts, erect buildings and fix machinery and works, but doing no wilful damage and making to the lessee reasonable compensation for any actual damage which he may sustain and a pro rata abatement of rent being allowed in respect of the extent of the surface so occupied or interfered with:

Cap. 61:01

Provided always that the lessee may, in accordance with the Mines and Minerals Act, take from the demised premises for his own use any limestone and other materials suitable for building, road metalling or agricultural purposes so long as such limestone and other materials or any products manufactured therefrom are not sold for profit;

(b) the right, subject to any prior grant, lease or other disposition by the Minister thereof, to control, use or make dispositions of interest or rights in any running or stagnant water, the whole extent of which is not included within the boundaries of the demised premises;

(c) right of way with or without vehicle or animals across the demised premises to and from any public land or land in the occupation of any lessee, tenant or licensee of the Minister; and

(d) right for any authorized officer with or without others to enter upon the demised premises and every part thereof including buildings thereon at all reasonable times for all reasonable purposes;

(2) Nothing in this section shall prejudice, or be deemed ever to have prejudiced, the vesting of the minerals in the President or a Minister under any law relating to minerals for the time being in force, whether before or after the commencement of the Mines and Minerals Act.

Cap. 61:01

Revision of
rent

23. — (1) There shall be implied in every lease granted by the Minister or a local government authority a right on the part of the Minister or the local government authority to revise the rent thereby reserved.

(2) Notwithstanding anything to the contrary contained in any lease subsisting at the commencement of this Act, in respect of all leases, whether made before, on or after the commencement of this section, the Minister or a local government authority may, at any time, by order or by-laws published in the *Gazette*, revise the rents thereby reserved, and after such first revision of those rents the Minister may further in like manner revise those rents:

Provided that where an authority, other than the Minister or a local government authority, grants a lease, there shall be no need to publish such revision of rent in the *Gazette*.

(3) In the case of leases for agricultural estates, the rent payable may, in respect of such crops as the Minister may specify by order published in the *Gazette*, be deducted from the proceeds of the sales of such crops at the auction floors or at other source of payment in accordance with such arrangements as the Minister may agree with the authorities of the auction floors or other source of payment.

(4) Any rent payable for the purposes of any lease pursuant to this section shall be calculated in accordance with the formula provided in the First Schedule.

24. The Minister or a local government authority shall, in revising any rent, take into consideration any enhanced value of the demised premises attributable to improvements effected thereon by the lessee during the term of the lease.

Matters to be taken into account

25. — (1) If the Minister or a local government authority decides to alter a rental on revision, he or it, as the case may be, shall cause the lessee to be notified in writing of the amount of the revised rental and the date from which it shall become payable, which date shall not be less than three (3) months from the date of such notice.

Procedure on alteration of rent

(2) If the rental shall be increased on such revision, and if, within six (6) months of the date of the notice, the lessee does not notify the Minister or the local government authority in writing that he objects to the revised rental and intends to terminate his lease in accordance with section 26, the revised rental shall become payable as from the date specified.

26. — (1) If a lessee notifies the Minister or the local government authority of his intention to terminate his lease under section 25, he may surrender his lease to the Minister or the local government authority at any time before the date specified as the date on which the revised rental shall become payable.

Surrender in lieu of revision of rent

(2) If the lessee fails to surrender his lease before such date, the lease shall continue in full force and effect and the revised rental shall become payable as from the date specified.

Compensation for improvements on surrender

27. If a lessee surrenders his lease in accordance with section 26, he shall upon registration of the surrender in the Land Registry be entitled to such compensation in respect of any improvements effected by him upon the demised premises during the term, and such compensation shall be based on the unexhausted value of the improvements thereon.

Acceptance of rent not to waive breach of covenant

28. The acceptance by the Minister or a local government authority of any rent reserved by a lease, or any part thereof, shall not constitute or be construed as a waiver of any previous breach by the lessee of any of the covenants or conditions contained or implied in the lease and on his part to be performed and observed.

Authorized officer may distrain

29. An authorized officer may distrain for any rent due in respect of any land granted, leased or otherwise disposed of under this Act or the existing laws, or any amendment thereto.

Service of notices

30. Any notice required to be given under this Act or under any grant, lease or other disposition of land made thereunder, shall be deemed to be sufficiently served on a grantee, lessee or other person in favour of whom such other disposition is made, if addressed to him by prepaid registered post at his last known address, or, if such grantee, lessee or person is a company, at its registered office, or principal office or place of business in Malawi, and on the Minister if addressed to him by prepaid registered post.

Fees

31. The prescribed fees shall be payable in respect of such matters as may be prescribed:

Provided that in any special case the Minister or a local government authority may reduce any such fee.

Prior written notification to Minister or local government authority of intention to sell, etc., private land

32. — (1) Any person who intends to offer for sale or otherwise to convey, lease, transfer or assign any private land shall, not less than thirty (30) days before he makes such offer or otherwise conveys, leases, transfers or assigns, give notice in writing to the Minister or a local government authority of his intention.

(2) In subsection (1) “sale” includes any manner of selling or letting by bids.

(3) Any person who acts, or attempts to act, in contravention of the provisions of subsection (1) commits an offence and upon conviction shall be liable to a fine of one hundred thousand Kwacha (K100,000) and to imprisonment for a term of twelve (12) months.

(4) Nothing in this section shall apply to—

(a) any offer of sale, conveyance, lease, transfer or assignment by or direct to the Government;

(b) any agreement to lease, or any lease, for a non-renewable term of not more than three (3) years;

(c) any sale pursuant to any order of court or by any officer in the public service acting in his official capacity and pursuant to any written law; or

(d) any mortgage or other hypothecation by way of security for repayment of money lent in good faith or for the due performance of the terms and conditions of any contract entered into in good faith:

Provided that this subsection shall not apply to any mortgage or hypothecation given for the purpose of the evasion or avoidance of the provisions of this section.

(5) The Minister or any local government authority may, by regulations or by-laws, as the case may be, published in the Gazette, prescribe forms for the purposes of this section.

33. Any grant of private land to any person who is not a citizen of Malawi, whether by way of sale, conveyance, assignment, lease, transfer or other transaction, shall not be for an estate greater than a lease of fifty (50) years unless, for reasons fully explained in writing accompanying the application for the registration of the grant, a greater estate is required for the realization of investment:

Grants of private land to persons who are not citizens of Malawi

Provided that where, at the time of transaction, the existing interest in the private land concerned is for an estate greater than fifty (50) years, a grant of private land may be made extending up to the entire remaining estate.

34. — (1) Without prejudice to the requirements of section 33 or any other provision of this Act, no person shall sell, whether by private transaction or by tender, auction or other means, any private land to a person who is not a citizen of Malawi, unless—

Restriction of sale of private land to persons who are not citizens of Malawi

(a) the intention to sell the private land has been published in a newspaper in daily circulation in Malawi not less than twenty-one (21) days before the date of sale, specifying the price, location and size of the private land, any developments thereon and any other particulars sufficient to identify the land;

(b) following the publication referred to in paragraph (a), no person who is a citizen of Malawi has made an offer, or has been able, to purchase the private land at a price that is not lower than the published price; and

(c) the purchaser, if not a citizen of Malawi, has purchased the private land at a price that is not lower than the published price.

(2) Notwithstanding any provision to the contrary in any other written law, no title to private land shall pass under any sale made or purportedly made in contravention of subsection (1), but registration of title upon such sale shall be *prima facie* evidence of validity of title to the land.

Freehold land held by non-resident who are not citizens of Malawi

35. Where private land under freehold title is held by a person who is not a citizen of Malawi and who is not ordinarily resident in Malawi for a continuous period of more than two (2) years and during that period such person has not shown or effected his intention to develop the land or dispose of it or to use or own the land jointly with a citizen or a permanent resident of Malawi, the Minister may, without prejudice to any other powers conferred on him by this Act or any other written law—

(a) by written notice to the person concerned addressed to his registered or his last known address in Malawi, demand voluntary surrender of the land by that person to the Government within a period of ninety (90) days from the date of the notice;

(b) in the event that there is no voluntary surrender as demanded under paragraph (a)—

Cap. 58:04

(i) acquire the land under the Lands Acquisition Act; or

Act No..of 2010

(ii) consult with the Minister responsible for the Physical Planning for the exercise of the powers under that Act.

Gifts of private land between person who are not citizens of Malawi

36. No title to private land shall pass as between persons who are not citizens of Malawi by way of a gift inter vivos.

PART V—USE OF LAND

Minister's power to regulate, manage or control the use of land

37. — (1) Subject to this Act, the Minister may, from time to time, by order published in the *Gazette*, or by regulations made under section 43, or by directions or instructions made or given by him in writing in any individual case, make provision for regulating, managing and controlling the use of all land other than public land or private land situate within a City, Municipality or Township:

Provided that before exercising any powers granted under this subsection, the Minister shall consult with and have regard to the views of the Minister for the time being responsible for the administration of the Physical Planning Act.

Cap. 23:01

(2) Without derogation from the generality of subsection (1), any such order, regulation, direction or instruction, may make provision regulating and controlling the use to which land may be put, the method of cultivation and growing of crops and keeping livestock, the maintenance of proper drainage of such land and the fencing, hedging and modes of access to such land, the preservation and protection of the source, course and banks of streams and generally for the good management and conservation of the soil, water, woodland, pasture and other natural resources thereof.

(3) The Minister may make or give different orders, regulations, directions or instructions in respect of different categories of land.

(4) Any person who contravenes this section, or any order, regulation, direction or instruction made or given under this section commits an offence and upon conviction shall be liable—

(a) in the case of a natural person, to a fine of one hundred thousand Kwacha (K100,000) and imprisonment for six (6) months and for any continuing offence to imprisonment of twelve (12) months; and

(b) in the case of a legal person, to a fine of one million Kwacha (K1,000,000) or the reasonable estimate of the cost of restoring the land, and, for any continuing offence, the directors, manager or any person concerned in the management of its affairs shall be liable to imprisonment of twelve (12) months.

(5) If any person is convicted of an offence under this section, the Minister may, by notice terminate that person's right, however arising, to occupy land in respect of which such offence was committed, and the person shall, within thirty (30) days after being given such notice, vacate the land, where the person fails, omits or refuses so to vacate the land, his use and occupation of it shall be unlawful.

38. Any authorized officer may at any reasonable time enter upon any land to which section 37 (1) applies for the purpose of ensuring that this Part is being complied with.

Powers of entry on land

39. If any person obstructs or impedes another person lawfully exercising any powers or performing any functions or duties conferred or imposed upon him or under this Part, the person obstructing or impeding that other person commits an offence and upon conviction shall be liable—

Obstruction and penalties

(a) in the case of a legal person, to a fine of one hundred thousand Kwacha (K100,000); and

(b) in the case of a natural person, to a fine of fifty thousand Kwacha (K50,000) and imprisonment for six (6) months.

40. Where, by virtue of section 37, the right of a person to occupy land is terminated by the Minister by order, then, from the date of such order, the land shall—

Vesting of land after termination of right to occupy

(a) if it is held by such person directly under a grant, lease or other disposition of public or customary land made under this Act or the existing laws, revert in the Republic as public land;

(b) if it is held by such person under a lease, licence or other disposition of private land, revert in the person entitled to the land on the termination of the lease, licence or interest created by such other disposition; or

(c) in any other case, become vested in the Republic as public land.

PART VI—TRESPASS OR ENCROACHMENT UPON, OR UNLAWFUL
OCCUPATION OF LAND

Summons in
a Magistrate's
Court for
trespass,
encroachment
or unlawful
occupation

41. (1) If any person trespasses or encroaches upon any public land or any private land other than a customary estate or is deemed under this Act to be in unlawful use or occupation of any such land, then the magistrate having jurisdiction in the area where such land is situated may, upon a sworn complaint being made by a person who has lawful title to the land, issue a summons to such first-mentioned person (hereinafter referred to as the “defendant”) requiring him to attend at the court of that magistrate to answer such complaint.

(2) Upon the hearing of the summons, the magistrate, if he is satisfied that the defendant has trespassed or encroached upon the land, or is deemed to be in an unlawful use or occupation thereof, make an order requiring the defendant, his family or other dependants, if any, to vacate the land within seven (7) days, or such other longer period as the magistrate shall determine, and if the defendant fails to comply with such an order he may be removed from the land by any authorized officer, police officer or officer of the court authorized in that behalf and for that purpose by the magistrate.

(3) When determining in accordance with subsection (2), the period of time which shall be allowed to the defendant within which to vacate the land, the magistrate shall take into consideration the period of time which may reasonably be required to enable the defendant, if he be so minded, for his own use and benefit-

(a) to take down, disassemble and remove from the land, or any part thereof, any buildings, structure, fence or improvement of any kind whatsoever which he may have erected upon or made to the land;

(b) to harvest, collect, take-in and remove from the land or any part thereof, any crops, plants, trees, shrubs or other matter which he may have sown, planted or cultivated on the land during his occupation thereof; and

(c) to remove from the land any chattels belonging to him.

(4) The provisions of this section shall be in addition to; and not in substitution for, the provisions of any other written law relating to ejectment from land.

42. The practice and procedure to be observed in any proceedings in the magistrate's court under this Part shall be the practice and procedure prescribed by, in or under the Courts Act with such variation as to forms or otherwise as this Part, and the circumstances of the case, may require.

Procedure

Cap. 3:01

PART VII—MISCELLANEOUS

43. Subject to this Act, the Minister may, from time to time, make regulations for any of the purposes of this Act.

Minister
empowered to
make
regulations

44. In any proceedings before a court in which the question arises as to whether or not any land is public land or private land, a certificate purporting to be signed by the Minister shall be *prima facie* proof that the land is public land or private land, as the case may be.

Certificate of
Minister to be
prima facie
proof

45. Where, in relation to any land transaction, a person who is party to such transaction is required, whether as a matter of law, procedure or practice, to disclose his citizenship to the Minister and claims to be a citizen of Malawi, he shall furnish to the Minister evidence of proof of his Malawi citizenship in accordance with the Malawi Citizenship Act or other applicable law in Malawi.

Proof of
citizenship in
relation to
land
transactions

Cap. 15:01

46. — (1) The Minister or a local government authority may, by notice published in the *Gazette*, depute any authorized officer to exercise and perform such of the Minister's powers or duties under this Act as he may specify in the notice.

Minister's
powers of
delegation

(2) Any authorized officer deputed under subsection (1) shall, in the exercise of his powers to allocate land for leases or grant leases under section 6 or to administer any lease so granted, consult with and take into account the views of the Commissioner for Physical Planning in respect of any matter concerning the use or development of the land so leased or to be leased.

47. — (1) The Land Act is repealed.

Repeal and
savings

(2) Any subsidiary legislation made under the Land Act repealed by subsection (1) and in force immediately before the coming into force of this Act, shall so far as it is not inconsistent with the provisions of this Act, continue in force as if made under this Act.

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

48. Nothing in this Act shall prejudice the grant or issue, under the Mines and Minerals Act, of any licence or permit, or the exercise of rights conferred on the holder of any such licence or permit or any claim by that Act.

Saving with
respect to
mining
Cap. 61:01

SCHEDULE

Revision of Rent (s.24)

<i>Type of lease:</i>	<i>Formula to be used in calculating rent:</i>
1. Agricultural Lease	Equivalent of an official market price of one bag of maize per hectare
2. Other leases	Seven and a half per centum of the open market value of the unimproved site

**CUSTOMARY LAND BILL,
20...**

CUSTOMARY LAND BILL

ARRANGEMENT OF SECTIONS

SECTION

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12. Division of Traditional Land Management Areas
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23. Payment of fees on grant of customary estate to an organization or other body
24. Customary lease and sublease
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A B I L L

entitled

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

PART I—PRELIMINARY

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|----------------|-----------|---|
| Short title | 1. | This Act may be cited as the Customary Land Act, 20... |
| Interpretation | 2. | In this Act, unless the context otherwise requires—
“adjudication officer” means any person appointed to carry out
adjudication functions pursuant to section 41; |

“Central Land Board” means a tribunal established under section 47;

“Commissioner” bears the same meaning as ascribed to it in the Land Act; Cap. 57:01

“communal customary lands” means customary land set aside as such under Section 13:

“customary estate” bears the same meaning as ascribed to it in the Land Act; Cap. 57:01

“customary land use agreement” means an agreement adopted and approved under section 3;

“customary land” means all land declared as customary land in accordance with section 31;

“customary land committee” means a committee appointed under section 4;

“customary Land Tribunal” means a tribunal established under section 43;

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

“hazardous land” means land declared to be hazardous under section 18;

“land clerk” means a clerk appointed under section 7;

“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; Cap. 58:01

“spot adjudication” means adjudication pursuant to section 36;

“Traditional Land Management Area” bears the same meaning ascribed to it in the Land Act. Cap. 57:01

PART II—MANAGEMENT AND ADMINISTRATION OF 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; Customary
land

(b) land designated as customary land under the Land Act; Cap. 57:01

(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 gazetted; and

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

(2) The Commissioner shall issue a certificate of customary land, in the prescribed form, to every Traditional Land Management Area in respect of which the boundaries to such 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 to which a certificate of customary land has been issued to maintain and at all times 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, the boundaries of whose land has been altered to send to the Commissioner the certificate of customary land for indorsement 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 such rules as may be prescribed.

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

4. — (1) There shall be established in each Traditional Land Management Area a customary land committee at the Group village headman level (hereinafter referred to as a “land committee”).

(2) A land committee shall consist of—

(a) a Group village headman who shall be the Chairperson;

(b) six (6) other persons recognized and respected by the community, at least three (3) of which shall be women, who shall be appointed by the Group village headman in consultation with other village headmen of the area.

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

- (a) he dies;
- (b) he resigns;
- (c) he is convicted of any offence involving dishonesty or moral turpitude; or
- (d) he becomes incapable as a result of any disability to perform his duties.

5. — (1) A land committee shall, subject to the provisions of this Act, be responsible for the management of all customary land in the Traditional Land Management Area.

Management
of
customary
land

(2) A land committee shall exercise the functions of management in accordance with the principles applicable to a trustee managing property on behalf of a beneficiary as if the committee were a trustee of, and the residents in the area were beneficiaries under a trust of the customary land.

(3) 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 with 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 with and take into account the views of other local government authorities having jurisdiction in the area where the customary land is situated.

(5) A land committee shall not allocate land or grant a customary estate without a prior approval of the relevant Traditional Authority.

(6) The Commissioner may give any advice, either generally to all land committees or 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 have regard to that advice.

6. A land committee shall follow the procedure to be prescribed under this Act by the Minister.

Procedure for
land
committees

7. — (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.

Land clerks

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

- (a) possess 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.

(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;
- (b) prepare or cause to be prepared a basic map for each Traditional Land Management Area;
- (c) maintain a register of land transactions occurring within a Traditional Land Management Area;
- (d) provide technical advice on land matters to members of the land committee; and
- (e) monitor compliance with this Act and the Registered Land Act.

Cap. 58:01

Advice by
local
government
authorities

8. — (1) A local government authority may provide advice and guidance to any land committee situated within its area of jurisdiction concerning the administration 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 have regard to that advice and guidance.

(2) No advice and guidance given by a local government authority shall contradict or conflict any advice given by the Commissioner under section 5 of this Act and section 4 of the Physical Planning Act.

Complaints
concerning
management
of customary
land

9. — (1) Where a land committee is not exercising the functions of managing customary land in accordance with this Act and other laws applying to customary land 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.

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

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

(b) through a meeting or an assembly 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 of 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 on the appointment of an inquiry to investigate the complaint and make recommendations on it.

(2) An inquiry appointed under subsection (1) (d) may recommend to the Minister that the land committee be dissolved and a new committee be appointed.

(3) Where the Commissioner, or an inquiry, determines that the land committee has taken or omitted to take any action on customary land which is contrary to law, the Commissioner shall take all such action as may be necessary to re-establish the lawful management of that customary land and the proper allocation of interests in that customary land.

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

(3) Any 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 sue the land committee in respect of the management of that customary land.

10. — (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 such agreement may be amended, modified or varied from time to time.

Joint
customary
land use
agreements
between land
committees

(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 of 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 and until 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.

Joint
customary
land use
agreement
between
Traditional
Land
Management
Areas

11. — (1) In the exercise of the powers of management, a Traditional Authority shall have power to enter into an agreement with any other 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.

(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.

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

Division of
Traditional
Land
Management
Areas

(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 being 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 or 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.

13. — (1) A land committee shall determine what portions of customary land shall be set aside as communal land and for what purposes.

Communal
customary
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 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 by this Act to be communal land.

Occupation of
customary land
by
organizations
and other
bodies

14. — (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.

Cap. 57:01

(2) Subject to the provisions 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.

(3) Any organization or body which wishes to obtain a lease of customary land after the coming into operation 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,

Cap. 5:03

shall, if the persons forming the association register it in accordance with the provisions of the Trustees Incorporation Act, be recognized as such by this Act and accordingly the provisions of that Act shall apply in relation to such association.

(5) For the purposes of this section, an organization or other 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 corporate or other body, 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.

Conflict of
interest

15. — (1) Where any matter concerning land in which any member of a land committee exercising functions under this Act or any 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.

(2) Where a conflict of interest arises in respect of administration of customary land, any member of a land committee affected shall

declare his conflict of interest and shall take no further part nor attend any meeting of the land committee where the land which is subject of the conflict of interest is on the agenda, and any person who fails to declare that conflict of interest or who contravenes this provision shall render himself liable to dismissal from the land committee.

(3) For the 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) wife or husband;
- (d) brother, sister, brother in-law or sister in-law,

whether and where any member referred to above has more than one spouse, shall include all those spouses and all the in-laws.

PART III—TRANSFERS AND HAZARDOUS LAND

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

Transfer of
customary
land to
Government
or reserved
land

(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 (90) 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 recommendations for the proposed transfer to an assembly of persons in the Traditional Land Management Area for its approval or refusal of the transfer and the assembly shall, in arriving at its decision, consider the recommendation of the land committee.

(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 as the case may be, may address the meeting and answer questions, if any about the proposed use of land.

(8) No customary land shall be transferred—

(a) until the type, amount, method and timing of the payment of compensation has been 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;

(b) if the matters of compensation referred to in paragraph (a) cannot be agreed until the High Court has agreed as an interim measure, pending final determination of the matters of compensation, to the payment of any sum on account of which it thinks proper by the Commissioner to the land committee and to the persons referred to in subsection (4) as the case may be; or

(c) if Government or reserved land is to be exchanged with customary land which is the subject of the transfer, until the Government land or reserved land has been identified and is ready to be transferred to the Traditional Land Management Area.

(9) Where the relevant body under subsection (6) has, by resolution, approved the transfer of the customary land or part of it, 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 (30) days after the date of the publication of the notice.

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

Transfer of
Government
land or
reserved
land into
customary
land
Cap. 57:01

18. — (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.

Declaration
of
hazardous
land

(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,” is 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) mangrove swamps and coral reefs;
- (b) wetlands and offshore island in the sea and lakes;
- (c) land designated or used for the dumping of hazardous waste;
- (d) land within sixty (60) metres of a river bank or the shoreline of an inland lake;
- (e) land slopes with a gradient exceeding any angle which the Minister shall, after taking account of proper scientific advice, specify;
- (f) land specified by the appropriate authority as land which should not be developed on account of its fragile nature; or
- (g) 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”, he 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 (60) 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) 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) All persons and authorities on whom a notice has been served and all persons on whom and organizations on which a notice should have been served but was not and any other person or organization with an interest in the proposed hazardous land may, within not less than thirty (30) days after the date of the service of the 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 thereof 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 shall 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 land or a part of it should be declared to be hazardous land, report the matter to the President.

(9) The President may, after considering the report of the Minister, declare any land to which subsection (8) applies to be hazardous land and any such declaration shall operate to compulsorily acquire, subject to compensation, any interest in that land.

(10) A notice of a declaration of hazardous land shall be published in the Gazette and shall come into force thirty (30) days after the date of the publication of the notice.

PART IV—GRANT AND MANAGEMENT OF CUSTOMARY ESTATES

19. — (1) A customary estate is in every respect of equal status and effect to a lease granted under the Land Act.

Customary
estate
Cap. 57:01

(2) A customary estate shall be allocated by a land committee to—

- (a) a citizen or a family of citizens;
- (b) a group of two or more citizens 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.

(3) A customary estate shall be—

- (a) governed by customary law in respect of any dealings;
- (b) of indefinite duration;
- (c) inheritable, and transmissible by will;
- (d) subject to any conditions set out in section 26 or as may be prescribed and to any other conditions which the land committee having jurisdiction over that land may prescribe; and
- (e) liable, subject to adequate notification and prompt payment of full and fair compensation, to acquisition by the State for public purposes in accordance with the Lands Acquisition Act.

Cap. 58:04

20. — (1) Any person, family unit, a group of persons recognized as such 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.

Application
for customary
estate

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

- (a) in a prescribed form;
- (b) signed—
 - (i) by the applicant;
 - (ii) where the application is made by a family unit, by not less than two (2) persons from the family unit;
 - (iii) where the application is by a group of persons recognized as such under customary law, by not less than two (2) 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 any fee which may be prescribed.

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

Determination
of application
of customary
estate

21. — (1) A land committee shall, within ninety (90) days of receipt of an application for a customary estate or within ninety (90) days of the submission of further information, determine the application.

(2) In determining whether 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 20;

(c) have special regard in respect of equality of all persons, such as—

(i) treat an application from a woman, or a group of women 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 woman 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 be able to obtain access to the necessary skills and knowledge to be able 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 ordinary resident in the Traditional Land Management Area—

(i) the amount and location of the land being applied for;

(ii) the purpose for which the applicant intends to use the land for and whether that purpose is in accordance with development or land use plan concerning that land; and

(iii) any other matters which may be prescribed.

(3) Where the application is from an organization or body under section 20, the Commissioner in giving guidance to a land committee shall have regard to—

(i) any advice which has been given by a local government authority responsible for the area with respect to the application;

(ii) the contribution that the organization or body has made or has undertaken to make to the community;

(iii) the contribution to the national economy and well-being that the development for which the customary estate is being applied for is likely to make; and

(iv) whether the amount of land applied for is so extensive or is located in such an area that it will or is likely to impede the present or future occupation and use of customary land by persons ordinarily resident in the area.

(4) A land committee shall, after consideration of an application in accordance with subsection (3)—

(a) grant a customary estate in respect of all land or a part of the land applied for subject to any conditions which-

(i) are set out in section 26 or which may be prescribed;

(ii) the land committee is directed by the Commissioner to impose in respect of a grant to an organization or body; or

(iii) may be prescribed; or

(b) refuse to grant a customary estate.

(5) Where the land committee refuses an application it shall furnish the applicant with a statement of reasons for the refusal.

Grant of
customary
estate

22. — (1) Where a land committee determines to grant a customary estate, it shall send or deliver to the applicant an offer in writing, signed by the Chairperson and a land clerk of the land committee, in a prescribed form, setting out the terms and conditions subject to which it will grant the customary estate to that applicant.

(2) Where an applicant, has received an offer in writing under subsection (1), he shall within not more than twenty-one (21) days, reply in writing in the prescribed form either accepting or refusing the offer.

(3) Where an applicant accepts an offer for the grant of a customary estate, a land committee shall issue a certificate, known as a “certificate of customary estate” to that applicant.

(4) No certificate of customary estate shall be valid and no occupation of land under such customary estate shall be lawful until a fee applicable under this section, if any, is paid in full.

(5) A certificate of customary estate shall be—

(a) in a prescribed form;

(b) signed by the Chairperson of the land committee and the land clerk responsible for the area;

(c) signed or marked with a personal mark by the grantee of the customary estate; and

(d) signed, sealed and registered by the District Land Registrar of the district in which the land is situate.

Payment of fees
on grant of
customary
estate to an
organization or
other body

23. — (1) A land committee may require the payment of a fee on the grant of a customary estate to an organization or other body.

(2) A customary lease or sublease shall seek and take account of the advice of the Commissioner published to all land committees concerning fees applicable to such organizations or other bodies.

Customary
estate lease and
sublease

24. — (1) A lease or sublease may be granted out of a customary estate and such lease shall be called a “customary estate lease” and a “customary estate sublease”, as the case may be.

(2) Any lease or sublease granted out of a customary estate shall be governed by the customary law applicable to the land out of which a lease or sublease, as the case may be, has been granted.

Rent

25. A land committee may require the payment of annual rent for customary estates granted to organizations or bodies under section 22.

26. — (1) Every customary estate shall be granted subject to the conditions set out in this section and any other conditions which may be prescribed. Conditions

(2) Every grant of a customary estate shall contain the implied conditions that—

(a) the occupier shall use, keep and maintain the land in good state and, in the case of land to be used for farming, farm the land in accordance with the practice of good husbandry customarily used in the area;

(b) no building shall be erected until all required permissions have been obtained;

(c) the occupier shall pay any 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 rules of customary law and 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.

27. — (1) All transactions involving customary estates during the first five (5) years of registering and titling such estates shall be approved by a land committee and the Traditional Authority in whose jurisdiction the land is situated. Approval
required for
disposal of
customary
estate

(2) No disposition of a customary estate granted to a person or family unit shall be permissible outside the immediate family during the first five (5) years of titling of such 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, as the case may be, above eighteen (18) years of age, have agreed to the disposal.

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

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

(2) A surrender under this section which has or 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 operate to prevent that woman from occupying that land in accordance with customary law or otherwise.

(3) A surrender of a customary estate which has or it is reasonable to deduce that its purpose is the fraudulent, dishonest or unjust deprivation of dependants who are below the age of eighteen (18) shall not be a valid surrender.

(4) Any person who surrenders a customary estate shall remain liable for any breaches of any conditions to which the customary estate was subject and for breaches of any rules 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 right of occupancy shall be—

(a) made on a 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.

Re-grant of
surrendered
customary
estate

29. — (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, that is to say -

(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 (18); 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(18); 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.

30. — (1) Where any condition consists of an obligation to comply with regulations made by any local 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 situate, failure to comply with such regulations or orders shall constitute a breach of a condition.

Breach of condition of customary estate

(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.

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

Fine for breach of condition

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

32. The Minister may revoke a customary estate granted to an organization or other body under section 20.

Revocation of customary estate

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

Abandonment of a customary estate

(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 not less than five (5) years; 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 (3) 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 (30) 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 (90) days from the date of the declaration of the provisional order.

(7) The land committee shall pay compensation for any unexhausted improvements on land on a claim being made within sixty (60) days of the coming into effect of a final order of abandonment by an occupier of a customary estate declared by that order to be abandoned.

34. — (1) An occupier or other person who has an interest in a customary estate may apply to a court having jurisdiction 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) A court 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 court 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 V—ADJUDICATION OF INTEREST IN CUSTOMARY LAND

35. No grant of a customary estate shall be made to any person, group of persons, organization or other body unless and until the boundaries and interest in that land have been adjudicated in accordance with this Part.

Grant of
customary
estate require
adjudication

36. (1) A person or group of persons may, on making an application to a land committee for a customary estate, apply, on a 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 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

Traditional
Land
Management
Area or District
Adjudication

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

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 not less than twenty (20) 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 any 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 shall authorize to apply district adjudication to the land to which the area adjudication was being applied.

Determination
to apply area
adjudication

38. — (1) A local government authority may, either of its own motion or on the application of not less than fifty (50) 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.

(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—

Procedures
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 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 made under section 40, become a final adjudication record thirty (30) 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 made, become a final adjudication record thirty (30) days after the final disposition of that appeal.

40. — (1) Any person who is aggrieved by a determination of a land committee may, within thirty (30) days of the publication of the adjudication record, appeal to a customary land tribunal against that determination.

Appeals

(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 all the circumstances, and, without limiting the generality of that power, may—

(i) amend the adjudication record;

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

(iii) 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) Any 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 that 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 issued a directive under section 37 (4) (b) or where it has determined that district adjudication shall be applied to land within a Traditional Land Management Area, it 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 may, within thirty (30) days of the publication of a provisional adjudication record, appeal to the Commissioner and may further appeal to the Central Land Board.

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

Principles of
adjudication

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

(a) a person is or has been in peaceable, open and uninterrupted occupation of customary land under customary law for not less than twelve (12) 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 other body is in occupation of customary land without any right or interest so to be, shall determine that organization or other body to be an unauthorized occupier, permitted to remain on the land temporarily 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 interest 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 VI—DISPUTE SETTLEMENT

43. — (1) There shall be established in every Traditional Land Management Area a customary land tribunal to mediate on any disputes concerning customary land in the area. Customary
land tribunals

(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 (6) members of the community nominated by the Traditional Authority and approved by the Commissioner, three (3) of whom shall be women.

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

(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 a National Assembly;
- (d) a magistrate;
- (e) a person under the apparent age of eighteen (18);
- (f) a mentally unfit person;
- (g) a person who has been convicted of a criminal offence involving dishonesty or moral turpitude; or
- (h) a person who is not a citizen.

(5) A member of a customary land tribunal shall, unless he sooner resigns, dies or falls within the category set out in subsection (3), serve for three (3) years and shall be eligible for re-appointment for one further term.

(6) The quorum of a meeting of customary land tribunal shall be satisfied by attendance of at least four (4) members of whom two (2) shall be women.

Appeals from
customary land
tribunals

44. Where any person is aggrieved by a decision of a customary land tribunal, he may appeal to a district land tribunal.

District land
tribunal

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

- (a) three (3) Traditional Authorities;
- (b) three (3) reputable persons that come from, and reside in the district, two (2) of which shall be women; and
- (c) the District Land Registrar.

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

Appeals from
district land
tribunals

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

Central Land
Board

47. — (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 (3) Traditional Authorities, one from each region of Malawi; and
- (c) two (2) other members with good standing in society.

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

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

Guiding
principles for
land tribunals

(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 such a manner it considers appropriate, 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 such person or the production of such document.

(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 such decision to a higher tribunal or the High Court, as the case may be.

PART VII—MISCELLANEOUS

Effect of disposition of customary land

49. Any disposition of customary land shall not transfer the residential property interest vested in the community but the registered usufructuary right in the grantor.

Register of customary land

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

(2) A land clerk shall not make any entry on the register in respect of any customary estate requiring the payment of a fee unless such fee has been paid.

(3) A registry for the purpose of records under this section shall be Traditional Land Management Area branch of the District Land Registry for the district in which that land is situate and all persons working in that District Land Registry shall fall under the jurisdiction and be subject to the supervision and direction of the Registrar.

Corrupt transactions

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

(2) For the purpose 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 and all final appeals arising from that conviction have been concluded;

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(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.

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

53. The Customary Land (Development) Act is hereby repealed. Regulations

Repeal
Cap. 59.01

**REGISTERED LAND
(AMENDMENT) BILL, 20...**

REGISTERED LAND (AMENDMENT) BILL, 20..

ARRANGEMENT OF SECTIONS

SECTION

1. Short title
2. Amendment of s.2 to Cap. 58:01
3. Repeal of s.4 of the principal Act
4. Amendment of s. 10 of the principal Act
5. Amendment of s.11 of the principal Act
6. Amendment of s.12 of the principal Act
7. Amendment of s.15 of the principal Act
8. Amendment of s. 16 of the principal Act
9. Amendment of s. 17 of the principal Act
10. Amendment of s. 19 of the principal Act
11. Amendment of s. 20 of the principal Act
12. Amendment of s.21 of the principal Act
13. Amendment of s.25 of the principal Act
14. Amendment of s.27 of the principal Act
15. Amendment of s.31 of the principal Act
16. Amendment of s.32 of the principal Act
17. Amendment of s.34 of the principal Act
18. Amendment of s.66 of the principal Act
19. Amendment of s. 91 of the principal Act
20. Repeal of s.101 of the principal Act
21. Amendment of s.108 of the principal Act
22. Amendment of s.119 of the principal Act
23. Repeal of s.121 of the principal Act
24. Repeal of s.122 of the principal Act
25. Amendment of s.134 of the principal Act
26. Amendment of s.137 of the principal Act
27. Amendment of s.140 of the principal Act
28. Amendment of s.143 of the principal Act
29. Amendment of s.144 of the principal Act

A B I L L

entitled

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) Short title Act, 20...

- Amendment of s. 2 to Cap. 58:01
- 2.** Section 2 of the Registered Land Act (hereinafter referred to as “principal Act”) is amended—
- (a) by deleting the definition of “Allocation Officer”;
- (b) by deleting the definition of “court” and substituting therefor the following—
- “court” means any court of competent jurisdiction”;
- (c) by inserting the following new definition of “customary estate” after the definition of “court”—
- “customary estate” bears the same meaning as assigned to it in the Customary Land Act”;
- (d) in the definition of the words “to file” by inserting therein, at the end the following new words “or electronic file”;
- (e) by deleting the definition of “land” and substituting therefor the following—
- “land” bears the same meaning as assigned to it in the Land Act”;
- (f) by inserting the following new definition of “land clerk” after the definition of “land”—
- “land clerk” bears the same meaning as assigned to it in the Customary Land Act”;
- (g) by deleting the definition of “registration district” and substituting therefor the following—
- “registration district” means the area under the jurisdiction of a local government authority.”
- Act No... of 20...
- Cap. 57:01
- Act No... of 20...
- Repeal of s. 4 of the principal Act
- Amendment of s. 10 of the principal Act
- 3.** Section 4 of the principal Act is repealed.
- 4.** Section 10 of the principal Act is amended—
- (a) in subsection (1), by inserting therein, immediately after the word “lease” the words “or customary estate”;
- (b) by deleting subsection (2) and substituting therefor the following new subsection 2—
- “(2) Each register shall show whether the land is public land or private land and shall indicate the relevant class of such land”; and
- (c) in subsection (3) by deleting paragraph A and substituting therefor the following new paragraph A- “A - the property section, containing a brief description of the land, lease or customary estate, together with particulars of its appurtenances, and a reference to the registry map and filed plan, if any;” .

- 5.** Section 11 of the principal Act is amended in subsection (1)—
- (a) by deleting the words “under section 27 of the Customary Land (Development) Act”; and
- (b) by deleting the words “Allocation Officer” and substituting therefor “land clerk”.
- Amendment of s. 11 of the principal Act
- 6.** Section 12 of the principal Act is amended by deleting subsection (3) and substituting therefor the following new subsection (3)—
- “(3) No subsequent registration shall be made with respect to a customary estate or a lease of customary land within a Traditional Land Management Area unless the Registrar is satisfied that the dealing in such land or lease, which requires registration, is with the written consent of a land committee responsible for the area and the Registrar shall file a copy of the consent given by such committee.”.
- Amendment of s. 12 of the principal Act
- 7.** Section 15 of the principal Act is amended by deleting the words “Director of Surveys” and substituting therefor “Surveyor General” wherever the words appear in the section.
- Amendment of s. 15 of the principal Act
- 8.** Section 16 of the principal Act is amended by deleting the words “Director of Surveys” and substituting therefor “Surveyor General” wherever the words appear in the section.
- Amendment of s. 16 of the principal Act
- 9.** Section 17 of the principal Act is amended by deleting the words “Director of Surveys” and substituting therefor “Surveyor General” wherever the words appear in the section.
- Amendment of s. 17 of the principal Act
- 10.** Section 19 of the principal Act is amended in subsection (3) by deleting the words “Director of Surveys” and substituting therefor “Surveyor General”.
- Amendment of s. 19 of the principal Act
- 11.** Section 20 of the principal Act is amended in subsections (2) and (3) by deleting “£10” and substituting therefor “K100,000”.
- Amendment of s. 20 of the principal Act
- 12.** Section 21 of the principal Act is amended in subsection (1)—
- (a) by deleting “£100” and substituting therefor “K200,000”; and
- (b) by deleting the words “two months” and substituting therefor “six months”.
- Amendment of s. 21 of the principal Act
- 13.** Section 25 of the principal Act is amended in paragraph (b) (i) by deleting the words “, or as a family representative” at the end of the paragraph.
- Amendment of s. 25 of the principal Act
- 14.** Section 27 of the principal Act is amended by deleting the word “country” appearing in the first line and substituting therefor the word “contrary”.
- Amendment of s. 27 of the principal Act

- Amendment of s. 31 of the principal Act **15.** Section 31 of the principal Act is amended in subsection (1) by deleting the words “Local Land Boards Act” and substituting therefor “Customary Land Act”.
- Amendment of s. 32 of the principal Act **16.** Section 32 of the principal Act is amended in subsection (2) by deleting the words “or family representative”.
- Amendment of s. 34 of the principal Act **17.** Section 34 of the principal Act is amended in subsection (2) by deleting “£25” and substituting therefor “K100,000”.
- Amendment of s. 66 of the principal Act **18.** Section 66 of the principal Act is amended in subsection (4), by—
- (a) inserting thereto the following new proviso—
- “Provided that where the subject of the charge is a customary estate, the amount payable shall be paid into the District Development Fund.”; and
- (b) inserting a new subsection (5) as follows—
- “(5) For the purposes of this section, “District Development Fund” means any fund of that title as contemplated under section 46 of the Local Government Act.”.
- Cap. 22:01 **19.** Section 91 of the principal Act is amended in subsection (1) by deleting the words “Mining Act” and substituting therefor “Mines and Minerals Act”.
- Repeal of s. 101 of the principal Act **20.** Section 101 of the principal Act is repealed.
- Amendment of s. 108 of the principal Act **21.** Section 108 of the principal Act is amended in subsection (1) by deleting the words “twenty-one” and substituting therefor “eighteen”.
- Amendment of s. 119 of the principal Act **22.** Section 119 of the principal Act is amended by deleting subsection (3) and substituting therefor the following new subsection (3)—
- “(3) Where the proprietor of land, a lease or a charge is a trustee, he shall hold the same subject to any unregistered liabilities, rights and interests to which it is subject by virtue of the instrument creating the trust, and for the purpose of any registered dealings any person having dealings in such land shall be deemed to have notice of the trust and any breach of the trust shall create a right to indemnity under this Act”.
- Repeal of s. 121 of the principal Act **23.** Section 121 of the principal Act is repealed.
- Repeal of s. 122 of the principal Act **24.** Section 122 of the principal Act is repealed.

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- 25.** Section 134 of the principal Act is amended in the proviso to subsection (1) by deleting the proviso and substituting therefor the following new proviso—
- “Provided that no person shall so acquire the ownership of public land, except unallocated or communal customary land.”.
- 26.** Section 137 of the principal Act is amended in subsection (1) by deleting the words “customary or public land” and substituting therefor “public land, including unallocated or communal customary land”.
- 27.** Section 140 of the principal Act is amended in subsection (1) by inserting therein the following new words at the end of the subsection “or by the local government authority in whose jurisdiction that area falls.”.
- 28.** Section 143 of the principal Act is amended by inserting therein, immediately after the word “Minister” appearing in the second line, the following new words “or a local government authority, as the case may be.”.
- 29.** Section 144 of the principal Act is amended in subsection (1) by deleting the words “Subject to the proviso to section 28 (2) of the Customary Land (Development) Act” and substituting therefore the following new words “Subject to the Customary Land Act”.
- Amendment
of s. 134 of
the principal
Act
- Amendment
of s. 137 of
the principal
Act
- Amendment
of s. 140 of
the principal
Act
- Amendment
of s. 143 of
the principal
Act
- Amendment
of s. 144 of
the principal
Act

**PHYSICAL PLANNING BILL,
20...**

PHYSICAL PLANNING BILL, 20...

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SCHEDULES

A B I L L

entitled

An Act to make provision for physical planning and the orderly and progressive development of land in both urban and rural areas and to preserve and improve amenities thereof; for the grant of permission to develop land and for other powers of control over the use of land; for the establishment of the Physical Planning Council; for the establishment of the Physical Planners Board; for the registration and licensing of physical planners and for connected matters

PART I—PRELIMINARY

- | | |
|----------------|--|
| Short title | 1. This Act may be cited as the Physical Planning Act, 20... |
| Interpretation | <p>2. In this Act, unless the context otherwise requires—</p> <p>“accelerated development area order” means an order made, and referred to as such, under section 63;</p> <p>“advertisement” means any word, letter, model, sign, placard, board, notice, poster, device or representation, whether illuminated or not, in the nature of and employed wholly or in part for the purposes of advertisement, announcement or direction (excluding any such thing employed wholly as a memorial or as a railway signal), and without prejudice to the foregoing includes any hoarding or similar structure used or adapted for use for the display of advertisements;</p> <p>“authorized officer” means a person authorized under section 4 to carry out the functions of the Commissioner;</p> <p>“Board” means the Physical Planners Board established under section 72;</p> <p>“building” means any building, erection or structure erected on or made on, in or under any land and includes the land on, in or under which the building, erection, structure is situated;</p> <p>“building operations” includes any road or other works, preliminary or incidental to the erection or building;</p> |

“building preservation order” means an order made, and referred to as such, under section 64;

“Commissioner” means the Commissioner for Physical Planning appointed under section 3;

“Council” means the Physical Planning Council established under section 7;

“Declared area” means an area declared by order to be a Land Development Control Area;

“development” in relation to any land means any building, rebuilding, engineering or mining operations in, on, under or over land and any material change in the use of land or building;

“development permission” means permission granted under section 44;

“District Physical Development Plan” means the plan referred to under section 26;

“enforcement notice” means a notice served under section 54;

“exempted development” means development exempted by section 42 from the operation of this Act;

“improvement area order” means an order made under section 62;

“land” bears the same meaning as ascribed to it in the Land Act; Cap.57:01

“land committee” bears the same meaning as ascribed to it in the Customary Land Act; Act No. ... of 20...

“land development control area order” means an order made, and referred to as such, under Part VI;

“local government authority” bears the same meaning as ascribed to it in the Local Government Act; Cap.22:01

“local government area” bears the same meaning as ascribed to it in the Local Government Act; Cap.22:01

“Local Physical Development Plan” means the plan referred to in *Division IV* of Part IV;

“National Physical Development Plan” means the plan referred to in *Division II* of Part IV;

“notice of revocation” means a notice served under section 49 of this Act revoking, to the extent set out in the notice, a grant of development permission;

“permitted development” means the development specified in the First Schedule;

“plan” means a plan made under this Act;

“Planning Committee” means a planning committee appointed under section 16;

“Registrar” means the Registrar appointed under section 81;

“responsible authority” in relation to—

(a) a local government area, means the local government authority of that area; and

(b) any other area, means the Commissioner;

“stop notice” means a notice served under section 58;

“subdivision” means the division of any piece of land for the purpose of parting with possession or of disposing of any portion thereof, either by way of lease or sale or for the erection of a building upon any portion;

“subdivision control area order” means an order made, and referred to as such, under Part VI;

“subdivision agreement” includes any agreement whereby any person is given—

(a) any right whether vested or contingent to acquire, lease, or obtain possession of any portion of land, whether immediately or upon fulfillment of any condition or upon the happening of any event, or after the lapse of any time, or upon the exercise of any option or the payment of any sum, whether by installments or otherwise; or

(b) a right to erect a building on any portion of land belonging to some other person;

“Traditional Land Management Area” bears the same meaning as ascribed to it in the Customary Land Act;

“vacant land development area order” means an order made and referred to as such, under Part VI.

Act No. ... of
20...

PART II—ADMINISTRATION

Commissioner
for Physical
Planning

Duties of the
Commissioner

3. There shall be a Commissioner for Physical Planning who shall be a public officer.

4. — (1) The Commissioner shall be responsible for—

(a) formulating national and regional physical development policies, guidelines and strategies;

(b) preparing National Physical Development Plans;

(c) approving District and Local Physical Development Plans and ensuring that such plans are in line with the National Physical Development Plan;

(d) initiating, undertaking or directing studies and research into matters concerning physical planning from time to time;

(e) advising the Commissioner for Lands and local government authorities on the most appropriate use of land;

(f) requiring local government authorities to properly execute physical development control and preservation orders; and

(g) carrying out any other duties pursuant to the objectives of this Act.

(2) The Commissioner may delegate in writing any of his functions under this Act to any officer subordinate to him or to any public officer who is authorized, either specially or generally, in that behalf in writing by the Commissioner.

5. The Minister may, subject to special or general directions, delegate all or any of the powers or duties conferred by this Act to the Commissioner. Delegation of powers by the Minister

6. A public officer shall not incur any liability in respect of the exercise or performance or purported exercise or performance by him, in good faith, of any function under and for the purposes of this Act. Indemnity of public officers

PART III—PLANNING AUTHORITIES

7. There is hereby established a Council to be known as the Physical Planning Council (hereinafter referred to as the “Council”) which shall have powers and functions as are conferred upon it by this Act. Establishment of Physical Planning Council

8. — (1) The Minister shall appoint members of the Council on recommendation from various relevant professional bodies regulating the professions listed in subsection (2). Composition of the Council

(2) Membership of the Council shall consist of—

(a) persons with experience in, or knowledge of, the following—

- (i) physical planning;
- (ii) land management and valuation;
- (iii) economics;
- (iv) law;
- (v) civil engineering;
- (vi) surveying;
- (vii) housing;
- (viii) architecture;
- (ix) social welfare;

- (x) community services;
 - (xi) environment;
 - (xii) rural development; and
 - (xiii) district administration;
- (b) the following ex-officio members—
- (i) the resident magistrate in charge of a region;
 - (ii) Commissioner for Lands;
 - (iii) Surveyor General;
 - (iv) Director of Environmental Affairs; and
 - (v) such senior public officers as the Minister may designate, performing technical or professional duties in the Departments of Housing, Buildings, Land Resources and Conservation, Economic Planning, Public Roads and Local Government.

Disqualifica-
tion of a
member

9. A person who—

- (a) is a discharged bankrupt;
- (b) has been convicted of an offence under this Act;
- (c) has, within the preceding three (3) years, been convicted of an offence under any written law and sentenced to imprisonment; and
- (d) has been convicted within the preceding six (6) years of an offence involving dishonesty or fraud,

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

Vacancies

10. — (1) The office of a member of the Council, not being an *ex-officio* member, shall become vacant—

- (a) if the member dies;
- (b) if the member resigns; and
- (c) if in accordance with section 9, he becomes disqualified from continuing to hold the office.

(2) A vacancy in the Council shall be filled by a person appointed in accordance with section 8.

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

Chairperson
and Vice-
Chairperson
of the
Council

11. — (1) There shall be a Chairperson and a vice Chairperson of the Council who shall be elected by the Council from among the members, at the first meeting of the Council convened by the Commissioner.

(2) The election of the Chairperson and the vice Chairperson of the Council shall be by secret ballot and by a simple majority.

(3) An *ex-officio* member of the Council shall not be eligible to be elected as Chairperson or vice Chairperson.

12. — (1) The Chairperson or in his absence the vice Chairperson shall preside at all meetings of the Council.

Proceedings
of the
Council

(2) The quorum at any meeting of the Council shall be constituted by a simple majority.

(3) The Council shall regulate its own procedure.

(4) The proceedings of the Council shall be deemed to be judicial proceedings within the meaning ascribed to that expression in the Penal Code.

Cap 7:01

13. A member of the Council who is not an *ex-officio* member shall hold office for a term of three (3) years which may be renewable.

Tenure of
office of
members of
the Council

14. The functions of the Council shall be—

Functions of
the Council

(a) to hear and determine appeals lodged by a person aggrieved by the decision of any Planning Committee or Commissioner;

(b) to hear and determine physical planning matters referred to it by any other Planning Committee;

(c) to advise the Minister on broad planning policies, planning standards and social and economic liability of any proposed subdivision of urban or rural land;

(d) to study and give guidance and recommendations on issues relating to physical planning which transcend more than one local government authority for purposes of co-ordination and integration of physical development;

(e) to advise the Minister on the approval of the National Physical Development Plan submitted by the Commissioner;

(f) to approve applications for development permission of national interest referred to it by any Planning Committee or the Commissioner; and

(g) to do all such acts, matters and things as may be necessary for fulfilling the objects of the Council.

15. Any member of the Council shall not incur any liability in respect of the exercise or performance or purported exercise or performance by him in good faith of any of the functions of the Council under this Act.

Limitation of
liability of
members of
the Council

Appointment of
Planning
Committees

16. — (1) A local government authority shall appoint a Planning Committee for its area of jurisdiction which shall be the responsible planning authority for the area and shall exercise any duties as are conferred by this Act.

(2) Where an area earmarked for physical development lies within the boundaries of two or more local government authorities, the respective local government authorities may appoint a joint Planning Committee.

(3) Pursuant to subsection (2), a joint Planning Committee may be appointed to exercise powers and duties in respect of more than one Planning Area.

Composition
of a Planning
Committee

17. A Planning Committee shall consist of the following members—

(a) in the case of a City Assembly—

- (i) the Chief Executive who shall be the Chairperson;
 - (ii) the Director of Planning and Development who shall be the Secretary;
 - (iii) the District Physical Planning Officer;
 - (iv) the District Lands Officer;
 - (v) the City Engineer;
 - (vi) the District Surveyor;
 - (vii) the District Water Engineer;
 - (viii) the City Architect;
 - (ix) the Director of Social Services of the Assembly;
 - (x) the District Environmental Officer;
 - (xi) the Chairperson of the Urban Development Committee;
- and
- (xii) a registered Physical Planner in private practice duly appointed by the Commissioner on recommendation from the Physical Planners Registration Board;

(b) in the case of a District Assembly—

- (i) the District Commissioner who shall be the Chairperson;
- (ii) the District Physical Planning Officer who shall be the Secretary;
- (iii) the District Lands Officer;
- (iv) the District Engineer;
- (v) the District Surveyor;

- (vi) the District Agricultural Officer;
- (vii) the District Education Officer;
- (viii) the District Community Development Officer;
- (ix) the District Public Health Officer;
- (x) the District Environmental Officer;
- (xi) the Chairperson of the District Development Committee;
- (xii) the Chairperson of the District Works Committee; and
- (xiii) a registered physical planner in private practice duly appointed by the Commissioner on recommendation from the Physical Planners Registration Board.

18. The Minister may, as he sees fit, cause inquiries to be made or seek advice from any person or body of persons established by him for that purpose on any matter concerning physical planning in Malawi or any part thereof.

Powers of Minister to direct inquiries and seek advice

PART IV—PLANS AND PLAN-MAKING

Division I—General

19. — (1) The responsible authority shall furnish the Minister or the Commissioner, as the case may be, with such particulars and information as the Minister or Commissioner may require concerning the preparation and content of any plan on the present and future planning needs and the probable direction and nature of development of any area in respect of which plan may be prepared.

Duties and powers of responsible authority with regard to plans generally

(2) The responsible authority may seek such information and opinions and consult with such persons and organizations as may be necessary to ensure the proper and expeditious preparation of a plan and all such persons and organizations shall to the extent that they are able, comply with such requests for information and opinions.

(3) Where a plan is being prepared which will or is likely to involve—

(a) the movement or relocation of people from their homes and places of work;

(b) the acquisition of land in the area or the redistribution of land; and

(c) the readjustment of the boundaries and areas of plots of land, the responsible authority shall, before reaching a decision on the matter, cause the substance of those proposals in the plan to be made known throughout the area of the plan in such manner as is likely to be effective for the purpose of bringing the proposals to the attention of all persons affected by them and shall consider and take into account any representations made concerning the proposals.

Consideration
of plans other
than a National
Physical
Development
Plan

20. — (1) When a plan, other than a National Physical Development Plan has been prepared, a copy shall be placed on deposit at the office of the local government authority responsible for the area.

(2) Notice of such deposit and of the period in which any person may inspect and make representations on a plan shall be published in the *Gazette* and in at least one issue of a newspaper in general circulation in Malawi.

(3) The responsible authority shall cause the substance of the plan to be made known throughout the area for which it has been prepared in such manner as it considers to be most effective for the purpose of bringing it to the attention of the people residing or working in that area.

(4) The responsible authority may hold meetings with any persons or organization for the purpose of explaining the proposed plans and receiving representation and comments thereon.

(5) After the expiry of the period of inspection as published under subsection (2), the responsible authority shall submit the plan to the Minister or Commissioner, as the case may be, together with all such representations and comments and any recommendations made on them by the responsible authority for consideration by the Minister or Commissioner.

Division II—National Physical Development Plan

National
Physical
Development
Plan

21. A National Physical Development Plan shall consist of such development statements of policies and principles and such background studies, reports, maps, plans and other materials containing such information and analysis of demographic, economic, energy, environmental, land use and tenure, physical, rural, social welfare, transportation, urban and other like matters as are necessary to enable the plan to achieve its purpose.

Purpose of a
National
Physical
Development
Plan

22. — (1) The purpose of a National Physical Development Plan shall be—

(a) to provide a spatial framework for the coordination and implementation of programmes and projects of development;

(b) to assist with the development of an ordered hierarchy of urban and rural growth centres so as to contribute to a balanced pattern of development and an economical use of resources and facilities; and

(c) to provide guidelines for the development of services and facilities to desirable standards.

23. — (1) The Commissioner shall be responsible for the preparation of the National Physical Development Plan.

Responsibility for the preparation of National Physical Development Plan

(2) The Minister may require such information and such policies and proposals as he may see fit to be included in a National Physical Development Plan at the stage of its preparation.

24. — (1) When a National Physical Development Plan (in this section referred to as the “Plan”) has been prepared it shall first be submitted to the Council for its consideration and endorsement.

Approval of National Physical Development Plan

(2) Once the Council endorses the Plan, the Commissioner shall submit the Plan to the Minister for approval.

(3) The Minister may place the Plan or an official summary thereof before Parliament for its information.

(4) The Minister may seek such advice on, and give such publicity to, the Plan as he sees fit.

(5) The Minister may approve the Plan with or without amendments or reject it in whole or in part.

25. Where the Minister approves a National Physical Development Plan or where a National Physical Development Plan has been prepared but has not yet been approved by the Minister, all District Physical Development Plans and all Local Physical Development Plans and all programmes or projects of development shall, as far as is practicable, be so formulated and prepared to have regard to, and take into account, the policies and principles of the National Physical Development Plan so approved or prepared.

Status of National Physical Development Plan

Division III—District Physical Development Plans

26. — (1) A District Physical Development Plan shall include—

District Physical Development Plan

(a) a technical report on the conditions, resources and facilities of the district;

(b) a statement of policies and proposals directed to assist the making of decisions or the allocation of resources and the location of physical development within the district;

(c) such information about the description and analysis of the conditions of development in the district as may be necessary to explain and justify the statement of policies and proposals;

(d) background studies and reports;

(e) maps and plans showing present and future land uses and development; and

(f) such other matters as the Planning Committee may request.

(2) A District Physical Development Plan may be made for—

(a) the whole or part of a district;

(b) more than one district; or

(c) parts of more than one district:

Provided that a District Physical Development Plan made for part of a district or parts of more than one district shall be given a special name as appropriate other than that of the district or districts to which the plan relates.

Purpose of a District Physical Development

27. The purpose of a District Physical Development Plan shall be to—

(a) elaborate on, and to apply, the principles and policies of the National Physical Development Plan, if any is in existence in so far as they are relevant to the district;

(b) provide a survey of the conditions, resources and facilities within the district to which it relates;

(c) identify the growth and service centres, the priorities and possible locations of major public investments and the communication and transportation facilities within the district; and

(d) formulate a general land use plan for the district.

Responsibility for preparation of a District Physical Development Plan

28. — (1) A local planning authority shall be responsible for the preparation of a District Physical Development Plan of the district for which it is responsible and may comprise of a joint planning Committee from two or more local government authorities.

(2) A local planning authority shall submit its District Physical Development Plan to the Commissioner for approval.

Status of District Physical Development Plans

29. — (1) When a District Physical Development Plan has been approved by the Commissioner in respect of the whole or part of a district, all Local Physical Development Plans and all programmes and projects of development proposed for the district or that part for which a District Physical Development Plan has been approved and all Local Physical Development Plans for areas bordering on or adjacent to the district shall, as far as is practicable, be so formulated and prepared as to have regard to, and take into account, the District Physical Development Plan.

(2) When a District Physical Development Plan has been prepared but not yet approved, all Local Physical Development Plans and all programmes and projects for development within the district shall, as far as is practicable, be so formulated and prepared as to have regard to, and take into account, the District Physical Development Plan.

Division IV—Local Physical Development Plans

30. — (1) The following are the types of Local Physical Development Plans that may be prepared—

Types of
Local
Physical
Development
Plan

(a) an urban structure plan, which shall be a land use plan outline zoning scheme or outline zoning plan for the whole of an urban area;

(b) an urban layout plan, which shall be a detailed land use plan of a part of an urban area in which significant physical development is planned or likely to or has begun to take place or there is need for development or redevelopment or revision or upgrading;

(c) an urban civic plan, which shall be a more elaborate design of a special area or areas of an urban area showing layout of buildings, car parking lots and landscaping among other details; and

(d) a subject physical development plan, which shall be a plan concerned with a particular subject matter.

(2) A Local Physical Development Plan other than a subject physical development plan shall be named after the place or area to which it relates and the kind of plan it is.

(3) A subject physical development plan shall be named after the particular subject matter with which it is concerned.

(4) More than one Local Physical Development Plans may be applied to any one area or place at the same time and one Local Physical Development Plan may apply to more than one area at the same time.

31. — (1) A Local Physical Development Plan shall include the following—

Contents of
Local
Physical
Development
Plans

(a) a summary of the principal features of the plan;

(b) a statement of the existing conditions of the place or area or subject matter with which the plan is concerned;

(c) a statement on planning policies and proposals;

(d) a statement on the relationship between the plan and the District Physical Development Plan to which it would relate and any other Local Physical Development Plans adjacent to it;

(e) maps and plans to show present and future land and transportation uses and the location of proposed developments; and

	<p>(f) guidance on land uses for purposes of making decisions on applications for development permission.</p> <p>(2) The Commissioner may require any other matter to be included in any local physical development plan.</p>
Responsibility for preparation of Local Physical Development Plans	<p>32. — (1) A local government authority shall be responsible for the preparation of Local Physical Development Plans for the area within its jurisdiction.</p> <p>(2) A local government authority may delegate the responsibility for the preparation of such Plan to a Planning Committee.</p> <p>(3) The Commissioner may require any other matter to be included in any Local Physical Development Plan.</p>
Approval of Local Physical Development Plan	<p>33. — (1) When a Local Physical Development Plan has been prepared it shall be submitted to the Commissioner for approval.</p> <p>(2) The Commissioner may approve the Plan with or without amendments or reject it in whole or in part within sixty (60) days of its submission.</p>
Status of Local Physical Development Plan	<p>34. — (1) When a Local Physical Development Plan has been approved by the Commissioner—</p> <p>(a) all Government Departments and all statutory bodies shall have due regard to the plan in formulating and preparing any project of public investment and development within the area to which the plan applies;</p> <p>(b) a local government authority responsible for the preparation of such plan and having jurisdiction in the area to which such plan relates shall, in considering any application for development permission, have due regard to and, so far as is practicable, comply with the plan; and</p> <p>(c) the planning committee shall in considering any application for development permission, have due regard to and, so far as is practicable, comply with the plan.</p> <p>(2) When a Local Physical Development Plan is in course of preparation or has been prepared but not yet been approved, all Government Departments and statutory bodies, shall, so far as is practicable in respect of their proposals for public investment and development or their decisions on applications for development permission, have regard to such policies and proposals as have been or are likely to be included in the plan.</p>
Deposit of approved plan	<p>35. — (1) When a plan has been approved by the Minister or Commissioner, as the case may be, in respect of the whole or part of the area for which it has been prepared, a copy of it shall be deposited</p>

in such places within the area and the substance of it shall be made known throughout the area in such manner as the Minister or Commissioner may direct.

(2) Any approved plan shall be a public document and shall be available for inspection and use by members of the public at all reasonable times at the offices of the responsible authority and at such other places within the area to which the plan applies as the Minister shall direct.

36. —(1) The Minister or Commissioner, as the case may be, may require the responsible authority to review, or prepare modifications and amendments to, any plan or any part thereof.

Review,
amendments
and
modification
of plans

(2) The responsible authority may review, modify and amend any plan that has been prepared, whether or not it has been approved by the appropriate authority, as is in the opinion of the responsible authority necessary to take into account of the changing circumstances of the area to which the plan relates.

(3) The provisions of sections 19 and 20 shall apply to any review, amendment or modification of a plan.

(4) Where the plan was initially approved by the Minister, the responsible authority shall submit to the Minister any modifications and amendments to a plan for his approval and if the Minister is of the opinion that new substantial policies and proposals are being introduced into the plan, he may prior to the grant of his approval therefor, direct inquiries to be made under section 18.

(5) Where the plan was initially approved by the Commissioner, the responsible authority shall submit to the Commissioner any modifications and amendments to a plan for his approval.

37. — (1) The Minister or Commissioner may, as the case may be, by order published in the *Gazette*, revoke any plan or part of a plan but such revocation shall not render illegal any action that has been taken by a responsible authority or any other person under, or in pursuance of, such a plan.

Revocation
of plans

(2) Any action in the process of being taken by a responsible authority or by any other person under or in pursuance of a plan that has been revoked shall unless the order of revocation otherwise provides, cease to be taken and if continued thereafter shall have no effect.

(3) Upon revocation of a plan under subsection (1), the Minister or Commissioner shall cause the substance of the revocation order to be made known in the area to which the plan applies in such manner as the Minister or Commissioner shall direct.

Conflict
between
Plans

38. — (1) Where there is any conflict or discrepancy between the policies and proposals of an approved District Physical Development Plan and an approved Local Physical Development Plan applicable to the same area or between two or more approved Local Physical Development Plans applicable to the same area, the policies and proposals of the approved District Physical Development Plan or, as the case may be, the most recently approved Local Physical Development Plan shall prevail.

(2) Where there is a conflict between an approved plan and a plan that has been prepared but not yet approved, the policies and proposals of the approved plan shall prevail.

(3) Where there is a conflict between two or more plans applicable to the same area none of which have been approved, a District Physical Development Plan shall prevail over any other plan or plans.

Advisory
local
development
plans

39. Nothing in this Part shall be so construed as to prevent the preparation and use by the Commissioner of advisory local physical development plans for urban areas, rural centres and villages for the physical development, redevelopment and use of any land.

PART V—DEVELOPMENT CONTROL AND ENFORCEMENT

Division I—Development Control

Application
of this Part

40. — (1) This Part shall apply to—

(a) all proposals for development within a local government area other than development permitted or exempted under this Act;

(b) all proposals for development within a declared area other than development permitted under this Act;

(c) all proposals for the display of advertisements other than those permitted by this Act; and

(d) all proposals for subdivisions within a subdivision control area.

(2) The control of development, advertisements and subdivision, or the proposed use of, land is to take place on private and public land and no person or organization other than those provided for in this Act shall have any power or authority to grant permission for development or subdivision of land within a declared area or in respect of advertisements anywhere in Malawi.

Public land
which is
unallocated
customary
land
Act No... of
20...

41. — (1) Nothing in this Part shall affect the mandate of a customary land committee under the Customary Land Act to authorize the use and occupation of any customary land within its area in accordance with customary law but where that area falls within a declared area such authorization shall not operate as a development

permission and it shall be the duty of the occupant of the customary land to apply for development permission unless the proposed development is an exempted development under this Act.

(2) An exempt development under this section is—

(a) the erection of a building of a traditional nature within the recognized boundaries of a village;

(b) the erection of a traditional house outside the generally recognized boundaries of a village:

Provided that this shall not authorize or render the lawful erection of such a house within a road reservation or on land where all development is prohibited in a declared area;

(c) the erection of a house made with non-permanent materials but in such case the provisions of the Public Health (Minimum Building Standards for Traditional Housing Areas) Rules or any rules replacing those rules shall apply to such a house;

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sub. leg. P. 75

(d) the erection of houses and other buildings in accordance with a simple layout plan prepared by or approved by the Planning Committee for use by a Traditional Authority and land committees in the authorization of the use and occupation of customary land in a Traditional Customary Land Management Area; and

(e) the use of customary land in accordance with an urban layout plan approved by the Planning Committee for use by a Traditional Authority and land committees in the authorization for small-scale commercial and manufacturing purposes in buildings made with non-permanent materials.

(3) Where a simple layout plan has been prepared or approved by the responsible authority, it shall be explained to and discussed with the Traditional Authority and all the land committees to whose Traditional Customary Land Management Area the plan relates.

(4) Where a simple layout plan under subsection 2(d) has been given to a Traditional Authority, all land committees under his jurisdiction shall, in any case where it is intended to authorize the use and occupation of customary land for the erection of any building within a declared area, comply with the provisions of that plan.

(5) The Minister shall cause the substance of this section to be made known throughout those parts of any declared area where the land is customary land in such manner as he considers to be most effective for the purpose of bringing it to the attention of any Traditional Authority and relevant land committees having authority over customary land.

Permitted
Development
*First
Schedule*

42. — (1) The types and classes of development set out in the First Schedule hereto shall, to the extent provided in the Schedule, be permitted development under this Act and shall be exempt from development permission under this Act.

(2) The Minister may by order amend the First Schedule.

Types of
Development
Permission

43. 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 within a declared area;

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

(c) a subdivision permission for the subdivision of land within a subdivision control area.

Application
for
Development
Permission

44. — (1) An application for development permission under this Part shall—

(a) be made to—

(i) a local government authority, in case of any development within the area of its jurisdiction; or

(ii) the Commissioner in every other case;

(b) be accompanied with a prescribed fee; and

(c) be in a prescribed form,

and shall include such other information as the local government authority or the Commissioner may require.

(2) Where the development permission applied for is of national interest, the authority or the Commissioner, as the case may be, shall forward the application to the Physical Planning Council for approval.

(3) The responsible authority may by written notice served on an applicant for the grant of a development permission require the applicant to do either or both of the following namely—

(a) publish details of his application at a time or times in a place or places and in a manner specified in the notice;

(b) give details of his application to the persons and authorities and in a manner specified in the notice.

(4) A responsible authority shall in writing notify the applicant for a development permission of its decision on the application, giving, where it grants the permission, the conditions, if any, upon which it is granted and, where it refuses the permission, a brief of reasons for the refusal.

(5) The responsible authority shall within sixty (60) 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 taken, of the progress on the application and the likely date by which a decision will be taken.

45. — (1) The responsible authority, may by written notice served on the applicant for the grant of a development permission require the applicant—

Power to obtain information concerning applications

(a) to furnish it, within such time as is specified in the notice, with such further information relevant to the application as may be specified in the notice; or

(b) to permit it to enter on the land to which the application for the grant of development permission relates so as to enable it to view the site and the adjacent lands and developments.

(2) Where the applicant for the grant of development permission does not have such an interest in the land to which the application relates as would enable him to permit the responsible authority to enter the land, he shall obtain that permission from the person having such interest.

(3) The responsible authority may defer a decision on an application for the grant of development permission until it is satisfied on the matters in respect of which it requires information or permission to enter on the land to which the application relates has been granted:

Provided that any deferment to make a decision under this subsection shall not exceed a period of sixty (60) days.

(4) Where the responsible authority does not make a decision within sixty (60) days, the applicant may appeal to the Council.

46. — (1) The Minister may from time to time, by order published in the *Gazette*, or in any individual case, by directions or instructions in writing under his hand, withdraw an application or class of applications for development permission from the jurisdiction of the responsible authority and reserve the power to make a decision on that application or class of applications to himself.

Power of Minister concerning applications

(2) The power of the Minister under subsection (1) may be exercised in respect of any application that has been made to the responsible authority and in such case the responsible authority shall cease to take any action in respect of the application and shall send it together with any information concerning it to the Minister.

(3) An application to which subsection (1) relates shall be deemed to have been made to the Minister and the Minister shall, in addition

to any other powers conferred on him by this Act, have all the powers of a responsible authority under this Part in connection with such application.

(4) The Minister may refer any application to which subsection (1) relates to the Council for its advice or decision.

Consideration
of
application

47. — (1) A responsible authority may, on receipt of an application for development permission, consult with and seek information from any of the following persons and authorities as may be necessary for the satisfactory disposal of the application—

(a) the Commissioner for Lands;

(b) the Controller of Roads;

(c) the person or authority responsible for the provision of other basic infrastructural services to the land to which the application relates;;

(d) the Electricity Supply Commission of Malawi;

(e) the Director of Environmental Affairs; and

(f) such other person and authorities as the responsible authority may see fit to consult or seek information from.

(2) The persons or authorities referred to in subsection (1) or their representatives may be invited to attend and speak, without a right to vote, at any meeting convened by the responsible authority to consider any application for development permission.

(3) The persons or authorities referred to in subsection (1) shall, where they are not invited, or are unable, to attend a meeting convened by the responsible authority to consider an application for development permission, provide the information or advice requested by the responsible authority within twenty-one (21) days of the receipt of the request or where that is not practicable, they shall inform the responsible authority when they are likely to be able to provide that information or advice.

(4) The responsible authority shall not decide on any application for development permission in respect of which it has requested information or advice from any of the persons or authorities referred to in subsection (1) until after the receipt of that information or advice or twenty-one (21) days have elapsed since such information or advice was requested whichever is the sooner.

Consultation in
relation
to application

48. — (1) In considering any application for development permission, the responsible authority shall, and subject to this Act or any other written law, take such of the following matters into account as it considers necessary for the satisfactory disposal of the application—

(a) any District Physical Development Plan or Local Physical Development Plan applicable to the area;

(b) such information and advice as it has received under section 45;

(c) the foreseeable impact of the proposed development on the natural or built environment and on adjacent uses of land;

(d) the quality and economy of the proposed development, its proposed layout and the quality of its architectural designs;

(e) consideration of noise, air, water and ground pollution, and any other detrimental effect the proposed development may have on the amenity and built environment of the area and adjoining land uses;

(f) traffic considerations;

(g) the contribution the proposed development may make to economic and social facilities and welfare, including employment, within the area;

(h) the financial and other resources available to the person who has applied for development permission;

(i) whether the proposed development is desirable, convenient or necessary having regard to the public interest; and

(j) any other consideration which the Minister requires the responsible authority to have regard to.

(2) The responsible authority may in its discretion, grant an application for development permission either absolutely or subject to such conditions as it may think fit to impose or may refuse to grant an application for development permission.

(3) Without prejudice to the generality of subsection (2), the responsible authority may in respect of a grant of development permission impose such conditions as are likely to advance any of the matters referred to in subsection (1), including all or any of the following matters—

(a) the timing and phasing of a development;

(b) the contribution including financial contribution which a developer will be required to make to the provision of infrastructure and car-parking in connection with the development;

(c) landscaping and the preservation of trees and other natural resources on the land where the development is to take place;

(d) controlling the processes of development;

(e) land in the ownership or control of the developer which is contiguous to the land where the development is to take place;

(f) the duration of a development; and

(g) the nature of materials to be used in the construction of buildings and fences and the colour of external paintwork of buildings and fences.

Time and
completion of
development

49. — (1) A development permission shall lapse and shall cease to have any effect if the development to which it relates has not been commenced within two (2) years of the date of the grant of that development permission.

(2) A responsible authority may by written notice served on a person who has commenced but has not within two (2) years of the date of that commencement completed a development, for which he has obtained a grant of development permission, require that person to complete that development within the time specified in the notice.

(3) A responsible authority may on the request of an applicant for a grant of development permission, or a person who has obtained a grant of development permission, extend the time limits referred to in subsection (1) and (2).

(4) A grant of development permission may provide that the development to which it relates shall be permitted for a limited period only.

Revocation of
grant of
development
permission

50. — (1) A responsible authority may, and on the directions of the Minister shall, by written notice served on a person who has obtained a grant of development permission, revoke in whole or in part that grant of development permission.

(2) A notice of revocation served under subsection (1) shall include—

(a) a statement of reasons for the revocation;

(b) such directions as the responsible authority shall consider necessary as to the cessation of any development that has been commenced in pursuance of the grant of development permission;

(c) information on any claim to compensation that may be made in respect of revocation; and

(d) such other matters as may be prescribed by regulations.

(3) A grant of development permission in respect of which a notice of revocation has been served on any person shall, to the extent of the revocation, cease to be valid or to have effect and any development to be affected by the revocation and which takes place after the service of the notice of revocation shall be unauthorized development.

(4) A person upon whom a notice of revocation has been served shall comply in all respects with that notice.

51. — (1) A grant of development permission is personal to the person to whom it is made and where that person ceases to have an interest in the land which would entitle him without obtaining the permission of any person to enter and undertake building operations on the land, the grant of development permission shall lapse and, unless it is transferred in accordance with this section, shall cease to have effect.

Development
permission
personal to
applicant

(2) Where a person has transferred or has made a contract to transfer his interest in land which is the subject of an application for a grant of development permission or in respect of which a grant of development permission has been made, or in case of a company, where a controlling interest in the company which made the application for development permission or to which a grant of development permission has been made, or is to be or has been transferred to another person or company, the person in whose name the application for or to whom a grant of development permission has been made shall inform the responsible authority of the name and address of the person to whom, or company to which the land or controlling interest in the company, is being or has been transferred.

(3) A transferee of land or a land controlling interest in a company referred to in subsection (2) shall, if he intends to continue with the development which is the subject of the application for a grant of development permission apply in writing to the responsible authority for a transfer of the development permission.

(4) Sections 42 to 49 of this Act shall apply to any application for a transfer of a development permission made under this section.

Division II—Enforcement

52. — (1) A person shall not commence the development of any subdivision of any land or display any advertisement on any land or building to which this Part applies unless he has first obtained a grant of development permission or except where the development, subdivision or display of advertisement is permitted development under this Act.

Development
not to take
place without
permission

(2) Notwithstanding anything contained in the Registered Land Act, the Land Registrar shall refuse to accept for registration any document which effects or purports to effect a subdivision or which constitutes or purports to constitute a subdivision agreement to which subsection (1) applies, unless there is attached to such document a copy of the grant of development permission which permits such subdivision or subdivision agreement.

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(3) Notwithstanding anything contained in the Land Act, the Commissioner for Lands shall not sign, seal, execute or perfect any grant or lease of public land or customary land for the purpose of development to which this Part applies, unless the application for the grant or lease of public land or customary land is accompanied with a copy of a grant of development permission or a certificate from the responsible authority that such grant is not required for the development.

Enforcement
notice

53. — (1) A responsible authority may, in any case where it considers that unauthorized development has taken place, by written notice (in this Act referred to as the “enforcement notice”) a copy of which shall be served on the owner and occupier of the land or building to which the notice relates, require that person or those persons to take such action within such time, being not less than thirty (30) days from the date of the service of a copy of the enforcement notice, in relation to that development as may be specified in that notice.

(2) An enforcement notice shall specify clearly and in a manner which may be easily understood—

(a) the development to which it relates;

(b) the activity on or in or the use of land or buildings alleged to constitute the unauthorized development;

(c) the person or persons to whom it is addressed;

(d) the time at which it comes into effect;

(e) the action which must be taken to rectify the alleged unauthorized development and the time, being not less than sixty (60) days, within which such action must be taken;

(f) the powers of the responsible authority to enter the land and undertake the action specified in paragraph (e);

(g) the penalties which may be imposed if the action specified in paragraph (e) is not undertaken; and

(h) the right of the owner and occupier of the land or building, which is the subject of the enforcement notice, to object to or appeal against the enforcement notice.

(3) An enforcement notice shall continue to apply to development in respect of which it was served notwithstanding that it has been complied with.

(4) A person who has been served with an enforcement notice shall, subject to the provisions of this Act, be under a duty to comply with all the terms and conditions of the notice that has been served on him.

54. — (1) At any time within thirty (30) days of the service of an enforcement notice, a person on whom such a notice has been served may by giving reasons in writing request the responsible authority to reconsider the enforcement notice.

Reconsideration of enforcement notice

(2) Where a written request in accordance with subsection (1) has been made to the responsible authority, the enforcement notice shall continue in effect until varied, suspended or withdrawn under subsection (3) and, if varied, shall continue in effect in accordance with the variation.

(3) A responsible authority may, after reconsidering the case, either of his own volition or upon request made under subsection (1), confirm, vary, suspend or withdraw the enforcement notice.

(4) Where a request has been made under subsection (1), the responsible authority to whom the request is made shall, within thirty (30) days of the receipt of the request, reconsider the enforcement notice and notify in writing the person who made the request of his decision thereon.

(5) A responsible authority may, but shall not be obliged to, give the person who has requested a reconsideration of an enforcement notice the opportunity to be heard orally by the responsible authority.

55. — (1) A responsible authority shall, in considering whether to serve or in reconsidering an enforcement notice, take such of the following matters into account as it may consider necessary to determine the question before it satisfactorily—

Matters to be taken into account on enforcement notice

- (a) the nature and extent of the unauthorized development;
- (b) the harm to the natural and built environment and the degree of nuisance caused to adjacent development;
- (c) the length of time the unauthorized development has existed;
- (d) the likely expense to the person or persons who may have been served with an enforcement notice and their capacity to meet that expense;
- (e) the benefits of the unauthorized development;
- (f) the possible alternative measures which could be taken to rectify or regularize the unauthorized development;
- (g) whether it is necessary, desirable or convenient, having regard to the public interest to serve or confirm an enforcement notice;
- (h) any other material consideration; and
- (i) any consideration which the responsible authority is directed by the Minister to take into account.

(2) A responsible authority may inspect or cause to be inspected on its behalf any development to determine whether, and if so, to what extent that development is authorized and may take into account the evidence obtained from such an inspection in any decision on whether to serve or confirm an enforcement notice.

(3) A responsible authority may seek and take into account any technical, professional and scientific advice which it considers to be necessary for a satisfactory decision to be made on an enforcement notice.

Action in
pursuance of
enforcement
notice

56. — (1) The action which a responsible authority may require to be taken by a person on whom an enforcement notice has been served to rectify the unauthorized development to which the enforcement notice relates may be all or any of the following—

(a) to pull down or remove a structure in whole or in part;

(b) to erect or re-erect a structure in whole or in part;

(c) to restore land as near as may be to the appearance and state which it had before the unauthorized development took place including the replanting of any vegetation;

(d) to display an advertisement in the place permitted by a development permission;

(e) to cease any use of land or buildings; and

(f) to do or take any action which in the opinion of the responsible authority will assist in the ending of the unauthorized development.

(2) Where a person on whom an enforcement notice has been served fails or refuses to take the action required by the enforcement notice to rectify the unauthorized development, the responsible authority may with all necessary workmen and other officers enter or authorize any other person to enter the land and take all such necessary action in respect of the unauthorized development and otherwise to enforce the notice as may seem fit.

(3) When the responsible authority has exercised the power under subsection (2) it may recover as a civil debt, in any court of competent jurisdiction, from the person or persons referred to in subsection (2) those expenses necessarily incurred by the responsible authority in the exercise of such power.

Stop notice

57. — (1) Where a responsible authority is of the opinion that a person is carrying out unauthorized development, the responsible authority may serve a stop notice requiring that person to cease the activity or such portion of it as may be specified in the stop notice.

(2) If a person feels aggrieved by the stop notice issued pursuant to subsection (1), he may appeal to the Council within thirty (30) days from the date of the service of the notice.

(3) The Council may confirm, vary or rescind the stop notice appealed from and in doing so the Council may take into account any matters provided for in section 54 respecting enforcement notices.

58. — (1) A responsible authority may in any case where it considers that unauthorized development has taken place, by written notice served on the owner and occupier of the land or building in respect of which the unauthorized development has taken place, require that person or those persons to apply for a grant of development permission.

Development
permission
subsequent
upon
unauthorized
development

(2) The provisions of sections 45 to 50, inclusive, shall apply to any application for a grant of development permission made under this section.

(3) Where a notice under subsection (1) has been served on any person the responsible authority shall refrain from serving an enforcement notice under section 54 (1) or stop notice under section 58 (1) on that person until after not less than thirty (30) days from the date of the service of the notice under subsection (1).

(4) A grant of development permission issued under this section may be back-dated to the time at which the development to which it relates was commenced or is considered by the responsible authority to be likely to have commenced.

(5) A responsible authority may, if it sees fit in any case of unauthorized development of a minor nature, issue a grant of development permission after requiring an application from the owner and occupier of the land on which the unauthorized development has taken place.

59. — (1) A responsible authority may, in any case where it considers that—

Cleaning up
land and
buildings and
demolition of
unfit
buildings

(a) by reason of rubbish and other materials or goods left on land or of the general appearance of the land, that land is detrimental to the environment; or

(b) a building is defectively constructed or has become dilapidated, is run down or is in need of repair so that it detracts from the built environment, by written notice served on the owner of land or building require the owner to take such action within such time, being not less than thirty (30) days from the date of the notice, as may be specified in the notice, to clean up and thereafter maintain in a clean state the land or building or commence to demolish the building.

(2) The action which a responsible authority may specify in the notice made under subsection (1), may be all or any of the following, namely to—

- (a) remove rubbish and other materials from the land;
- (b) fence the land;
- (c) cut down vegetation on the land to a reasonable height;
- (d) plant shrubs and flowers and thereafter maintain them;
- (e) paint or repaint the building in specified colours;
- (f) carry out minor repairs to the building;
- (g) tidy-up the land surrounding the building;
- (h) demolish or render safe a building; and
- (i) to take such other similar action as will contribute to the cleaning of the land.

(3) Where the owner of the land or building has not, within two (2) months or such longer time as may be specified in the notice, cleaned up the land or building or demolish or render safe a building in the manner specified in the notice, the responsible authority may, with all necessary workmen and other officers, enter or authorize others to enter, on the land and carry out the actions specified in the notice.

(4) When the responsible authority has exercised the power under subsection (3) it may recover as a civil debt, in any court of competent jurisdiction, from the owner of the land or building those expenses necessarily incurred by the responsible authority in the exercise of such power.

PART VI—SPECIAL AREAS

Declaration
of special
areas

60. — (1) Subject to this Act, the Minister may, from time to time by order published in the *Gazette*, declare any area of land (in this Act referred to as the “special area”) to be subject to special powers of control and management of land as provided for in this Part.

(2) The following are the orders and their general purport which the Minister may make—

- (a) an improvement area order, for improving the physical layout, housing or other conditions of life of the inhabitants of the area;
- (b) a vacant land development order, for empowering the Minister to bring about development in the public interest on vacant land;
- (c) a building preservation order, for preserving individual or

group of buildings which have special architectural, cultural or historical significance; and

(d) an accelerated development area order, for assisting in the planned development of an area designated for or experiencing rapid physical growth, including any rural growth area.

(3) Subject to this Act, the Minister may declare an area to be a special area in respect of any type of land within Malawi.

(4) The powers contained in any special area order for regulating, managing, controlling and bringing about the development of land within the special area shall be in addition to all other powers over land and respecting its development contained in this Act.

61. — (1) An improvement area order may be made in respect of any area of land developed primarily for residential purposes to a high density or in an unplanned and unauthorized manner or in a manner which makes further development or redevelopment of that land or adjacent land difficult to carry out or in a manner detrimental to the environment of the area and the health of the residents of the area or adjacent areas.

(2) An improvement area order may make provision for the exercise of powers in respect of—

- (a) the improvement of houses;
- (b) the building or rebuilding of houses and other structures;
- (c) the provision of roads, water and electricity in the area;
- (d) the relocation of some or all of the residents of the area either within the area or elsewhere;
- (e) the demolition of houses and other structures;
- (f) the reallocation of land within the area to ensure a more beneficial occupation and a more suitable subdivision of the land;
- (g) the demarcation of boundaries;
- (h) the payment of compensation to residents of the area who suffer loss or inconvenience through the exercise of any of the powers of the order;
- (i) the landscaping of the area; and
- (j) such other matters as are in the opinion of the Minister conducive to the physical improvement of the residents of the area.

(3) Where the Minister wishes to make an improvement area order he may, prior to the making of such order, require the responsible authority over the area to which the proposed order relates to hold a meeting with the residents of that area in order to explain to them the purport of the proposed order, to obtain any representations on the proposed order and to report the substance of the meeting to him.

(4) An improvement area order shall provide for the person who or authority which is to be responsible for implementing the order and such provision may establish a special committee of persons with relevant skills and knowledge to implement the order.

(5) When the Minister has made an improvement area order he shall cause the substance of the order to be made known throughout the improvement area in such manner as the Minister considers to be most effective for the purpose of bringing it to the attention of the residents of the area.

(6) The person or authority responsible for the implementation of the order shall during the period of implementation keep the residents of the area informed of, and consider their representations on, the programme of implementation and in pursuance of their duty he or it shall consult with any existing committee or residents or may appoint a committee of residents to assist them generally in the implementation of the order.

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(7) Where an improvement area consists of or has within it customary land, the Minister may declare the customary land to be public land in accordance with the provision of section 14 of the Land Act.

Vacant land
development
order

62. — (1) A vacant land development order may be made in respect of any land in an urban area where the Minister, after making such inquiries as he sees fit, is satisfied that a person entitled to the land has either through absence from the country or otherwise unreasonably failed to develop the land.

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(2) When a vacant land development order has been made the Minister shall have the power to lease the land in accordance with the Land Act as if it were public land being leased.

(3) No land within a vacant land development area shall be leased in accordance with subsection (2) until a plan for the development of that land has been prepared by the Commissioner and approved by the Minister.

(4) Any person who obtains a lease of land in a vacant land development area shall develop it in accordance with the plan approved by the Minister under subsection (3).

(5) Any rent payable in respect of a lease granted under this section shall be paid to the Commissioner for Lands who shall, after making any deduction of any charges and necessary administrative costs, place such monies in a special account with the Reserve Bank of Malawi in the name of the Minister as trustee for the person entitled to the land.

63. — (1) Subject to the provisions of the Monuments and Relics Act, a building preservation order may be made in respect of any building or group of buildings the preservation of which is in the opinion of the Minister desirable for architectural, landscape, cultural or historical reasons.

Building
preservation
order
Cap. 29:01

(2) A responsible authority may, and shall if so directed by the Minister, cause a survey of the buildings in its area to be made with a view to determining whether any such buildings ought to be made the subject of a building preservation order.

(3) Where a responsible authority considers that a building preservation order may be made in respect of any building, it shall forward a draft of such an order to the Minister and cause a notice of the draft order to be affixed in a conspicuous place on each building to which the draft order relates.

(4) No person shall develop, demolish, alter or engage in any building operations other than essential repairs, or attempt so to do, in respect of any building which is subject to a building preservation order without first obtaining a grant of development permission from the responsible authority.

(5) In considering whether to grant, with or without conditions, or to refuse an application for development permission in respect of a building which is subject to a building preservation order, the responsible authority shall in addition to taking into account the matters contained in section 49 (1) have regard to the importance of preserving the architectural, cultural and historical heritage of Malawi.

(6) Any person affected by a building preservation order made by the Minister under this section shall be entitled to compensation in accordance with the Land Acquisition and Compensation Act.

Cap. 58:04

64. — (1) An accelerated development area order may be made in respect of any area of land designated for the purpose of effecting rapid physical development or which in the opinion of the Minister is undergoing or is likely to undergo rapid physical development.

Accelerated
development
area order

(2) The Minister may, in connection with the making of an accelerated development area order—

(a) declare any customary land in the area to be public land under section 14 of the Land Act;

Cap. 57:01

(b) require the responsible authority to prepare a plan for the area and expedite the consideration of any applications for development permission;

(c) ensure the rapid processing of applications for plots of land within the area;

(d) ensure a coordinated approach to development within the area; and

(e) take such other action as will in his opinion facilitate the planned and orderly development of the area.

(3) An accelerated development area order may provide that, subject to such conditions as may be specified in the order, certain developments or classes of developments shall not require a grant of development permission or that developments otherwise permitted under this Act shall require a development permission.

(4) When an accelerated development area order has been made, the responsible authority shall cause the substance of the order to be made known throughout the area to which it relates in such manner as the responsible authority shall consider to be most effective for the purpose of bringing it to the attention of all persons affected thereby.

PART VII—ACQUISITION OF LAND AND COMPENSATION

Acquisition
of land

65. — (1) The Minister, if it is considered desirable or expedient in the interests of the implementation of any plan or of the proper control and furtherance of development of any land under this Act, may acquire any land, either compulsorily or by agreement, paying such compensation therefor as may be agreed or determined in accordance with the law.

Cap. 58:04

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

Occasions
when
compensation
payable for
planning
actions *Second
Schedule*

66. — (1) There shall be a right to the payment of compensation assessed, in accordance with the provisions of this Part in the following cases—

(a) where, by reason of a refusal of a grant of development permission by the Minister or a responsible authority, the land which was the subject of the application for a grant of development permission has become incapable of any reasonable beneficial use;

(b) where a building has been destroyed in whole or in part by fire or other natural disaster and the Minister or a responsible authority refuses to allow a building of similar content to be erected on the same or adjacent site in the ownership or occupation of the owner of the destroyed building;

(c) where the Minister or a responsible authority requires a building to be demolished, altered, removed, relocated or to cease being built or being used or a use of land to cease, such building and use of land, being at the time authorized and in accordance

with any law or in respect of which the Minister or responsible authority has approved that compensation should be paid in the interests of the implementation of a plan or the proper control of land or the exercise of powers under Part IV;

(d) where a person is required to move from his house either permanently or on a temporary basis and take up residence elsewhere in the exercise of powers under an improvement area order;

(e) where as a result of the reallocation of land to effect a more desirable subdivision thereof in an improvement area, a person has suffered a diminution in the value of his land;

(f) where a development permission has been revoked and the holder of that permission has incurred expense necessarily arising out of commencing to develop or developing in accordance with the permission; and

(g) any other case where the Minister or a responsible authority certifies that it would be just and desirable to pay compensation.

(2) For the purposes of determining whether compensation is payable, and assessing the amount of compensation which may be payable in accordance with this Part, the expression “incapable of any reasonable beneficial use” shall mean that the land cannot be used for any lawful purpose in keeping with surrounding uses so as to enable any person derive an income or produce from the land.

(3) The Minister shall calculate the compensation payable under subsection (1) in accordance with the Second Schedule hereto.

(4) Where a right to compensation has arisen in the circumstances referred to in subsection (1) (a) and (b) a claimant may, instead of pursuing a claim of compensation, by written notice (hereinafter called a “purchase notice”) addressed to the Minister or responsible authority, require the Minister or responsible authority to purchase the land.

(5) On receipt of a purchase notice, the Minister or responsible authority may—

(a) accept the notice and agree to purchase the land in accordance with the provision of the Lands Acquisition and Compensation Act as if it were a compulsory acquisition of land;

(b) reject the purchase notice but agree to pay compensation assessed in accordance with this Act;

(c) reject the purchase notice and direct the granting of development permission for—

(i) the development in respect of which an application for development permission has been made; or

(ii) development as specified in the direction; and

(d) reject the purchase notice on the grounds that the land is not capable of yielding any reasonable beneficial use.

Assessment
of
compensation

67. — (1) Compensation shall be assessed by the Minister or responsible authority.

(2) In assessing compensation under this section, the Minister or responsible authority shall, unless to do so would in his opinion cause injustice, set off against any compensation payable, any increase in the value of the land which is the subject of the claim for compensation or any other land of the claimant adjacent to that land brought about by or reasonably likely to have been or to be brought about by any action or decision by the Minister, a responsible authority or any person or authority exercising powers under Part VI.

(3) The Minister may refer any question of compensation arising under this Part to the Council for its advice and the Council shall give its advice in the form of a written report to the Minister.

(4) A person aggrieved by an assessment of compensation made by a responsible authority under this section may apply to the High Court for judicial review within thirty (30) days from the date of the assessment.

Claim for
compensation

68. — (1) A claim for compensation under this Part shall be made in a prescribed form—

(a) to the Minister or responsible authority, as the case may be; and

(b) within six (6) months of the date on which the action or decision which gives rise to the claim was taken.

(2) The Minister or responsible authority may, by written notice served on a claimant, require the claimant to furnish him within such reasonable time as may be specified in the notice with such further information relevant to the claim as may be described in the notice to enable him to determine the claim satisfactorily and expeditiously.

(3) The Minister or responsible authority shall not be obliged to determine a claim in respect of which he has exercised the power contained in subsection (2) until he has received the information so required from the claimant.

PART VIII—APPEALS

69. — (1) Any person—

Appeals to
the Council

(a) whose application for development permission has been refused, revoked or granted subject to conditions by a responsible authority;

(b) upon whom a completion notice has been served;

(c) upon whom an enforcement notice has been served and after reconsideration has been confirmed by a responsible authority;

(d) aggrieved by a decision directly applicable to him taken by any person or authority exercising powers under Part VI other than any powers exercised in respect of a vacant land development order; or

(f) who has been served with a stop notice,

may appeal to the Council against that notice or decision.

(2) Where a person wishes to appeal against any notice or decision referred to in subsection (1), he shall submit a notice of appeal within thirty (30) days of the receipt of the notice or decision to be appealed against, to the Council.

(3) The Minister may prescribe rules of procedure to be followed in the making and hearing of appeals under this Part.

(4) A person aggrieved by an assessment of compensation made by the Minister or a responsible authority under this section may apply to the High Court for judicial review within thirty (30) days from the date of the assessment.

70. — (1) The Council shall have, in relation to the hearing of any appeal, under section 70—

Powers of
Council on
appeal

(a) all the powers which the responsible authority has in considering an application for a grant of development permission whether to revoke a grant of development permission or serve or confirm after reconsideration an enforcement notice or serve a completion notice or stop notice and shall exercise those powers in accordance with sections 42 to 56; and

(b) the power to do all things which it is required or empowered to do by or under this Act.

(2) The Council may in the exercise of its powers of appeal under this Part, confirm, with or without modifications, vary, amend, alter, reverse or substitute its own decision or any decision on which an appeal has been brought before it.

(3) The decision of the Council on any appeal shall be—

- (a) made in writing;
- (b) sent to all the parties to the appeal and, where he was not a party, to the Minister; and
- (c) available for public inspection.

(4) A person aggrieved by the decision of the Council may apply to the High Court for judicial review within thirty (30) days from the date of the decision of the Council.

PART IX—PHYSICAL PLANNERS BOARD

Physical
Planners
Board

71. — (1) There is hereby established a Physical Planners Board (in this Act otherwise referred to as the “Board”) which shall be responsible for regulating the activities and conduct of physical planners registered in accordance with the provisions of this Act.

(2) The Board shall consist of—

(a) the following members appointed by the Minister—

- (i) two (2) persons in the service of a local government authority;
- (ii) two (2) persons engaged in private practice and registered as physical planners;
- (iii) a member of the teaching staff of the University of Malawi; and

(b) the following *ex-officio* members—

- (i) the Commissioner for Physical Planning or his representative;
- (ii) the Surveyor General or his designated representative; and
- (iii) the Commissioner for Lands or his designated representative.

(3) At any time after a period of not less than five (5) years from the date of the commencement of this Act, the Minister may appoint a firm of auditors or any other competent person or body, or may request the Auditor General, to assess the financial viability of the Board and to report to him as to whether the Board is capable of generating sufficient revenue from fees and other charges and from grants, if any, payable to the Board under this Act to meet its recurrent and capital expenditures.

(4) If, upon a report submitted to him pursuant to subsection (3), the Minister is satisfied with the financial viability of the Board, he

shall, by order published in the *Gazette*, declare that the Board shall become a body corporate from a date to be specified in the order, and from that date the Board shall be a body corporate to be known by its name, “the Physical Planners Board”, with perpetual succession and a common seal capable of suing and being sued in its corporate name, and with power, subject to this Act, to do or perform all such acts and things a body corporate may by law do or perform.

72. — (1) There shall be a Chairperson of the Board who shall be elected by the Board from among the members at the first meeting of the Board convened by the Registrar within thirty (30) days from the date of appointment of the Board and attended by all members.

Chairperson
of the Board

(2) The election of the Chairperson of the Board shall be by secret ballot and by a simple majority.

(3) A member of the Board who is a public officer shall not be eligible to be elected as Chairperson of the Board.

(4) Subject to subsection (5), the Chairperson shall hold office as such until the expiry of his term as member of the Board.

(5) The Chairperson may be removed from office as such by the Board for good cause and upon the unanimous decision of all the members of the Board.

73. — (1) A member of the Board shall hold office for a term of three (3) years and at the expiry of that period may be eligible for reappointment.

Tenure of
office of
members of
the Board

(2) The Chairperson of the Board may, by notice in writing addressed to the Minister, resign his appointment, and any other member may resign by giving his notice in writing to the Chairperson.

74. Any person who—

- (a) is an undischarged bankrupt;
- (b) has been convicted, at any time, of an offence under this Act;
- (c) has, within the preceeding three (3) years, been convicted of an offence under any written law and sentenced to imprisonment; or

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

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

Disqualifica-
tion

75. — (1) The office of a member of the Board, not being a member *ex-officio*, shall become vacant—

- (a) if the member dies;

Vacancies

(b) if the member resigns;

(c) if, in accordance with section 75, he becomes disqualified from continuing to hold the office.

(2) A vacancy in the Board shall be filled by a person appointed in accordance with section 72.

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

Proceedings of
the Board

76. — (1) The Board shall meet at least four (4) times every year in ordinary meeting but the Chairperson shall, upon application in writing by at least three (3) members of the Board, at any time convene an extraordinary meeting of the Board.

(2) The Chairperson shall preside over meetings of the Board, but in the absence of the Chairperson, the members present and forming quorum shall elect one of their number to perform the functions of the Chairperson at that meeting.

(3) Minutes of proceedings of every meeting of the Board or any Committee of the Board shall be taken and kept by the Registrar or by such other officer of the Board as the Registrar may designate in that behalf and shall be subject to confirmation by the Board or Committee, as the case may be, at the succeeding meeting.

(4) Decisions of the Board on any matter shall be in accordance with the vote of the majority of members present and voting thereon, but in the event of an equality of votes, the Chairperson or the presiding member at the meeting concerned, shall have a casting vote in addition to his deliberative vote.

(5) The Board shall have power to regulate its own procedures.

Committees
of the Board

77. — (1) The Board may establish such number of its own committees as it considers necessary for the performance of its functions and exercise of its powers and may assign to such committees any of its functions without prejudice to the power of the Board itself to perform the functions.

(2) Every committee of the Board shall be chaired by a member of the Board and may include persons who are not members of the Board but shall not include members of staff of the secretariat of the Board.

(3) The Board or the Chairperson may, at any time, direct the chairperson of any committee to convene a meeting of such committee and such a chairperson shall, as soon as is practicable, comply, with such direction.

(4) Every committee shall keep minutes of its meetings and shall inform the Board of its activities and conduct its proceedings in such manner as the Board may direct.

(5) A member of a committee shall, in respect of expenses incurred by him in travelling and subsistence while discharging his duties as such member, be paid out of the funds of the Board, such allowances as may be prescribed.

(6) Subject to any general or special directions of the Board, every committee of the Board shall have power to determine its own procedure.

78. — (1) The Board or any committee of the Board may, invite any person to attend any meeting of the Board or of the committee, as the case may be, for the purpose of assisting or advising the Board or the committee in respect of any matter under consideration by the Board or committee.

Invited
persons

(2) Any person invited under subsection (1) may take part in the deliberations of the Board or committee at any meeting but shall not be entitled to vote on any matter at that meeting.

79. — (1) The Board shall be the sole authority for licensing and registering physical planners in Malawi and shall have the following powers and duties—

Powers and
duties of the
Board

(a) to approve minimum qualifications and training acceptable for registration as a physical planner;

(b) to approve educational and training institutions within and outside Malawi for purposes of recognized training in physical planning;

(c) to set up and conduct such tests, examinations as may be required for the purposes of registration;

(d) to grant licenses;

(e) to keep and maintain a register of all registered physical planners;

(f) to advise the Minister on policies relating to technical and professional matters within the scope of this Act;

(g) to advise the Minister as to the professional fees and other charges to be prescribed under section 98;

(h) to determine the fees payable in respect of the licensing and registration of a physical planner and the annual fee payable for the renewal of any such licence;

(i) to determine other methods, apart from examinations, to be used in assessing suitability of an applicant for registration;

(j) from time to time, to appoint such examiners and invigilators as may be necessary for the purposes of administering any examinations under section 83;

(k) from time to time, to prescribe principles of conduct and ethics to be followed by physical planners in the course of their practice as such;

(l) to exercise disciplinary control over physical planners and to prescribe and impose disciplinary measures against such physical planners; and

(m) to exercise, any other powers and perform any other functions pursuant to the objectives of this Act.

(2) The Board shall publish in the *Gazette*, once every year, lists of physical planners registered under this Act.

Registrar of
the Board

80. There shall be the office of the Registrar of the Board (in this Act referred to as “Registrar”) who shall be the Chief Executive Officer of the Board and who shall be appointed by the Board.

Duties of
Registrar

81. Subject to the general and special directions of the Board, the Registrar the shall—

(a) be responsible to the Board for the day to day management of the Board and supervision over the work and staff of the Board;

(b) keep and maintain a register of all registered physical planners; and

(c) cause to be published in the *Gazette* at the beginning of each year a notice of the names, addresses and qualifications of all registered physical planners.

Application
for
registration

82. — (1) Any person shall qualify to make an application for registration as a physical planner under this Act if—

(a) he is the holder of a bachelor’s degree in urban or regional planning from any university which is recognized from the time being by the Board and has passed any examination prescribed by the Board; and

(b) he has been admitted as a corporate member of an approved professional institution whose qualification for such admission are not less than those in paragraph (a).

(2) A person shall be eligible to take any examinations prescribed by the Board if he has had two (2) years post qualification practical experience in physical planning.

Registration
as a physical
Planner

83. — (1) Where the Board is satisfied of the suitability of an application under section 83, it shall direct the Registrar to enter the name of the applicant in the register.

(2) The Registrar shall issue to every person registered as a physical planner under this Act a certificate of registration in the form as may be prescribed.

84. — (1) Where a person satisfies the Board that—

(a) he is qualified under section 83;

(b) he is not ordinarily resident in Malawi; and

(c) he intends to reside in Malawi and engage in practice as a physical planner for the specific work which he has been engaged, the Board may direct the Registrar to register that person for a period not exceeding one year or for a period of the duration of the specific work which he has been engaged to do.

Registration
in exceptional
circumstances

(2) Any application for registration under this section shall—

(a) be made in the prescribed form;

(b) be accompanied by a prescribed fee; and

(c) be accompanied by documentary evidence of the applicants work or employment immediately prior to his coming to Malawi.

(3) The Board may require an applicant under this section to appear before it for the purposes of considering his application.

85. — (1) The Board may discipline a registered physical planner where—

(a) he is convicted of an offence;

(b) after due inquiry by the Board, he is found guilty of an act or omission amounting to professional misconduct; or

(c) he is involved in activities prejudicial to the public interest.

(2) Pursuant to subsection (1), the Board may—

(a) caution or censure the registered physical planner;

(b) direct that his registration be suspended for such period as the Board may specify;

(c) direct that his name be removed from the register; or

(d) impose on the registered physical planner a penalty not exceeding one hundred thousand Kwacha (K100,000.00).

Power of Board
to deal with
offences by
registered
physical
planners

86. The Board may direct the removal of a name of a physical planner from the register where such physical planner—

(a) dies;

(b) fails, within a period of six (6) months from the date of an inquiry sent by the Registrar by prepaid registered letter to the

Removal of
name from
register

address appearing in the register against his name, to notify the Registrar of his current address;

(c) requests that his name be removed from the register;

(d) is entered in the register by mistake or by reason of any false or misleading information;

(e) has his qualification withdrawn or cancelled by the body through which it was acquired or by which it was awarded;

(f) is adjudged bankrupt;

(g) is found by the Board to be guilty of an act or omission prejudicial to the public interest or misconduct under this Act;

(h) is convicted of an offence under this Act;

(i) being a company, is placed under receivership or in liquidation.

(2) The Registrar shall inform any registered physical planner whose name has been removed from the Register of the removal in writing.

(3) The Registrar shall cause to be published in the *Gazette* as soon as practicable, the name, address and qualifications of any person whose name is removed from the register under this section.

Restoration of
name in
register

87. Where the name of a physical planner is removed from the register or his registration is suspended, the Board may, of its own motion or on the application of any person in the prescribed form and after holding such inquiry as it may consider necessary, direct that—

(a) the name of that physical planner be restored on the register; or

(b) the suspension of the registration of that physical planner be terminated.

Corrections
of register

88. The Registrar may, with the prior approval of the Board, make alteration or correction in any register in relation to any entry.

Appeals
against
decisions of
Board

89. Any person aggrieved by a decision of the Board to—

(a) register his name;

(b) remove his name from the register;

(c) suspend his registration; or

(d) restore his name on the register,

may, within twenty one (21) days after receiving the written decision of the Board, apply to the High Court for judicial review.

90. — (1) Any person whose name has been entered in the register shall be entitled to adopt and use the title “Registered Physical Planner” or such contraction as the Board may approve. Effect of
Registration

(2) Any person who adopts or uses the title “Registered Physical Planner” in contravention of subsection (1) commits an offence and shall, upon conviction, be liable to a fine of one hundred thousand Kwacha (K100,000) and to imprisonment for one (1) year.

91. — (1) No person shall practice as a physical planner unless registered under this Act. Non-
registered
person not
to practice
as physical
planner

(2) Any person who contravenes this section commits an offence and shall, upon conviction, be liable to a fine of one hundred thousand Kwacha (K100,000) and to imprisonment for one (1) year.

92. The funds of the Board shall consist of—

(a) such sums as may be payable to the Board from moneys appropriated by Parliament for the purpose; and

(b) such moneys or other property as may be payable to or vest in the Board pursuant to this or any other written law or pursuant to any trust or gift. Funds of
the Board

PART X—MISCELLANEOUS

93. — (1) For the purpose of this Act, the Commissioner or an authorized officer may, at all reasonable times, enter any land or building— Powers of
entry

(a) to inspect or survey the land or building for the purpose of preparing a plan;

(b) to determine whether any unauthorized development is being or has been undertaken on the land or in the building;

(c) to determine whether an order under Part VI shall be made in respect of the land or to enter such land in exercise of the powers under any order so made;

(d) to assess compensation under Part VIII, and

(e) to obtain information relevant to the determination of an application for development permission.

(2)—(a) in the case of subsection (1) in respect only of entry to a dwelling house or any enclosed court or garden attached to a dwelling house, the Commissioner or an authorized officer shall give not less than seven (7) days notice of his intention to enter; and

(b) in the case of only paragraph (b) of subsection (1), if the entry is to land or building other than a dwelling house or any enclosed

court or garden attached to a dwelling house, it shall be sufficient if the Commissioner or an authorized officer gives not less than twenty-four (24) hours notice of his intention to enter.

(3) Where the Commissioner or an authorized officer has entered upon any land or building under this section, he may make such examination and inquiries as necessary to effect the purposes of the entry.

(4) Before exercising any powers under this section, the Commissioner or an authorized officer shall identify himself to the person who is or appears to be in control of the land or building which is about to be or has been entered.

Registration
of
applications
for
development
permission
and
enforcement
notices

94. — (1) A responsible authority shall maintain a register in the prescribed form of all applications for development permission and all enforcement notices, made or served in the area of jurisdiction for which it is responsible.

(2) A register under this section shall be open to the public at all reasonable times at the offices of the responsible authority.

(3) A member of the public may, with the permission of the responsible authority and on payment of the prescribed fee, make a copy of any entry in the register.

Publication of
information
by the
Commissioner

95. — (1) The Commissioner may, with the approval of the Minister, publish such periodicals and reports as will, in his opinion assist the citizens of Malawi and other persons to understand and comply with the purpose and practices of physical planning.

(2) The approval of the Minister under this section may be given in general terms in respect of any particular publication or class of publications which the Commissioner wishes to publish.

(3) Any publication to which this section applies, may be made available to the public without charge.

Offences

96. Any person who, without lawful or reasonable excuse—

(a) fails to carry out any work or action required by an enforcement notice which has been served on him;

(b) obstructs or impedes any authorized officer or any member of the Board or any member of the Planning Committee, lawfully exercising a power of entry onto land or building, from entering any land or any building;

(c) fails to comply with any order, direction, notice or instruction lawfully given to him by an authorized officer exercising any powers conferred by this Act;

(d) fails to give information on any matter in respect of which he has been lawfully required so to do;

(e) tears down, defaces or otherwise marks or interferes with any notice lawfully affixed to any building or placed upon a board specially erected for that purpose in connexion with the administration of this Act;

(f) fails to comply with a condition subject to which a grant of development permission was made;

(g) subdivides, or enters into any subdivision agreement with respect to any land or a portion thereof within any area in which such subdivision or subdivision agreement is prohibited;

(h) commences any development without a grant of development permission where such permission is required;

(i) displays an advertisement without a grant of development permission where such permission is required;

(j) ignores a stop notice;

(k) fraudulently makes, or causes or permits to be made any false or incorrect entry in the register of physical planners or any copy thereof;

(l) fraudulently procures or attempts to procure the entry in the register of physical planners of any name or other particulars whether on his own behalf or on behalf of any other person; or

(m) knowingly and wilfully makes any statement, which is false in any material particular or which is misleading with a view to gaining any advantage or privilege under this Act whether for himself or for any other person,

commits an offence and upon conviction shall be liable to a fine of one hundred thousand Kwacha (K100,000) and to imprisonment for a term of one year, in the case of a continuing offence, a further fine of two thousand Kwacha (K2,000) for each day during which the offence continues after conviction.

97. This Act shall bind Government.

Act to bind
Government

98. (1) The Minister may make regulations for carrying out or giving effect to the provisions of this Act, and, without prejudice to the generality of the foregoing, the regulations may prescribe—

Regulations

(a) the forms of plans;

(b) the forms of applications for a grant of development permission;

(c) the forms of enforcement notices;

(d) the forms to be used in connection with claim for compensation;

(e) the procedures to be followed by a Planning Committee;

(f) forms of register of applications for development permission and of enforcement notices;

(g) fees payable under this Act;

(h) the remuneration of members of the Council and Planning Committees;

(i) procedures to be followed by physical planners applying for registration under this Act;

(j) the fees to be charged and the forms to be used for the purposes of this Act;

(k) conduct of or activities by physical planners considered to be prejudicial to the public interest;

(l) the type of materials to be used in the construction of buildings and fences;

(m) the forms of notice of revocation; and

(n) the forms of purchase notices.

(2) The Minister may, with the concurrence of the Minister for the time being responsible for Local Government, make regulations providing for the exercise by local government authorities of any functions and duties conferred upon them by this Act.

Repeal and
savings
Cap. 23:01

99. — (1) The Town and Country Planning Act is hereby repealed.

(2) Any subsidiary legislation made under the Act 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, amended, or repealed by subsidiary legislation made under this Act.

FIRST SCHEDULE
PERMITTED DEVELOPMENT

s. 43

The following developments shall, subject to such conditions as may be imposed by a responsible authority be permitted developments within a Planning Area and a Land Development Control Area namely—

(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 33 of this Act;

(b) minor repairs which do not result in any extension of the external dimensions of a building and which do not materially affect either the use of the building or its external appearance;

(c) any changes of use of land within the same class of uses;

(d) the display of an advertisement on a building or on site which—

(i) merely discloses the name of any business or undertaking carried on in such building or on such site or the name of the proprietor or manager of such business or undertaking; or

(ii) relates solely to any business or undertaking carried on or to the goods sold or the services provided in such building or on such site:

Provided that the space which may be occupied by all such advertisements on any external face of any such building shall not exceed thirty square centimeters for each thirty centimeters length of the building frontage of that face and provided also that the area occupied by any such advertisement, however affixed to a building, shall be computed as if the advertisement as a whole were displayed flat against the face of the building.

(e) the display of an advertisement which relates solely to—

(i) a form of recreation which is or will be available upon the land;

(ii) an agricultural show, entertainment, meeting or sale which is being or is to be held upon the land; or

(iii) the sale or lease of the land, or the sale or hire of livestock or implements or produce of the land, upon which the advertisement is displayed:

Provided that the advertisement shall only be displayed at any entrance to such land and that no more than one advertisement shall be displayed in respect of any one of such matters at any one entrance;

(f) the display of an advertisement which merely indicates—

(i) that a particular road or path is a private road or path or leads to a particular place; or

(ii) that a particular act is prohibited or permitted;

(g) the display of advertisements upon any railway station, yard, platform or station approach belonging to a railway company;

(h) the display of any traffic sign as defined in section 2 of the Road Traffic Act or any notice or warning lawfully erected in accordance with the Railways Act; and

(i) the display of any advertisement of a class prescribed by the Minister if such advertisement conforms to specifications prescribed by him and is displayed in accordance with conditions prescribed by him.

Cap.69:01

Cap.69:03

SECOND SCHEDULE
CALCULATION OF COMPENSATION

s. 67

Compensation payable in respect of cases referred to in section 67 (1) (a) to (g) shall be calculated as follows—

(a) paragraph (a): the difference between the value of land immediately prior to the application for the grant of development permission, ignoring the possibility of obtaining a grant of development permission, and the value of the land after the refusal of development permission;

(b) paragraph (b): the difference between the value of the land with the building on it in its existing state and use immediately before the fire or other natural disaster whereby it was destroyed and the value of land as a cleared site in respect of which the Minister has issued a certificate stating what, if any, development would be permitted on the site;

(c) paragraph (c): the value of the building immediately before it was demolished, altered, removed, relocated or ceased to be used and the value of the land immediately before it ceased to be used together with the costs of relocation of the building and the activities that took place in the building or the land;

(d) paragraph (d): the cost of moving and relocation elsewhere together with a reasonable sum to compensate for the loss of a home;

(e) paragraph (e): the difference between the value of the land immediately before the reallocation of land and re-subdivision of plots and the value of the land after the reallocation of land and re-subdivision of plots taking into account the benefits accruing to the whole area which has been subject to such a process of reallocation and re-subdivision;

(f) paragraph (f): the expense necessary incurred in commencing to develop or in developing land in respect of which a development permission has been revoked; and

(g) paragraph (g): such amount of compensation as the Minister or local government authority shall consider just to provide.

**FORESTRY
(AMENDMENT) BILL,
20...**

FORESTRY (AMENDMENT) BILL, 20...

ARRANGEMENT OF SECTIONS

SECTION

1. Short title
2. Amendment s. 26 of Cap. 63:01
3. Amendment of s.30 of the principal Act
4. Amendment of s.32 of the principal Act
5. Amendment of s.33 of the principal Act

A B I L L*entitled***An Act to amend the Forestry Act.**

ENACTED by the Parliament of Malawi as follows—

1. This Act may be cited as the Forestry (Amendment) Act 20... Short title
2. Section 26 of the Forestry Act (hereinafter referred to as the “principal Act”) is amended by inserting the words “and Minister responsible for physical planning” immediately after the words “the Minister responsible for Irrigation and Water Development”. Amendment of s. 26 to Cap. 63:01
3. Section 30 of the principal Act is amended by deleting the words “village headman” and inserting the words “Customary Land Committee”. Amendment of s. 30 of the principal Act
4. Section 32 of the principal Act is amended in subsection (2) (c) by deleting the words “District Councils” and inserting the words “local government authorities”. Amendment of s. 32 of the principal Act
5. Section 33 of the principal Act is amended by deleting the word “Minister” and inserting the words “local government authority”. Amendment of s. 33 of the principal Act

**PUBLIC ROADS
(AMENDMENT) BILL, 20...**

PUBLIC ROADS (AMENDMENT) BILL, 20...

ARRANGEMENT OF SECTIONS

SECTION

1. Short title
2. Amendment of s. 2 to Cap. 69:02
3. Amendment of s.3 of the principal Act
4. Amendment of s.4 of the principal Act
5. Amendment of s.5 of the principal Act
6. Amendment of s.5A of the principal Act
7. Amendment of s.6 of the principal Act
8. Amendment of s.9 of the principal Act
9. Amendment of s.10 of the principal Act
10. Amendment of s.11 of the principal Act
11. Amendment of s.12 of the principal Act
12. Amendment of s.24 of the principal Act
13. Amendment of s.25 of the principal Act
14. Amendment of s.26 of the principal Act
15. Amendment of s.28 of the principal Act
16. Amendment of s.29 of the principal Act
17. Amendment of s.44 of the principal Act
18. Amendment of s.45 of the principal Act
19. Amendment of s.46 of the principal Act
20. Amendment of s.47 of the principal Act
21. Replacement of s.48 of the principal Act
22. Amendment of s.49 of the principal Act
23. Replacement of s.50 of the principal Act
24. Amendment of s.51 of the principal Act
25. Amendment of s.53 of the principal Act

A B I L L*entitled***An Act to amend the Public Roads Act.**

ENACTED by the Parliament of Malawi as follows—

1. This Act may be cited as the Public Roads (Amendment) Act, 20... Short title
2. Section 2 of Public Roads Act (hereinafter referred to as the “principal Act” is amended by deleting the definition of “surface rights” and substituting therefor the following— Amendment of s. 2 of the principal Act

““surface rights”, in relation to land in respect of which compensation is claimed, means the rights of the claimant to any interest in the crops, structures and other improvements on the land;”.

- Amendment of s. 3 of the principal Act **3.** Section 3 of the principal Act is amended in subsection (2) by deleting the word “President” and substituting therefor the word “Republic.”
- Amendment of s. 4 of the principal Act **4.** Section 4 of the principal Act is amended by deleting the words “City, Municipality or Township” wherever they appear and substituting therefor the words “local government authority.”
- Amendment of s. 5 of the principal Act **5.** Section 5 of the principal Act is amended by deleting the words “City Council, Municipality Council or Township Council” wherever they appear and substituting therefor the words “local government authority”.
- Amendment of s. 5A of the principal Act **6.** Section 5A of the principal Act is amended by deleting the words “City Council, Municipal Council or Township,” wherever they appear and substituting therefor the words “local government authority”.
- Amendment of s. 6 of the principal Act **7.** Section 6 of the principal Act is amended by deleting the word “Council” wherever it appears and substituting therefor the word “Assembly”.
- Amendment of s. 9 of the principal Act **8.** Section 9 of the principal Act is amended—
 (a) in subsection (1) (b) by deleting the words “Municipal Council or Town Council” and inserting the words “Municipal Assembly or Town Assembly”;
 (b) in subsection (2) by deleting the word “Council” wherever it appears and substituting therefor the word “Assembly”; and
 (c) in subsection (3) by deleting the word “Council” wherever it appears and substituting therefor the word “Assembly”.
- Amendment of s. 10 of the principal Act **9.** Section 10 of the principal Act is amended—
 (a) by deleting subsection (1) and substituting therefor the following new subsection (1)—
 “(1) A local government authority shall have power to declare by notice published in the *Gazette* the width, not exceeding sixty metres (60 m), of any road reserve or class or classes of road reserve in its area”; and
 (b) in subsection (6) by deleting the words “Town and Country Planning” and substituting therefor the words “Physical Planning”.
- Amendment of s. 11 of the principal Act **10.** Section 11 of the principal Act is amended in subsection (4) by deleting the word “President” and substituting therefor the word “Republic”.
- Amendment of s. 12 of the principal Act **11.** Section 12 of the principal Act is amended in subsection (2) by deleting the words “Town and Country Planning” and inserting the words “Commissioner for Physical Planning”.

- 12.** Section 24 of the principal Act is amended—
- Amendment
of s. 24 of the
principal Act
- (a) in subsection (3) by deleting the words “Town and Country Planning Act” and substituting therefor the words “Physical Planning Act”; and
- (b) in subsection (5) by deleting the word “Deeds” and substituting therefor the word “Land”.
- 13.** Section 25 of the principal Act is amended by—
- Amendment
of s. 25 of the
principal Act
- (a) deleting the marginal note and substituting therefor the following new marginal note—
- “reservation of a steep of land not exceeding 60m wide”; and
- (b) in subsection (1)—
- (i) by deleting the words “Commissioner for Surveys” and substituting therefor the words “Surveyor General”; and
- (ii) by deleting the word “Deeds” and inserting the word “Land”.
- 14.** Section 26 of the principal Act is amended—
- Amendment
of s. 26 of the
principal Act
- (a) by deleting the word “Deed” and substituting therefor the word “Land” immediately after the word “Registrar”; and
- (b) by deleting the words “Commissioner for Surveys” and substituting therefor the words “Surveyor General”.
- 15.** Section 28 of the principal Act is amended by deleting the word “President” and substituting therefor the word “Republic”.
- Amendment
of s. 28 of the
principal Act
- 16.** Section 29 of the principal Act is amended by deleting the proviso to subsection (5).
- Amendment
of s. 29 of the
principal Act
- 17.** Section 44 of the principal Act is amended—
- Amendment
of s. 44 of the
principal Act
- (a) in subsection (1) by deleting the words “whenever, under this Act” and inserting the word “where”;
- (b) by deleting subsection (2) and substituting therefor the following new subsection (2)—
- “(2) In any case in which such compensation is limited to compensation in respect of surface rights, if the land on which such surface right exists, is private land, the amount of compensation shall be based on the loss or damage suffered by the claimant arising from the damage to or destruction of his interest in the surface rights on such land valued at the valuation date and shall include—
- (a) the damage, if any, sustained by the person interested at the valuation date by reason of the severance of such land

from his other land or other injurious matter affecting his other property, movable or immovable, by reason of the exercise of the powers conferred by this Act; and

(b) if, in consequence of the matters giving rise to the claim, the claimant is compelled to change his residence or place of business, the reasonable expenses, if any, incidental to such change, but shall not include any sum in respect of improvements on land in a road reserve effected since the land became road reserve.”.

Amendment of
s. 45 of the
principal Act

18. Section 45 of the principal Act is amended—

(a) in subsection (1)—

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

“(a) in the case of a customary estate, subject to subsection (2), the occupier shall be entitled to reasonable compensation in respect of disturbance and the amount of such compensation shall be assessed using open market value based on the loss suffered by the claimant arising from damage to or destruction of his interest in the land and surface rights on such land may include compensation for other disturbance;”;

(ii) by deleting subparagraph (ii) and substituting therefor the following new subparagraph (ii)—

“(ii) where no alternative land can be made available to him and the land remaining to him for any purposes is not an economic unit;”;

(iii) by deleting subparagraph (iii) and substituting therefore the following new subparagraph (iii)—

“(iii) where alternative land is made available to him and the making of the alternative land equally as fit for use as the land of which he has been deprived is likely to involve a loss in terms of money, materials or work;”;

(iv) by deleting subparagraph (i) of the proviso and substituting therefore the following new subparagraph (i)—

“(i) what would have been the value of the land in its improved condition at the valuation date less its value at such date in an unimproved condition;”;

(v) in paragraph (a) (iii) by deleting the word “cultivation” and substituting therefor the word “use”; and

Amendment
of s. 46 of the
principal Act

(b) in subsection (2) (b) by inserting the words “and to interest in the land itself” immediately after the words “surface rights”.

19. Section 46 of the principal Act is amended—

(a) in subsection (1) by deleting the words “and no others” appearing in the second line;

(b) in subsection (1) (c) by inserting the words “and good-will” immediately after the word “change” appearing in the fourth line; and

(c) in subsection (2) (a) by deleting the words “within two (2) years before the valuation date” and substituting therefor the words “after the notice to acquire”.

Amendment
of s. 47 of the
principal Act

20. Section 47 of the principal Act is amended—

(a) in subsection (1)—

(i) by deleting paragraph (a) to the proviso and substituting therefore the following new paragraph (a)—

“(a) in the case of a customary estate, the claim may be made orally to a Customary Land Committee which shall be required to record the claim in writing through the assistance of the land clerk who shall forward the claim to the officer responsible for land matters within the local government area and such officer shall in turn forward the claim to the relevant highway authority;”;

(ii) by deleting the words “compensation board” and substituting therefore “Land Tribunal” in paragraph (b) of the proviso;

(iii) in the proviso to paragraph (a), by deleting the words “the Chief for the area” and substituting therefor the phrase “a Customary Land Committee which shall be required to record the claim in writing through the assistance of the land clerk”; and

(iv) in the proviso to paragraph (b) and wherever they appear in the section, by deleting the words “compensation board” and substituting therefor the words “Land Tribunal”;

(b) in subsection (4)—

(i) by deleting the word “Minister” and substituting therefor the phrase “Judicial Service Commission, on the recommendation of the Ministry responsible for land matters”; and

(ii) by deleting the word “board” and inserting the words “land tribunal”; and

(c) in subsection (5) by deleting the words “Chief of such land” and substituting therefor the words “Customary Land Committee of such area”.

21. Section 48 of the principal Act is repealed and replaced as follows—

“Procedure before Land Tribunals 48. The Chief Justice may make rules to regulate the procedure to be followed before any Land Tribunal and for constituting the Land Tribunal.”.

Amendment of s. 48 of the principal Act

22. Section 49 of the principal Act is amended by deleting subsection (1) and substituting therefor the following new subsection (1)—

“(1) Where the claimant or the highway authority is not satisfied with the amount of compensation awarded, he may apply to the High Court for judicial review within one month from the date of the award by the Land Tribunal and in accordance with the rules made by the Chief Justice.”.

Amendment of s. 49 of the Principal Act

23. Section 50 of the principal Act is repealed and replaced as follows—

““Appeal 50. An appeal from the decision of the High Court given under section 49 shall lie to the Supreme Court of Appeal.”.

Replacemet of s. 50 of the principal Act

24. Section 51 of the principal Act is amended—

(a) in subsection (1)—

(i) by deleting the words “customary land” appearing in the third line and substituting therefor the words “customary estate”; and

(ii) by deleting the word “Chief” in the fifth line and substituting therefor the words “Customary Land Committee”; and

(b) in subsection (4), by deleting the word “Council” and substituting therefor the words “local government authority”.

Amendment of s. 51 of the principal Act

25. Section 53 of the principal Act is amended by deleting “K500” and substituting therefor “K50,000”.

Amendment of s. 53 of the principal Act

**MINES AND MINERALS
(AMENDMENT) BILL, 20...**

MINES AND MINERALS (AMENDMENT) BILL, 20...

ARRANGEMENT OF SECTIONS

SECTION

1. Short title
2. Amendment of s. 16 to Cap. 61:01
3. Amendment of s.25 of the principal Act
4. Amendment of s.37 of the principal Act

A B I L L*entitled***An Act to amend the Mines and Minerals Act**

ENACTED by the Parliament of Malawi as follows—

1. This Act may be cited as the Mines and Minerals (Amendment) Act, 20... Short title
2. Section 16 of the Mines and Minerals Act (hereinafter referred to as “principal Act”) is amended by inserting the word “sketch” immediately before the word “plan”. Amendment of s. 16 to Cap. 61:01
3. Section 25 of the principal Act is amended in paragraph (c) by inserting the word “sketch” immediately before the word “plan”. Amendment of s. 25 of the principal Act
4. Section 37 of the principal Act is amended in subsection (1) by inserting the word “sketch” immediately before the word “plan”. Amendment of s. 37 of the principal Act

LAND SURVEY BILL, 20...

LAND SURVEY BILL, 20...

ARRANGEMENT OF SECTIONS

SECTION

1. Short title
2. Interpretation

PART II—ADMINISTRATION

3. Surveyor General and other officers

PART III—LAND SURVEYORS REGISTRATION BOARD

4. Establishment of the Board
5. Composition of the Board
6. Nature of service of Board member
7. Chairperson and Vice Chairperson
8. Disqualification
9. Tenure of office of members of the Board
10. Vacancies
11. Proceedings of the Board
12. Committees of the Board
13. Invited persons
14. Powers and duties of the Board
15. Board not liable for acts done in good faith
16. Funds of the Board
17. Investment of surplus sums
18. Borrowing powers
19. Financial year of the Board
20. Books of accounts, audits and reports.
21. Annual Report

PART IV—ADMINISTRATION OF THE BOARD

22. Registrar
23. Duties of the Registrar
24. Other staff
25. Attendance of meetings by staff

PART V—LICENSING, REGISTRATION AND DUTIES OF SURVEYORS

26. Qualifications of licensed surveyors
27. Application for a licence and registration
28. Licensing and registration of surveyors
29. Qualifications for registration as a licenced surveyor
30. Qualifications for registration as a graduate surveyor
31. Qualifications for registration of surveying technician
32. Certificate of registration
33. Corrections of registers

34. Registers
35. Surveying instruments and measuring tapes to be accurate
36. Duties of surveyor
37. Complaints against surveyor
38. Power of Board to deal with offences
39. Persons other than surveyors forbidden to survey
40. Survey plans to be deposited with Surveyor General and to become the property of the Government
41. Aerial and topographic survey and topographical mapping.
42. Approval of surveys by Surveyor General
43. Surveyor General may cancel approval of the plan

PART VI—SURVEY MARKS AND BOUNDARIES

44. Survey marks and boundaries lawfully established
45. Survey of Traditional Management Areas and Townships
46. Sites of trigonometrical stations and fundamental benchmarks reserved to Government
47. Blasting of rock within area reserved for a fundamental bench-mark prohibited
48. No posts or fences to be placed near survey mark
49. Preservation and maintenance of survey marks
50. Surveyor General may call upon owner to restore survey mark
51. Offences and compensation
52. Authority to remove survey marks

PART VII—MALAWI GEOGRAPHIC INFORMATION COUNCIL

53. Establishment of the Council
54. Composition of the Council
55. Secretary of the Council
56. Nature of service of Council Member
57. Disqualifications
58. Tenure
59. Vacancies
60. Proceedings
61. Committees of the Council
62. Invited persons
63. Powers and duties of the Council

PART VIII—MISCELLANEOUS

64. Government not liable for incorrect survey
65. Board not liable for acts done in good faith
66. Plans and records, etc., prima facie evidence
67. Power to enter upon land and to use material thereon
68. Rules
69. Repeals and savings

A B I L L*entitled***An Act to make provision for Land Surveys, the establishment of the Land Surveyors Registration Board; the licensing and control of land surveyors; the establishment of the Malawi Geographic Information Council and for matters incidental thereto and connected therewith**

ENACTED by the Parliament of Malawi as follows—

PART I—PRELIMINARY

1. This Act may be cited as the Land Survey Act, 20... Short title
2. In this Act, unless the context otherwise requires— Interpretation

“Board” means the Land Surveyors Registration Board established under section 4;

“cadastre” means a methodically arranged public inventory of data concerning properties within a district based on a survey of their boundaries;

“general plan” means a document containing geometrical, numerical and verbal representations of a piece of land, which has been approved or certified by the Surveyor General or a copy thereof prepared in the Surveyor General’s office and approved and certified as aforesaid, or a document which has, at any time prior to the commencement of this Act, been accepted as a diagram in the Deeds Registry or Land Registry;

“Government surveyor” means the Surveyor General or, as the case may be, any officer of the Survey Department who is authorized in writing by the Surveyor General to perform the duties of a surveyor under this Act or any government officer, being a surveyor;

“land” bears the same meaning assigned to it under the Land Act; Cap. 57:01

“licensed surveyor” means a land surveyor duly licensed as a surveyor under this Act;

“owner” includes—

every lessee, tenant or licensee of land and his successors in title and every occupier of land, whether as supervisor, overseer or manager or otherwise; and

any agent who receives rents or profits on behalf of such person;

“parcel” means a piece of land with defined boundaries on which a property right of a person applies;

“plan” includes any map, chart, diagram or aerial photograph where such aerial photograph is approved by the Surveyor General as suitable for survey purposes, and any photographic copy of any such plan, map, chart, diagram or aerial photograph;

“Registrar” means a registrar appointed under section 22;

“Register” means the register of licensed surveyors, surveying technicians or graduate surveyors kept and maintained by the Board under section 34;

“survey” means every type of land survey, including cadastral surveys and aerial surveys and to survey with its grammatical variations and cognate expressions shall be so construed;

“survey mark” means any trigonometrical station, signal station, benchmark of whatever type, reference mark, boundary beacon, peg, picket, mark or pole, whether above or below the surface of the ground, which is fixed, placed or set up by or under the direction of, a surveyor, for the purpose of any survey and includes, when so fixed or placed, a properly cut survey point on any rigid building or structure of permanent material and construction;

“surveying technician” means a surveyor registered as such under this Act;

“surveyor” means a Government surveyor, licensed surveyor, surveying technician or graduate surveyor where such surveyor is duly registered under this Act.

PART II—ADMINISTRATION

Surveyor
General and
other officers

3. — (1) There shall be a Surveyor General who shall be responsible for the administration of this Act.

(2) No person shall be appointed as Surveyor General unless he is licensed and registered as a surveyor under this Act.

(3) There shall be such other officers, being qualified surveyors, employed in the Surveyor General’s office who may, if so authorized by the Surveyor General, either generally or specially, perform any of the duties or do any of the acts or things required or authorized by this Act to be done by the Surveyor General.

PART III—LAND SURVEYORS REGISTRATION BOARD

Establishment
of the Board

4. — (1) There is hereby established a Land Surveyors Registration Board (hereinafter referred to as the “Board”) for the purpose of performing the functions assigned under this Act.

(2) The Board shall be a body corporate with perpetual succession and a common seal capable of suing and being sued in its corporate name and with power, subject to this Act, to do or perform all such acts and things a body corporate may by law do or perform.

5. The Board shall consist of seven (7) members as follows— Composition
of the Board

(a) persons nominated by the Surveyors Institute of Malawi and appointed by the Minister—

(i) five (5) licensed surveyors, two of which shall be from private practice; and

(ii) one member being a land surveyor and a person who is a full member of the Surveyors Institute of Malawi in good standing; and

(b) the Surveyor General or his designated representative who shall be an *ex-officio* member.

6. The members of the Board or committee of the Board shall serve on part time basis. Nature of
service of
Board
members

7. — (1) The Board shall elect a Chairperson and vice Chairperson from among its members at the first meeting of the Board convened by the Registrar and attended by all members. Chairperson
and vice
Chairperson
of the Board

(2) The Surveyor General or his designated representative shall not be eligible to be elected as Chairperson or vice-Chairperson of the Board.

8. Any person who— Disqualificati
on

(a) is an undischarged bankrupt;

(b) has been convicted, at any time, of an offence under this Act;

(c) has, within the preceding three (3) years, been convicted of an offence under any written law and sentenced to imprisonment of not less than six (6) months; or

(d) has been convicted, within the preceding six (6) years, of an offence involving fraud or dishonesty,

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

9. A member of the Board, not being a member *ex officio*, shall hold office for two (2) years and may be eligible for re-appointment to only one second term immediately following the expired term. Tenure of
office of
members
of the Board

10. — (1) The office of a member of the Board, not being a member *ex officio*, shall become vacant— Vacancies

(a) if the member dies;

(b) if the member resigns by notice in writing to the Minister; or

(c) if, in accordance with section 8, he becomes disqualified from continuing to hold office.

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

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

Proceedings
of the Board

11. — (1) The Board shall meet at least once every year but the Chairperson may, and shall upon application in writing by at least three (3) members of the Board, at any time convene a meeting of the Board.

(2) The Chairperson shall preside at meetings of the Board, but in the absence of the Chairperson, vice Chairperson shall perform the functions of the Chairperson at that meeting.

(3) Minutes of proceedings of every meeting of the Board or any committee of the Board shall be taken and kept by the Secretary or by such other officer of the Board as the Secretary may designate in that behalf and shall be subject to confirmation by the Board or committee, as the case may be, at the succeeding meeting.

(4) The quorum of the Board shall be a simple majority of the total number of members.

(5) Decisions of the Board on any matter shall be in accordance with the vote of the majority of members present and voting thereon, but in the event of an equality of votes, the Chairperson or the presiding member at the meeting concerned, shall have a casting vote in addition to his deliberative vote.

(6) The Board shall have power to regulate its own procedures.

Committees of
the Board

12. — (1) The Board may establish such number of its own committees as it considers necessary for the performance of its functions and for the exercise of its powers and may assign to such committees any of its functions without prejudice to the power of the Board itself to perform the functions.

(2) Every committee of the Board shall be chaired by a member of the Board and may include persons who are not members of the Board but shall not include members of staff of the secretariat of the Board.

(3) The Board or the Chairperson may, at any time, direct the chairperson of any committee to convene a meeting of such committee and such a chairperson shall, as soon as is practicable, comply, with such direction.

(4) Every committee shall keep minutes of its meetings and shall inform the Board of its activities and conduct its proceedings in such manner as the Board may direct.

(5) A member of a committee shall, in respect of expenses incurred by him in travelling and subsistence while discharging his duties as such member, be paid out of the funds of the Board, such allowances as may be prescribed.

(6) Subject to any general or special directions of the Board, every committee of the Board shall have power to determine its own procedure.

13. — (1) The Board or any committee of the Board may, invite any person to attend any meeting of the Board or the committee, for the purpose of assisting or advising the Board or the committee in respect of any matter under consideration by the Board or the committee. Invited persons

(2) Any person invited pursuant to subsection (1) may take part in the deliberations of the Board or committee at any meeting but shall not be entitled to vote on any matter at that meeting.

14. — (1) The Board shall be the sole authority for licensing and registering surveyors in Malawi and shall have the following powers and duties— Powers and duties of the Board

(a) to approve minimum qualifications and training acceptable for registration as a surveyor;

(b) to approve educational and training institutions within and outside Malawi as approved institution with recognized training in land surveying;

(c) to set up and conduct such tests, examinations and trial surveys as may be required for the purposes of this Act;

(d) from time to time, to appoint such examiners and invigilators as may be necessary for the purpose of administering any examinations under this Act;

(e) to grant licences;

(f) to keep and maintain a register of licensed surveyors, surveying technicians and graduate surveyors;

(g) to advise the Minister on policies relating to technical and professional matters within the scope of this Act;

(h) unless otherwise provided under this Act, to advise the Minister regarding the professional fees and other charges to be prescribed under this Act;

(i) to determine other methods, apart from examinations, to be used in assessing suitability of an applicant for licensing and registration under this Act;

(j) from time to time, to apscribe principles of conduct and ethics to be followed by surveyors in the course of their practice as surveyors;

(k) to exercise disciplinary control over surveyors and to prescribe and impose disciplinary measures against such surveyors; and

(l) to do all such acts, matters and things as may be necessary for fulfilling the objects of the Board.

(2) The Board shall publish in the *Gazette*, once every year, lists of surveyors registered under this Act.

Board not
liable for act
done in good
faith

15. The Board or any member of the Board shall not be liable for any act or omission done in good faith in the exercise of or purported exercise of the functions and duties under this Act.

Funds of the
Board

16. The funds of the Board shall consist of—

(a) such sums as may be payable to the Board from moneys appropriated by Parliament for the purpose; and

(b) such moneys or other property as may be payable to or vest in the Board pursuant to this or any other written law or pursuant to any trust or gift.

Investment of
surplus sums

17. The Board may invest any sums which are not immediately required for its objects in such manner as the Minister may approve.

Borrowing
powers
Act No. 7 of
2003
Act No. 6 of
2003

18. Subject to the provisions of the Public Finance Management Act and the Public Audit Act, the Board may borrow, either temporarily, by way of overdraft or otherwise, such sums as it may require for meeting its obligations or discharging its functions under this Act.

Financial
year of the
Board

19. The financial year of the Board shall be a period of twelve months ending on 30th June every year.

Books of
accounts,
audits and
reports

20. — (1) The Board shall cause to be kept proper books of accounts and other records in relation to all moneys and other property vested, received or otherwise obtained, and of all moneys expended or other property sold or otherwise disposed of, by the Board.

(2) The accounts of the Board shall be audited annually by professional auditors appointed by the Board.

(3) The expenses of, and incidental to, any audit shall be paid out of funds of the Board.

21. — (1) The Board shall, as soon as is practicable but not later than six (6) months after the end of each financial year, submit to Parliament an annual report of its work and operations. Annual Report

(2) The Annual Report shall be laid in Parliament by the Minister and the report shall include a balance sheet, an income and expenditure account and the annual report of auditors.

PART IV—ADMINISTRATION OF THE BOARD

22. — (1) There shall be a Registrar of the Board (in this Act otherwise referred to as “Registrar”) who shall be appointed by the Board with the approval of the Minister on such terms and conditions as the Board shall determine. Registrar

(2) The Registrar shall be the chief executive officer of the Board.

(3) Where no Registrar is appointed by the Board in accordance with subsection (1), the Minister may, in consultation with the Board designate as Secretary to the Board a public officer serving with the Department of Surveys.

23. — (1) Subject to the general and special directions of the Board, the Registrar shall be responsible to the Board for the day to day management of the Board and supervision over the work and staff of the Board. Duties of the Registrar

(2) Minutes of every meeting of the Board shall be taken and kept by the Registrar or such other officer of the Board as the Registrar may designate in that behalf and shall be subject to confirmation by the Board at the next meeting.

24. — (1) There shall be employed in the service of the Board such other staff, subordinate to the Registrar, as the Board shall consider necessary for the exercise of its powers and performance of its duties and functions. Other staff

(2) The staff of the Board under subsection (1) shall, save as provided by subsection (4), be appointed by the Board.

(3) The staff of the Board shall serve on such terms and conditions as the Board shall determine.

(4) The Board may, by directions in writing, delegate to the Registrar the appointment of its staff in such junior ranks as it shall specify and the Registrar shall report to the Board every appointment he has made pursuant to this subsection.

Attendance of
meetings by
staff

25. — (1) The Registrar or any other officer of the Board as the Registrar shall designate with the approval of the Board, shall attend meetings of the Board or any committee of the Board to record the minutes of the meetings and to take part in the deliberations thereof subject to the directions of the Board or committee but shall not be entitled to vote.

(2) Where in any meeting the deliberations of the Board or of a committee of the Board concern the Registrar or any officer of the Board designated to attend the meeting, the Board or the committee, as the case may be, may exclude the Registrar or such officer from the meeting.

PART V—LICENSING, REGISTRATION AND DUTIES OF SURVEYORS

Qualifications
of licensed
surveyors

26. — (1) No person shall be licensed as a surveyor unless he—

(a) (i) holds a degree in land surveying from a university approved for the purposes of this subsection;

(ii) produces a certificate that he has served at least one year as an assistant in practical field surveys under the direct personal supervision of a licensed surveyor practising as such under the Act or in any country listed in the First Schedule hereto:

Provided that no less than half such period shall have been in doing title surveys the nature of which shall be approved by the Board;

(iii) possesses a commission or a licence entitling him lawfully to practise as a land surveyor in any country listed in the First Schedule;

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

(v) has successfully passed any examination which the Board has declared to confer a qualification equivalent to any of the qualifications referred to in subparagraphs (i) (ii) and (iv);

(vi) furnishes testimonials or other evidence of good character to the satisfaction of the Board; and

(b) satisfies the Board by examination, or by other method prescribed by the Board that he is familiar with the provisions of this Act and all other written laws of Malawi relating to land survey.

(2) Notwithstanding subsection (1), the Board may, in its discretion, require any person who applies to be licensed as a

surveyor to satisfy the Board, either by carrying out to the satisfaction of the Board a trial survey, or by such other evidence as the Board may think fit, that he is capable of conducting surveys in accordance with this Act.

(3) If a person has undergone training which, in the opinion of the Board is equivalent to serving as an assistant in practical field survey as provided for under subsection (1) (a), he may be granted exemption from such portion of the period of service as the Board may determine:

Provided that no such exemption shall—

(a) reduce the requisite period of training to less than one year; or

(b) be granted in respect of training served before the completion of the first year of study.

(4) The certificate indicating proof of service as an assistant to a licensed surveyor under subsection (1) (a) (ii) shall be in the form as may be prescribed and shall be accompanied by an annexure in the form of a diary, signed by the licenced surveyor and the employee containing detailed particulars of all survey work carried out.

(5) The Minister may by order published in the Gazette amend the First Schedule.

First
Schedule

27. Any application for a licence and registration under this Act shall be made to the Board in the prescribed manner and shall be accompanied by a prescribed fee.

Applications
for a licence
and
registration

28. — (1) Any person who qualifies to be licensed as a surveyor under this Act and satisfies the conditions under section 26 shall be entitled to receive a licence as a licensed surveyor upon application to the Board.

Licensing
and
registration of
surveyors

(2) Save as otherwise provided in this Act, no person shall engage in the practice of land surveying in Malawi, or hold himself out as being entitled so to do, unless he is registered under this Act.

(3) Any person who engages in the practice of land surveying in contravention of this Act commits an offence.

29. Any person may, upon making application for registration as a licenced surveyor, be registered as a licensed surveyor, if he—

Qualifications
for
registration as
a licenced
surveyor

(a) has passed a qualification approved by the Board or has satisfied the Board that he possesses a qualification which, in the opinion of the Board, furnishes a sufficient guarantee of the possession of the requisite knowledge and skill for the efficient practice of the work of a surveyor in terms of section 26;

(b) is a full member of the Surveyors Institute of Malawi or such other institution or society as the Minister may, by notice published in the *Gazette*, declare to be of adequate standing; and

(c) proves to the satisfaction of the Board that his professional and general conduct has been such as not, in the opinion of the Board, to debar him from registration.

Qualifications
for
registration as
a graduate
surveyor

30. — (1) Any person shall be entitled to make application for registration as a graduate surveyor under this Act if he has in consequence of an examination, obtained from an approved institution a degree or other qualifying certification which the Board considers acceptable for registration.

(2) Every graduate surveyor registered pursuant to this section shall be entitled to practice land surveying as a surveyor in training, by agreement with and under the direction or control of a registered licenced surveyor.

Qualifications
for
registration of
surveying
technician

31. — (1) Any person shall be entitled to make an application for registration as a surveying technician under this Act, if he has—

(a) obtained a diploma or a certificate in land surveying from an approved institution or obtained other qualifications approved by the Surveyors Institute of Malawi which the Board considers acceptable for registration; and

(b) received practical training from approved employment as a technician for a period of not less than two (2) years.

(2) The Board may direct the Registrar to register an applicant under this section if it is satisfied that the applicant—

(a) is of good character and is a fit and proper person to be registered; and

(b) has complied with all the relevant requirements of this section.

Certificate of
registration

32. The Registrar shall issue to every person registered as a licenced surveyor, graduate surveyor, surveying technician, as the case may be, under this Act, a certificate of registration in the form as may be prescribed.

Corrections
of registers

33. — (1) The Registrar may, with the prior approval of the Board, make necessary alterations or corrections in any Register in relation to any entry therein.

(2) The Registrar shall remove from any Register the name of any deceased person, and shall, when directed by the Board to do so, remove from any Register any entry which has been incorrectly or fraudulently made therein.

(3) The Registrar may, with the consent, in writing, of the person concerned, remove from any Register the name of any person who has ceased to practise land surveying in Malawi.

(4) Any name removed from any Register pursuant to subsection (3) shall, at the request in writing of the person concerned, and approval of the Board be reinstated by the Registrar.

34. — (1) The Board shall keep and maintain—

Registers

- (a) a register of all licensed surveyors;
- (b) a register of all graduate surveyors; and
- (c) a register of all surveying technicians.

(2) A register shall contain—

- (a) names, addresses and qualifications of surveyors;
- (b) the respective dates of their registration; and
- (c) any other particulars which may be prescribed.

(2) The Registrar shall keep custody of the registers at the offices of the Board or at such other place in Malawi as the Board may direct.

(3) A register shall, at all reasonable times, be open to inspection by—

- (a) public officers in the course of duty;
- (b) any person registered under the Act; and
- (c) members of the public upon payment of a prescribed fee.

35. — (1) A surveyor shall ensure that all surveying instruments he uses for the purpose of carrying out surveys are in a proper state of adjustment and that all distance measuring instruments so used have been properly standardized.

Surveying
instruments
and
measuring
tapes to be
accurate

(2) A surveyor shall, when called upon so do by the Surveyor General, produce to the Surveyor General, any surveying instrument or distance measuring instrument he uses for testing, as the Surveyor General may think fit.

(3) If the Surveyor General finds that any such surveying instrument or distance measuring instrument is defective or inaccurate, he may order such surveyor to remedy such defect or to rectify such inaccuracy and the surveyor shall not use the instrument until the defect is remedied the inaccuracy rectified.

(4) If the Surveyor General is of the opinion that any surveying instrument or distance measuring instrument is in such a condition as to render it impossible to remedy a defect or rectify such inaccuracy, he may condemn the instrument.

(5) Where the Surveyor General condemns a surveying instrument or measuring tape under this Act—

(a) the surveying instrument or measuring tape shall no longer be used for the carrying out of any survey; or

(b) he may, by order in writing, specify the class of work upon which such surveying instrument or measuring tape may be used.

Duties of
surveyor

36. — (1) A surveyor shall—

(a) carry out every survey undertaken by him in accordance with this Act and in such manner as will ensure the accuracy of such survey and of any plan, survey data, or other record of such survey;

(b) deposit with the Surveyor General for filing in the Surveyor General's office such plans, survey data and records of survey as he may be required to do under this Act;

(c) be responsible to the Surveyor General for the corrections of every survey carried out by him or under his supervision and for the correctness of any plan and diagram which bears his signature; and

(d) when required by the Surveyor General, without delay adjust the position of any survey mark which has been fixed, placed or set up in accordance with any incorrect survey.

(2) The Surveyor General may require any surveyor, within ninety (90) days, to correct, in conformity with this Act, any inaccuracy or error in any plan, survey data or other record where such error or inaccuracy exceeds the limit of error prescribed under this Act to be allowed in the execution of surveys and the preparation of plans, survey data and other records.

Complaints
against
surveyor

37. — (1) Any complaint against a surveyor shall be submitted in writing to the Board and shall be signed by the person making the complaint.

(2) The Board may inquire into the matter regarding which a complaint has been submitted under subsection (1) and shall fix a time and place for the purpose of holding such inquiry.

(3) A notice in writing shall be sent by the Board by registered post to the last known address of the surveyor against whom the complaint is made, at least thirty (30) days prior to the date fixed for the inquiry.

(4) At any inquiry under this section, a surveyor against whom the complaint is made shall be entitled to be heard in his defence, either personally or by a legal practitioner.

(5) The findings and decision of the Board on any inquiry under this section shall be made in writing.

(6) A surveyor with regard to whom the findings and decision of the Board were made, may apply to the High Court for judicial review within thirty (30) days of the date of the findings and decision of the Board.

38. — (1) Upon a complaint duly made, and after inquiry under section 37, the Board may discipline any registered surveyor, if it is proven to the satisfaction of the Board that the registered surveyor has—

Power of
Board to deal
with offences

(a) signed any plan, survey data or other record of any survey relating to any land in respect of which he has not carried out or personally supervised the whole of such survey and examined and satisfied himself of the correctness of the entries in any field book, and the calculations, working plans and other records in connection with which may have been made by any other person;

(b) signed a plan which he knows or ought, by the exercise of reasonable care, to have known, is incorrect;

(c) performed through negligence or incompetence an incorrect survey;

(d) made any entry in a field book or other document which purports to have been made as a result of actual observation or measurement in the field when it was not so made;

(e) supplied erroneous information to the Board in connection with any survey mark or boundary which he knows, or ought, by the exercise of reasonable care, to have known was erroneous;

(f) demanded or received a sum for fees, charges or expenses either less or more than the amount prescribed under this Act;

(g) been guilty of any felony or misdemeanour involving moral turpitude, or of such improper conduct as, in the opinion of the Board, renders him unfit to practise as a surveyor;

(h) obtained his licence by misrepresentation, or has had his licence or his qualification of fellow or professional associate mentioned suspended or cancelled; and

(i) failed to obey any order or instruction given to him by the Board under the provisions of this Act or to carry out any duty imposed upon him under the provisions of this Act or to comply with any of such provisions.

(2) Pursuant to subsection (1), the Board may—

(a) caution the surveyor in writing;

(b) suspend the surveyor from practising as a surveyor for any period not exceeding two (2) years and enter the reasons for such suspension in the register; or

(c) remove the name of such surveyor from the register.

(3) In addition to the punishment imposed upon the surveyor under subsection (2), the Board may order the surveyor to pay the cost of any correction necessitated by his negligence.

(4) The Board may, in its absolute discretion—

(a) reinstate any surveyor whose name has been removed from the register; or

(b) terminate or reduce the period of suspension of a surveyor who has been suspended from practice.

(5) Where the Board has suspended a surveyor from practice or has removed the name of a surveyor from the register, such surveyor shall deliver to the Board his licence and the Board may retain such licence either until such licence has expired or until the name of the surveyor has been reinstated on the register or until the period of his suspension is terminated, as the case may be.

(6) There shall be published in the *Gazette* a notification of—

(a) the removal of the name of a surveyor from the register;

(b) the suspension from practice of a surveyor; and

(c) the reinstatement in the register of the name of a surveyor or the termination or reduction of the period of suspension of a surveyor.

Persons other than surveyors forbidden to survey

39. — (1) No person, other than a surveyor registered under this Act shall—

(a) carry out any survey for the purpose of preparing any plan, survey data or other record required under the provisions of this Act to be deposited with, examined and approved by, the Surveyor General, or to be referred to in any manner whatsoever in any other document to be so deposited or examined and approved;

(b) carry out any survey affecting the delimitation of the boundaries or the location of the beacons or other boundary marks of any land; or

(c) hold himself out or act in any manner whatever as a surveyor or perform any of the functions of a surveyor.

(2) Any person who contravenes any of the provisions of subsection (1) commits an offence and shall, upon conviction, be liable to a fine of one hundred thousand Kwacha (K100,000) and to imprisonment for six (6) months.

Survey plans to be deposited with Surveyor General and to become the property of the Government

40. — (1) All plans, survey data and records of surveys deposited with the Surveyor General in pursuance of any requirement imposed by this Act or any Rules made thereunder shall become the property of the Government.

(2) No plan, survey data or other record deposited in the office of the Surveyor General by virtue of this Act shall be altered or amended in any way without the permission in writing of the Surveyor General.

(3) Any person who alters or amends in any way any plan, survey data or other record deposited in accordance with this Act without the written permission of the Surveyor General, commits an offence and upon conviction, shall be liable to a fine of one hundred thousand Kwacha (K100,000) and to imprisonment for six (6) months.

41. — (1) Any person, before carrying out an aerial survey of any land in Malawi, shall at least one (1) month before such survey is carried out, notify the Surveyor General in writing of his intention to cause such survey to be made.

Aerial and topographic survey and topographic mapping

(2) Any person who carries out an aerial survey in accordance with subsection (1) and any topographic survey shall submit to the Surveyor General within thirty (30) days of completion of such survey—

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

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

(3) Within thirty (30) days of the completion of any topographical mapping in Malawi by any surveyor, copies of all data and subsequent maps and plans shall be submitted 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.

(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.

Cap. 49:03

(6) Any person who fails to comply with this section, commits an offence and shall, upon conviction be liable to a fine of two hundred fifty thousand Kwacha (K250,000) and to imprisonment for twelve (12) months.

42. The Surveyor General shall examine all data, plans and diagrams of surveys of land and approve all such plans and diagrams if he is satisfied that such surveys have been properly carried out.

Approval of surveys by Surveyor General

43. — (1) Where any plan approved by the Surveyor General under this Act is found to be incorrect by reason of any error or omission in survey, the Surveyor General may cancel his approval of such plan and in every such case he shall cause to be made and to be deposited a corrected plan.

Surveyor General may cancel approval of the plan

(2) The Surveyor General shall, upon the cancellation of any plan in accordance with subsection (1), notify in writing—

(a) the owner of the land to which such plan relates or the Traditional Authority in case of customary or public land, and the local government authority or Minister in case of public or government land; or

(b) the appropriate registrar, if any.

PART VI—SURVEY MARKS AND BOUNDARIES

Survey marks and boundaries lawfully established

44. — (1) Notwithstanding anything contained in any written law, the position of any survey mark fixed, placed or set up for the purpose of denoting the boundaries of any land shall be deemed under this section to have been lawfully established.

(2) A survey mark fixed, placed or set up for the purpose of denoting a boundary of any land shall be deemed to have been lawfully established—

(a) if its position is in agreement with the position established in any other survey and where a plan based on such survey has been approved for the purpose of establishing such survey mark by the Surveyor General; or

(b) if its position is in agreement with an order of the High Court.

Survey of Traditional Management Areas and Townships

45. — (1) The boundaries of any area declared as a Traditional Land Management Area, a district or a local government area shall be surveyed and registered in the Land Registry under the Traditional Authority or local government authority of the area.

(2) Where a Traditional Land Management Area is registered, all the villages and the public land within such area shall be surveyed and registered.

Sites of trigonometrical stations and fundamental benchmarks reserved to Government

46. Every trigonometrical station or fundamental benchmark shall be deemed to comprise the land within five metres (5m) of the center-mark of such station or within five metre (5m) of the center of the pillar of such fundamental benchmark as the case may be, together with a right-of-way to and from the same and shall, notwithstanding any alienation thereof, be reserved to the use of the Government and be deemed to have been and to be excepted out of such alienation.

Blasting of rock within area reserved for a fundamental bench-mark prohibited

47. — (1) No person shall carry out rock blasting operations within a radius of one hundred (100) metres from any fundamental benchmark without first obtaining the written authority of the Surveyor General.

(2) Any person who contravenes this section commits an offence and shall, upon conviction, be liable to a fine of two hundred fifty thousand Kwacha (K250,000) and to imprisonment for twelve (12) months.

48. No person shall place any fence, post or fence anchor or any other erection or make any excavation, within half ($\frac{1}{2}$) a metre of any survey mark except with the written permission of the Surveyor General.

No posts or fences to be placed near survey mark

49. — (1) Every owner of land shall preserve and maintain in proper order and repair, in such manner as may be prescribed, every survey mark fixed, placed or set on such land for the purpose of denoting the boundary of such land, whether such survey mark was erected for the purpose of or in connection with a survey of such land under this Act or of any other written law, or for the purpose of, or in connection with, a survey of any land contiguous to the land upon which such survey mark is situate, and shall forthwith report to the Surveyor General if any such survey mark cannot be found or is obliterated, removed or injured or requires repair.

Preservation and maintenance of survey marks

(2) Any person who fails to comply with any of the provisions of subsection (1) commits an offence and shall, upon conviction, be liable to a fine of two hundred fifty thousand Kwacha (K250,000) and to imprisonment for twelve (12) months.

50. —(1) If any mark has not been maintained in proper order or repair, or has been removed or obliterated, the Surveyor General may serve upon the owner of the land upon which such survey mark is, or has been situated, either by delivering the same to such owner or by transmitting it in a registered letter through the post, a notice in writing calling upon such owner to restore such survey mark to the condition prescribed for such a survey mark or to cause it to be replaced in the prescribed manner, as the case may be.

Surveyor General may call upon owner to restore survey mark

(2) Where any survey mark is restored or re-erected such restoration or re-erection shall be carried out by a surveyor.

(3) If any survey mark is not restored or re-erected within six (6) weeks of the date upon which any such notice was delivered or posted, the Surveyor General may cause such survey mark to be restored or re-elected and in such case the owner of the land, and the owners of all land jointly affected by this section, shall be liable in equal shares for the cost of such restoration or re-erection and the Surveyor General may recover from every such owner his share of all costs incurred by the Surveyor General under this subsection:

Provided that—

(a) if any such owner or the servant or agent of such owner has damaged, removed or obliterated any such survey mark, the entire cost of the repair, restoration or re-erection of such survey mark shall be borne by such owner;

(b) where a survey mark which requires restoration or re-erection or any part of such survey mark is on customary land or public land or on land contiguous to customary land or public land, the Surveyor General may, in his discretion, exercise his powers under this subsection without waiting for the expiration of such period of six weeks.

(4) In the case of a local government authority, the local government authority shall be responsible for the maintenance of all survey marks erected in accordance with this Act on all roads, lands and premises in respect of which the local government authority is responsible for the upkeep and maintenance, and any destruction or damage to any such survey mark may be made good by the Surveyor General at the expense of such local government authority.

Offences and
compensation

51. — (1) Any person who, without lawful excuse—

(a) alters, moves, disturbs or willfully damages or destroys any survey mark, whether permanent or temporary and erected for the purpose of or in connection with any survey operations, whether such survey mark is upon his own land or not and whether above or below the surface of the land; or

(b) fixes, places or sets up any such survey mark except under the supervision of a surveyor or anyone authorized by the Surveyor General in that behalf, whether or not his intention is to alter the boundary line of any piece of land or to deceive any person as to the position of a boundary line,

commits an offence and shall, upon conviction, be liable to imprisonment for twelve (12) months.

(2) The removal or disturbance of any survey mark for the purpose of erecting another survey mark in its place shall not constitute a lawful excuse under this section unless a surveyor or a person authorized in writing by the Surveyor General in that behalf personally superintends such removal or disturbance and the erection of such other survey mark.

Cap. 7:01

(3) Nothing in this section shall be construed as exempting any person from being charged and punished under the Penal Code or any other written law in respect of any such act or omission as is described in this section.

(4) For the purpose of awarding compensation under the law relating to criminal procedure in respect of any damage caused by the commission of an offence under subsection (1)—

(a) any survey mark in connection with which such offence was committed shall be deemed to be the property of any person upon whose land or upon a boundary of whose land such survey mark was situate; and

(b) and any fundamental benchmark, reference mark or trigonometrical station, in connection with which any such offence was committed, shall be deemed to be the property of the Surveyor General.

52. Any person who, for the purpose of carrying out any work which he may lawfully perform, desires to remove or disturb any survey mark, may apply to the Surveyor General for authority to effect such removal or disturbance, and the Surveyor General may authorize in writing such removal or disturbance and, in his discretion, may, at the expense of such applicant, employ any surveyor or any authorized officer personally to effect or supervise the removal or disturbance and subsequent replacement of such survey mark or the erection or placing of any other survey mark to indicate the position of such removed or disturbed survey mark, in such manner as the Surveyor General may direct.

Authority to
remove
survey marks

PART VII—MALAWI GEOGRAPHIC INFORMATION COUNCIL

53. There is hereby established a Malawi Geographic Information Council (hereinafter referred to as the “Council”) for the purpose of performing the functions assigned under this Act.

Establishment
of the
Council

54. The Minister shall appoint members of the Council on recommendation from bodies comprising users and producers of geographic information as follows—

Composition
of the
Council

(a) the Surveyor General, who shall be the Chairperson of the Council;

(b) two (2) members representing the user and producer community from the public sector;

(c) two (2) members representing the user and producer community from the private sector;

(d) one member from the academic fraternity ;

(e) one member from civil society; and

(f) one member from the Surveyors Institute of Malawi.

55. The Surveyor General shall appoint a public officer to serve as Secretary to the Council.

Secretary of
the Council

Nature of service of Council Members	<p>56. — (1) A member of the Council shall not, by virtue only of his appointment to the Council be deemed to be an officer in public service or hold a public appointment.</p> <p>(2) A member of the Council or committee of the Council shall serve on part time basis.</p>
Disqualifications	<p>57. Any person who—</p> <p>(a) is an undischarged bankrupt;</p> <p>(b) has been convicted, at any time, of an offence under this Act, shall be disqualified from appointment to, or continuing to hold office as a member of the Council.</p>
Tenure	<p>58. A member of the Council, not being the Surveyor General, shall hold office for two (2) years and may be eligible for re-appointment to only one second term immediately following the expired term.</p>
Vacancies	<p>59. — (1) The office of a member of the Council, not being the Surveyor General, shall become vacant—</p> <p>(a) if the member dies;</p> <p>(b) if the member resigns by notice in writing to the Minister; or</p> <p>(c) if, in accordance with section 57 he becomes disqualified from continuing to hold office.</p> <p>(2) A vacancy in the Council shall be filled by a person appointed in accordance with section 54.</p>
Proceedings	<p>60. — (1) The Council shall meet at least once every year but the Chairperson may, and upon application in writing by at least three (3) members of the Council, at any time convene a meeting of the Council.</p> <p>(2) The Chairperson shall preside at meetings of the Council, but in the absence of the Chairperson, the members present and forming quorum shall elect one of their number to perform the functions of the Chairperson at that meeting.</p> <p>(3) Minutes of proceedings of every meeting of the Council or any committee of the Council shall be taken and kept by the Secretary and shall be subject to confirmation by the Council or committee, as the case may be, at the subsequent meeting.</p> <p>(4) The quorum of the Council shall be a simple majority of the total number of members.</p> <p>(5) Decisions of the Council on any matter shall be in accordance with the vote of the majority of members present and voting thereon, but in the event of an equality of votes, the Chairperson or the</p>

presiding member at the meeting concerned, shall have a casting vote in addition to his deliberative vote.

(6) The Council shall have power to regulate its own procedures.

61. — (1) The Council may establish such number of its own committees as it considers necessary for the performance of its functions and exercise of its powers and may assign to such committees any of its functions without prejudice to the power of the Council itself to perform the functions.

Committees
of the
Council

(2) Every committee of the Council shall be chaired by a member of the Council and may include persons who are not members of the Council.

(3) The Council or the Chairperson may, at any time, direct the chairperson of any committee to convene a meeting of such committee and such a Chairperson shall, as soon as is practicable, comply, with such direction.

(4) Every committee shall keep minutes of its meetings and shall inform the Council of its activities and conduct its proceedings in such manner as the Council may direct.

(5) A member of a committee shall, in respect of expenses incurred by him in travelling and subsistence while discharging his duties as such member, be paid out of the funds of the Council, such allowances as may be prescribed.

(6) Subject to any general or special directions of the Council, every committee of the Council shall have power to determine its own procedure.

62. — (1) The Council or any committee of the Council may, invite any person to attend any meeting of the Council or of the committee, as the case may be, for the purpose of assisting or advising the Council or the committee in respect of any matter under consideration by the Council or committee.

Invited
persons

(2) Any person invited pursuant to subsection (1) may take part in the deliberations of the Council or committee at any meeting but shall not be entitled to vote on any matter at that meeting.

63. The Council shall be the sole authority for licensing and registering spatial data in Malawi and shall have the following powers and duties—

Powers and
duties of the
Council

(a) to establish and enforce national spatial data standards;

(b) to establish and maintain centralized and decentralized spatial data access points and nodes;

(c) to grant memoranda of understanding and data user licences for spatial data transfer;

(d) to act as an advisory body on policies and technical issues relating to spatial data development and management;

(e) to advise the Minister on fees payable for data development, update, management and transfer;

(f) to assist in the development and maintenance of a national spatial data infrastructure;

(g) to regularly audit the quality of metadata provided to the major access point;

(h) to regularly audit availability and quality of framework data; and

(i) to perform any other function pursuant to the objectives of this Act.

PART VIII—MISCELLANEOUS

Government not liable for incorrect survey

64. The Government or any officer employed by the Government shall not be liable for any incorrect survey or work appertaining thereto done in good faith by a Government surveyor, notwithstanding that such survey or work or any plans, survey data or other record appertaining thereto has been approved by the Surveyor General.

Board not liable for acts done in good faith

65. — (1) The Board or a member of the Board shall not be liable for any act or default done in good faith in the exercise of or purported exercise of functions and duties under this Act.

(2) The Council or a member of the Council shall not be liable for any act or default done in good faith in the exercise of or purported exercise of functions and duties under this Act.

Plans and records, etc., prima facie evidence

66. A survey plan, survey data or other record relating to the survey of any land purporting to be signed by a surveyor and approved by the Surveyor General shall be admitted as prima facie evidence of the contents thereof in all courts and proceedings.

Power to enter upon land and to use material thereon

67. — (1) The Surveyor General and any person generally or specially authorized by the Surveyor General in writing and any surveyor may, for the purpose of performing any duties imposed by or in pursuance of this Act or any other written law—

(a) enter upon any land with such assistants or servants, animals, vehicles, appliances and instruments as are necessary for or incidental to the performance of such duties;

(b) fix, place or set up any survey mark, whether permanent or temporary, upon such land;

(c) make use of any brushwood, stone, sand, gravel, clay or other materials of a like nature upon which no work has been

expended by the owner of such land without tender or payment by way of compensation to any person, and, except within a Municipality or Township, of any water, whether conserved or not, found upon or in such land;

(d) cut and remove or destroy all such trees, branches, underwood, growth or vegetation of any kind whatsoever in the vicinity of any survey mark as may interfere or be likely to interfere with the functions of such survey mark; and

(e) enter at all reasonable hours any building or enclosed place—

Provided that—

(i) reasonable notice of the intention to exercise any of the powers conferred by this section shall be given to the owner or occupier of such land or in the case of customary land to the appropriate Traditional Authority; and

(ii) as little damage and inconvenience as possible shall be caused by the exercise of any of the powers conferred by this section, and such owner or occupier shall be entitled to compensation for any avoidable damage caused to or in any building or caused to any other property belonging to such owner or occupier.

(2) Any person who, in any manner whatsoever prevents, obstructs or impedes the exercise of any powers conferred by subsection (1) or who moves, obscures, damages or destroys any flag, peg, signal or other mark of a temporary nature lawfully placed on any land in connection with any surveying operations before the completion of such operations, commits an offence and shall, upon conviction, be liable to a fine of fifty thousand Kwacha (K50,000).

68. The Minister may make regulations prescribing anything which by this Act may be or is to be prescribed and generally as to any matter relating to the surveying of land and for the purpose of carrying this Act into effect, and, in particular but without prejudice to the generality of this section, may make regulations prescribing the following matters—

Regulations

(a) the method of executing surveys, the information to be recorded in the plans, survey data and other records of surveys and the manner and form in which such information is to be recorded;

(b) the persons who, and the times at which such persons, may have access to any plans, survey data or other records in the office of the Surveyor General and the fees which may be charged in connection therewith;

(c) the degree of accuracy to be attained and the limit of error to be allowed in the execution of surveys and the preparation of plans, survey data and other records;

(d) the method in which surveys shall be based upon existing secondary and tertiary triangulations;

(e) the method of surveying land, including general boundaries;

(f) the plans, survey data and other records which are required to be deposited with the Surveyor General;

(g) the plans, survey data and other records which are required to be examined and approved by the Surveyor General and the method of such examination and approval;

(h) the method to be employed by the Surveyor General to test the accuracy of surveys the results of which are recorded on plans, survey data and records deposited with the Surveyor General at the date of the commencement of this Act;

(i) the method of correcting any inaccuracy or error in any plan, survey data or any record of any survey;

(j) the form and dimensions of survey marks, the manner of marking survey marks for identification and the manner of their construction, erection, protection, inspection, maintenance and repair;

(k) the material from which survey marks are to be constructed and the method of fixing, placing and setting up of survey marks;

(l) the unit of measure to be used on any specified plans;

(m) the fees, charges or expenses to be paid for any survey or class of survey or for the demarcating and measuring the boundaries of any land, and the person or authority responsible for the payment of, and the method of recovering, such fees, charges or expenses;

(n) the fees, charges and expenses to be paid for the examination and approval by the Surveyor General of plans, survey data and other records required to be examined and approved under this Act and for any other work undertaken by the Surveyor General in connection therewith;

(o) the fees, charges and expenses to be paid in respect of any plan, survey data, record or other document issued under the authority of this Act or in respect of any act done under such authority;

(p) the fees, charges and expenses to be paid in respect of any act or matter performed or dealt with by any officer of the Survey Department;

(*q*) the control and conduct of trigonometrical, topographical and level surveys and such geodetic geophysical operations as are required in Malawi;

(*r*) recording and preserving all information relating to surveys and operations executed under paragraph (*r*);

(*s*) the preparation of maps from the data derived from any surveys, and the compilation and revision of such maps from time to time as may be required; or

(*t*) the construction, erection and maintenance of such control points as are necessary for trigonometrical, topographical and level surveys.

69. — (1) The Land Survey Act is hereby repealed.

Repeal and
savings

(2) Any subsidiary legislation made under the Act repealed under 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, amended, or repealed by subsidiary legislation made under this Act.

**LANDS ACQUISITION
(AMENDMENT) BILL, 20...**

LANDS ACQUISITION (AMENDMENT) BILL, 20...

ARRANGEMENT OF SECTIONS

SECTION

1. Short title
2. Replacement of long title to Cap. 58:04
3. Replacement of s.1 of the principal Act
4. Amendment of s. 2 of the principal Act
5. Replacement of s. 3 of the principal Act
6. Replacement of s. 4 of the principal Act
7. Amendment of s. 5 of the principal Act
8. Amendment of s. 6 of the principal Act
9. Amendment of s. 8 of the principal Act
10. Insertion of new Part IIA into the principal Act
11. Replacement of s.9 of the principal Act
12. Replacement of s.10 of the principal Act
13. Insertion of a new s.10A into the principal Act
14. Insertion of a new s.11A, 11B and 11C into the principal Act
15. Amendment of Part III of the principal Act
16. Replacement of s.12 of the principal Act
17. Repeal of s.13 of the principal Act
18. Repeal of s.14 of the principal Act
19. Amendment of s.15 of the principal Act
20. Amendment of s.16 of the principal Act
21. Amendment of s.17 of the principal Act.

A B I L L*entitled***An Act to amend the Lands Acquisition Act.**

ENACTED by the Parliament of Malawi as follows—

1. This Act may be cited as the Lands Acquisition (Amendment) Act, 20... Short title

2. The Lands Acquisition Act (hereinafter referred to as the “principal Act”) is amended by repealing the long title and replacing it as follows— Replacement of long title to Cap. 58:04

“An Act to provide for the acquisition of land and compensation and for incidental matters”.

3. Section 1 of the principal Act is repealed and replaced as follows— Replacement of s. 1 of the principal Act

“1. This Act may be cited as the Land Acquisition and Compensation Act.”.

Amendment of
s. 2 of the
principal Act

4. Section 2 of the principal Act is amended by—

(a) deleting the definition of the word “land” and substituting therefor the following—

““land” has the same meaning as ascribed to it under section 2 of the Land Act;”.

(b) by insertion of new definition of the word “court” as follows—

““court” means a court of competent jurisdiction;”.

Amendment
of s. 3 of the
principal Act

5. Section 3 of the principal Act is repealed and replaced as follows—

“Power to
acquire
land

3. — (1) Subject to the provisions of this Act, the Minister or a local government authority may acquire land for public utility either compulsorily or by agreement, pay compensation therefor as may be agreed or determined under this Act.

(2) A Chief may acquire land situated within the area of his jurisdiction for public utility, and the person so deprived shall be entitled to an alternative allocation of a customary estate.”

Replacement
of s. 4 of the
principal Act

6. Section 4 of the principal Act is repealed and replaced as follows—

“Preliminary
investigation

4. — (1) Where there is need to acquire land under this Act for public utility, it shall be lawful for any person authorized by the acquiring authority under section 3 in that behalf and for his servants and agents to—

(a) enter upon any land in question or any land in the vicinity thereof and survey and take levels;

(b) dig or bore under the subsoil;

(c) do all other acts necessary to ascertain whether the land is or may be suitable; or

(d) clear, set out and mark the boundaries of the land proposed to be acquired and the intended line of work, if any, proposed to be done on it.

(2) Any entry upon land under this section shall be preceded by a notice to the occupier of not less than seven (7) days.

(3) The acquiring authority shall pay for any damage done by persons entering any land pursuant to this section.”.

7. Section 5 of the principal Act is amended—
- Amendment of s. 5 of the principal Act
- (a) in subsection (1) by deleting the word “Minister” and substituting therefore the words “acquiring authority” ;
- (b) in subsection (3) by—
- (i) inserting the phrase “except where the acquiring authority is a Chief” immediately after the word “section”.
- (ii) deleting the word “Minister” and substituting therefore the words “acquiring authority”;
- (iii) inserting a new proviso immediately after subsection (3) as follows—
- “Provided that no compensation shall be payable to interests created after publication of the notice to acquire.”.
8. Section 6 of the principal Act is amended—
- Amendment of s. 6 of the principal Act
- (a) in subsection (1) by deleting the word “Minister”, wherever it appears and substituting therefor the words “acquiring authority”;
- (b) in subsection (2) by—
- (i) deleting the word “Minister” and substituting therefore with the words “acquiring authority” ;
- (ii) adding the words “after paying compensation” immediately after the word “land”.
9. Section 8 of the principal Act is amended by deleting the word “Minister” and substituting therefore the words “acquiring authority”.
- Amendment of s.8 of the principal Act
10. The principal Act is amended by inserting immediately after Part II the following—
- Insertion of new Part IIA into the principal Act
- “PART IIA—COMPENSATION”.
11. Section 9 of the principal Act is repealed and replaced as follows—
- Replacement of s. 9 of the principal Act
- “Compensation 9. — (1) Subject to the provisions of this Act, where any land is acquired by the Minister or a local government authority, as the case may be, under this Act the Minister or local government authority shall pay in respect thereof appropriate compensation agreed or determined in accordance with the provisions of this Act.
- (2) Any compensation payable under this section shall be paid in one lump sum.”.

Replacement
of s. 10 of the
Principal Act

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

Assessment
of appropriate
compensation

10. — (1) Unless otherwise agreed between the parties, appropriate compensation shall be assessed by an independent valuer appointed by the Minister or local government authority.

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

- (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) injurious affection;
- (i) nuisance;
- (j) loss or reduction of tenure; or
- (k) disturbances, if it is not too remote and is a natural and reasonable consequence of the disposition of the land.”.

Insertion of a
new s. 10A into
the principal
Act

13. The principal Act is amended by inserting immediately after section 10 a new section 10A as follows—

“Matters to
be taken into
consideration
in assessing
compensation
for alienated
land

10A. — (1) In assessing the amount of compensation under section 10, the following matters and no others shall be taken into consideration—

(a) the market value of the land or interest therein of the claimant at the valuation date;

(b) the damage, if any, sustained by the person interested, at the valuation date, by reason of the severance of such land from his other land or other injurious affection of his other property moveable or immovable by reason of the exercise of the powers conferred by this Act;

(c) if, in consequence of the matters giving rise to the claim, the claimant is compelled to change his residence or place of business, reasonable expenses, if any, incidental to such change;

(*d*) any increase in the value of the other land or other benefit of the person interested at the valuation date likely to accrue from the proposed development; and

(*e*) the relief obtained by the claimant as a result of the taking of the land from the necessity of carrying out in whole or in part any order or direction against the land taken made under any law for the time being in force relating to the use and protection of land when the work required by the order or direction has not been commenced or completed at the valuation date.

(2) For the purposes of subsection (1) (*a*)—

(*a*) if the market value has been increased by means of any improvement made by the claimant or his predecessor in interest within two (2) years before the valuation date, such increase shall be disregarded unless it is proved that the improvement was made in good faith and not in contemplation of the acquisition;

(*b*) the following matters shall be disregarded—

(i) any enhancement of the market value due to the proposal to change use of the land;

(ii) any increased value thereof due to use of the land or any premises thereon which is contrary to law or could be restrained by a court;

(iii) any damage sustained by the claimant which, if caused by a private person, would not be a good cause of action;

(iv) the special suitability or adaptability of the land for the proposed development;

(v) the degree of urgency which has led to the taking of the land; and

(vi) any disinclination of the claimant to part with his interest in the land.

(3) For the purposes of subsection (1) (*d*), the increase in value of the other land and the other benefit likely to accrue shall, where the land forms part of an estate—

(*a*) not less than one hundred sixty (160) hectares and not more than four hundred (400) hectares in extent, be deemed equal in value to two (2) per centum of the total area of the estate;

(*b*) exceeding four hundred (400) hectares in extent, be deemed equal in value to four (4) per centum of the total area of the estate:

Provided that—

(i) where the land taken is improved land, this subsection shall not operate to deprive the person interested of compensation in respect of damage to or destruction of surface rights existing at the valuation date on the land taken; and

(ii) where the land taken forms part of an estate less than one hundred and sixty (160) hectares in extent it shall not, in the absence of evidence, be assumed that there is any increase in the value or other benefit to be taken into consideration.

(4) For the purposes of this section, “estate” means an undivided area of land for commercial agricultural purposes or otherwise, the legal right to occupy which is vested in a person other than the Government.”.

Insertion of new ss. 11A, 11B and 11C into the principal Act

14. The principal Act is amended by inserting after section 11 the following new sections, as sections 11A, 11B and 11C—

“Injurious affection

11A. — (1) Notwithstanding any other provisions of this Act, the assessment of compensation shall take into account injurious affection in the following circumstances—

(a) where no land is taken but value of the land is depreciated; and

(b) where part of the claimant’s land is taken and there is loss of value to the remainder due to the taking of the other part.

(2) Where the effects of acquiring a portion of land or property is drastic on the remaining portion, the claimant may force the acquiring authority to acquire the whole property at the original fair market price or value.

(3) Compensation under this section shall include compensation for any loss where no land is involved.

“Compensation to take into account environmental impact

11B. Compensation shall take into account the environmental impact on the property arising out of the proposed development scheme, though subject property remains untouched.

Compensation for depreciation

11C. Where the claimant has suffered depreciation in the value of land caused by the discharge on the land of any solid or liquid substance, appropriate compensation shall depend on—

(a) the depreciation suffered as a result of physical factors such as noise, vibration, smell, dust, fumes, smoke and artificial lighting;

(b) the depreciation occasioned as a result of the works; or

(c) the interest in the land where the property is not residential:

Provided that—

(i) where the property is residential, the interest in the land must be freehold, customary estate or leasehold with a minimum of an unexpired period of three (3) years and the person entitled to occupy must do so; and

(ii) where the premises are business premises, other than residential or agricultural, the rateable value must not exceed seventy (70%) per centum of the market value.”.

15. Part III of the principal Act is amended by deleting the word “TRANSFER” and substituting therefor the word “REVERSION”.

Amendment of Part III of the principal Act

16. Section 12 of the principal Act is repealed and replaced as follows—

Replacement of s. 12 into the Principal Act

12. — (1) Where a notice to acquire any land under this Act has been published in terms of section 5, such land shall revert to the Government as public land within two (2) months of the publication of such notice.

“Reversion to the Government

(2) Notwithstanding subsection (1), where a person possessed of an interest in the land obtains a court order against the notice to acquire land, such land shall not revert to the Government until the court order is removed or the court decides in favour of the acquiring authority.”.

17. Section 13 of the principal Act is repealed.

Repeal of s. 13 of the principal Act

18. Section 14 of the principal Act is repealed.

Repeal of s. 14 of the principal Act

19. Section 15 of the principal Act is amended by inserting the words “or a local government authority” after the word “Minister”.

Amendment of s. 15 of the Principal Act

20. Section 16 of the principal Act is amended—

Amendment of s. 16 of the Principal Act

(a) by inserting the words “or a local government authority” immediately after the word “Minister” wherever it appears;

(b) by deleting the word “President” and substituting therefor the word “Republic.”.

Amendment
of s. 17 of the
Principal Act

21. Section 17 of the principal Act is amended—

(a) in subsection (1) by deleting the words “two hundred kwacha” and substituting therefor the words “K20,000.”;

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

“(2) The court may issue an order of ejection in addition to penalties under subsection (1) or upon application to such court.”

**LOCAL GOVERNMENT
(AMENDMENT) BILL, 20...**

LOCAL GOVERNMENT (AMENDMENT) BILL, 20...

ARRANGEMENT OF SECTIONS

SECTION

1. Short title
2. Amendment of s. 15 to Cap. 22:01
3. Amendment of s. 34 of the principal Act
4. Amendment of s. 35 of the principal Act
5. Amendment of s. 36 of the principal Act
6. Amendment of s. 61 of the principal Act
7. Amendment of s. 62 of the principal Act
8. Amendment of s. 63 of the principal Act
9. Amendment of s. 66 of the principal Act
10. Amendment of s. 67 of the principal Act
11. Amendment of s. 68 of the principal Act
12. Amendment of s. 73 of the principal Act
13. Amendment of s. 75 of the principal Act
14. Amendment of s. 76 of the principal Act
15. Insertion of new s.76A into the principal Act
16. Insertion of new ss. 78A, 78B, 78C into the principal Act
17. Amendment of s.79 of the principal Act
18. Amendment of s.83 of the principal Act
19. Insertion of new s.83A of the principal Act
20. Amendment of s.84 of the principal Act
21. Amendment of s.91 of the principal Act

A B I L L*entitled***An Act to amend the Local Government Act.**

ENACTED by the Parliament of Malawi as follows—

1. This Act may be cited as the Local Government (Amendment) Act, 20... Short title
2. Section 15 of the Local Government Act (hereinafter referred to as the “principal Act”) is amended by adding a new paragraph (*d*) as follows— Amendment of s. 15 to Cap. 22:01

“(d) acquire and dispose of land.”
3. Section 34 of the principal Act is amended in subsection (2) by inserting the words “Subject to the provisions of the Lands Acquisition and Compensation Act” immediately before the word “The” appearing in the first line. Amendment of s. 34 of the principal Act

Amendment
of s. 35 of the
principal Act
Cap. 57:01
Cap. 58:01

4. Section 35 of the principal Act is amended—

(a) in subsection (1) by deleting the words “any manner it wishes” and substituting therefor the words “in accordance with the provisions of the Land Act and the Registered Land Act”;

(b) by deleting subsection (2); and

(c) by deleting subsection (3).

Repeal of s.
36 of the
principal Act

5. Section 36 of the principal Act is repealed.

Amendment of
s. 61 of the
principal Act

6. Section 61 of the principal Act is amended by—

(a) inserting a subsection “(1)” at the beginning of the paragraph; and

(b) inserting a new subsection (2) as follows—

“(2) The Minister shall, before designating an area as a rateable area, be satisfied that—

(a) the following aspects are such that they justify an area to be designated a rateable area—

(i) physical size of the area;

(ii) population size of the area;

(iii) economic activities;

(iv) available infrastructure; and

(v) potential to generate revenue locally;

(b) the assembly has the capacity and ability to provide basic essential services; and

(c) there is rateable property in the area.”.

Amendment of
s. 62 of the
principal Act

7. Section 62 of the principal Act is amended by inserting the definition of the words “Valuation Tribunal” as follows—

““Valuation Tribunal” means a Tribunal appointed under section 78A.”.

Amendment of
s. 63 of the
principal Act

8. Section 63 of the principal Act is amended—

(a) in paragraph (c) by adding the words “but shall not include those which are privately owned” at the end of the paragraph;

(b) in paragraph (e) by inserting the word “public” immediately before the word “railway”;

(c) by inserting a new paragraph (f) as follows—

“(f) rivers, streams and buffer zones except those which are privately owned”.

- 9.** Section 66 of the principal Act is amended—
- Amendment
of s. 66 of the
principal Act
- (a) in subsection (2) by deleting the word “excluded” and substituting therefor the word “demolished”; and
- (b) in subsection (3) by deleting the phrase “may estimate the value of the property as if it had been completed or occupied and may level a rate calculated on such estimated value which” and substituting therefor the phrase “shall use the estimated value of the property for rating purposes and such rates”.
- 10.** Section 67 of the principal Act is amended by—
- Amendment
of s. 67 of the
principal Act
- (a) numbering the paragraph as a subsection (1);
- (b) inserting a new subsection (2) as follows;
- “(2) A local government authority shall pay fees and expenses incurred by a valuer in respect of his duties under this Act together with such remuneration and other expenses as may be agreed upon between the local government authority and the valuer.”
- 11.** Section 68 of the principal Act is amended by deleting subsection (2) and substituting therefor the following new subsection (2)—
- Amendment
of s. 68 of the
principal Act
- “(2) The total valuation of an assessable property shall represent the fair amount of income in rental which the property is likely to realize at the time of the valuation if the property were in a reasonable state of repair, having regard to the type of property and the area in which it is situated.”.
- 12.** Section 73 of the principal Act is amended in subsection (2) by deleting the words “K5,000” and “K1,000” and substituting therefor the words “K50,000” and “K10,000” respectively.
- Amendment
of s. 73 of the
principal Act
- 13.** Section 75 of the principal Act is amended in subsection (2) by deleting the word “one” immediately after the words “at least” and substituting therefor the word “two”.
- Amendment
of s. 75 of the
principal Act
- 14.** Section 76 of the principal Act is amended in subsection (1) paragraph (b) by—
- Amendment
of s. 76 of the
principal Act
- (a) deleting the word “valuer” appearing in the fourth line and substituting therefor the word “Assembly”; and
- (b) adding the phrase “and the assembly shall in turn advise the valuer of the objection.”, at the end of the paragraph.
- 15.** The principal Act is amended by inserting immediately after section 76 a new section 76A as follows—
- Insertion of
new s. 76A
into the
- “Signing and certification of valuation rolls
- 76A.** — (1) The Chief Executive Officer or District Commissioner, as the case may be shall indorse a

valuation roll or supplementary valuation roll and sign a certificate to that effect where—

(a) on the expiry of the twenty-eight (28) days referred to in section 76, no objection has been received; or

(b) all objections duly received shall have been withdrawn prior to the date fixed for the sitting of the Valuation Tribunal.

(2) The Chief Executive Officer or District Commissioner, as the case may be shall publish a notice in the *Gazette* and at least two (2) newspapers circulating in the local government area a notice that a valuation roll or supplementary valuation roll has been signed and certified under this section.”.

Insertion of
ss. 78A, 78B
and 78C into
the principal
Act

16. The principal Act is amended by inserting after section 78 the following new sections 78A, 78B and 78C—

“Valuation
Tribunal

78A. — (1) The Minister shall appoint a Valuation Tribunal which shall consist of—

(a) a Resident Magistrate or a legal practitioner of not less than five years experience recommended by the Judicial Service Commission who shall be the Chairperson of the Valuation Tribunal;

(b) two valuers recommended by the body regulating that profession in Malawi; and

(c) a person conversant with issues of land economy.

(2) A local government authority having jurisdiction in the area where an issue arises for the consideration of the Valuation Tribunal shall be responsible for the payment of such expenses, fees and allowances for the members of the Valuation Tribunal as may be prescribed.

(3) A member of the Valuation Tribunal shall not, by reason only of the payment to him of a fee or allowance under this Act, be deemed to be an officer of the local government authority or to have a pecuniary interest in any contract or proposed contract or other matter.

Proceedings
of a Valuation
Tribunal

78B. — (1) The Chief Executive Officer or other person appointed by a local government authority, shall act as clerk to the Valuation Tribunal.

(2) At every sitting of a Valuation Tribunal, three members present shall constitute a quorum, and all decisions of such Valuation Tribunal shall be arrived at

by a vote of a majority of the members present; and, in case of an equality of votes, the Chairperson or the member acting as such shall have a casting vote.

(3) No member of a Valuation Tribunal shall sit on the hearing of any matter in which he is directly or indirectly interested or concerned as being liable to pay the rates in question or any part thereof.

(4) In the case of a vacancy in Valuation Tribunal or incapacity to act, so that a quorum cannot be formed, the local government authority may at once, appoint a suitable person temporarily or otherwise to fill up such vacancy or the place of any member incapable of sitting.

(5) Not less than seven days before the fixed date for the first sitting of a Valuation Tribunal, the clerk shall publish notice of the sitting.

(6) A Valuation Tribunal shall determine its own procedures.

(7) Proceedings before a Valuation Tribunal shall be deemed to be judicial proceedings as defined under section 4 of the Penal Code.

Cap. 7:01

Consideration
of objections
by the
Valuation
Tribunal

78C. — (1) A Valuation Tribunal shall, at a sitting duly called by the clerk, consider the objections made under section 76.

(2) Not less than seven days before the day fixed for the consideration by a Valuation Tribunal of any objection, the clerk shall send a notice of the date to the persons mentioned in subsection (3); but it shall be lawful for the Valuation Tribunal to hear any objection at shorter notice if all the persons entitled to be heard on the objection consent.

(3) On the consideration of an objection, the local government authority and the persons who lodged the objection and the rateable owner of the property which is the subject of the objection, may appear and be heard, either in person or by legal practitioner or accredited representative, and may examine any witness before the Valuation Tribunal, and may call witnesses.

(4) After hearing the persons mentioned in subsection (3), or such of them as desire to be heard, the Valuation Tribunal shall confirm or may amend the

draft valuation roll or draft supplementary valuation roll, by way of reduction, increase, addition or omission, as it may deem just.

(5) Where a Valuation Tribunal has amended a draft valuation roll or draft supplementary valuation roll in accordance with subsection (4), it shall be lawful for the Valuation Tribunal to make any further amendment of the roll, as it may seem proper, in consequence of such first-mentioned amendment—

Provided that—

(a) no such further amendment by way of increase or addition shall be made unless any rateable owner concerned has been given at least fourteen days' previous notice of the proposed amendment and of the date of the sitting of the Valuation Tribunal at which such amendment will be considered; and

(b) every such rateable owner may lodge an objection to such further amendment in writing, so as to reach the clerk not less than three days before such date.

(6) The Valuation Tribunal shall consider the objections made under paragraph (b) of the proviso to subsection (5), and the provisions of subsection (3) shall apply, *mutatis mutandis*, in respect of those objections.”.

Amendment of s. 79 of the principal Act **17.** Section 79 of the principal Act is amended in subsection (1) by deleting the word “all” and substituting therefor the word “some”.

Amendment of s. 83 of the principal Act **18.** Section 83 of the principal Act is amended in subsection (1) (a) in paragraph (d) by adding the words “that is not operating on a commercial basis” at the very end;

(b) in paragraph (e) by adding the words “that is not operating on a commercial basis” at the very end.

19. The principal Act is amended by inserting a new section 83A immediately after section 83 as follows—

Civil society organizations to pay rates **83A.** An Assembly may allow a civil society organization to pay to the Assembly only fifty per centum of the amount of rates on its assessable property.”.

Amendment of s. 84 of the principal Act **20.** Section 84 of the principal Act is amended by—

(a) renumbering the paragraph as subsection (1);

(b) inserting a new subsection (2) as follows—

“(2) The decision of the Minister shall be based on existing reciprocal agreement with the State of the relevant diplomatic mission.”.

21. Section 91 of the principal Act is amended in subsection (2) by deleting all the words immediately after the word “and” and inserting the words “the Assembly shall manage such property until the arrears are cleared”.

Amendment
of s. 91 of the
principal Act

**MALAWI HOUSING
CORPORATION
(AMENDMENT) BILL, 20...**

MALAWI HOUSING CORPORATION (AMENDMENT)
BILL, 20...

ARRANGEMENT OF SECTIONS

SECTION

1. Short title
2. Repeal of s.12 to Cap. 32:02

A B I L L

entitled

An Act to amend the Malawi Housing Corporation Act.

ENACTED by the Parliament of Malawi as follows—

1. This Act may be cited as the Malawi Housing Corporation (Amendment) Act, 20... Short title

2. Section 12 of the principal Act is repealed and replaced as follows— Repeal and replacement of s. 12 to Cap. 32:02

“Acquisition **12.** If the Corporation requires any customary land for the purposes of carrying into effect any of the provisions of this Act, it may apply for grant, lease or other disposition in accordance with the Customary Land Act”.

**COMPANIES (AMENDMENT)
BILL, 20...**

COMPANIES (AMENDMENT) BILL, 20...

A B I L L

entitled

An Act to amend the Companies Act.

ENACTED by the Parliament of Malawi as follows—

1. This Act may be cited as the Companies (Amendment) Act, short title
20...

2. The Companies Act is amended by inserting therein after
section 49, the following new section as section 49 A—

Insertion of
section 49A
into cap
46:03

“Registrar to
furnish
Minister for
lands with
information on
status of
shareholding
of companies in
Malawi

49A. (1) The Registrar shall furnish the Minister responsible for land matters with information regarding the status of shareholding of companies in Malawi at the beginning of each calendar year.

(2) The information under subsection (1) shall include the following—

- (a) membership of the company;
- (b) nationality of the members of the company;
- and
- (c) whether the company is Malawian or foreign owned.”.

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MALAWI LAW COMMISSION

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