

CUSTOMARY LAND REGULATIONS, 2018

LAND ADMINISTRATION

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INTRODUCTION

- Customary Land Act (CLA) 2016; Sec. 5 – (1) establishes a Customary Land Committee (CLC) as follows: “There shall be established in each Traditional Land Management Area, customary land committees at Group Village Headman Level”
- CLA - Sec 8 (1) establishes the office of a Land Clerk.
- The regulations deal with the “How” part of these two structure, among other things.

Nomination of Members of a CLC

- **Clause 4.** A land clerk of each Traditional Land Management Area shall—
 - a) issue a notice to a group village headman requesting for the list of all
 - b) persons who are at least eighteen years of age and are ordinarily resident in the area under the jurisdiction of the group village headman;

- c) call for nominations of names of persons who are at least eighteen years of age and are ordinarily resident in the area under the jurisdiction of the group village headman for election to a committee;
- d) receive nominations of persons for election to a committee from persons who are at least eighteen years of age and are ordinarily resident in the area under the jurisdiction of the group village headman at least twenty-one days before the day of the election.

Membership Criteria

- **Clause 5.** In order to qualify for election and appointment as a member of a committee, a person shall—
 - a) be a citizen of Malawi;
 - b) be ordinarily resident in the area;
 - c) be at least eighteen years of age;
 - d) not be a member of the National Assembly;
 - e) not be a ward councilor;
 - f) not be a judicial officer;
 - g) not be a public officer;

- h) not be a person holding a political party office;
- i) not be a mentally unfit person; and
- j) not a person who has been convicted of a criminal offence involving dishonesty or moral turpitude

VACANCIES

- **Clause 6.** In addition to the provisions of section 5(4) of the Act, a member of a committee shall vacate office, if he is—
 - a) incapable of performing his duties as a result of any disability;
 - b) adjudged bankrupt;
 - c) elected a ward councilor;
 - d) elected a Member of Parliament; or
 - e) convicted of an offence involving dishonesty or moral turpitude.

Co-option of Members

- **Clause 8.**

- 1) A committee may co-opt up to three members, at least one of whom shall be a woman, to attend a meeting of the committee on account of their expertise.
- 2) The co-opted members may deliberate during the meeting of the committee but shall not have a vote.
- 3) A person shall be eligible to be co-opted to a committee, if he satisfies membership criteria under regulation 5.

Qualifications of a Voter

- **Clause 9.** A person may nominate and vote for a candidate for appointment to a committee, if he is—
 - a) a citizen of Malawi;
 - b) at least 18 years of age;
 - c) resident within the area; and
 - d) registered in the Group Village Head register for the poll.

Voting Procedure

- **Clause 10.** On the day of the elections, a land clerk shall introduce all candidates to the voters and thereafter the voters shall indicate their vote for a candidate by casting their ballots in secret

Functions of a Customary Land Committee

- **Clause 11.** The functions of a committee shall be to—
 - a) clarify all rights of occupation and use of customary land by land users in the area under the jurisdiction of the group village headman of the area;
 - b) ensure all other categories of land and their respective boundaries within the jurisdiction of the group village headman of the area are clear and known;
 - c) adjudicate customary land rights either sporadically or systematically for purposes of registration of land;
 - d) process applications for and make grants of customary estates subject to the consent of the Traditional Authority;
 - e) prescribe amounts of land that can be allocated to an individual, a family, group of persons, or an organization;

- f) liaise with and consult institutions and bodies within the jurisdiction whose activities and mandates affect land use, water, forestry, mining, agriculture, and development planning;
- g) in consultation with the Commissioner, levy any fees or charges on customary estates granted to organizations or bodies or annual rent on customary estate leases granted or sub-leased to organizations or bodies;
- h) inspect and verify whether the conditions subject to which a customary estate is granted are being complied with;

- i) approve any transactions on customary estates within the first five years of registration;
- j) carry out public outreach campaigns on any matter concerning the Act; and
- k) recommend to a local government authority, the appointment of any staff it may need to carry out its duties and responsibilities

Functions of a Land Clerk

- **Clause 13 – issuing notice of meetings.** A land clerk shall issue a written notice of every meeting of a committee to each member at least seven days prior to the date of the meeting.
- **Clause 14.** The quorum for the conduct of the business of a committee shall be four members including the chairperson or the person presiding over the meeting and at least two women

- **Clause 16 – Record keeping.** A land clerk shall record and maintain minutes of the meetings of a committee
- **Clause 21 – Boundary verification.** A land clerk shall, in liaison with a committee, carry out the verification of boundaries of traditional land management areas using the orthophoto maps printed by the District Land Registrar under regulation 20.
- **Clause 22 (1)** A land clerk shall, in accordance with instructions from the Surveyor General and the Commissioner for Physical Planning, prepare a base map and a land use plan for each traditional land management area and group village area in accordance with the Land Survey Act, 2016 and the Physical Planning Act, 2016

- 2) The base map and land use plan referred to in sub-regulation (1) shall be used for purposes of preparing for the adjudication process.
- 3) The base map and land use plan shall highlight the key natural resources that may require protection and management frameworks such as wetlands, fragile lands, hazardous lands and existing infrastructure and services

- **Clause 23 – Giving notice of Adjudication and Demarcation.**
 - 1) Not less than seven days before the demarcation of an adjudication area is commenced, a land clerk shall give notice of the intended demarcation and recording of claims, and of the time and place at which the demarcation will commence, in such manner as the land clerk considers most likely to bring the matter to the knowledge of the persons who will be affected by the demarcation and recording.
 - 2) The notice in sub-regulation (1) shall be posted in prominent places in the area in order to ensure that as many persons as possible have access to the information

Claims of interest in land

- **Clause 24.** Any person, body or organization with an interest in land within an adjudication area shall make a claim to a land clerk, and point out his or its boundaries to the land clerk

- **Clause 25.** The land clerk shall, in liaison with a committee,—
- verify the boundaries of land parcels and the individual claims to those land parcels in the presence of persons who may be affected by the verification;
- map the boundaries of land parcels using an image or a mobile device;
- set aside or make reservations of land or demarcate rights of way and other easements which it considers necessary for the more beneficial occupation of land;

- The Land Clerk shall
 - provide advice and guidance to claimants in accordance with customary law, on any questions about land parcel boundaries, land claims, and persons of interest;
 - make provision for witnesses to be present during the recording of claims to attest to the validity of the claims and provide any evidence or testament to support the claims;

- The Land Clerk shall
 - safeguard the interests of absent persons, women, minors, the elderly and persons under a disability;
 - without prejudice, hear any dispute or objection that may arise during the claims recording and record the parcel as “DISPUTED” for referral to the Customary Land Tribunal;
 - ensure all claims are heard within the principles stated here as no claim shall be excluded by the field recorders;

- provide a unique parcel number that can be attributed to claimant; and
- present the final field records to the committee for checking and confirmation and once confirmed, the final field records shall form the preliminary adjudication and demarcation record register.
- Inspection of Preliminary Adjudication Record

Inspection of Preliminary Adjudication Record

- **Clause 26.**
- (1) A land clerk shall give a notice of fourteen days for inspection of the adjudication register to enable other persons make objections or corrections, if any.
- (2) The land clerk shall keep the adjudication record for inspection for a period of 60 days from the date of the expiry of the notice in sub-regulation (1).

Final Adjudication Record

- **Clause 29.** Upon the resolution of disputes, the demarcation and adjudication record and the maps shall form the customary land register.

Customary Land Register

- **Clause 35.** A land clerk shall maintain a Land Record for each committee which shall comprise every parcel of land that has been registered and every customary estate or customary estate lease, if any, which has been granted.