

GAZETTE EXTRAORDINARY

**The Malawi Gazette Supplement, dated 22rd February, 2016, containing
Bills**

NOTICE

The following Bill, for introduction in Parliament, are published for general information.

LILONGWE 22rd February, 2016.

FIONA KALEMBA
Clerk of Parliament

LAND BILL, 2016

MEMORANDUM

This Bill seeks to make provision for land administration and management in Malawi and for all matters relating to land. The Bill vests all land in perpetuity, in the Republic.

The Bill also maintains the two categories of land, namely, "public land" and "private land". Public land comprises "Government land" and "unallocated customary land used for the benefit of the community as a whole". Private land is composed of freehold land, "leasehold land", and "customary estates". The Bill also repeals the Land Act (Cap. 57:01).

The Bill is divided into eight Parts.

Part I of this Bill contains preliminary provisions such as short title as well as interpretation of words as used in the Bill.

Part II of the Bill provides for administration of the Bill. It provides for the office of the Commissioner for Lands and his roles in the administration and management of land. The Part further empowers the Minister to delegate his roles to the Commissioner, and lastly, provides for protection of the Commissioner as well as any person authorized by the Minister to act on behalf of the Minister from any liability emanating from acts done in good faith in the course of discharging of duties and exercise of powers under the Bill.

Part III provides for general matters in regulating land regardless of category or class. Such matters included categorization, classification of land, and vesting of all land in the Republic in order to align the Bill with section 207 of the Constitution. The Part also provides for allocation of land for investment purposes to the Malawi Investment and Trade Centre Limited. The Part also prohibits the granting of freehold interest and determines the fate of persons who are already holders of freehold interest in land. The Part, lastly, empowers the Minister or local government authority to dispose of public land, prohibits

(ii)

Land Bill

disposal of state or official residences and institutional premises, and provides for financial penalty for delay in payment of rent.

Part IV makes provision for public land. It prohibits the implied right of entry into any Government land, outlines the procedure on acquisition of customary land for public utility and the conversion of customary land to registered land.

Part V provides for private land. Among other issues, it provides for the procedure on the acquisition and sale of private land not only to citizens of Malawi but also to people who are not citizens. It also provides for repossession of land by Government where the title holders are not developing the land.

Part VI provides for the users of land. It provides for the Minister's power to regulate, manage or control the user of land and the power of entry on land.

Part VII provides for the regulation of trespass or encroachment upon, or unlawful occupation of, land. It also provides for the procedure of legal actions in such matters.

Part VIII contains miscellaneous provisions including provisions relating to making of regulations, proof of citizenship in relation to land transactions, as well as the repeal of the Land Act and its savings.

LAND BILL, 2016

ARRANGEMENT OF SECTIONS

SECTION

PART I—PRELIMINARY

1. Short title and commencement
2. Interpretation

PART II—ADMINISTRATION

3. Commissioner for Lands
4. Duties of the Commissioner
5. Delegation of powers by the Minister
6. Protection of the Commissioner or authorized officers

PART III—GENERAL

7. Categories and classes of land
8. Vesting of land
9. Prohibition to grant freehold land
10. Power of corporations to hold land
11. Land designated for investment purposes
12. The Minister may dispose of public land
13. Prohibition against disposal of state and official residences
14. Interest for delay in payment of rent

PART IV—PUBLIC LAND

15. No implied right of entry
16. Use and occupation of Government land
17. Acquisition of customary land for public utility
18. Compensation to individuals for loss, damage or disturbance

SECTION

- 19. Conversion of customary land to registered land
- 20. Unlawful use of public land an offence, etc.

PART V—PRIVATE LAND

- 21. Interest in land which the Minister may grant
- 22. Minister or local government authority may accept surrenders
- 23. Minister or local government authority may relieve from liability to perform covenants, etc.
- 24. Implied covenants in leases
- 25. Power of re-entry by Minister or local government authority
- 26. Exceptions and reservations
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- 30. Surrender in lieu of revision of rent
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- 35. Fees
- 36. Prior written consent of the Minister or local government authority before sale, lease, etc., of private land
- 37. Grants of private land to persons who are not citizens of Malawi
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- 39. Non-development of freehold land
- 40. Gifts of private land between non-citizens.

PART VI—USER OF LAND

- 41. Minister's power to regulate, manage or control the user of land
- 42. Power of entry on land
- 43. Obstruction and penalties
- 44. Vesting of land after termination of right to occupy

SECTION

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

45. Summons for trespass, encroachment or unlawful occupation
46. Procedure

PART VIII—MISCELLANEOUS

47. Regulations
48. Certificate of Minister to be *prima facie* proof
49. Proof of citizenship in relation to land transactions
50. Delegation
51. Repeal and savings
52. Savings with respect to mining and oil exploration and production

A BILL

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

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

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

“authorized officer” means an officer duly authorized by the Minister for the purposes of this Act or any part thereof;

“Commissioner” means Commissioner for Lands;

“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 private land 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 customary 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 which is held in perpetuity;

“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;

Cap 22:01 “local government authority” bears the meaning ascribed to it in the Local Government Act;

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

Cap. 3:02 “magistrate’s court” means any subordinate court constituted under section 54 of the Courts Act;

“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;

•
Cap. 58:01 “private land” means all land which is owned, held or occupied under a freehold title, leasehold title or as a customary estate or which is registered as private land under the Registered Land Act;

“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;

“public road” bears the same meaning as assigned thereto in the Public Roads Act;

Cap. 69:02

“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; and

“traditional land management area” means an area demarcated and registered as falling within the jurisdiction of a Traditional Authority.

PART II—ADMINISTRATION

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

Commissioner
for Lands

4.—(1) Subject to the special and general written direction of the Minister, the Commissioner shall—

Duties of the
Commissioner

(a) administer all land;

(b) make grants, leases or other dispositions;

(c) sign, seal, execute, perfect, deliver and accept—

(i) grants, leases or other dispositions of public land and surrenders;

(ii) agreements or licences in respect of the control of or use of running or stagnant water or affecting the dispositions of interests or rights therein;

- (d) sign and issue documents including documents of consent;
- (e) grant relief from liability to perform and extend the time for performance or observance of any covenant, condition, agreement or stipulation;
- (f) except from any lease any implied covenant or covenants; and
- (g) serve notices of determination of any lease.

(2) The Commissioner may delegate in writing any of his functions under this Act to any officer subordinate to him or to any authorized officer.

Delegation
of powers by
the Minister

5. The Minister may, subject to general or special directions, delegate to the Commissioner all or any of the powers and duties conferred on the Minister by this Act.

Protection of
the
Commissioner
or authorized
officers

6. A suit, prosecution or other legal proceeding shall not lie against the Commissioner or any authorized officer in respect of exercise or performance or purported exercise or performance in good faith, of any power or function under this Act.

PART III—GENERAL

Categories and
classes of land

7.—(1) Land shall be categorized as either public land or private land.

(2) Public land shall be classified either as Government land or unallocated customary land.

(3) Private land shall be classified as freehold, leasehold or customary estate.

Vesting of land

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

Prohibition to
grant freehold
land

9.—(1) Freehold land shall not be allocated or granted to any person.

Cap. 15:01

(2) Freehold land acquired by a person who is not a citizen of Malawi prior to the commencement 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 three years of the commencement of this Act.

(3) Where a holder of freehold title fails to comply with subsection (2), the land shall, at the expiry of the three years, revert to Government as public land.

10.—(1) Land shall not be assured to or for the benefit of, or acquired by or on behalf of a body corporate, unless the body corporate is authorized by a licence issued by the Minister in consultation with the President to hold land in Malawi, but 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.

Powers of
corporations
to hold land

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 land in Malawi, be of no effect and unenforceable in any court, and any documents of title relating to such unenforceable disposition shall not be registerable 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 Minister may, in consultation with the President, issue a licence pursuant to subsection (1) and where the President declines to issue a licence, he shall give reasons, in writing, for that refusal and the decision of the President shall be subject to judicial review.

11.—(1) Land designated for investment purposes shall be identified, published in the *Gazette* and allocated to the Malawi Investment and Trade Centre Limited which shall create derivative rights to investors in accordance with the Investment and Export Promotion Act, 2012.

Land
designated for
investment
purposes
Act No 11 of
2012

(2) The size of land to be allocated to investors under this section shall be in accordance with land ceilings which the Minister may, in consultation with the Minister responsible for investment, set by notice published in the *Gazette*, based on the type of activity and location of the land.

12.—(1) The Minister 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.

The Minister
may dispose
of public land

(2) The Minister shall reserve a rack rent in respect of every grant of a lease of Government land.

(3) Without prejudice to the generality of subsection (2), the Minister may reserve a rent which is less than a rack rent in leases granted under this section—

(a) to public utility bodies, statutory corporations, missions or religious bodies, scientific and philanthropic bodies, or any other organizations, associations, bodies or undertaking; and

(b) where, having regard to all the circumstances of the case, the Minister is satisfied that it is expedient, equitable or necessary to do so.

(4) For the purposes of this section, "rack rent" means rent that is calculated in relation to the annual and current value of the land.

Prohibition
against
disposal of state
and official
residences

13.—(1) Notwithstanding section 12 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.

(2) A person shall not acquire the land referred to in this section as a personal possession.

Interest for
delay in
payment
of rent

14.—(1) If any moneys due to the Government in respect of any rent payable under any lease, 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 days after the same became due and payable, the amount so remaining unpaid shall, at the end of such period, be paid with simple interest at ten percent and the interest payable 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 interest under this section shall not affect the powers conferred upon the Minister by section 25 of this Act to enforce a 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 of the powers conferred by section 25 of this Act, to enforce a forfeiture of a lease 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 may, in any case or class of cases, where the circumstances so warrant, exempt the lessee from payment of any penalty due by the lessee under subsection (1).

PART IV—PUBLIC LAND

No implied
right of entry

15. A right of entry into any Government land shall not be implied in favour of any person.

16. 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

17.—(1) Where it appears to the Minister that any unallocated customary land is needed for public utility, the Minister shall serve notice upon the traditional authority within whose traditional land management area the customary land is situated but this subsection shall not apply to any customary land required for use as a public road or for the widening or diversion thereof, for such land shall be acquired for that purpose in accordance with the Public Roads Act.

Acquisition
of unallocated
customary
land for
public utility

Cap. 69:02

(2) Whenever any unallocated customary land is required for temporary use for a public utility, such use not being in the opinion of the Minister likely to necessitate occupation for a period in excess of seven years, the Minister 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.

(3) On the expiry of the period mentioned in subsection (2), the Minister may authorize such temporary use and occupation for a further period of three years.

(4) 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 within two months of the date of the publication of such notice in the *Gazette*.

(5) For the purposes of this section “public utility” means a 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.

18. A person who, by reason of—

(a) any acquisition made under section 17(1); or

(b) the temporary use and occupation of customary land under section 17 (2) or (3),

Compensation
to
individuals
for loss,
damage or
disturbance

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.

Conversion of
customary land
to registered
land
Cap. 58:01

19. 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.

20. A 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 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 K500,000 and to imprisonment for three years, and, in the case of a continuing offence, to a further fine of K5,000 in respect of every day during which the offence continues.

PART V—PRIVATE LAND

Interest in
land which
the Minister
may grant

21.—(1) The Minister may, upon application by any person in a prescribed manner, grant or allocate leasehold or customary estate to such person on such terms and conditions as the Minister considers appropriate.

(2) For avoidance of doubt, the Minister shall not grant freehold title:

Cap. 22:01

Provided that the exemption under section 85 of the Local Government Act, on rates payable or levied in respect of assessable property owned by diplomatic missions, shall apply to land granted to diplomatic missions.

Minister or
local
government
authority
may accept
surrenders

22. 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.

Minister
or local
government
authority may
relieve from
liability to
perform
covenants, etc.

23. 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.

Implied
covenants in
leases

24.—(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, but any

such implied covenant may, in the Minister's or the local government authority's discretion, be expressly exempted 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, 2016.

Act No. ... of
2016

25. 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, 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 writing to the lessee or by re-entry on any part of the demised premises in the name of the whole:

Power of
re-entry by
Minister or
local
government
authority

Provided that the Minister shall serve a on every creditor of the lessee to enable the creditor to make representations.

26.—(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—

Exceptions
and
reservations

(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,

Cap. 61:01

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, but 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.

Cap. 61:01

(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.

Revision of
rent

27.—(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, however 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 to be prescribed by the Minister, by notice published in the *Gazette*.

28. 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

29.—(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 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 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 30, the revised rental shall become payable as from the date specified.

30.—(1) If a lessee notifies the Minister or the local government authority of his intention to terminate his lease under section 29, 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.

31. If a lessee surrenders his lease in accordance with section 30, 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.

Compensation for improvements on surrender

32. 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

Acceptance of rent not to waive breach of covenant

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

33. An authorized officer may distrain for any rent due in respect of any land granted, leased or otherwise disposed of under this Act or any written law.

Service of
notices

34.—(1) Subject to subsection (2), 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.

(2) A notice served under subsection (1) shall be deemed to have been effected on the recipient seven days from the date of posting the notice to the recipient's address.

Fees

35.—(1) The Minister or local government authority may prescribe fees payable in respect of any matters provided under this Act.

(2) The Minister or the local government authority may, in any special case, by notice published in the *Gazette*, revise any such fee.

Prior written
consent of the
Minister or
local
government
authority
before sale,
lease, etc., of
private land

36.—(1) A person shall not sell or otherwise to convey, lease, transfer or assign any private land shall, without prior written consent of the Minister or a local government authority to sell, convey, lease, transfer or assign the land.

(2) The Minister of the local government authority shall grant or withhold consent within thirty days of receipt of the written request from the person who intends to intended sell the land.

(3) A person who acts, or attempts to act, in contravention of subsection (1) commits an offence and shall, upon conviction, be liable to a fine of K1,000,000 and to imprisonment for twelve 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 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, except that this paragraph 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.

37.—(1) 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 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

(2) Without prejudice to subsection (1), where, at the time of transaction, the existing interest in the private land concerned is for an estate greater than fifty years, a grant of private land may be made extending up to the entire remaining estate.

38.—(1) Without prejudice to the requirements of section 37 or any other provision of this Act, a person shall not 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 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:

Provided that the government valuer appointed by the Minister shall be at liberty to verify the advertised purchase price prior to the sale;

(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) Where there is a difference between the value of the private land reached by the seller, on one hand, and the valuer appointed by

the Minister under subsection (1)(a), on the other hand, either party may refer the difference for final resolution by the Land Economy Board.

(3) 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.

(4) Where there is evidence to show that the registration referred to under subsection (3) has been made in contravention of subsection (1), the Minister shall cancel the registration and avoid the transfer of title in the private land, by giving notice of such cancellation to the parties involved.

Non-develop-
ment of
freehold land

39. Prior to the expiry of the three year period referred to in section 9(2), where a holder of private land under freehold title has not developed the land or has not shown or effected his intention to develop the land or dispose of it, within two years from the date the holder has been registered, the Minister may, without prejudice to any other powers conferred on him by this Act or any other written law-

(a) by written notice sent by prepaid registered mail to the person concerned addressed to his registered or his last known address, demand voluntary surrender of the land by that person to the Government within a period of ninety 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

(ii) consult with the Minister responsible for the physical planning for the exercise of the powers under section 64 of the Physical Planning Act, 2016.

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2016

Gifts of private
land between
non-citizens.

40. No title to private land shall pass by way of gift *inter vivos* as between persons who are not citizens of Malawi.

PART VI—USER OF LAND

Minister's
power to
regulate,
manage or
control the
use of land

41.—(1) Subject to this Act, the Minister may, from time to time, by order published in the *Gazette*, or by regulations made under section 47, 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.

(2) The Minister shall, before exercising any powers granted under subsection(1), consult with and have regard to the views of the Minister for the time being responsible for the administration of the Physical Planning Act, 2016.

Act No. ... of
2016

(3) 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.

(4) The Minister may make or give different orders, regulations, directions or instructions in respect of different categories of land.

(5) A 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 K500,000 and imprisonment for six months and for any continuing offence a fine of K5000 per day; and

(b) in the case of a legal person, to a fine of K1,000,000 and a reasonable estimate of the cost of restoring the land to be assessed by experts in a relevant discipline, and, for any continuing offence, the directors, manager or any person concerned in the management of its affairs shall be liable to imprisonment for twelve months.

(6) If a 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 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.

42. Any authorized officer may at any reasonable time enter upon any land to which section 41 (1) applies for the purpose of ensuring that this Part is being complied with.

Powers of
entry on land

43. A person who obstructs or impedes another person lawfully exercising any powers or performing any functions or duties conferred or imposed upon him or under this Part, shall, upon conviction, be liable—

Obstruction
and
penalties

(a) in the case of a natural person, to a fine of K500,000 and imprisonment for six months; and

(b) in the case of a legal person, to a fine of K500,000.

Vesting of
land after
termination
of right to
occupy

44. Where, by virtue of section 42, 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-

(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 any written law, revert in the Republic as public land;

(b) if it is held by such person under a lease, license or other disposition of private land, revert in the person entitled to the land on the termination of the lease, license or interest created by such other disposition; or

(c) in any other case, become vested in the Republic as public land.

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

Summons for
trespass,
encroachment
or unlawful
occupation

45.—(1) Where a person—

(a) trespasses or encroaches upon any public land or any private land other than a customary estate; or

(b) is deemed under this Act to be in unlawful use or occupation of any such land,

a magistrate having jurisdiction in the area where such land is situated may, upon a sworn complaint being made by a person who claims to have lawful title to the land, issue a summons to the alleged trespasser, encroacher, or unlawful user or occupier, (hereinafter referred to as the "defendant") requiring him to attend at the court of that magistrate to answer such complaint.

(2) Upon hearing of the summons, the magistrate court, if satisfied that the defendant has trespassed or encroached upon the land, or is deemed to be in an unlawful use or occupation thereof, shall make an order requiring the defendant, his family or other dependents, if any, to vacate the land within seven days, or such other longer period as the magistrate shall determine.

(3) If the defendant fails to comply with the order made by the magistrate court, 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 court.

(4) 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 court 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.

(5) 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.

46. 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. 3:02

PART VIII—MISCELLANEOUS

47. The Minister may make regulations for the better carrying into effect of the provisions of the Act.

Regulations

48. 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

49. 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

50.—(1) The Minister may, by notice published in the *Gazette*, delegate 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.

Delegation

(2) Any authorized officer delegated with powers and duties under subsection (1) shall, in the exercise of his powers to allocate land for leases or grant leases under section 12 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.

Repeal and
savings
Cap. 57:01

51.—(1) The Land Act is hereby repealed.

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

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

(b) may be replaced, amended, revoked or repealed by subsidiary legislation 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.

Savings with
respect to
mining and
oil exploration
and production
Cap. 61:01
Cap. 61:02

52. Nothing in this Act shall prejudice the grant or issue, under the Mines and Minerals Act or the Petroleum (Exploration and Production) Act, of any licence or permit, as the case may be, or the exercise of rights conferred on the holder of any such licence or permit or any claim by the Acts.

OBJECTS AND REASONS

The object of this Bill is to make provision for land administration and management in Malawi and for all matters incidental and connected thereto, as well as the repeal of the Land Act (Cap. 57:01).

KALEKENI KAPHALE
Attorney General

PHYSICAL PLANNING BILL, 2016

MEMORANDUM

This Bill seeks to provide for all matters connected to physical planning in Malawi. The Bill makes provision for orderly and progressive development of land both in urban and rural areas. It also makes provision for the granting of permits to develop land and such other powers of control and use of land.

The Bill establishes two institutions.

Firstly, the Bill establishes the Physical Planning Council. This Council will, among other things, be responsible for resolving disputes on matters of physical planning, advising Government on broad planning policies, and planning standards, and advising Government on the National Physical Development Plan.

Secondly, the Bill establishes the Physical Planners Board. It has been observed that the profession of physical planning is not regulated in this country. The Physical Planners Board will be tasked with the responsibility of regulating the activities, conduct and qualification of physical planners in Malawi.

The Bill also makes provision for the establishment of planning committees, and it further stipulates guidelines for the composition of such committees so that only relevant and critical persons are members. It also recommends that such a planning committee must be appointed by a local government authority of an area.

This Bill therefore comprises one comprehensive statute and encompasses matters of physical planning, urban and rural development, and land use management. This is in tandem with the National Land Policy which advocates for the making of the whole of Malawi, a planning area..

The Bill further repeals the Town and Country Planning Act, (Cap 23:01).

PHYSICAL PLANNING BILL, 2016

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2. Interpretation
3. Application

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4. Commissioner for Physical Planning
5. Duties of the Commissioner
6. Delegation of powers by the Minister
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PART III—PLANNING AUTHORITIES

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9. Composition of the Council
10. Disqualification of a member
11. Vacancies
12. Chairperson and Vice Chairperson of the Council
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SCHEDULES

A BILL*entitled*

An Act to make provision for physical planning and the orderly and progressive development of land in both urban and rural areas; 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 regulation of physical planners and for matters connected therewith and incidental thereto.

ENACTED by the Parliament of Malawi as follows—

PART I—PRELIMINARY

1. This Act may be cited as the Physical Planning Act, 2016 and shall come into force on such a date appointed by the Minister by notice published in the *Gazette*. Short title and
commence-
ment

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

“accelerated development area order” means an order made, and referred to as such, under section 66;

“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;

“authorized officer” means a person authorized under section 5(2) to carry out the functions of the Commissioner;

“Board” means the Physical Planners Board established under section 73;

“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 or structure is situated;

“building operations” includes any road or other works, preliminary or incidental to the erection of a building;

“building preservation order” means an order made, and referred to as such, under section 65;

“Commissioner” means the Commissioner for Physical Planning appointed under section 4;

“Council” means the Physical Planning Council established under section 8;

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2016

“customary land committee” bears the meaning ascribed to it in the Customary Land Act, 2016;

“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 46;

“district physical development plan” means a plan referred to under section 29;

“enforcement notice” means a notice served under section 55;

“exempted development” means development exempted by section 43 from the operation of this Act;

“improvement area order” means an order made under section 63;

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2016

“land” bears the meaning ascribed to it in the Land Act, 2016;

“land development control area” means an area declared as such by the Minister by order published in the *Gazette* under Part VI;

“land development control area order” means an order made, and referred to as such, under Part VI;

Cap 22:01

“local government authority” bears the same meaning as ascribed to it under the Local Government Act;

Cap 22:01

“local government area” bears the same meaning as ascribed to it under the Local Government Act;

“local physical development plan” means a plan referred to in *Division IV of Part IV*;

“National Physical Development Plan” means a plan referred to in *Division II of Part IV*;

“notice of revocation” means a notice served under section 51 of this Act, revoking a grant of development permission to the extent set out in the notice;

“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 19;

“Registrar” means the Registrar appointed under section 82;

“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 59;

“subdivision” means the division of any piece of land for the purpose of parting with possession of, or disposing of any portion thereof, either by way of lease or sale or for the erection of a building upon any portion;

“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 meaning ascribed to it under the Land Act, 2016; and

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2016

“vacant land development area order” means an order made and referred to as such, under Part VI.

3. This Act shall apply to all types of physical development by any person or Government agency. Application

PART II—ADMINISTRATION

4. There shall be a Commissioner for Physical Planning who shall be a public officer. Commissioner for Physical Planning

5.—(1) The Commissioner shall be responsible for—

Duties of the
Commissioner

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

(b) preparing and reviewing the National Physical Development Plan;

(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) ensuring that local government authorities are properly executing physical development control and preservation orders; and

(g) carrying out any other duties pursuant to the objectives of this Act.

(2) The Commissioner may, in writing, delegate 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.

Delegation of powers by the Minister

6. 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.

Indemnity of public officers

7. 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.

PART III—PLANNING AUTHORITIES

Establishment of the Physical Planning Council

8. There is hereby established a Council to be known as the Physical Planning Council which shall have powers and functions as are conferred upon it by this Act.

Composition of the Council

9.—(1) The Minister shall appoint members of the Council on recommendation from various relevant professional bodies regulating the professions listed in subsection (2) (a) and on recommendation from various relevant civil society organizations in the areas listed in subsection (2) (b).

(2) The Council shall consist of the following persons—

(a) a representative of a professional body with experience in, or knowledge of, the following areas—

(i) physical planning;

(ii) land management and valuation;

(iii) economics;

(iv) law;

(v) civil engineering;

(vi) land surveying;

- (vii) quantity surveying; and
- (viii) architecture;

(b) a representative of civil society with experience in, or knowledge of, the following areas—

- (i) social welfare and community services;
- (ii) environment; and
- (iii) rural development; and

(c) *ex-officio* members consisting of—

- (i) a 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 relevant Government ministries and departments.

10. A person who—

- (a) is an undischarged bankrupt;
- (b) has been convicted of an offence under this Act;
- (c) has, within the preceding three years, been convicted of an offence under any written law and sentenced to a term of imprisonment; or
- (d) has been convicted within the preceding six years of an offence involving dishonesty or fraud,

Disqualifica-
tion of a
member

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

11.—(1) The office of a member of the Council, not being an *ex-officio* member, shall become vacant where—

Vacancies

- (a) the member dies;
- (b) the member resigns; and
- (c) in accordance with section 10, 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 9.

(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

12.—(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.

Proceedings of
the Council

13.—(1) The Chairperson or in his absence the Vice Chairperson shall preside at all meetings of the Council.

(2) In the absence of both the Chairperson and the Vice Chairperson, the members present shall elect a member amongst themselves to preside over that meeting.

(3) The quorum at any meeting of the Council shall be constituted by a simple majority.

(4) 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.

(5) The Council shall regulate its own procedure.

Tenure of office
of members of
the Council

14. A member of the Council who is not an *ex-officio* member shall hold office for a term of three years which may be renewable once.

Functions of
the Council

15. The functions of the Council shall be to—

(a) hear and determine appeals lodged by a person aggrieved by the decision or action of any planning committee or the Commissioner;

(b) hear and determine physical planning matters referred to it by any planning committee;

(c) advise the Minister on broad planning policies, planning standards and social and economic liability of any proposed subdivision of urban or rural land;

(d) 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) advise the Minister on the approval of the National Physical Development Plan;

(f) approve applications for development permission of national interest referred to it by any planning committee or the Commissioner; and

(g) do all such acts, matters and things as may be necessary for fulfilling the objectives of the Council.

16. The funds of the Council shall consist of—

Funds of the Council

(a) such sums of money as may be appropriated by Parliament to the Council for its functions; and

(b) such money or other property as may be payable to or vest in the Council pursuant to this or any other written law or pursuant to any trust or gift.

17. The Commissioner shall appoint a public officer who shall serve as secretary to the Council.

Secretary to the Council

18. 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

19.—(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.

Appointment of planning committees

(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 local government area.

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

Composition and procedure of a planning committee

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

(i) the Director of Planning and Development who shall be the Secretary;

(ii) the Urban Physical Planning Officer;

(iii) the Urban Lands Officer;

(iv) the Urban Engineer;

(v) the Urban Surveyor;

(vi) the Urban Water Engineer;

- (vii) the Urban Architect;
- (viii) the Director of Social Services of the Council;
- (ix) the Urban Environmental Officer;
- (x) a member of the Urban Development Committee;
- (xi) a member of the Urban Works Committee; and
- (xii) a registered Physical Planner in private practice duly appointed by the Commissioner on recommendation from the Physical Planners Board; and

(b) in the case of a District Council—

(i) the District Physical Planning Officer who shall be the Secretary;

(ii) the District Lands Officer;

(iii) the District Engineer;

(iv) the District Surveyor;

(v) the District Agricultural Officer;

(vi) the District Education Officer;

(vii) the District Community Development Officer;

(viii) the District Public Health Officer;

(ix) the District Environmental Officer;

(x) a member of the District Development Committee;

(xi) a member of the District Works Committee; and

(xii) a registered physical planner in private practice duly appointed by the Commissioner on recommendation from the Physical Planners Board.

(2) The members shall, at the first meeting of the planning committee, elect a chairperson from amongst their number.

(3) The planning committee shall elect its chairperson by secret ballot and by a simple majority.

(4) An *ex-officio* member of the planning committee shall not be eligible to be elected as chairperson.

(5) A planning committee may regulate its own procedure.

Powers of
Minister to
make inquiries
and seek advice

21. The Minister may, where he considers appropriate, cause inquiries to be made, seek advice or consult any authority, person or body of persons, on any matter concerning physical planning in Malawi.

PART IV—PLANS AND PLAN MAKING

Division I—General

22.—(1) The responsible authority shall furnish the Minister with such particulars and information as the Minister 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 a 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; or

(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.

23.—(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.

Consideration of plans other than a National Physical Development Plan

(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 Commissioner together with all such representations and comments and any recommendations made on them by the responsible authority for his consideration.

Division II—National Physical Development Plan

National
Physical
Development
Plan

24. 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

25.—(1) The purpose of a National Physical Development Plan shall be to—

(a) provide a spatial framework for the coordination and implementation of programmes and projects of development;

(b) 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) provide guidelines for the development of services and facilities to desirable standards.

Responsibility
for the
preparation
and review of
the National
Physical
Development
Plan

26.—(1) The Commissioner shall be responsible for the preparation and review of the National Physical Development Plan.

(2) The Commissioner may delegate the responsibility for the preparation of a physical development plan to a registered physical development planner in private practice.

(3) The Minister may require such information policies and proposals as he may consider appropriate, to be included in a National Physical Development Plan at the stage of its preparation.

Approval of
National
Physical
Development
Plan

27.—(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.

(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 considers appropriate.

(5) The Minister may approve the Plan with or without amendments or reject it in whole or in part.

28. 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 a
National
Physical
Development
Plan

Division III—District physical development plans

29.—(1) A district physical development plan shall include—

District
physical
development
plans

(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 Commissioner 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.

(3) 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.

30. The purpose of a district physical development plan shall be to—

Purpose of
a district
physical
development
plan

(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

31.—(1) A local government 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 government authority may delegate the responsibility for the preparation of a district physical development plan to a registered physical planner in private practice.

(3) A local Government authority shall submit its district physical development plan to the Commissioner for approval.

Status of
district
physical
development
plans

32.—(1) Where a district physical development plan has been approved by the Commissioner in respect of the whole or part thereof, all plans, programmes and projects of development proposed for the district or that part for which have been approved and all 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

Types of local
physical
development
plans

33.—(1) The following are the types of local physical development plans that may be prepared—

(a) an urban structure plan, which shall be a land use 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 plan 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.

34.—(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

(f) guidance on land uses for purposes of making decisions on applications for development permission.

(2) The Commissioner may require any other matter to be included in any local physical development plan.

35.—(1) A local government authority shall be responsible for the preparation of local physical development plans for the area within its jurisdiction.

Responsibili-
ty for
preparation of
local physical
development
plans

(2) A local government authority may delegate the responsibility for the preparation of such plan to a registered physical planner in private practice.

(3) The Commissioner may require any other matter to be included in any local physical development plan.

Approval of
local physical
development
plans

36.—(1) When a local physical development plan has been prepared it shall be submitted to the Commissioner for approval.

(2) The Commissioner may approve the plan with or without amendments or reject it in whole or in part within sixty days of its submission.

Status of local
physical
development
plans

37.—(1) When a local physical development plan has been approved by the Commissioner—

(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;

(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

(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.

(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 all 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.

Deposit of
approved plan

38.—(1) Where 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 that plan shall be deposited in such places within the area and its substance 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.

Review,
modification
and
amendments
of plans

39.—(1) The Minister or Commissioner, as the case may be, may require the responsible authority to review, or prepare amendments and modifications to, any plan or any part thereof.

(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 the changing circumstances of the area to which the plan relates.

(3) The provisions of sections 22 and 23 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 21.

(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.

40.—(1) The Minister 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.

41.—(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. Conflict
between plans

(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.

Preparation
and use of
plans by the
Commissioner

42. Nothing in this Part shall be construed as to prevent the preparation and use by the Commissioner of plans within an area under the jurisdiction of a local government authority.

PART V—DEVELOPMENT CONTROL AND ENFORCEMENT

Division I—Development Control

Public land
which is
unallocated
customary
land
Act. No. ... of
2016

43.—(1) Nothing in this Part shall affect the mandate of a customary land committee under the Customary Land Act, 2016 to authorize the use and occupation of any customary land within its area in accordance with the Customary Land Act, 2016, but where such land is in a land development control 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 exempted development under this Part 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, however, 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;

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leg.

(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;

(d) the erection of houses and other buildings in accordance with a simple layout plan prepared by or approved by a planning committee for use by a Traditional Authority and customary land committees in the authorization of the use and occupation of customary land in a Traditional Land Management Area; and

(e) the use of customary land in accordance with a layout plan approved by a planning committee for use by a Traditional Authority and customary 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 customary land committees to whose Traditional Land Management Area the plan relates.

(4) Where a simple layout plan under subsection 2(d) has been given to a Traditional Authority, all customary 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) Where a customary land committee fails to comply with a layout plan in its authorization of use and occupation of customary land for the erection of any building, the Minister may, where the customary land is within a land development control area and after consultation with a planning committee, declare such land to be Government land under the Land Act, 2016.

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of 2016

(6) 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 most effective, for the purpose of bringing it to the attention of any Traditional Authority and relevant customary land committees having authority over that customary land.

44.—(1) The types and classes of development set out in the *First Schedule* hereto shall, to the extent provided, be permitted development under this Act and shall be exempt from development permission under this Act.

Permitted
development

(2) The Minister may by order published in the *Gazette*, amend the First Schedule.

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

Types of
permitted
development

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

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

(c) a subdivision permission for the subdivision of land within a subdivision control area.

46.—(1) An application for development permission under this Part shall be—

Application
for
development
permission

(a) 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) in a prescribed form; and
 - (c) accompanied by a prescribed fee payable to Government, and shall include such other information as the local government authority or the Commissioner may require.
- (2) An application for development permission shall be submitted by a registered physical planner being an agent of the applicant.
- (3) Where the development permission applied for is of national interest, the local government authority or the Commissioner, as the case may be, shall forward the application to the Council for approval.
- (4) 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—
- (a) publish details of his application at a time or times in a place or places and in a manner specified in the notice; or
 - (b) give details of his application to the persons and authorities and in a manner specified in the notice.
- (5) Pursuant to the notice given in subsection (3), a person with an interest in the published notice may make a submission outlining his interest in the publication, to the responsible authority.
- (6) In making its decision on an application for a grant of development permission, the responsible authority shall take into account any submission made under subsection (4).
- (7) 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.
- (8) The responsible authority shall, within thirty days of the receipt of an application for development permission, inform the applicant of the decision on the application, or where no decision has been taken, of the progress on the application, and the likely date by which a decision will be taken.

Power to obtain
information
concerning
applications

47.—(1) The responsible authority, may by written notice served on the applicant for the grant of a development permission require the applicant to—

(a) furnish the responsible authority, 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) permit the responsible authority 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 the responsible authority 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 days.

(4) Where the responsible authority does not make a decision within sixty days, the applicant may appeal to the Council.

48.—(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.

49.—(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

Consultation
in relation to
applications

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 Director of Environmental Affairs; and
- (e) 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 fourteen 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 fourteen days have elapsed since such information or advice was requested whichever is the sooner.

Consideration
of applications

50.—(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 46;
- (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.

51.—(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 years of the date of the grant of that development permission.

Time and
completion of
development

(2) A responsible authority may by written notice served on a person who has commenced but has not within two 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 subsections (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

52.—(1) A responsible authority may, or 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.

Development
permission
personal to
applicant

53.—(1) A grant of development permission shall be 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.

(2) Where—

(a) 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

(b) 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 44 to 51 of this Act shall apply to any application for a transfer of a development permission made under this section.

Division II—Enforcement

54.—(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, 2016, the Commissioner for Lands shall not sign, seal, execute or perfect any grant or lease of public land for the purpose of development to which this Part applies, unless the application for the grant or lease of public land is accompanied with a copy of a grant of development

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permission or a certificate from the responsible authority that such grant is not required for the development.

Enforcement
notice

55.—(1) A responsible authority may, in any case where it considers that unauthorized development has taken place, by written 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 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 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.

Reconsideration
of enforcement
notice

56.—(1) At any time within thirty 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.

(2) Where a written request in accordance with subsection (1) has been made to the responsible authority, the enforcement notice shall

continue to be in effect until varied, suspended or withdrawn under subsection (3) and, if varied, shall continue to be in effect in accordance with the variation.

(3) A responsible authority may, after reconsidering the case, either of its 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 days of the receipt of the request, reconsider the enforcement notice and notify in writing the person who made the request of its 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.

57.—(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
- (j) 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

58.—(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 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

59.—(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 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 56, in respect of enforcement notices.

60.—(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 47 to 52 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 55 (1) or stop notice under section 59 (1) on that person until after not less than thirty 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.

61.—(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 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 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

62.—(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 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 any development thereon, contained in this Act.

Improvement
area order

63.—(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—

- (a) explain to them the purpose of the proposed order;
- (b) obtain any representations on the proposed order; and
- (c) report the substance of the meeting to the Minister.

(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) Where 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 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.

Vacant land
development
order

64.—(1) A vacant land development order may be made in respect of any land in any area where the Minister, after making such inquiries as he considers appropriate, is satisfied that a person entitled to the land has either through absence from the country or otherwise unreasonably failed to develop the land.

Act No. ... of
2016

(2) Where a vacant land development order has been made, the Minister shall have the power to lease that land in accordance with the Land Act, 2016, as if it were public land being leased.

(3) Land within a vacant land development area shall not 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) A 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).

65.—(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) A person shall not 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 51 (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 Lands Acquisition Act.

Cap 58:04

66.—(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) require the responsible authority to prepare a plan for the area and expedite the consideration of any applications for development permission;

(b) ensure the rapid processing of applications for plots of land within the area;

(c) ensure a coordinated approach to development within the area; and

(d) 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 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 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

67.—(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 Lands Acquisition Act.

Occasions
when
compensation
payable for
planning
actions

68.—(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 Act as if it were a compulsory acquisition of land; Cap 58:04

(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; or

(d) reject the purchase notice on the grounds that the land is not capable of yielding any reasonable beneficial use.

Assessment of
compensation

69.—(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 doing so would in his opinion cause injustice, set off against—

(a) any compensation payable;

(b) any increase in the value of the land which is the subject of the claim for compensation; or

(c) 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 the Minister or a responsible authority under this section may apply to the High Court for judicial review within thirty days from the date of the assessment.

Claim for
compensation

70.—(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 months from the date on which the action or decision which gave 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

71.—(1) A person—

Appeals

(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 local government 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

(e) 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 to the Council, within thirty days of the receipt of the notice or decision to be appealed against.

(3) The Minister may prescribe rules of procedure to be followed in the making and hearing of appeals under this Part.

72.—(1) The Council shall, in relation to the hearing of any appeal under section 71, have the powers—

Powers of
Council on
appeal

(a) 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 44 to 59; and

(b) 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 days from the date of the decision of the Council.

PART IX—PHYSICAL PLANNERS BOARD

Physical
Planners Board

73.—(1) There is hereby established a Physical Planners 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 persons in the service of a local government authority;
 - (ii) two persons in private practice who are registered as physical planners; and
 - (iii) a member of the teaching staff at an accredited university or other institutions of higher education offering physical planning as a course; and
- (c) the following *ex-officio* members—
 - (i) the Commissioner or his designated representative;
 - (ii) the Surveyor General or his designated representative; and
 - (iii) the Commissioner for Lands or his designated representative.

Chairperson of
the Board

74.—(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 days from the date of appointment of the Board and attended by all members.

(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 by the Board for good cause and upon the unanimous decision of the rest of the members.

75.—(1) A member of the Board shall hold office for a term of three 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.

(3) A member of the Board, other than the chairperson, may resign by giving his notice in writing to the chairperson.

76. Any person who—

Disqualifica-
tion

(a) is an undischarged bankrupt;

(b) has been convicted, at any time, of an offence under this Act;

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

(d) has been convicted, within the preceding 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.

77.—(1) The office of a member of the Board, not being an *ex-officio* member, shall become vacant where—

Vacancies

(a) the member dies;

(b) the member resigns; or

(c) in accordance with section 76, 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 73.

(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.

78.—(1) The Board shall meet at least four times every year in ordinary meeting but the chairperson shall, upon a request in writing by at least three members of the Board, at any time convene an extraordinary meeting of the Board.

Proceedings
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

a quorum shall elect one of their number to perform the functions of the chairperson at that meeting.

(3) The Registrar or any officer of the Board as the Registrar may designate in that behalf shall take and keep all minutes of proceedings of every meeting of the Board or any committee of the Board and such minutes 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

79.—(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 presided over 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 Board.

(3) The Board or the chairperson may, at any time, direct a 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.

Invited persons

80.—(1) The Board or any of its committees may, invite any person to attend any meeting of the Board or 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.

(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.

81.—(1) The Board shall be the sole authority for registering and regulating 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 register and grant certificates of registration to physical planners;

(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 99;

(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 84;

(k) from time to time, to prescribe principles of conduct and ethics to be followed by physical planners in the course of their practice ;

(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.

Secretariat of
the Board

82.—(1) There shall be a Secretariat of the Board which shall consist of a Registrar and such other staff of the Board subordinate to the Registrar.

(2) The Board shall appoint, on such terms as it may determine, the Registrar who shall be the Chief Executive Officer of the Board, and shall in addition perform such duties as the Board may assign to his office.

(3) The Board may appoint, on such terms and conditions as it may determine, such other staff of the Board, as it considers necessary for the performance of its functions and to assist the Registrar in discharging his duties.

Duties of the
Registrar

83. Subject to the general and special directions of the Board, the Registrar shall—

(a) be responsible to the Board for the day to day management and supervision of the Secretariat;

(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

84.—(1) A 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 physical planning from a university which is recognized 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 years post qualification practical experience in physical planning.

Registration
as a physical
planner

85.—(1) Where the Board is satisfied of the suitability of an application under section 84, 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.

Registration in
exceptional
circumstances

86.—(1) Where a person satisfies the Board that—

(a) he is qualified under section 84;

(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.

(2) An application for registration under this section shall be—

(a) made in the prescribed form;

(b) accompanied by a prescribed fee; and

(c) 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.

87.—(1) The Board may discipline a registered physical planner where—

Power of the Board to deal with offences by registered physical planners

(a) he is convicted of an offence involving dishonesty or moral turpitude;

(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 the registration of the registered physical planner be suspended for such period as the Board may specify;

(c) direct that the name of the registered physical planner be removed from the register; or

(d) impose on the registered physical planner a penalty not exceeding one hundred thousand Kwacha (K100,000.00).

88. The Board may direct the removal of a name of a physical planner from the register where such physical planner—

Removal of name from register

(a) dies;

(b) fails, within a period of six months from the date of an inquiry sent by the Registrar by prepaid registered letter to the 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 guilty of an act or omission prejudicial to the public interest or misconduct under this Act by the Board; or

(h) is convicted of an offence under this Act.

(2) The Registrar shall inform any registered physical planner whose name has been removed from the register of his 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

89. 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 in the register; or

(b) the suspension of the registration of that physical planner be terminated.

Corrections of
register

90. 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
the Board

91. A 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 apply to the High Court for judicial review, within twenty one days after receiving the written decision of the Board.

Effect of
Registration

92.—(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.

(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 five hundred thousand

Kwacha (K500,000) and to imprisonment for one year.

93.—(1) A person shall not practice as a physical planner unless he is registered under this Act. Non-registered persons not to practice as physical planners

(2) A person who contravenes this section commits an offence and shall, upon conviction, be liable to a fine of five hundred thousand Kwacha (K500,000) and to imprisonment for one year.

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

(a) registration fees, subscription fees, examination fees and administrative penalties; 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.

PART X—MISCELLANEOUS

95.—(1) For the purpose of this Act, the Commissioner or an authorized officer may, at all reasonable times, enter any land or building to— Powers of entry

(a) inspect or survey the land or building for the purpose of preparing a plan;

(b) determine whether any unauthorized development is being or has been undertaken on the land or in the building;

(c) 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) assess compensation under Part VIII; and

(e) 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 less than seven days notice of his intention to enter; and

(b) in the case of 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 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

96.—(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

97.—(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

98. 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 a 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 connection 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—

(a) in the case of a natural person, to a fine of five hundred thousand Kwacha (K500,000.00) and to imprisonment for a term of one year and in the case of a continuing offence, a further fine of two thousand Kwacha (K2,000.00) for each day during which the offence continues after conviction; and

(b) in the case of a legal person, to a fine of two million Kwacha (K2,000,000.00).

99.—(1) The Minister may make regulations for the better 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 form of plans;

(b) the form of applications for a grant of development permission;

(c) the form 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) the 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, Board and planning committees;
- (i) procedures to be followed by applicant when applying for registration as physical planners 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;
- (n) the forms of purchase notices; and
- (o) any other matter which may be prescribed.

(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.

Cap. 1:01

(3) Notwithstanding section 21(e) of the General interpretation Act, the regulations made pursuant to this section may create offences in respect of any contravention to the regulations, and may for any such contravention, prescribe penalties up to two million Kwacha (K2,000,000.00) and to imprisonment for a period of up to one year.

Repeal and
savings
Cap. 23:01

100.—(1) The Town and Country Planning Act is 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.

(3) Anything done in accordance with the Act repealed under subsection (1) prior to the commencement of this Act, including enforcement notices, orders and development permissions and which may be done in accordance with the provisions of this Act, shall be deemed to have been done in accordance with this Act.

(4) At the commencement of this Act, a responsible authority shall notify any developer who shall be found not to be in compliance with the provisions of this Act, to comply with the Act within a period that the responsible authority may specify.

FIRST SCHEDULE

(s.44)

PERMITTED DEVELOPMENT

The following developments shall, subject to such conditions as may be imposed by a responsible authority be permitted developments within any land 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 36 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 the space which may be occupied by all such advertisements on any external face of any such building shall not exceed thirty square centimetres for each centimetre length of the building frontage of that face and provided 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, but 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;
- Cap.69:01 (h) the display of any road 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 an 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.

SECOND SCHEDULE

(s. 68(3))

CALCULATION OF COMPENSATION

Compensation payable in respect of cases referred to in section 68 (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.

OBJECTS AND REASONS

The object of this Bill is to make provision for physical planning, the orderly and progressive development of land in both urban and rural areas, and to preserve and improve land amenities.

KALEKENI KAPHALE
Attorney General

FORESTRY (AMENDMENT) BILL, 2016

MEMORANDUM

The Bill proposes to amend sections 2, 26, 30 and 32 of the Forestry Act (Cap 63:01). The Bill seeks to give effect of the recommendations of the Law Commission in its report on the review of land related matters.

The Bill seeks to—

- (a) include the definition of a customary land committee as defined in the Customary Land Act, 2016 and the definition of local government authority as defined in the Local Government Act Cap 22:01;
- (b) provide that the Minister responsible for Physical Planning be included on the list of those to be consulted before an area is declared a protected forest area under section 26;
- (c) empower customary land committees in the demarcation of village forest areas under section 30; and
- (d) make reference to local government authorities instead of District Councils under section 32.

FORESTRY (AMENDMENT) BILL, 2016

ARRANGEMENT OF SECTIONS

SECTION

1. Short title and commencement
2. Amendment of s.2 of Cap. 63:01
3. Amendment of s.26 of the principal Act
4. Amendment of s.30 of the principal Act
5. Amendment of s.32 of the principal Act

A BILL

*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 2016 and shall come into force on a date appointed by the Minister by notice published in the <i>Gazette</i> . | Short title and commencement |
| 2. Section 2 of the Forestry Act (hereinafter referred to as the “principal Act”) is amended by inserting therein, in the correct alphabetical order, the following definitions—
“customary land committee” bears the meaning ascribed to it in the Customary Land Act, 2016.
“local government authority” bears the meaning ascribed to it in the Local Government Act. | Amendment of s.2 to Cap. 63:01

Act No...of 2016

Cap 22:01 |
| 3. Section 26 of the principal Act is amended in subsection (1) by inserting the words “the Minister responsible for physical | Amendment of s.26 of the principal Act |

B. No. 4

planning," immediately after the words "the Minister responsible for land matters".

Amendment of s.30 of the principal Act 4. Section 30 of the principal Act is amended by deleting the words "any village headman" and inserting the words "a customary land committee".

Amendment of s.32 of the principal Act 5. Section 32 of the principal Act is amended in subsection (2) paragraph (c) by deleting the words "District Councils" and inserting the words "local government authorities".

OBJECTS AND REASONS

The object of this Bill is to amend sections 2, 26, 30 and 32 of the Forestry Act (Cap 63:01) as part of the exercise of harmonizing land related laws in Malawi. The amendment decentralizes forest management by empowering customary land committees and local government authority to manage forest areas.

KALEKENI KAPHALE
Attorney General

**MALAWI HOUSING CORPORATION (AMENDMENT) (NO.2)
BILL, 2016**

MEMORANDUM

This Bill seeks to repeal section 12 of the Malawi Housing Corporation Act (Cap. 32:02) and replace it with a new section. The amendment is a result of the Law Commission's recommendation to introduce a new regime that will regulate the administration and management of customary land under the Customary Land Act, 2016:

The new section will apply where the Corporation requires customary land for the purposes of carrying into effect any of the provisions of the Act. It will empower the Corporation to apply for a grant, lease or other disposition of that customary land in accordance with the Customary Land Act, 2016 and not the Land Act, 2016.

**MALAWI HOUSING CORPORATION (AMENDMENT) (NO.2)
BILL, 2016**

ARRANGEMENT OF SECTIONS

SECTION

1. Short title and commencement
2. Replacement of s.12 to Cap. 32:02

A BILL

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) (No. 2) Act, 2016 and shall come into force on a date appointed by the Minister by notice published in the *Gazette*.

Short title and
commence-
ment

2. Section 12 of the Malawi Housing Corporation Act is repealed and replaced as follows—

Replacement
of s. 12 of
Cap. 32:02

“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 a grant, lease or other disposition in accordance with the Customary Land Act, 2016.”

Act No. ... of
2016

OBJECTS AND REASONS

The principle objective of this Bill is to repeal section 12 of the Malawi Housing Corporation Act (Cap. 32:02) by replacing it with a new section which provides that if the Malawi Housing Corporation requires any customary land for the purposes of carrying into effect any of the provisions of the Malawi Housing Corporation Act, it may apply for a grant, lease or other disposition of

B. No. 5

that customary land in accordance with the Customary Land Act, 2016 and not the Land Act, 2016.

KALEKENI KAPHALE
Attorney General

LAND SURVEY BILL, 2016

MEMORANDUM

The purpose of this Bill is to provide for land surveys and related matters, and repeal the Land Survey Act (Cap 59:03). The Bill has seventy six clauses and is divided into the following eight Parts—

Part 1 of the Bill contains preliminary provisions that include a commencement date and definitions of terms used in the Bill.

Part II of the Bill provides for administrative matters and includes the establishment of the office of the Surveyor General and other officer subordinate to this office. The Surveyor General shall, among other duties, be responsible for carrying out surveys on public land for grant, lease or easement purposes, supervise the survey of land for registration purposes, keep records of surveys, and supervise the preparation of maps and other geographical information.

Part III of the Bill provides for the establishment of the Land Surveyors Registration Board, including its functions, powers and composition. The Board shall be responsible for licensing and registration of surveyors in Malawi and among other functions, approve the minimum qualifications and acceptable training for surveyors and exercise disciplinary control over surveyors in Malawi. The names of surveyors registered by the Board shall be published annually in the *Gazette*. Members of the Board shall serve on a part time basis, and hold office for a term of three years and be eligible for appointment for a further term. The funds of the Board comprise such sums as may be appropriated by Parliament or other moneys that may be payable to the Board. The Board may invest funds not immediately required for its use. The Board shall submit an annual report of its activities to the Minister, who shall lay the report before the National Assembly. There shall be a Registrar of the Board who shall be the Chief Executive of the Board responsible for the day to day management of the Board and supervision of other staff of the Board.

Part IV of the Bill contains provisions relating to the licensing, registration and duties of surveyors, including provisions regarding qualifications for

licensed surveyors. A person shall not engage in the practice of land survey unless he is registered as a licensed surveyor. Applications for registration shall be made to the Board in the prescribed manner. A person shall have at least a degree in land surveying with one year practical field study and pass examinations on familiarity with the Act, set up by the Board, to qualify for registration as a surveyor. The categories of surveyors include licensed surveyors, graduate surveyors and surveying technicians. The Board shall keep registers of all categories of licensed surveyors which shall be under the custody of the Registrar. Information in the registers may be corrected by the Registrar with approval of the Board at any time, or on application by an interested party. Surveyors registered shall carry out surveys in a manner that will ensure accuracy of the surveys, deposit of all survey plans and data with the Surveyor General and ensure that all surveying instruments in his use are accurate and standardized. The survey plans and related survey data shall be property of the Government. The Surveyor General may condemn defective or inaccurate measuring instruments. Persons with complaints against surveyors may lodge complaints with the Board and the Board may, where a licensed surveyor who engages in a misconduct, apply disciplinary measures including suspension. Any person who intends to carry out an aerial or topographic survey shall notify the Surveyor General for approval.

Part V of the Bill makes provision for survey marks and boundaries, survey of traditional land management areas and townships, including sites of trigonometrical stations and fundamental benchmarks reserved to Government and preservation and maintenance of survey marks. Survey marks shall be preserved and maintained by owners of land on which the survey marks are situate. Offences include alteration, removal, disturbance, willful damage of survey marks which attracts a penalty of K500,000.00 and twelve months imprisonment. A person whose property is damaged as a result of the commission of an offence may be compensated for the damage incurred.

Part VI of the Bill provides for the establishment of the Malawi Geographic Information Council which shall perform functions related to spatial data. The Council shall be the sole authority for the registration of spatial data and be an advisory body on policies and technical issues relating to spatial data development, update, management and transfer. The Council shall comprise seven members including the Surveyor General and other persons nominated by users and producers of geographical information who shall be appointed by the Minister. The members of the Council shall hold office for a term of three years and be eligible for reappointment for a further term. The funds of the Council shall comprise funds appropriated by Parliament and such other sums of money that may be payable to the Council. The Council may invest surplus funds and shall have powers to borrow funds for the implementation of its functions.

Part VII of the Bill contains miscellaneous provisions. The Government shall not be liable for incorrect surveys done in good faith. The Board and the

Council shall not be liable for acts done in good faith in exercise of their respective functions. The Surveyor General shall have powers to enter land and use material thereon for purposes of carrying out functions provided by the Bill. The Minister may make regulations prescribing anything that may be prescribed under the Bill. The Part also repeals the Land Survey Act (Cap 59:03) and saves subsidiary legislation made thereunder.

LAND SURVEY BILL, 2016

ARRANGEMENT OF SECTIONS

SECTION

PART I—PRELIMINARY

1. Short title and commencement
2. Interpretation

PART II—ADMINISTRATION

3. Surveyor General and other officers
4. Duties and functions of the Surveyor General

PART III—LAND SURVEYORS REGISTRATION BOARD

5. Establishment of the Land Surveyors Registration Board
6. Powers and functions of the Board
7. Composition of the Board
8. Chairperson and vice Chairperson of the Board
9. Disqualification of members of the Board
10. Tenure of office of members of the Board
11. Vacancies and filling of vacancies in the Board
12. Meetings of the Board
13. Committees of the Board
14. Allowances of members of the Board and its committees
15. Invited persons
16. Board not liable for acts done in good faith
17. Funds of the Board
18. Investment of surplus sums of money
19. Borrowing powers of the Board
20. Financial year of the Board
21. Books of accounts, audits and reports

SECTION

- 22. Annual report of the Board
- 23. Registrar
- 24. Duties of the Registrar
- 25. Other staff
- 26. Attendance of meetings by staff

PART IV—LICENSING, REGISTRATION AND DUTIES OF SURVEYORS

- 27. Application for a license and registration
- 28. Qualifications of licensed surveyors
- 29. Licensing and registration of surveyors
- 30. Qualifications for registration as a licensed surveyor
- 31. Qualifications for registration as a graduate surveyor
- 32. Qualifications for registration of a surveying technician
- 33. Certificate of registration
- 34. Registers
- 35. Corrections of registers
- 36. Duties of a surveyor
- 37. Surveying instruments to be accurate
- 38. Complaints against a surveyor
- 39. Misconduct and disciplinary measures
- 40. Persons other than surveyors forbidden to carry out land surveys
- 41. Survey plans to be deposited with the Surveyor General and to be property of the Government
- 42. Aerial and topographic survey and topographic mapping
- 43. Approval of surveys by the Surveyor General
- 44. Surveyor General may cancel approval of a plan

PART V—SURVEY MARKS AND BOUNDARIES

- 45. Survey marks and boundaries lawfully established
- 46. Survey of Traditional Land Management Areas etc.
- 47. Sites of trigonometrical stations and fundamental bench-marks reserved to Government
- 48. Blasting of rock within area reserved for a fundamental bench-mark prohibited
- 49. No posts or fences to be placed near survey mark
- 50. Preservation and maintenance of survey marks
- 51. Surveyor General may call for restoration of survey mark
- 52. Offences, penalties and compensation
- 53. Authority to remove survey marks

SECTION

PART VI—MALAWI GEOGRAPHIC INFORMATION COUNCIL

54. Establishment of the Malawi Geographic Information Council
55. Functions and powers of the Council
56. Composition of the Council
57. Secretary to the Council
58. Nature of service and tenure of members of the Council
59. Disqualifications
60. Vacancies and filling of vacancies
61. Meetings of the Council
62. Committees of the Council
63. Allowances of members of the Council and its committees
64. Invited persons
65. Funds of the Council
66. Investment of surplus funds
67. Borrowing powers of the Council
68. Financial year
69. Accounts and reports
70. Annual report

PART VII—MISCELLANEOUS PROVISIONS

71. Government not liable for incorrect survey
72. Board not liable for acts done in good faith
73. Plans and records, etc., *prima facie* evidence of contents therein
74. Power of Surveyor General to enter upon land and to use material thereon
75. Regulations
76. Repeals and savings

A BILL

entitled

An Act to provide 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 to provide for matters connected therewith or incidental thereto.

ENACTED by the Parliament of Malawi as follows—

PART I—PRELIMINARY

Short title and commencement 1. This Act may be cited as the Land Survey Act, 2016, and shall come into operation on a date appointed by the Minister by notice published in the *Gazette*.

Interpretation 2. In this Act, unless the context otherwise requires—
 “Board” means the Land Surveyors Registration Board established under section 4;

“cadastre” means a methodically arranged public inventory of data on properties within a district based on a survey of the property 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, and includes 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 Department of Surveys 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;

Act No. ...of 2016 “land” has the meaning ascribed to the word in the Land Act, 2016;

“licensed surveyor” means a land surveyor duly licensed as a surveyor under this Act;

“owner” includes—

(a) 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

(b) any agent who receives rents or profits on behalf of such person;

“parcel” means a piece of land with defined boundaries to which a property right of a person applies;

“plan” includes any aerial photograph where such aerial photograph is approved by the Surveyor General as suitable for survey purposes, chart, diagram, and map or any photographic

copy of any such aerial photograph, chart, diagram, or map;

“registrar” means the Registrar of the Board appointed pursuant to section 23;

“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;

“survey mark” means any trigonometrical station, continuous operating reference 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; and

“surveyor” means a Government surveyor, licensed surveyor, surveying technician or graduate surveyor who is duly registered under this Act.

PART II—ADMINISTRATION

3.—(1) There shall be established in the public service, an office of the Surveyor General which shall be responsible for the administration of this Act. Surveyor General and other officers

(2) A person shall not be appointed as Surveyor General unless that person is licensed and registered as a surveyor under this Act.

(3) There shall be appointed such other officers, who are qualified surveyors, employed in the Surveyor General's office who may, if so authorized by the Surveyor General, either generally or specifically, 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.

4. Subject to the general or special directions of the Minister, the Surveyor General shall— Duties and functions of the Surveyor General

(a) carry out surveys on public land and any land on behalf of Government, for grant, lease and easement purposes;

(b) supervise and control the survey and charting of land for purposes of registration;

(c) take charge and preserve all records appertaining to the survey of parcels of land;

(d) direct and supervise the conduct of trigonometric, topographic and level surveys and such geodetic and geophysical operations as the Minister may direct;

(e) take charge of and preserve all records of all surveys and operations carried out under paragraph (c);

(f) supervise the preparation of maps and other geo-information products as the Minister may direct from data derived from any surveys and the amendment of such maps and geo-information products; and

(g) generally administer the provisions of this Act.

PART III—LAND SURVEYORS REGISTRATION BOARD

Establishment
of Land
Surveyors
Registration
Board

5. There is hereby established a Land Surveyors Registration Board (hereinafter referred to as the "Board") which shall—

(a) be a body corporate with perpetual succession and common seal;

(b) capable of suing and being sued in its corporate name; and

(c) have power to do and perform such things and acts which a body corporate may by law do or perform.

Powers and
functions of the
Board

6.—(1) The Board shall be the sole authority for licensing and registering surveyors in Malawi and in that regard, shall have the following powers and functions—

(a) approve minimum qualifications and training acceptable for registration as a surveyor;

(b) approve, in consultation with the National Council for Higher Education, educational and training institutions within and outside Malawi as institutions with recognized training in land surveying;

(c) set up and conduct such tests, examinations and trial surveys as may be required for purposes of this Act;

(d) appoint such examiners and invigilators as may be necessary for the purpose of administering any examinations under this Act;

(e) grant surveyor licences;

(f) keep and maintain a register of licensed surveyors, surveying technicians and graduate surveyors;

(g) advise the Minister on policies relating to technical and professional matters within the scope of this Act including fees and other charges to be prescribed under this Act;

(h) determine other methods, apart from examinations, to be used in assessing the suitability of an applicant for licensing and registration under this Act;

(i) prescribe principles of conduct and ethics to be followed by surveyors in the course of their practice as surveyors;

(j) exercise disciplinary control over surveyors and to prescribe and impose disciplinary measures against such surveyors, if necessary;

(k) establish such committees of the Board as may be considered necessary for implementation of this Act; and

(l) do all such acts, matters and things as may be necessary for fulfilling the functions of the Board.

(2) The Board shall cause to be published in the *Gazette*, once every year, a list of surveyors registered under this Act.

7. The Board shall consist of the following seven members—

Composition
of the Board

(a) the following persons nominated by the Surveyors Institute of Malawi and appointed by the Minister—

(i) five licensed surveyors, two of which shall be from private practice; and

(ii) one member, being a land surveyor and a full member of the Surveyors Institute of Malawi of good standing in the Institute; and

(b) the Surveyor General or his designated representative, *ex-officio*.

8.—(1) Members of the Board shall elect a Chairperson and vice Chairperson from among their number at the first meeting of the Board which shall be 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.

(3) The Minister shall cause a notice of every appointment to the Board to be published in the *Gazette*.

9. A person shall not qualify to be appointed, or shall be disqualified from continuing to hold office, as a member of the Board if that person—

Disqualificati
on of
members of
the Board

(a) is an undischarged bankrupt;

(b) has been convicted, at any time, of an offence under this Act;

(c) has, within the preceding three years, been convicted of an offence under any written law and sentenced to imprisonment of not less than six months; or

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

Tenure and
nature of office
of members of
the Board

10.—(1) Members of the Board shall serve on a part time basis.

(2) A member of the Board, not being an *ex officio* member, shall hold office for a period of three years and shall be eligible for re-appointment for one further term.

Vacancies
and filling of
vacancies in
the Board

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

(a) the member dies;

(b) the member resigns by notice in writing to the Minister; or

(c) he becomes disqualified from continuing to hold office pursuant to section 9.

(2) A vacancy in the Board shall be filled by a person appointed in accordance with section 7.

Meetings of
the Board

12.—(1) The Board shall meet at least once every year:

Provided that the Chairperson may, at any time and shall, upon application in writing by at least three members of the Board, convene a meeting of the Board.

(2) The Chairperson shall preside at meetings of the Board, but in the absence of the Chairperson, the vice Chairperson shall preside and perform the functions of the Chairperson at any such meeting.

(3) Where both the Chairperson and vice Chairperson are absent at a meeting, the members of the Board present shall elect a member from among their number to preside at that meeting.

(4) The Registrar or such other person as the Registrar may designate, shall take and keep minutes of proceedings of every meeting of the Board or its committees.

(5) A simple majority of the members of the Board shall constitute a quorum at a meeting of the Board.

(4) Decisions of the Board on any matter shall be made by a vote of the majority of members of the Board present and voting thereon, but in the event of an equality of votes, the Chairperson or the member presiding shall have a casting vote in addition to his deliberative vote.

(5) Subject to the provisions of this Act, the Board shall have power to regulate its own procedure at meetings.

13.—(1) The Board may—

Committees
of the Board

(a) establish such number of committees as it considers necessary for the performance of its functions and the exercise of its powers under this Act; and

(b) without prejudice to the exercise of any of its powers under this Act, assign any of those functions to such committees.

(2) A committee of the Board shall comprise a member of the board who shall be the chairperson of the committee, and other persons who may include persons who are not members of the Board but who are not members of staff of the secretariat of the Board.

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

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

(5) A committee shall have power to determine its own procedure at meetings.

14. A member of the Board or member of a committee of the Board shall be paid such allowances to cover expenses reasonably incurred by the member in respect of attendance of meetings of the Board or committee, as may be prescribed by the Minister.

Allowances
of members
of the Board
and its
committees

15.—(1) The Board or any committee of the Board, may invite any person to attend any of its meetings in order to assist or advise the Board or the committee in respect of a matter under consideration at the meeting.

Invited
persons

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

16. The Board or any member of a committee of the Board, shall not be liable for any act or omission done in good faith in the exercise of the functions and duties of the Board under this Act.

Board not
liable for acts
done in good
faith

17. The funds and property of the Board shall consist of such sums of money—

Funds of the
Board

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

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

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

Investment of
surplus sums
of money
Cap. 37:02

18. The Board may, in accordance with the Public Finance Management Act, invest any sums which are not immediately required for immediate use by the Board.

Borrowing
powers of the
Board
Cap. 37:02
Cap. 37:01

19. Subject to the provisions of the Public Finance Management Act and the Public Audit Act, the Board may borrow such sums of money as it may require to discharge its functions under this Act.

Financial year
of the Board

20. The financial year of the Board shall be the financial year of the Government.

Books of
accounts,
audits and
reports

21.—(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) Expenses incurred in relation to and incidental to, annual audits shall be paid out of the funds of the Board.

Annual report
of the Board

22.—(1) The Board shall, as soon as it is practicable, but not later than three months after the end of each financial year, submit to the Minister, an annual report of its work and operations.

(2) The annual report shall include a balance sheet, an income and expenditure account and the annual report of auditors.

(3) The Minister shall lay the annual report before Parliament.

Registrar

23.—(1) The Board shall, with the approval of the Minister, appoint a Registrar who shall be a registered surveyor, on such terms and conditions as the Board shall determine.

(2) The Registrar shall be the chief executive officer of the Board and shall act as a secretary to 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 a public officer in the Department of Surveys as a secretary to the Board.

24. 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 of staff of the Board. Duties of the Registrar

25.—(1) The Board shall appoint 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 shall serve on such terms and conditions as the Board shall determine.

(3) The Board may, by directions in writing, delegate to the Registrar, the appointment of its staff in such junior ranks as the Board shall specify, and the Registrar shall report to the Board every appointment made pursuant to this section.

26.—(1) The Registrar or any other officer of the Board as the Registrar may, with the approval of the Board designate, may attend meetings of the Board or any committee of the Board to record minutes of the meetings and take part in the deliberations thereof subject to the directions of the Board or the committee of the Board, but shall not be entitled to vote. Attendance of meetings by staff

(2) Where at any meeting, the deliberations of the Board or committee of the Board concern the Registrar or any staff of the Board designated to attend the meeting, the Board or the committee of the Board, as the case may be, may exclude the Registrar or such officer from attending the meeting.

PART IV—LICENSING, REGISTRATION AND DUTIES OF SURVEYORS

27.—(1) Save as otherwise provided in this Act, a person shall not engage in the practice of land surveying in Malawi, or hold himself out as being entitled so to do, unless he is registered as a licensed surveyor under this Act. Application for a licence and registration

(2) 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.

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

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

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

(b) produces a certificate that he has served at least two years 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 as the Minister list by notice published in the *Gazette*:

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

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

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

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

(2) In addition to having any of the requirements under subsection (1), the person shall—

(a) furnish testimonials or other evidence of good character to the satisfaction of the Board; and

(b) satisfy the Board through an 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.

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

(4) 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)(b), that person may be granted exemption from such portion of the period of service as the Board may determine:

Provided that the exemption shall not—

(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 applicant's first year of study.

(5) A certificate indicating proof of service as an assistant to a licensed surveyor under subsection (1)(b) shall be in the form prescribed by the Board, and shall be accompanied by an annexure in the form of a diary containing detailed particulars of all survey work carried out, signed by the licensed surveyor who supervised the applicant, and the applicant, as an employee.

29. A person who qualifies to be registered as a licensed surveyor under this Act and satisfies the conditions under section 28 shall, upon application to the Board, be entitled to be issued with a licence.

Licensing and
registration of
surveyors

30. A person may be registered as a licensed surveyor, if he—

(a) holds a qualification approved by the Board or has satisfied the Board that he holds a qualification which, in the opinion of the Board, is a sufficient guarantee of the possession by him of the requisite knowledge and skill for the efficient practice of the work of a surveyor under section 28;

Qualifications
for
registration
as a licensed
surveyor

(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 in the field of land surveying; and

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

31.—(1) A person may be registered as a graduate surveyor under this Act if he has, as a result of an examination obtained from an approved institution, a degree or other qualification which the Board considers acceptable for registration.

Qualifications
for
registration
as a graduate
surveyor

(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.

32.—(1) A person may be registered 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 in consultation with the National Council for Higher Education, which the Board

Qualifications
for
registration as
a surveying
technician

considers acceptable for registration; and

(b) received practical training as a technician for a period of not less than two years from an institution approved by the Board.

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

(a) is a fit and proper person to be registered; and

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

Certificate of
registration

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

Registers

34.—(1) The Board shall keep and maintain separate registers of all—

(a) licensed surveyors;

(b) graduate surveyors; and

(c) surveying technicians.

(2) A register shall contain—

(a) names, addresses and qualifications of registered surveyors;

(b) the respective dates of their registration; and

(c) any other particulars which may be prescribed.

(3) 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.

(4) A register shall, at all reasonable times, be open to inspection by—

(a) public officers in the course of duty;

(b) a person registered under this Act; and

(c) members of the public upon payment of a prescribed fee.

Corrections
of registers

35.—(1) The Registrar may, on his own or on application by an interested party, 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 the relevant register, the name of a registered surveyor who is deceased 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 written consent of the person concerned, remove from any Register, the name of any person who has ceased to practise land surveying in Malawi.

(4) The Registrar shall reinstate in the register, a name removed from any Register pursuant to subsection (3), on the request in writing by the person concerned.

36.—(1) A surveyor licensed under this Act shall—

Duties of a
surveyor

(a) carry out every survey undertaken by him in accordance with this Act in a manner that will ensure the accuracy of the survey and any plan, survey data, or other record of the survey;

(b) deposit with the Surveyor General, for filing in the Surveyor General's office, plans, survey data and records of survey he undertakes;

(c) be responsible 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 an incorrect survey.

(2) The Surveyor General may direct a surveyor, within ninety days, to correct any inaccuracy or error in any plan, survey data or other record where such error or inaccuracy exceeds the limit of error allowable under this Act to the execution of surveys and the preparation of plans, survey data and other records.

37.—(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 are properly standardized.

Surveying
instruments to
be accurate

(2) A surveyor shall, when called upon by the Surveyor General, produce to the Surveyor General, a surveying instrument or distance measuring instrument which he uses for testing, as the Surveyor General may consider appropriate.

(3) Where the Surveyor General finds that the surveying instrument or distance measuring instrument produced pursuant to subsection (2) is defective or inaccurate, he may order the surveyor to remedy the defect or to rectify the inaccuracy and the surveyor shall not use the instrument until the defect is remedied or the inaccuracy rectified, as the case may be.

(4) If the Surveyor General is of the opinion that a surveying instrument or distance measuring instrument is in such a condition as to render it impossible to remedy a defect or rectify an

inaccuracy, he may condemn the instrument.

(5) Where the Surveyor General condemns a surveying instrument or distance measuring instrument under this Act,—

(a) the surveying instrument or distance measuring instrument shall no longer be used for carrying out of any survey; or

(b) he may, by order in writing, specify the class of work for which the surveying instrument or distance measuring instrument may be used.

Complaints
against a
surveyor

38.—(1) A person with a complaint against a surveyor shall submit a signed written complaint to the Board.

(2) The Board may, where the complaint made under subsection (1) is justified, inquire into the complaint and shall fix a time and place for the purpose of holding an inquiry.

(3) The Board shall, at least thirty days prior to the date fixed for the inquiry, send a notice in writing through registered post to the last known address of the surveyor against whom the complaint is made.

(4) A surveyor against whom the complaint is made, shall be entitled to be heard in his defence, either personally or may be represented by a legal practitioner at an inquiry made pursuant to this section.

(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 are made, may apply to the High Court for judicial review within thirty days of the date of the findings and decision of the Board.

Misconduct
and
disciplinary
measures

39.—(1) The Board may invoke disciplinary measures on a registered surveyor, where, after an inquiry, it is proven to the satisfaction of the Board, that the registered surveyor has carried out any following acts of misconduct—

(a) signed a plan, survey data or other record of a survey relating to any land in respect of which he has not carried out, personally supervised the whole of such survey, or examined and satisfied himself of the correctness of the entries in any field book, calculations, working plans or other records, which may have been made by any another person;

(b) signed a plan which he knows or ought to have known by the exercise of reasonable care, to be incorrect;

(c) performed through negligence or incompetence, an

incorrect survey;

(d) made an entry in a field book or other document which purports to have been made as a result of actual observation or measurement in a field when in actual fact, was not so made;

(e) supplied erroneous information to the Board in connection with a survey mark or boundary which he knows or ought to have known by the exercise of reasonable care, to be 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 convicted of an offence involving moral turpitude, or 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 under section 28(1)(d) suspended or cancelled; or

(i) failed to obey any order or instruction given to him by the Board under this Act or to carry out any duty imposed upon him under this Act.

(2) The Board may invoke the following disciplinary measures for a misconduct under subsection (1)—

(a) caution the surveyor in writing;

(b) suspend the surveyor from practicing as a surveyor for any period not exceeding two years and enter the reasons for such suspension in the register; or

(c) remove the name of such surveyor from the relevant register.

(3) In addition to the measure imposed on 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—

(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, the surveyor shall surrender his license to the Board and the Board may retain the license either until the license expires, or until the name of the surveyor is reinstated in the register or until the expiry or termination of the period of his suspension, as the case may be.

(6) The Board shall cause to be published in the *Gazette*, a notice 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 carry out land surveys

40.—(1) A person, other than a licensed surveyor registered under this Act, shall not—

- (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 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 whatsoever, as a surveyor or perform any of the functions of a surveyor.

(2) Any person who contravenes subsection (1) commits an offence and shall, on conviction, be liable to a fine of K500,000 and to imprisonment for six months.

Survey plans to be deposited with the Surveyor General and to be property of the Government

41.—(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 regulations or rules made hereunder, shall become the property of the Government.

(2) No plan, survey data or other record deposited in the office of the Surveyor General pursuant to this Act shall be altered or amended in any way, without the written permission of the Surveyor General.

(3) Any person who alters or amends in any way, a plan, survey data or other record deposited in accordance with this section without the written permission of the Surveyor General, commits an offence and shall on conviction, be liable to a fine of K500,000 and to imprisonment for six months.

Aerial and topographic survey and topographic mapping

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

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

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

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

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

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

(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 on conviction, be liable—

(a) in case of a natural person, a fine of K500,00 and to imprisonment for twelve months; and

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

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

44.—(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 a survey, the Surveyor General may cancel his approval of the plan and in every such case, cause to be made and deposited, a corrected plan. Surveyor General may cancel approval of a plan

(2) Upon the cancellation of any plan in accordance with subsection (1), the Surveyor General shall in writing, notify—

(a) the owner of the land to which the plan relates;

(b) the traditional authority in case of land under a Traditional Land Management Area;

(c) the Minister in case of public or government land; or

(b) a land registrar, if any.

PART V—SURVEY MARKS AND BOUNDARIES

Survey marks
and boundaries
lawfully
established

45.—(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 where the position of the mark is in agreement with—

(a) the position established in another survey and where a plan based on the survey has been approved by the Surveyor General for the purpose of establishing the survey mark; or

(b) an order of the High Court.

Survey of
Traditional
Land
Management
Areas etc

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

Sites of
trigonometrical
stations and
fundamental
bench-marks
reserved to
Government

47. Every trigonometrical station or fundamental benchmark shall be deemed to comprise the land within five metres of the center mark of the station or within five metres of the center of the pillar of a fundamental benchmark as the case may be, together with a right-of-way to and from the trigonometric station or fundamental benchmark 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 fund
amental
bench-mark
prohibited

48.—(1) A person shall not carry out rock blasting operations within a radius of one hundred metres from any fundamental benchmark without prior written authorization of the Surveyor General.

(2) Any person who contravenes this section commits an offence and shall on conviction, be liable—

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

(b) in the case of a legal person, to a fine of one million Kwacha.

No posts or
fences to be
placed near
survey mark

49. A person shall not place a fence, post, fence anchor or any other erection, or make any excavation, within half a metre of a plot boundary beacon and ten metres from other survey marks, except

with the prior written authorization of the Surveyor General.

50.—(1) Every owner of land shall preserve and maintain in proper order and repair, and in a manner as may be prescribed, every survey mark fixed, placed or set on his land for the purpose of denoting the boundary of the land, whether the survey mark was erected for the purpose of, or in connection with, a survey of that land under this Act or any other written law, or for the purpose of, or in connection with, a survey of a land contiguous to the land on which the survey mark is situate.

Preservation
and
maintenance
of survey
marks

(2) The owner of the land in subsection (1) shall immediately report to the Surveyor General when the survey mark cannot be found is obliterated, removed, or requires repair.

(3) Any person who fails to comply with subsection (1) and (2) commits an offence and shall, on conviction, be liable—

(a) in the case of a natural person, to a fine of K500,000 and to imprisonment for twelve months; and

(b) in the case of legal person, a fine of K1,000,000.

51.—(1) Where a survey mark has not been maintained in proper order or repair, or has been removed or obliterated, the Surveyor General may serve on the owner of the land upon which the survey mark is situate, a notice in writing either by delivering the notice to the owner, or by transmitting the notice as a registered letter calling upon the owner to restore the survey mark to the condition prescribed for that survey mark or to cause the survey mark to be replaced in the prescribed manner, as the case may be.

Surveyor
General may
call upon
owner of land
to restore
survey mark

(2) Where a survey mark is to be restored or re-erected, the restoration or re-erection shall be carried out by a surveyor.

(3) The restoration or re erection of the survey mark shall be done within six weeks of the delivery of the notice in subsection (1).

(4) Where a survey mark is not restored or re-erected within six weeks of the date from which the notice in subsection (1) was delivered or posted, the Surveyor General may cause the survey mark to be restored or re-erected 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.

(5) The Surveyor General may recover from every such owner in subsection (4), all costs incurred by the Surveyor General:

Provided that—

(a) where the owner of the land or the servant or agent of the owner, has damaged, removed or obliterated the survey mark, the entire cost of the repair, restoration or erection of such survey mark shall be borne by the owner of the land; or

(b) where a survey mark which requires restoration or re-erection or any part of the survey mark is on public land or on land contiguous to public land, the Surveyor General may exercise his powers under this subsection without waiting for the expiration of six weeks.

(6) 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.

(7) Any destruction or damage to any survey mark in a local government area may be made good by the Surveyor General at the expense of the local government authority responsible for that area.

Offences,
penalties and
compensation

52.—(1) Any person who, without lawful excuse,—

(a) alters, moves, disturbs or willfully damages or destroys a survey mark, whether permanent or temporary, erected for the purpose of, or in connection with, a survey operation, whether the survey mark is on his own land or not, and whether the survey mark is above or below the surface of the land; or

(b) fixes, places or sets up a survey mark without 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 a piece of land or to deceive any person as to the position of a boundary line,

commits an offence and shall, on conviction, be liable to a fine of five hundred thousand Kwacha and to imprisonment for twelve 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.

(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.

Cap. 7:01

(4) A person whose property is destroyed or otherwise incurs damages as a result of an offence committed under this section may be awarded compensation.

(5) For the purpose of awarding compensation in respect of any damage caused by the commission of an offence under subsection (1)—

(a) a survey mark in connection with which the offence was committed shall be deemed to be the property of any person on whose land or on a boundary of the land the survey mark was situate; and

(b) a fundamental benchmark, reference mark or trigonometrical station, in connection with which the offence was committed, shall be deemed to be the property of the Surveyor General.

53.—(1) Any person who, for the purpose of carrying out any work which he may lawfully perform, intends to remove or disturb any survey mark, shall apply to the Surveyor General for authority to effect the removal or disturbance.

Authority to
remove
survey marks

(2) The Surveyor General may authorize the removal or disturbance of the survey mark and may, at the expense of the applicant, employ a surveyor or an authorized officer to personally effect or supervise the removal or disturbance and subsequent replacement of the survey mark or the erection or placing of another survey mark to indicate the position of the removed or disturbed survey mark, in such manner as the Surveyor General may direct.

PART VI—MALAWI GEOGRAPHIC INFORMATION COUNCIL

54. There is hereby established the Malawi Geographic Information Council (hereinafter referred to as the "Council") which shall—

Establishment
of the Malawi
Geographic
Information
Council

(a) be a body corporate with perpetual succession and common seal;

(b) capable of suing and being sued in its corporate name; and

(c) have power to do and perform such things and acts which a body corporate may by law do or perform.

55. The Council shall be the sole authority for licensing and registering spatial data in Malawi and shall have functions and powers to—

Functions
and powers of
the Council

(a) establish and enforce national spatial data standards;

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

(c) enter into, agreements memoranda of understanding and grant data user licenses for spatial data transfer;

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

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

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

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

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

(i) perform any other function for implementation of this Act.

Composition
of the Council

56. The Council shall comprise the following seven members—

(a) the Surveyor General, *ex officio* who shall be the Chairperson of the Council; and

(b) the following members appointed by the Minister on recommendation from bodies comprising users and producers of geographic information—

(i) two members representing the user and producer community from the public sector;

(ii) two members representing the user and producer community from the private sector;

(iii) one member from a public university; and

(iv) one member nominated by the Surveyors Institute of Malawi.

Secretary to
the Council

57. The Surveyor General shall appoint a public officer from the Department of Surveys to serve as secretary to the Council.

Nature of
service and
tenure of a
members of
the Council

58.—(1) A member of the Council shall not, by virtue only of his appointment to the Council, be deemed to be an officer in the public service or hold a public office.

(2) A member of the Council or committee of the Council shall serve on part time basis.

(3) A member of the Council, other than the Surveyor General, or member of a committee of the Council shall hold office for a term of three years and shall be eligible for re-appointment for only one further term immediately following the expired term.

Disqualifica-
tions

59. A person shall not qualify to be appointed, or continue to hold office as a member of the Council, where that person—

- (a) is an undischarged bankrupt; or
- (b) has been convicted of an offence under this Act.

60.—(1) The office of a member of the Council, other than the Surveyor General, shall become vacant where—

Vacancies and
filling of
vacancies

- (a) the member dies;
- (b) the member resigns by notice in writing to the Minister; or
- (c) if, in accordance with section 59, 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 56.

61.—(1) The Council shall meet at least once every year: Provided that the Chairperson may, on his own motion, and shall, on application in writing by at least three members of the Council, convene a meeting of the Council at any time.

Meetings of
the Council

(2) The Chairperson shall preside at meetings of the Council, but in the absence of the Chairperson, the members of the Council present and forming quorum shall elect one of their number to preside over the 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 of the Council and shall be subject to confirmation by the Council or committee, as the case may be, at a subsequent meeting.

(4) Five members of the Council shall constitute a quorum at any meeting of the Council.

(5) Decisions of the Council on any matter shall be made by the vote of a simple majority of members of the council present and voting thereon.

(6) In the event of an equality of votes, the member presiding at the meeting shall have a casting vote in addition to his deliberative vote.

(6) Subject to this Act, the Council shall have power to regulate its own procedure at meetings.

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

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 may, at any time, direct the 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 inform the Council of its activities and conduct its proceedings in a manner directed by the Council.

(5) Subject to this Act and any general or special directions of the Council, every committee of the Council shall have power to determine its own procedure.

Allowances of
members of t
he Council and
its committees

63. A member of the Council shall be paid such allowances to cover expenses reasonably incurred by him in respect of attendance of meetings of the Council, as may be prescribed by the Minister.

Invited persons

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

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

Funds of the
Council

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

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

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

(c) such sums of money or other property, real or personal as may be payable to or vest in the Council by way of a donation or accrue to the Council from any trust.

Investment of
surplus funds
Cap 37: 02

66. Subject to the Public Finance Management Act, The Council may invest any sums which are not immediately required for its use in such manner as the Minister may approve.

Borrowing
powers of the
Council
Cap 37: 01
Cap 37: 02

67. Subject to the provisions of the Public Finance Management Act, and the Public Audit Act, the Council may borrow, such sums as it may require to fulfil its obligations or

discharge its functions under this Act.

68. The financial year of the Council shall be the financial year of the Government.

Financial year
of the
Council

69.—(1) The Council 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 Council.

Accounts and
reports

(2) The accounts of the Council shall be audited annually by professional auditors appointed by the Council.

(3) The expenses of any audit shall be paid out of funds of the Council.

70.—(1) The Council shall, as soon as it is practicable but not later than six months after the end of each financial year, submit to the Minister, an annual report of its work and operations.

Annual report

(2) The annual report shall include a balance sheet on income and expenditure account and annual report of auditors, shall be laid before Parliament by the Minister.

PART VII—MISCELLANEOUS PROVISIONS

71. The Surveyor General 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 the survey, work, any plans, survey data or other record appertaining thereto, has been approved by the Surveyor General.

Government
not liable for
incorrect
survey

72.—(1) The Board or a member of the Board shall not be liable for any act done in good faith in the exercise of functions and duties of the Board under this Act.

Board or
Council not
liable for
acts done in
good faith

(2) The Council or a member of the Council shall not be liable for any act done in good faith in exercise of the function and duties of the Council under this Act.

73. A survey plan, survey data or other record relating to the survey of any land, signed by a surveyor and approved by the Surveyor General, shall be admissible as *prima facie* evidence of the contents thereof in all courts and judicial proceedings.

Plans and
records, etc.,
prima facie
evidence of
contents
therein

Power of
Surveyor
General to enter
land and to use
material
thereon

74.—(1) The Surveyor General, a Government surveyor and any person generally or specially authorized by the Surveyor General in writing may, for the purpose of performing any duties under this Act or any other written law, may—

(a) enter any land with 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 a survey mark, whether permanent or temporary, upon the land entered;

(c) make use of any brushwood, stone, sand, gravel, clay or other materials of a like nature on which no work has been expended by the owner of the 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 trees, branches, underwood, growth or vegetation of any kind whatsoever, in the vicinity of a survey mark that may interfere with the functions of the 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 the land or in the case of land under Traditional Land Management Area, 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.

(3) The owner or occupant of the land which is entered shall be entitled to compensation for any avoidable damage caused to the building or to any other property belonging to the owner or occupier of the land which is entered.

(4) Any person who—

(a) in any manner whatsoever prevents, obstructs or impedes the exercise of any powers conferred by subsection (1); or

(b) 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 five hundred thousand Kwacha and to imprisonment for twelve months .

75.—(1) The Minister may make regulations for the purpose of implementing this Act generally, and, in particular on the following matters— Regulations

(a) the method of executing surveys and the information to be recorded in 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 connexion therewith;

(c) the degree of accuracy to be attained and the limit of error allowable in the execution of surveys and the preparation of plans, survey data and other records;

(d) the method in which surveys shall be based on existing, primary, secondary and tertiary triangulations;

(e) methods of surveying land, including general boundaries;

(f) plans, survey data and other records which are required to be deposited with the Surveyor General;

(g) 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) methods 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) methods of correcting any inaccuracy or error in any plan, survey data or any record of any survey;

(j) forms 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) material from which survey marks are to be constructed and the method of fixing, placing and setting up of the survey marks;

(l) units of measure to be used on any specified plans;

(m) 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*) 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*) fees, charges and expenses to be paid in respect of any plan, survey data, record or other document issued under this Act or in respect of any act done under this Act;

(*p*) fees, charges and expenses to be paid in respect of any act or matter performed or dealt with by any officer in the office of Surveyor General;

(*q*) control and conduct of trigonometrical, topographical and level surveys, and geodetic and geophysical operations that are required in Malawi;

(*r*) recording and preserving all information relating to surveys and operations executed under paragraph (*q*);

(*s*) preparation of maps from the data derived from surveys, and the compilation and revision of such maps from time to time as may be required;

(*t*) the construction, erection and maintenance of such control points as are necessary for trigonometrical, topographical and level surveys; and

(*i*) any other matter as considered necessary for implementation of this Act.

Cap 1:01

(2) Notwithstanding section 21(*e*) of the General Interpretation Act, the regulations made under this Act may provide for offences whose penalties do not exceed a fine of two hundred and fifty thousand kwacha and a term of imprisonment of not more than six months.

Repeal and
savings
Cap. 59:03

76.—(1) The Land Survey Act is hereby repealed.

(2) Any subsidiary legislation made under the repealed Act and 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.

(3) Any survey approvals, survey licences and survey marks and boundaries made, granted and lawfully established under the repealed Act, shall be valid and have effect as if they were made, granted and lawfully established under this Act.

OBJECTS AND REASONS

The object of this Bill is to provide 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 repeal of the Land Survey Act (Cap. 59:03).

KALEKENI KAPHALE
Attorney General

REGISTERED LAND (AMENDMENT) BILL, 2016

MEMORANDUM

This Bill seeks to amend the Registered Land Act, Cap 58:01, in order to align the Act with the Malawi National Land Policy in accordance with the recommendations of the Law Commission on the Review of the Land Related Laws. The Bill therefore incorporates provisions to provide for title registration throughout the country for all land categories, including customary estates. The Bill also takes into account the move to decentralize land management.

In accordance with the Land Policy, all land shall be subjected to registration for purposes of determination of ownership. Registration districts shall now be decentralized and reliance will no longer be placed on the Minister to declare registration districts. Among other things, land registers shall indicate the class of land that is registered.

In order to prevent the unwise disposition of customary land converted to private land, the Bill provides for that the consent of local lands committees be obtained in the dealings with customary land in place of the Local Lands Boards which the now repealed Local Lands Board Act provided for.

The age of majority for accessing private land has been reduced from twenty one to eighteen taking into account the fact that people in rural areas marry at a young age.

The Bill affords protection to beneficiaries of land held on trust and subjects land held on trust to any unregistered liabilities and such persons having claim on land shall be deemed to have notice of the trust.

The ownership of family land has been done away with in accordance with the Land Policy and sections of the Act have been repealed accordingly.

Public land shall not be acquired, nor easements or profits therein be acquired by prescription.

Fines for commission of offences, which were on the lower side, have been enhanced in order to take into account of the prevailing economic situation in Malawi

REGISTERED LAND (AMENDMENT) BILL, 2016

ARRANGEMENT OF SECTIONS

SECTION

1. Short title and commencement
2. Amendment of s.2 of 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

SECTION

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.144 of the principal Act

A BILL

entitled

An Act to amend the Registered Land Act.

ENACTED by the Parliament of Malawi as follows—

Short title and
commencement

1. This Act may be cited as the Registered Land (Amendment) Act, 2016, and shall come into operation on a date appointed by the Minister by notice published in the *Gazette*.

Amendment
of s. 2 to Cap.
58:01

2. Section 2 of the Registered Land Act (hereinafter referred to as the “principal Act”) is amended—

(a) by deleting the definition of the term “Allocation Officer” and “Allocation Record”;

(b) by deleting the definition of the word “court” and substituting therefor the following definition—

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

(c) by inserting the following new definition immediately after the definition of the word “court”—

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

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2016

(d) by deleting the definition of the words “to file” and substituting therefor the following—

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

(e) by deleting the definition of the word “land” and substituting therefor the following—

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2016

““land” has the meaning ascribed to it in the Land Act, 2016”;

(f) by inserting the following new definition of the term “land clerk” immediately after the definition of the word “land”—

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2016

““land clerk” has the meaning ascribed to that term in the Customary Land Act, 2016;”and

(g) by deleting the definition of the term “registration district” and substituting therefor the following—

B. No. 7

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

3. Section 4 of the principal Act is repealed.

Repeal of
s. 4 of the
principal Act

4. Section 10 of the principal Act is amended—

Amendment
of s. 10 of the
principal Act

(a) in subsection (1), by inserting, immediately after the word “lease”, the words “or customary estate”;

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

“(2) Each register shall show whether the land registered 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—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), by deleting—

Amendment
of s. 11 of the
principal Act

(a) the words “under section 27 of the Customary Land (Development) Act”; and

(b) the term “Allocation Officer” and substituting therefor the term “land clerk”.

6. Section 12 of the principal Act is amended by deleting subsection (3) and substituting therefor the following—

Amendment
of s. 12 of the
principal Act

“(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, has 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.”.

7. Section 15 of the principal Act is amended, by deleting the term “Director of Surveys” and substituting therefor the term “Surveyor General”, wherever the words appear in the section.

Amendment
of s. 15 of the
principal Act

8. Section 1 of the principal Act is amended—

Amendment
of s. 16 of the
principal Act

(a) by deleting the words “Director of Surveys” and substituting therefor the term “Surveyor General” wherever the

words appear in the section; and

(b) in subsection (1), in the Proviso thereto, by deleting the word "Director" and substituting therefor the term "Surveyor General".

Amendment of s. 17 of the principal Act 9. Section 17 of the principal Act is amended by deleting the words "Director of Surveys" and substituting therefor the term "Surveyor General" wherever the words appear in the section.

Amendment of s. 19 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 the term "Surveyor General".

Amendment of s. 20 of the principal Act 11. Section 20 of the principal Act is amended in subsections (2) and (3), by deleting the words "£10" and substituting therefor the words "K100,000.00".

Amendment of s. 21 of the principal Act 12. Section 21 of the principal Act is amended in subsection (1)—

(a) by deleting the words "£100" and substituting therefor the words "K500,000.00"; and

(b) by deleting the words "two months" and substituting therefor the words "six months".

Amendment of s. 25 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".

Amendment of s. 27 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. 31 of the principal Act Act No. .. of 2015 15. Section 31 of the principal Act is amended in subsection (1), by deleting the words "Local Land Board Act" and substituting therefor the words "Customary Land Act, 2015".

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 the words "£25" and substituting therefor the words "K100,000.00".

Amendment of s. 66 of the principal Act 18. Section 66 of the principal Act is amended—
(a) in subsection (4), by inserting, at the end of the subsection, the following new proviso—

“Provided that where the subject of the charge is a customary estate, the amount payable shall be paid into the Special Fund.”; and

(b) inserting, immediately after subsection (4), a new subsection as subsection (5) as follows—

“(5) For the purpose of this section, “Special Fund” means a fund established in accordance with section 46 (2) 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 the words “Mines and Minerals Act”. Amendment of s. 91 of the principal Act Cap. 61:01

20. Section 101 of the principal Act is repealed. Repeal of s. 101 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 the words “eighteen”. Amendment of s. 108 of the principal Act

22. Section 119 of the principal Act is amended by deleting subsection (3) and substituting therefor the following— Amendment of s. 119 of the principal Act

“(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 registered dealings, a person having dealings in such land shall be deemed to have notice of the trust and breach of the trust shall create a right to indemnity under this Act.”.

23. Section 121 of the principal Act is repealed. Repeal of s. 121 of the principal Act

24. Section 122 of the principal Act is repealed. Repeal of s. 122 of the principal Act

25. Section 134 of the principal Act is amended subsection (1), by deleting the proviso thereto and substituting therefor the following— Amendment of s. 134 of the principal Act

“Provided that no person shall so acquire the ownership of public land”.

26. Section 137 of the principal Act is amended in subsection (1), by deleting the words “customary or public land” and substituting therefor the words “public land”. Amendment of s. 137 of the principal Act

Amendment of
s. 140 of the
principal Act

27. Section 140 of the principal Act is amended in subsection (1), by inserting, at the end of the subsection, the words “or by the local government authority in whose jurisdiction that area falls.”.

Amendment of
s. 144 of the
principal Act

28. 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 therefor the words “Subject to the Customary Land Act, 2016”.

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2016

OBJECTS AND REASONS

The principal object of this Bill is to amend the Registered Land Act to align the Act with the National Land Policy.

KALEKENI KAPHALE
Attorney General

PUBLIC ROADS (AMENDMENT) BILL, 2016

MEMORANDUM

This Bill seeks to amend the Public Road Act, (Cap.69:02), in order to align the Act with the new Land Act and other land related pieces of legislation. These proposed amendments have come about as a consequence of the structural changes made in the proposed Land Act and Physical Planning Act.

The Bill seeks to—

(a) make reference to local government authorities instead of City, Municipality or Town Councils in sections 3, 4,5 and 5A;

(b) make reference to the “Republic” instead of the “President” in sections 3, 10 and 15;

(c) make provision on matters to be taken into consideration when assessing compensation for land that has become public land in sections 44, 45 and 46;

(d) make provision for a review procedure, instead of an appeal procedure before the High Court, in cases of dissatisfaction with awards made by the Land Tribunal in sections 47, 48 and 49 ; and

(e) increase the general penalty of the fine from K500 to K50,000 in section 53.

PUBLIC ROADS (AMENDMENT) BILL, 2016

ARRANGEMENT OF SECTIONS

SECTION

1. Short title and commencement
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.10 of the principal Act
8. Amendment of s.11 of the principal Act
9. Amendment of s.12 of the principal Act
10. Amendment of s.24 of the principal Act
11. Amendment of s.25 of the principal Act
12. Amendment of s.26 of the principal Act
13. Amendment of s.28 of the principal Act
14. Amendment of s.29 of the principal Act
15. Amendment of s.44 of the principal Act
16. Amendment of s.45 of the principal Act
17. Amendment of s.46 of the principal Act
18. Amendment of s.47 of the principal Act
19. Replacement of s.48 of the principal Act
20. Replacement of s.49 of the principal Act
21. Repeal of s.50 of the principal Act
22. Amendment of s.51 of the principal Act
23. Amendment of s.53 of the principal Act

A BILL

entitled

An Act to amend the Public Roads Act.

ENACTED by the Parliament of Malawi as follows—

- Short title and commencement 1. This Act may be cited as the Public Roads (Amendment) Act, 2016, and shall come into force on a date appointed by the Minister by notice published in the *Gazette*.
- Amendment of s.2 of Cap.69:02 2. Section 2 of Public Roads Act (hereinafter referred to as the “principal Act”) is amended by—
- (a) inserting therein, in the correct alphabetical order, the following definitions—
- “customary estate” bears the same meaning ascribed to it in the Land Act, 2015;
- “customary land committee” bears the meaning ascribed to it in the Customary Land Act, 2015;
- “local government authority” bears the meaning ascribed to in the Local Government Act.
- (b) deleting the definition of the words “surface rights” and substituting therefor the following—
- “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;”.
- Act No...of 2016
- Act No...of 2016
- Cap 22:01
- 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—
- (a) in subsection (2) and (3), by deleting the words “City, Municipality or Township” wherever they appear and substituting therefor the words “local government authority”; and
- (b) in the proviso to subsection (3), by deleting the words “City Council, Municipal Council or Town Council” 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—
- (a) in subsections (2) and (3), by deleting the words “City, Municipality or Township” wherever they appear and substituting therefor the words “local government authority”; and
- (b) in the proviso to subsection (3), by deleting the words “City

Council, Municipal Council or Town Council” and substituting therefor the words “local government authority”.

6. Section 5A of the principal Act is amended—

Amendment
of s.5A of the
principal Act

(a) in subsections (2) and (3), by deleting the words “City, Municipality or Township,” wherever they appear and substituting therefor the words “local government authority”; and

(b) in the proviso to subsection (3), by deleting the words “City Council, Municipal Council or Town Council” and substituting therefor the words “local government authority”.

7. Section 10 of the principal Act is amended—

Amendment
of s.10 of the
principal Act

(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 the second proviso to subsection (6), by deleting the words, “Town and Country Planning” and substituting therefor the words “Physical Planning”.

8. 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.11 of the
principal Act

9. Section 12 of the principal Act is amended in subsection (2), by deleting the words “Town and Country Planning” and inserting the words “Physical Planning”.

Amendment
of s.12 of the
principal Act

10. 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”.

Cap. 23:01
Act No.
of 2016

11. Section 25 of the principal Act is amended—

Amendment
of s.25 of the
principal Act

(a) by 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 (3)—

(i) by deleting the words “Commissioner for Surveys” and substituting therefor the words “Surveyor General”; and

(ii) by deleting the word “Deeds” and substituting therefor

the word "Land".

Amendment of
s.26 of the
principal Act

12. Section 26 of the principal Act is amended—

(a) by deleting the word "Deeds" and substituting therefor the word "Land"; and

(b) by deleting the words "Commissioner for Surveys" and substituting therefor the words "Surveyor General".

Amendment of
s.28 of the
principal Act

13. Section 28 of the principal Act is amended, in subsection (1), by deleting the word "President" and substituting therefor the word "Republic".

Amendment of
s.29 of the
principal Act

14. Section 29 of the principal Act is amended by deleting the first and second proviso to subsection (5).

Amendment of
s.44 of the
principal Act

15. Section 44 of the principal Act is amended—

(a) in subsection (1), by deleting the words "Whenever, under this Act" and substituting therefor 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 a road reserve."

Amendment of
s.45 of the
principal Act

16. Section 45 of the principal Act is amended—

(a) in subsection (1)—

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

"(a) in the case of a customary estate, subject to subsec-

tion (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—

(i) where he has to move his residence or place of business;

(ii) where alternative land cannot be made available to him and the land remaining to him for any purposes is not an economic unit; or

(iii) where alternative land is made available to him, and where the making of the alternative land equally as fit for use as the land of which he has been deprived of, is likely to involve a loss in terms of money, materials or work, however, in assessing compensation under this paragraph, the total compensation for disturbance shall not in any case exceed the total of—

A. 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;

B. the damage, if any, sustained by the occupier by reason of severing such land from other land occupied by him; or

C. the reasonable expenses, if any, incidental to a change of residence or place of business if, in consequence of the matters giving rise to the claim, he is compelled to effect such change;”;

(b) in subsection (2) (b), by inserting the words “and to interest in the land itself” immediately after the words “surface rights”.

17. Section 46 of the principal Act is amended—

Amendment
of s.46 of the
principal Act

(a) in subsection (1), by deleting the words “and no others” ;

(b) in subsection (1) (c), by inserting the words “and good-will thereof” immediately after the word “change” appearing in the last 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,”.

18. Section 47 of the principal Act is amended—

Amendment
of s.47 of the
principal Act

(a) by deleting the words “compensation board” wherever they

appear in that Section and substituting therefor the words "Land Tribunal";

(b) in subsection (1), by deleting paragraph (a) to the proviso and substituting therefor 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;"

(c) 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 substituting therefor the word "tribunal"; and

(d) in subsection (5) by deleting the words "Chief of such land" and substituting therefor the words "customary land committee of such area".

Replacement
of s.48 of the
principal Act

19. Section 48 of the principal Act is repealed and replaced by the following new section—

"Procedure
before
Land Tribunals

48. The Chief Justice may make rules to regulate the procedure to be followed before a Land Tribunal and for constituting the Land Tribunal."

Replacement
of s.49 of the
principal Act

20. Section 49 of the principal Act is repealed and replaced by the following new section—

"Procedure
before
Land
Tribunals

49. 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 in accordance with the rules made by the Chief Justice under the Court's Act..

Cap 3:02

Repeal of s.50
of the
principal Act

21. Section 50 of the principal Act is repealed.

Amendment
of s.51 of the
principal Act

22. Section 51 of the principal Act is amended—

(a) in subsection (1)—

(i) by deleting the words "customary land" and substituting therefor the words "a customary estate"; and

(ii) by deleting the word "the Chief" and substituting therefor the words "a customary land committee"; and

(b) in subsection (4), by deleting the word "District Council" and substituting therefor the words "local government authority".

23. Section 53 of the principal Act is amended by deleting the words "K500" and substituting therefor the words "K50,000".

Amendment
of s.53 of the
principal Act

OBJECTS AND REASONS

The object of this Bill is to introduce consequential amendments to the Public Roads Act emanating from the review of the Land Act and related land laws. The Public Roads Act is being amended in order to bring it into conformity with the proposed new Land Act and the Physical Planning Act.

KALEKENI KAPHALE
Attorney General

CUSTOMARY LAND BILL, 2016

MEMORANDUM

This Bill seeks to repeal the Customary Land (Development) Act, Cap 59:01 (the Act) and the Local Land Boards Act (Cap.59:02) and replace it with new legislation on the management and regulation of customary land. The Bill has taken into account the system of titling of customary land as advocated by the National Land Policy.

The Bill formalizes the powers and duties of traditional leaders in land administration and management through the creation of committees and tribunals which will be empowered to carry out the function of allocation, adjudication and management of land and settlement of customary land disputes.

The Bill also seeks to address the challenges of security of tenure with regard to customary land. Currently, customary land is owned communally, which compromises land tenure security especially to the most vulnerable members of the community, especially women.

The Bill is part of the recommendations of the Law Commission on the Review of Land-Related Laws. The Bill contains eight parts including provisions on—

- (a) administration and management of customary land;
- (b) adjudication of interest in customary land;
- (c) dispute settlement; and
- (d) disposition and registration of customary land.

CUSTOMARY LAND BILL, 2016

ARRANGEMENT OF SECTIONS

SECTION

PART I—PRELIMINARY

1. Short title and commencement
2. Interpretation

PART II—ADMINISTRATION AND MANAGEMENT OF CUSTOMARY LAND

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

PART III—TRANSFERS

17. Transfer of customary land to Government or reserved land
18. Transfer of Government or reserved land into customary land

SECTION

PART IV—DECLARATION OF HAZARDOUS LAND

19. Declaration of hazardous land

PART V—GRANT AND MANAGEMENT OF CUSTOMARY ESTATES

20. Customary estate

21. Application for a customary estate

22. Determination of application of customary estate

23. Procedure on grant of customary estate

24. Payment of fees on grant of customary estate to an organization or body

25. Customary estate lease and sublease

26. Rent

27. Conditions for grant of customary estate

28. Approval required for disposal of customary estate

29. Surrender of customary estate

30. Re-grant of surrendered customary estate

31. Breach of condition for customary estate

32. Fine for breach of condition

33. Revocation of customary estate granted to an organization or body

34. Abandonment of a customary estate

35. Application for relief

PART VI—ADJUDICATION OF INTEREST IN CUSTOMARY LAND

36. Grant of customary estate require adjudication

37. Types of adjudication

38. Area adjudication

39. Procedure for area adjudication

40. Appeal against area adjudication

41. District adjudication

42. Spot adjudication

43. Guiding principles for adjudication

PART VII—DISPUTE SETTLEMENT

44. Customary land tribunals

45. Appeals from customary land tribunals

46. District land tribunals

47. Appeals from district land tribunals

48. Central Land Board

49. Guiding principles for land tribunals

SECTION

PART VIII—MISCELLANEOUS

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

A BILL

entitled

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

PART I—PRELIMINARY

1. This Act may be cited as the Customary Land Act, 2016 and shall come into operation on a date the Minister may appoint, by notice published in the *Gazette*. Short title and commencement
2. In this Act, unless the context otherwise requires— Interpretation
 - “adjudication officer” means any person appointed to carry out adjudication functions pursuant to section 42;
 - “Central Land Board” means a tribunal established under section 48;
 - “Commissioner” bears the meaning ascribed to that term in the Land Act, 2016; Act No..... of 2016
 - “communal customary land” means customary land set aside as such under section 14;
 - “customary estate” bears the meaning ascribed to that term in the Land Act, 2016; Act No..... of 2016
 - “customary land use agreement” means an agreement adopted and approved pursuant section 11;
 - “customary land” means all land declared as customary land in accordance with section 3;
 - “customary land committee” means a committee appointed under section 5;
 - “customary land tribunal” means a tribunal established under section 44;
 - “district land tribunal” means a tribunal established under section 46;

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"hazardous land" means land declared to be hazardous under section 19;

"land clerk" means a clerk appointed under section 8;

Cap 58:01

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

"spot adjudication" means adjudication pursuant to section 42;

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2016

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

PART II.—ADMINISTRATION AND MANAGEMENT OF CUSTOMARY LAND

Customary
Land

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

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

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2016

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

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

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

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

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

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

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

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

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

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

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

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

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

Administra-
tion and
management
of customary
land

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

Customary
land commit-
tees

(2) A land committee shall consist of—

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

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

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

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

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

Functions of
the land
committee

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

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

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

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

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

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

Procedure for
land
committees

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

Land clerks

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

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

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

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

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

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

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

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

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2016

Act No..... of
2016

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) two or more Traditional Land Management Areas;

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

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

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

Joint customary
land use
agreements
between land
committees

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Joint customary land use agreement between Traditional Land Management Areas

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

Division of a
Traditional
Land
Management
Area

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

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

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

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

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

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

Communal
customary land

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

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

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

(4) Any land—

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

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

shall be deemed to be communal land under this Act.

Occupation of
customary land
by
organizations
and bodies

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

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

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

(4) Any association—

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

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

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

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

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

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

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

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

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

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

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

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

PART III—TRANSFERS

Transfer of
customary land
to Government
or reserved land

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

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

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

- (a) the location of the area of the customary land to be transferred;
- (b) the extent of the boundaries of the customary land to be transferred;
- (c) a brief statement of the reasons for the proposed transfer; and
- (d) the date, being not less than ninety days from the date of the publication of the notice, when the Minister may exercise his power to transfer the land or a part of it.

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

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

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

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

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

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

(i) the land committee and the Commissioner; or

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

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

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

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

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

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

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

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

PART IV—DECLARATION OF HAZARDOUS LAND

Declaration of
hazardous land

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

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

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

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

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

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

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

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

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

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

(a) the location of the proposed hazardous land;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

PART V—GRANT AND MANAGEMENT OF CUSTOMARY ESTATES

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

Customary
estate

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

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

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

(2) A customary estate shall be—

(a) of indefinite duration;

(b) inheritable, and transmissible by will;

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

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

Cap 58:03

Application for
customary
estate

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

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

(a) in the prescribed form;

(b) signed—

(i) by the applicant;

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

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

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

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

(c) accompanied by a prescribed fee.

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

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

Determina-
tion of
application of
customary
estate

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

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

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

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

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

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

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

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

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

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

(iv) any other matters which may be prescribed;

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

- (i) the amount and location of the land being applied for;
- (ii) the purpose for which the applicant intends to use the land 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 under section 21 is from an organization or body, 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 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 27 or which may be prescribed;
- (ii) the land committee is directed by the Commissioner to impose in respect of a grant of customary estate to an organization or body; or
- (iii) may be prescribed; or
- (b) refuse to grant a customary estate.

(4) A determination of the land committee under this section shall be recorded in the minutes of the land committee.

(5) Where the land committee refuses an application, it shall furnish the applicant with reasons for the refusal.

Procedure on
grant of
customary
estate

23.—(1) Where a land committee grants 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 the 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), the applicant shall, within twenty-one 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) A certificate of customary estate shall not be valid and occupation of land under such customary estate shall not 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 the 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.

24.—(1) A land committee may require the payment of a fee on the grant of a customary estate to an organization or body.

Payment of fees on grant of customary estate to an organization or 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 bodies.

25.—(1) A lease or sublease may be granted out of a customary estate and the lease shall be called a "customary estate lease" or a "customary estate sublease", as the case may be.

Customary estate lease and sublease

(2) Any lease or sublease granted out of a customary estate shall be governed by the Registered Land Act.

Cap.58:01

26. A land committee may require the payment of annual rent for customary estates granted to an organization or a body.

Rent

27.—(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 for grant of customary estate

(2) Every grant of a customary estate shall contain 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 land husbandry ordinarily used in the area;

(b) no building shall be erected until all required permissions have been obtained;

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

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

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

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

Approval
required for
disposal of
customary
estate

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

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

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

(a) in cases of emergency; and

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

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

Surrender of
customary
estate

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

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

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

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

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

- (a) made in the prescribed form;
- (b) signed by a person or the duly authorized representative of the group of persons surrendering the customary estate;
- (c) accompanied by any evidence which may be prescribed or which is considered by a land committee to be satisfactory that all persons—
 - (i) dependent on a person who is surrendering that customary estate are aware of the surrender and have agreed to it; and
 - (ii) having derivative rights in that customary estate are aware of the surrender.

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

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

Re-grant of
surrendered
customary
estate

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

- (i) his wife;
- (ii) where he has more than one wife, his wives in order of seniority;
- (iii) where he has no wife, or all wives have declined to accept the offer, any of his children over the age of eighteen years; and
- (iv) where all of the above have declined to accept the offer, any of his other dependants;

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

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

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

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

Breach of
condition of
customary
estate

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

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

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

(b) the circumstances of the occupier; and

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

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

Fine for breach
of condition

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

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

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

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

Abandonment
of a customary
estate

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) sent to the Commissioner.

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

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

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

(2) The customary land tribunal may—

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

PART VI—ADJUDICATION OF INTEREST IN CUSTOMARY LAND

Grant of
customary
estate require
adjudication

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

Types of
adjudication

37.—(1) Adjudication shall be either—

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

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

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

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

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

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

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

(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—

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

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

- Act No. ... of 2016
- (a) a provisional demarcation map in accordance with the Land Survey Act, 2016;
- (b) a provisional adjudication record in a prescribed manner of the claims to the adjudicated land which it has determined pursuant to subsection (1) and shall post that record in a conspicuous place within the area.
- (3) A provisional adjudication record shall, unless an appeal is lodged under section 40, become a final adjudication record thirty days after it has been published and shall thereupon become a part of the register of the Traditional Land Management Area.
- (4) A provisional adjudication record shall, where an appeal has been lodged, become a final adjudication record thirty days after the final disposition of that appeal.
- Appeal against area adjudication
- 40.**—(1) Any person who is aggrieved by a determination of a land committee may, within thirty days of the publication of the adjudication record and demarcation map, appeal to a customary land tribunal against that determination.
- (2) A customary land tribunal shall, in hearing any appeal—
- (a) have all powers and comply with all the procedures applicable to a land committee; and
- (b) reach a decision which appears to it to be just, in the circumstances, and, without limiting the generality of that power, may—
- (i) amend the adjudication record;
- (ii) amend the demarcation map;
- (iii) correct any error in the adjudication record; or
- (iv) direct that a land clerk conduct further investigations into the subject matter of the appeal.
- (3) Where a customary land tribunal proposes to make a decision which may adversely affect the interests of any person in the adjudication area who has not appealed, the tribunal shall give that person an opportunity to be heard before it makes that decision.
- (4) An applicant or person, referred to in subsection (3), aggrieved by a decision of a customary land tribunal given under this section, may appeal to a District Tribunal of Traditional Authorities and the Tribunal may make any decision or order which it considers just in all the circumstances of the case.
- District adjudication
- 41.**—(1) Where a local government authority has determined that district adjudication shall be applied to land within a Traditional Land Management Area, or where the local government authority

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

PART VII—DISPUTE SETTLEMENT

Customary land
tribunals

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

(2) A customary land tribunal shall consist of—

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

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

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

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

(b) experience in handling social issues; and

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

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

(a) a member of a land committee;

(b) not ordinarily resident in the Traditional Land Management Area in which the tribunal is to function;

(c) a member of the National Assembly;

(d) a ward councilor;

(e) a magistrate;

(f) a public officer;

(g) a person holding a political party office;

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

(i) a mentally unfit person;

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

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

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

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

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

Appeals from
customary
land tribunals

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

District land
tribunals

(a) a presiding chair person who shall be the District Commissioner responsible for the District;

(b) up to three Traditional Authorities;

(c) three reputable persons that come from and reside in the

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

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

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

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

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

(b) experience in handling social issues; and

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

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

(a) a member of a land committee;

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

(c) a member of the National Assembly;

(d) a ward councilor;

(e) a magistrate;

(f) a political party official;

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

(h) a mentally unfit person;

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

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

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

Appeals from
district land
tribunals

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

Central Land
Board

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

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

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

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

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

(3) A person who—

(a) is an undischarged bankrupt;

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

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

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

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

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

(a) the member dies;

(b) the member resigns; and

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

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

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

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

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

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

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

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

Guiding
principles for
land tribunals

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

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

(i) the rights and obligations of the parties;

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

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

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

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

(ii) the circumstances of the case; and

(iii) the desirability of reaching a speedy settlement;

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

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

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

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

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

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

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

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

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

PART VIII—MISCELLANEOUS

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

Effect of
disposition of
customary
land

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

Register of
customary
land

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

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

Corrupt
transactions

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

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

Cap. 7:04

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

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

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

Regulations

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

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

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

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

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

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

OBJECTS AND REASONS

The principal object of the Bill is to repeal the Customary Land (Development) Act and the Land Boards Act and replace them with new legislation on the management and regulation of customary land.

KALEKENI KAPHALE
Attorney General

LANDS ACQUISITION (AMENDMENT) BILL, 2016

MEMORANDUM

This Bill seeks to amend the Lands Acquisition Act (Cap. 58:04) in order to provide an adequate framework for the compensation of persons affected by land acquisitions. The Bill therefore provides comprehensive provisions on regulation of land acquisition and compensation, including changing of the title of the Act to reflect the issue of appropriate compensation.

The amendments to the Act include measures to ensure transparency in the assessment of fair compensation by setting out clearly the factors to be taken into consideration in assessing compensation, and also appointing an independent value to carry out the assessment.

Amendments to the Act are part of the recommendations of the Law Commission on the Review of Land-Related Laws, including amendments aimed at harmonizing the legal framework for the regulation of land matters.

LANDS ACQUISITION (AMENDMENT) BILL, 2016

ARRANGEMENT OF SECTIONS

SECTION

1. Short title and commencement
2. Replacement of long title to Cap. 58:04
3. Amendment 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. Insertion of new part title as Part IIA into the principal Act
8. Replacement of s.9 of the principal Act
9. Replacement of s.10 of the principal Act
10. Insertion of a new s.10A into the principal Act
11. Amendment of Part III of the principal Act
12. Amendment of s.16 of the principal Act
13. Amendment of s.17 of the principal Act.

A BILL

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, 2016, and shall come into operation on a date appointed by the Minister by notice published in the *Gazette*.

Short title and
commence-
ment

2. The Lands Acquisition Act (hereinafter referred to as the

Replacement
of long title
to Cap. 58:04

B. No. 10

“principal Act”) is amended by repealing the long title thereto and replacing it as follows—

“An Act to provide for the acquisition of land and compensation; and for incidental matters”.

Amendment of
s.1 of the
principal Act

3. Section 1 of the principal Act is amended by inserting, immediately after the word “Acquisition”, the words “and Compensation”

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—

Act No.
of 2016

“land” has the meaning as ascribed to that term under section 2 of the Land Act, 2016;”.

(b) inserting, in the correct alphabetical order, a new definition of the word “court” as follows—

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

5. Section 3 of the principal Act is repealed and replaced as follows—
Replacement of
s.3 of the
principal Act

Power to
acquire land

3. Subject to the provisions of this Act, the Minister may acquire land for public utility either compulsorily or by agreement, and pay compensation therefor as may be agreed or determined under this Act.”.

6. Section 4 of the principal Act is repealed and replaced as follows—
Replacement of
s.4 of the
principal Act

“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 Minister 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 of not less than seven days to the occupier.

(3) The Minister shall pay for any damage done by persons entering any land pursuant to this section."

7. The principal Act is amended by inserting, immediately after section 8, the following new part title as Part II A—

Insertion of new part title as Part IIA into the principal Act

"PART IIA—COMPENSATION".

8. 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 under this Act, the Minister 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."

9. Section 10 of the principal Act is repealed and replaced as follows —

"Assessment of appropriate compensation

10.—(1) Unless otherwise agreed between parties, appropriate compensation shall be assessed by an independent valuer appointed by the Minister.

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

(a) loss of occupational rights;

(b) loss of land;

(c) loss of structure;

(d) loss of business;

(e) relocation costs;

(f) loss of good will;

(g) costs of professional advice;

(h) nuisance;

(i) loss or reduction of tenure; or

(j) disturbances, if it is not too remote and is a natural and reasonable consequence of the disposition of the land."

10. The principal Act is amended by inserting, immediately after section 10, the following new section as section 10A—

Insertion of a new s.10A into the principal Act

"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 other matters, 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 land 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 land or other benefit likely to accrue at the valuation date from the proposed development to the person interested; and

(e) the relief obtained by the claimant as a result of the taking of the land against the necessity of carrying out, in whole or in part, any order or direction against the land 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 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 not be taken into consideration—

(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 the 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 hectares in extent and not more than four hundred hectares in extent, be deemed equal in value to two per centum of the total area of the estate;

(b) exceeding four hundred hectares in extent, be deemed equal in value to four 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 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.”.

11. Part III of the principal Act is amended—

(a) in the title thereto, by deleting the word “TRANSFER” and substituting therefor the word “REVERSION”;

(b) by repealing section 12 and replacing it as follows—

“Reversion
to the
Government

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 months of the publication of such notice.

Amendment
of Part III of
the principal
Act

(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 Minister; and

(c) by repealing section 13 and section 14.

Amendment
of s.16 of the
principal Act

12. Section 16 of the principal Act is amended by deleting the word "President" and substituting therefor the word "Republic".

Amendment
of s.17 of the
principal Act

13. Section 17 of the principal Act is amended—

(a) in subsection (1), by deleting the words "two hundred kwacha" and substituting therefor the words "one hundred thousand Kwacha"; and

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

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

OBJECTS AND REASONS

The principal object of this Bill is to amend the Lands Acquisition Act in order to provide a more comprehensive legal framework for lands acquisition and the compensation of persons affected by lands acquisition.

KALEKENI KAPHALE
Attorney General

LOCAL GOVERNMENT (AMENDMENT) BILL, 2016

MEMORANDUM

This Bill proposes to amend the Local Government Act through the introduction of the following new sections, 76A, 78A, 78B and 78C to the Act and amendment of sections 2, 15, 34, 35, 36, 61, 62, 63, 66, 67, 68, 73, 75, 76, 79, 83 and 84 of the Act.

The proposed amendments have come about as a consequence of the proposal for the review of land related laws by Ministry of Lands, Physical Planning and Surveys. The Local Government Act is one of the Acts that has been affected by their view, in order to assess the role of Local Governments in land administration.

The amendments are in two categories. The first category is simply aimed at clarifying matters and better promotion of the spirit of the Act. This involves amendment of sections 2, 15, 34, 35, 36, 61, 62, 63, 66, 67, 68, 73, 75, 76, 79, 83 and 84 of the Act. The second category introduces new sections to cater for some inadequacies that are there in the Act. This category has introduced the following new sections, 76A, 78A, 78B and 78C.

Section 76A empowers Chief Executive Officers and District Commissioners to sign and certify valuation rolls.

Section 78A empowers the Minister responsible for land matters to appoint a Valuation Tribunal. It goes further to provide for the composition of the Tribunal.

Section 78B deals with proceedings to be followed in the Tribunal when considering objections.

Section 78C deals with the mandate of the Tribunal, which is to consider appeals arising out of the decision of a Valuer on objections to valuation rolls made under section 76 of the Act.

LOCAL GOVERNMENT (AMENDMENT) BILL, 2016

ARRANGEMENT OF SECTIONS

SECTION

1. Short title and commencement
2. Amendment of s.2 of Cap. 22:01
3. Amendment of s.15 of the principal Act
4. Amendment of s.34 of the principal Act
5. Replacement of s.35 of the principal Act
6. Repeal of s.36 of the principal Act
7. Replacement of s.61 of the principal Act
8. Amendment of s.62 of the principal Act
9. Amendment of s. 63 of the principal Act
10. Amendment of s.66 of the principal Act
11. Replacement of s.67 of the principal Act
12. Amendment of s.68 of the principal Act
13. Amendment of s.73 of the principal Act
14. Amendment of s.75 of the principal Act
15. Amendment of s.76 of the principal Act
16. Insertion of new s.76A into the principal Act
17. Insertion of new ss.78A, 78B, 78C into the principal Act
18. Amendment of s.79 of the principal Act
19. Amendment of s.83 of the principal Act
20. Replacement of s.84 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, 2016, and shall come into force on a date appointed by the Minister by notice published in the *Gazette*.

Short title and
commence-
ment

Amendment
of s.2 of Cap.
22:01

2. The Local Government Act (hereinafter referred to as the "principal Act") is amended, in section 2, by deleting the words "Local Authority" and substituting therefor the words "local government authority"

Amendment of
s.15 of the Cap.
22:01

3. Section 15 of the principal Act is amended in subsection (1) by deleting the proviso thereto and substituting thereto the following—

"Provided that the Council shall not delegate its powers to—

(a) make by-laws and Standing Orders;

(b) borrow money;

(c) levy a rate; and

(d) acquire and dispose of land."

Amendment
of s.34 of the
principal Act
Cap. 58:04

4. Section 34 of the principal Act is amended by deleting subsection (2) and substituting it with the following new subsection as subsection (2)—

Cap 58:04

"(2) Subject to the provisions of the Lands Acquisition Act, the Council may acquire land for any purpose for which the Council is authorized by this Act to acquire land, notwithstanding that the land is not immediately required for that purpose; and until it is required for the purpose for which it was acquired under this subsection, the land may be used for the purpose of any of the Council's functions."

Replacement of
s. 35 of the
principal Act

5. Section 35 of the principal Act is repealed and replaced with the following new section—

"Disposal of
land Act No.
of 2016
Cap. 58:01

35. The Council may dispose of land held by it in accordance with the provisions of the Land Act, 2016 and the Registered Land Act."

Repeal of s. 36
of the principal
Act

6. Section 36 of the principal Act is repealed.

Replacement of
s. 61 of the
principal Act

7. Section 61 of the principal Act is repealed and replaced with the following new section—

"Application

61.—(1) This Part shall apply to areas or parts thereof which the Minister shall designate by notice published in the Gazette as rateable areas.

(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.”.

8. Section 62 of the principal Act is amended by inserting therein, in the correct alphabetical order, the definition of the words “Valuation Tribunal” as follows—

Amendment
of s.62 of the
principal Act

“Valuation Tribunal” means the Tribunal appointed under section 78A.”.

9. Section 63 of the principal Act is amended—

Amendment
of s.63 of the
principal Act

(a) in paragraph (c) by adding, at the end of the paragraph, the words,..... “, but shall not include those which are privately owned”;

(b) in paragraph (e) by inserting the word “public” immediately before the word “railway”;

(c) by inserting, immediately after paragraph (e), a new paragraph, to be paragraph (f), as follows—

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

10. 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

(c) in subsection (3), by deleting the words “may estimate the value of the property as if it had been completed or occupied and may levy a rate calculated on such estimated value which” and substituting therefor the words “shall use the estimated value of the property for rating purposes and such rates”.

11. Section 67 of the principal Act is repealed and replaced with the following new section—

Replacement
of s.67 of the
principal Act

- “Valuer” 67.—(1) Each valuation and preparation of valuation rolls and supplementary valuation rolls shall be undertaken by a valuer registered under the Land Economy Surveyors, Valuers, Estate Agents and Auctioneers Act.
- Cap. 53:08 (2) A local government authority shall pay fees and expenses incurred by a valuer in respect of his duties under this Act together with remuneration and other expenses as may be agreed upon between the local government authority and the valuer.”
- Amendment of s.68 of the principal Act 12. Section 68 of the principal Act is amended by deleting subsection (2) and substituting therefor the following new subsection, as 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.”.
- Amendment of s.73 of the principal Act 13. 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.75 of the principal Act 14. 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.76 of the principal Act 15. Section 76 of the principal Act is amended in subsection (1) paragraph (b) by—
- (a) deleting the word “valuer” appearing in the fourth line and substituting therefor the word “Council”; and
- (b) adding the words “and the Council shall in turn advise the valuer of the objection.”, at the end of the paragraph.
- Insertion of new s.76 into the principal Act 16. The principal Act is amended by inserting immediately after section 76, a new section, as section 76A as follows—
- “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 days referred to in section 76, an objection has not 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 in two 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.”.

17. The principal Act is amended by inserting, immediately after section 78, the following new sections, as sections 78A, 78B and 78C—

Insertion of ss. 78A, 78B and 78C into the principal Act

“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, who shall be the Chairperson of the Valuation Tribunal, recommended by the Judicial Service Commission;

(b) three valuers recommended by the Board of Registration of Land Economy Surveyors, Valuers, Estate Agents and Auctioneers; 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 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 of the local government authority.

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 each sitting of the Valuation Tribunal, three members present shall constitute a quorum, and a decision of the Valuation Tribunal shall be arrived at by a vote of a majority of the members present and voting; and, in case of an equality of votes, the Chairperson or a

member acting as a Chairperson shall have a casting vote.

(3) A member of the Valuation Tribunal shall not sit on a hearing of a matter in which he is directly or indirectly interested or concerned as being liable to pay the rates or a part of the rates in question.

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

(5) The clerk shall publish notice of a sitting of the Valuation Tribunal not later than seven days before the fixed date of its first 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

78C.-(1) An aggrieved person who is not satisfied with the decision of the valuer under section 76, may appeal against the decision of the Valuer to the Valuation Tribunal.

(2) The Valuation Tribunal shall, at a sitting duly called by the clerk, consider the appeal made under subsection (1).

(3) The clerk shall send a notice of the date to the persons mentioned in subsection (3) not less than seven days before the day fixed for the consideration by the Valuation Tribunal of the appeal; but the Valuation Tribunal may hear the appeal at shorter notice if all the persons entitled to be heard on the appeal consent.

(4) On the consideration of the appeal, the local government authority, the person who lodged the appeal and a rateable owner of the property, which is the subject of the appeal, may appear and be heard, either in person or by legal practitioner or an accredited representative, and may call and examine witnesses before the Valuation Tribunal.

(5) 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 consider appropriate.

(6) Where the Valuation Tribunal has amended a draft valuation roll or draft supplementary valuation roll in accordance with subsection (4), the Valuation Tribunal may make further amendments to the roll, as it may consider appropriate, in consequence of the first-mentioned amendment:

Provided that—

(a) the further amendment by way of increase or addition shall not be made unless the rateable owner concerned has been given at least fourteen days' prior 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) the rateable owner may lodge an objection to such further amendment in writing, so as to reach the clerk not less than three days before the date of the sitting of the Valuation Tribunal at which such amendment will be considered.

(7) 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."

18. 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. 79 of the
principal Act

19. Section 83 of the principal Act is amended in subsection (1) —

Amendment
of s. 83 of the
principal Act

(a) in paragraph (d), by adding, at the end of the paragraph, the words "that is not operating on a commercial basis";

(b) in paragraph (e) by adding, at the end of the paragraph, the words "that is not operating on a commercial basis."

20. Section 84 of the principal Act is repealed and replaced with the following new section—

Replacement
of s. 84 of the
principal Act

"Exempted
properties

84.—(1) A rate shall not be made or levied in respect of assessable property owned by a diplomatic mission as may be approved by the Minister responsible for foreign affairs.

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

OBJECTS AND REASONS

The object of this Bill is to introduce consequential amendments to Local Government Act emanating from the review of Land Act and related land laws. Land administration under Local Government Act is reviewed in order to bring it into conformity with the dictates of the proposed new Land Act.

KALEKENI KAPHALE
Attorney General