

Malawi

Customary Land (Development) Act Chapter 59:01

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Customary Land (Development) Act
 Contents

Part I – Preliminary and application 1

 1. Short title 1

 2. Interpretation 1

 3. Application 2

Part II – Officers and Committee 2

 4. Appointment and general powers of officers 2

 5. Appointment of Land Committee 2

 6. Functions of the Committee 3

Part III – Claims and demarcation 3

 7. Development sections 3

 8. Notice by Allocation Officer 3

 9. Cesser of powers of customary authorities 3

 10. Notice of demarcation and recording 4

 11. Claims and attendance 4

 12. Indication of land claimed 4

 13. Demarcation of pieces 4

 14. Duties of the Survey Officer 5

 15. Duties of the Recording Officer 5

 16. Disputes 5

 17. Procedure in Committee 6

 18. Reconsideration of decisions by Committee 6

Part IV – Principles of allocation and Allocation Record 6

 19. Intended private land 6

 20. Recorded customary land 7

 21. Intended public land 7

 22. Allocation Record 7

 23. Notice of completion of Allocation Record 8

Part V – Objections and finality 8

 24. Objection to the Allocation Record 8

 25. Procedure in hearing objections 8

 26. Correction of Allocation Record 8

 27. Finality of the Allocation Record 8

Part VI – Miscellaneous 9

 28. Charge on land 9

29. Fees	9
30. Offences	9
31. Indemnity of officers	10
32. Regulations	10

Malawi

Customary Land (Development) Act

Chapter 59:01

Commenced on 9 May 1967

[This is the version of this document at 31 December 2014 and includes any amendments published up to 31 December 2017.]

[Note: This version of the Act was revised and consolidated in the Fourth Revised Edition of the Laws of Malawi (L.R.O. 1/2015), by the Solicitor General and Secretary for Justice under the authority of the Revision of the Laws Act.]

An Act to provide for the Ascertainment of Rights and Interests in Customary Land, for the Better Agricultural Development of Customary Land and for Purposes connected therewith and Incidental thereto

Part I – Preliminary and application

1. Short title

This Act may be cited as the Customary Land (Development) Act.

2. Interpretation

In this Act, except where the context otherwise requires—

“**Allocation Officer**” means an Allocation Officer appointed under [section 4](#);

“**agent**” means an agent duly authorized by law, including customary law;

“**Committee**” means a Land Committee appointed under [section 5](#);

“**customary land**”, “**private land**” and “**public land**” bear the same meaning as in section 2 of the Land Act;

[Cap. 57:01]

“**Demarcation Officer**” means a Demarcation Officer appointed under [section 4](#);

“**Demarcation Map**” means a Demarcation Map prepared under [section 14](#);

“**development area**” means an area to which this Act has been applied under [section 3](#);

“**development section**” means a development section declared under [section 7](#);

“**family land**” means customary land which is held, occupied or used by members of a family on the allocation of the head of that family;

“**guardian**” means any person responsible (whether under customary law or otherwise) for protecting the interests of any person who is under a disability, whether by reason of age, unsoundness of mind or any other cause;

“**interest in land**” means any right or interest in or over land which is capable of being recorded under this Act;

“**land**” includes land covered with water, all things growing on land, buildings and other things permanently affixed to land;

“**piece**” means a piece of land separately shown on the Demarcation Map and given a number;

“**Recording Officer**” means a Recording Officer appointed under [section 4](#);

“**Survey Officer**” means a Survey Officer appointed under [section 4](#).

3. Application

- (1) Whenever it appears expedient to the Minister that the ascertainment of interests in customary land and the better agricultural development of such land in any area should be effected the Minister may, by order, declare that this Act shall apply to such area. In such order or in a further order, the Minister may prescribe a development scheme for such area.
- (2) Where, on the date on which this Act is applied to any area of land, any demarcation and recording of rights and interests in such land and development of such land have been carried out, then, if the Minister is satisfied that such demarcation, recording and development have been carried out substantially in accordance with the principles of this Act he may, by order, declare that such demarcation, recording and development shall be deemed to have been carried out under this Act and may in such order make such transitional provisions as may be necessary to effect the completion of the allocation process and development of such land in accordance with this Act. Any Allocation Record or Demarcation Map prepared in accordance with such order shall be deemed to have been prepared under this Act.
- (3) Any order under this section shall define the situation and limits of the area to which it relates either by means of a plan or by description, or by a combination of plan and description.
- (4) If the Allocation Officer at any time considers that it is impracticable or undesirable to carry out this Act in any part of the development area because it is not yet ready or for any other reason is unsuitable, he shall refer the matter to the Minister who may by order declare that such land shall be excluded from the area declared under subsection (1).

Part II – Officers and Committee

4. Appointment and general powers of officers

- (1) On or after the publication of an order made under [section 3](#), there shall be appointed an Allocation Officer for the development area and such Demarcation Officers, Recording Officers and Survey Officers as may be necessary for performing the duties and exercising the powers imposed and conferred upon them by this Act.
- (2) The Allocation Officer shall, subject to the directions of the Minister, be in charge of the allocation and may issue instructions to the officers subordinate to him. The Allocation Officer may himself exercise all or any of the powers given under this Act to Demarcation Officers and Recording Officers.
- (3) The Allocation Officer shall be competent to administer oaths in any enquiry made by him and to issue summonses, notices or orders requiring the attendance of such persons or production of such documents as he may consider necessary for carrying out the allocation.
- (4) A Demarcation Officer or Survey Officer may at any reasonable time enter upon any land within the development area for the purpose of demarcating or surveying any piece therein and may summon any person who can give information regarding the boundaries of any such piece to point out the boundaries.

5. Appointment of Land Committee

- (1) For any development section or part of a development section within the development area the Allocation Officer, after consultation with the District Commissioner within whose District

the development area is situated, may appoint not less than six persons resident within the development area to form a panel from which he may from time to time select not less than five persons to form a Land Committee.

- (2) The Allocation Officer shall appoint an executive officer for each Committee who shall attend, and may speak, at any meeting of the Committee, but shall not vote.
- (3) The executive officer shall keep a record of the proceedings of the committee in such form as the Allocation Officer shall direct.

6. Functions of the Committee

The Committee appointed for a development section shall have the powers conferred by [section 16](#) and in addition shall—

- (a) advise the Allocation Officer or Demarcation Officer, or Recording Officer upon any point of customary law on which he has sought their guidance;
- (b) represent the interest of absent persons, minors and persons under disability, where no guardian or other representative has been appointed;
- (c) bring to the attention of officers engaged in the allocation any potential claim which for any reason may not have been made;
- (d) assist generally in the allocation process.

Part III – Claims and demarcation

7. Development sections

The Allocation Officer shall divide the development area into two or more development sections or declare the whole area to be a single development section, and shall give each development section a distinctive name.

8. Notice by Allocation Officer

A separate notice shall be published in respect of each development section, and in each such notice the Allocation Officer—

- (a) shall specify as nearly as possible the situation and limits of the development section;
- (b) shall declare that interests in land within the development section will be ascertained and recorded and provision made for the development of the land in accordance with this Act; and
- (c) shall fix a period within which any person claiming any interest in land within the development section is required to make his claim either in person or by his agent.

9. Cesser of powers of customary authorities

- (1) As from the date of a notice under [section 8](#), a '*mwini dziko*' or other customary authority shall, in relation to land within the development section, cease to have and exercise any customary functions and the right if any, to monetary or other payment in respect of the performance of such functions:

Provided that, upon the Allocation Record becoming final in accordance with [section 27](#), such functions shall revert in the '*mwini dziko*' or other customary authority in relation to land recorded as customary land in the Allocation Record.

- (2) Except with the consent in writing of the Allocation Officer, no person shall proceed with, and no customary authority shall take cognizance of, any dispute concerning any interest in land in a development section after publication of a notice under [section 8](#):

Provided that, upon the Allocation Record becoming final in accordance with [section 27](#), this subsection shall cease to apply to any dispute concerning an interest in land recorded as customary land in the Allocation Record.

- (3) The hearing of any such dispute which was begun before the publication of the notice mentioned in [section 8](#) shall, where practicable, be determined before the allocation of the land affected by such dispute is commenced.
- (4) Any such hearing which has not been completed before such allocation is commenced shall, unless the Allocation Officer otherwise directs, be stayed.

10. Notice of demarcation and recording

- (1) Not less than seven clear days before the demarcation of any development section is begun, the Demarcation Officer shall give notice of the intended demarcation of land in that section, and of the time and place at which it will begin, in such manner as the Allocation Officer shall deem to be most likely to bring the matter to the knowledge of the persons to be affected by that demarcation.
- (2) Such notice shall require every claimant to indicate the boundaries of the land affected by his claim in the manner specified in the notice.

11. Claims and attendance

- (1) Every person claiming any interest in land within a development section shall make his claim in the manner and within the period fixed by the notice given under [section 10](#).
- (2) Every person whose presence is required by the Allocation Officer, Demarcation Officer, Recording Officer or by the Committee, as the case may be, shall attend in person or by agent at the time and place specified.
- (3) If any such person fails to attend in person or by agent, the demarcation, recording or other proceeding may continue in his absence.
- (4) If the Allocation Officer, Demarcation Officer, Recording Officer or Committee is satisfied that any person who has not made a claim has a claim to any interest in land within the development section then the Adjudication Officer, Recording Officer or Committee may, but shall not be bound to, proceed as if a claim had been made.

12. Indication of land claimed

Subject to any instruction issued by the Allocation Officer, the Demarcation Officer shall first within each development section—

- (a) see that the boundaries of any land which is the subject of a claim are indicated in accordance with the requirements of the notice given under [section 10](#);
- (b) indicate or cause to be indicated the boundaries of other land referred to in [sections 20](#) and [21](#).

13. Demarcation of pieces

- (1) The Demarcation Officer shall then proceed to demarcate or cause to be demarcated any land which in his opinion should appear as a piece on the Demarcation Map, and in so doing may—

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

Provided that in such case the Demarcation Officer shall consult with and have regard to the views of the Commissioner for Town and Country Planning;

[26 of 1988]

- (b) effect or cause to be effected such measures as shall be required by any development scheme prescribed by the Minister;
 - (c) if he considers the existing layout of the land to be uneconomic or inconvenient for the use of the land or inconsistent with the development scheme, prepare a fresh layout and by exchange of land or otherwise adjust the existing layout;
 - (d) demarcate any right of way necessary to give access to a public road or water in favour of any piece completely surrounded by other pieces;
 - (e) terminate any such customary right as is referred to in [section 19](#) (2) if he considers such right unnecessary or inconsistent with any development scheme prescribed by the Minister;
 - (f) make such alignment of boundaries of land adjoining a public road as may be required in the public interest;
 - (g) clear any boundary or other line which it may be necessary to clear for the purpose of such demarcation.
- (2) The Demarcation Officer may request any person having an interest in any land to assist in the demarcation of such land in such manner as the Demarcation Officer may require.

[26 of 1988]

14. Duties of the Survey Officer

Subject to any instructions issued by the Allocation Officer, the duties of the Survey Officer shall be—

- (a) to carry out such survey work as may be required in the execution of the allocation process;
- (b) to prepare or cause to be prepared a Demarcation Map of each development section, on which shall be shown every piece identified by a distinguishing number, except that public roads and rivers shall not require to be identified by a number.

15. Duties of the Recording Officer

The Recording Officer shall consider all claims to any interest in land and after such investigation as he considers necessary shall prepare in accordance with [section 22](#) a record in respect of every piece shown on the Demarcation Map.

16. Disputes

- (1) If in any case—
 - (a) there is a dispute as to any boundary whether indicated to the Demarcation Officer or demarcated or readjusted by him, which the Demarcation Officer is unable to resolve; or

- (b) there are two or more claimants to any interest in land and the Recording Officer is unable to effect agreement between them,

the Demarcation Officer or the Recording Officer as the case may be shall refer the matter to the Committee.

- (2) The Committee shall adjudicate upon and determine any dispute referred to them under subsection (1), having due regard to any customary law which may be applicable.

17. Procedure in Committee

- (1) If a member of a Committee has an interest, direct or indirect, in any land the subject of a claim or a dispute referred to the Committee under [section 16](#), and is present at a meeting of the Committee at which the determination of that claim or dispute is under consideration, he shall, at the meeting as soon as practicable after its commencement, disclose the fact and shall not take part in the consideration or discussion of, or vote on any question with respect to, the determination of that claim or dispute.
- (2) Each Committee shall elect one of its members to be chairman, who shall preside at all meetings at which he is present; and if at any meeting the chairman is absent, the members present shall elect one of themselves to preside at that meeting.
- (3)
 - (a) The quorum of a Committee where the total number of members is an even number shall be one-half of that number, and, where the total number of members is an even number, shall be one-half of the even number that is greater than that number by one;
 - (b) in the event of an equality of votes the chairman or other member presiding shall have a casting as well as an original vote.
- (4) Any decision of a Committee shall be signified in writing and signed by the chairman or executive officer.
- (5) A committee shall not be disqualified for the transaction of business by reason of any vacancy in its membership; and any proceedings therein shall not be invalid by reason only that some person, who was not entitled to do so, took part in the proceedings.

18. Reconsideration of decisions by Committee

- (1) Any person named in or affected by a decision of the Committee who considers himself aggrieved thereby may, within fourteen days of such decision, lodge an objection with the executive officer of the Committee concerned stating in what manner the decision is alleged to be incorrect.
- (2) Upon receipt of an objection, or if in any case the Allocation Officer so directs, the Committee shall reconsider their decision and shall thereafter submit their finding to the Recording Officer who shall make any entry in or alteration to the Allocation Record as may be required to give effect to the decision of the Committee.

Part IV – Principles of allocation and Allocation Record

19. Intended private land

- (1) If the Recording Officer is satisfied—

- (a) that any person has customary rights in a piece which entitle a person to be registered as the proprietor of land under the Registered Land Act he shall record that person as the owner of that piece;

[Cap. 58:01]

- (b) that two or more persons have customary rights in a piece which entitle those persons to be registered as joint proprietors or proprietors in common under the Registered Land Act he shall record such persons as joint owners or owners in common, as the case may be, and if owners in common the share of each such owner;

- (c) that any family has customary rights in a piece which entitle the head of that family to be registered as the proprietor of family land under the Registered Land Act he shall record the head of such family as owner of family land.

[Cap. 58:01]

- (2) Subject to [section 13](#) (1) (e), if the Recording Officer is satisfied that any piece recorded under subsection (1) is subject to a customary right which is registrable as a lease, charge, easement, restrictive agreement or profit under the Registered Land Act he shall record such particulars as may be necessary to enable the right, and the name of the person entitled to the benefit thereof, to be registered, and shall so record any easement demarcated under [section 13](#)(1) (d).

20. Recorded customary land

If the Recording Officer is satisfied that any piece falls into the category of—

- (a) village residential land;
- (b) “*dambo*” land;
- (c) unallocated garden land; or
- (d) land used for any other special purpose of the community,

he shall record such piece as customary land, together with a note of the category of such piece:

Provided that nothing in this section shall operate to prevent such piece being allocated at any later time under this Act.

21. Intended public land

- (1) The Recording Officer shall record any land set aside by the Demarcation Officer under [section 13](#) (1) (a) for the needs of the community as intended public land, and shall specify the purpose for which the land is used or reserved.
- (2) Upon the Allocation Record becoming final in accordance with [section 27](#), land recorded as public land shall be deemed to have been declared public land under [section 27](#) (1) of the Land Act.

[Cap. 57:01]

22. Allocation Record

- (1) The Allocation Record shall consist of a form in respect of each piece, which form shall show—
 - (a) the number and approximate area of the piece as shown on the Demarcation Map;
 - (b) the owner of the piece, or that the piece is recorded customary land or intended public land;
 - (c) the date on which the form is completed.

- (2) When completed the form shall be signed by the Recording Officer and, in the case of intended private land, by the owner of the piece and by any person recorded under [section 19 \(2\)](#) as having an interest in such piece.

23. Notice of completion of Allocation Record

When the Allocation Record in respect of any development section has been completed the Allocation Officer shall sign and date a certificate to that effect and shall forthwith give notice of the completion thereof and of the place or places at which the same can be inspected together with the Demarcation Map.

Part V – Objections and finality

24. Objection to the Allocation Record

- (1) Any person named in or affected by the Allocation Record or Demarcation Map who considers such Record or Map to be inaccurate or incomplete in any respect may, within sixty days of the date upon which the notice of completion of the Allocation Record is published, inform the Allocation Officer stating the grounds of his objection.
- (2) The Allocation Officer, after giving reasonable notice to all persons affected by the objection, shall hear the objection, and shall allow or dismiss the objection or otherwise determine the matter in such manner as he thinks just.

25. Procedure in hearing objections

- (1) In hearing an objection the Allocation Officer shall, so far as may be practicable, follow the procedure directed to be observed in the hearing of civil suits save that in his absolute discretion he may admit evidence which would not be admissible in a court of law, and may use evidence adduced in any other claim or contained in any official record and may call evidence of his own motion.
- (2) Any proceeding conducted under this Act by the Allocation Officer shall be deemed to be a judicial proceeding for the purpose of Chapter XI of the Penal Code.
[Cap. 7:01]
- (3) A record of all proceedings on an objection shall be made or caused to be made by the Allocation Officer.

26. Correction of Allocation Record

- (1) Any correction in the Allocation Record required by a decision of the Allocation Officer given under [section 24](#) shall be made by the Recording Officer, and if necessary the Survey Officer shall alter the Demarcation Map to give effect to such decision.
- (2) At any time before the Allocation Record becomes final the Recording Officer may correct any error or omission not materially affecting the interests of any person and may, with the consent of every person whose interest is affected, make in the Allocation Record any alteration which in his opinion is necessary.

27. Finality of the Allocation Record

After the expiration of sixty days from the date of the publication of the notice of completion of the Allocation Record, or on determination of all objections in accordance with [section 24](#), whichever shall

be the later, the Allocation Record shall, subject to the Registered Land Act be final and the Allocation Officer shall sign a certificate to that effect and shall deliver the Allocation Record and the Demarcation Map to the Registrar of the registration district in which the development section is situated.

[Cap. 58:01]

Part VI – Miscellaneous

28. Charge on land

- (1) Every piece of intended private land in an Allocation Record may from the date of such Record becoming final be charged in favour of the Government, if the Minister so prescribes, with an amount which shall represent the proportionate cost of the allocation of land in the development section in which the piece is situated and of any development or fresh lay-out of the piece made in accordance with [section 13](#).
- (2) The amount of such charge shall be recoverable from the owner of the piece in such manner and over such period as may be prescribed by the Minister, but nothing in this section shall prevent the exercise of the remedies of the Government as chargee under the Registered Land Act:

[Cap. 58:01]

Provided that if such charge is calculated upon the area of the piece as shown in the Demarcation Map and such area exceeds by more than ten *per centum* the actual area of the piece, then the amount of the charge shall be reduced accordingly and any overpayment resulting from such reduction shall be refunded to the owner of the piece.

29. Fees

Every person who is a party to any proceedings before the Committee or the Allocation Officer shall be required to pay such fees in respect of the proceedings as may be prescribed.

30. Offences

- (1) Any person who—
 - (a) after the delivery of a summons issued under this Act, wilfully neglects or refuses to attend in pursuance of such summons, or to produce any document which he is required to produce;
 - (b) wilfully neglects or refuses to answer upon oath or otherwise any question which may lawfully be put to him by an officer or the Committee;
 - (c) without reasonable cause wilfully neglects or refuses to indicate his land or to assist in the demarcation of his land when required to do so by a Demarcation Officer; or
 - (d) fails to comply with the requirements of [section 17](#) relating to persons having an interest in the proceedings of the Committee,shall be liable to a fine of K100 and to imprisonment for six months.
- (2) No prosecution for an offence contrary to subsection (1) (d) shall be instituted except with the consent of the Director of Public Prosecutions.

31. Indemnity of officers

No officer, or member of the Committee, shall be liable to any action or proceedings for or in respect of any act or matter in good faith done or omitted to be done in exercise or supposed exercise of the powers conferred by this Act or any regulations made thereunder.

32. Regulations

The Minister may make regulations for carrying into effect the provisions and purposes of this Act.