

CHAPTER 114
THE VILLAGE LAND ACT
[PRINCIPAL LEGISLATION]

ARRANGEMENT OF SECTIONS

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CHAPTER 114

THE VILLAGE LAND ACT

An Act to provide for the management and administration of land in villages, and for related matters.

[1st May, 2001]

[G.N. No. 486 of 2001]

Act No. 5 of 1999

PART I
PRELIMINARY PROVISIONS (ss 1-2)

1. Short title

This Act may be cited as the Village Land Act.

2. Interpretation Act No. 7 of 1982

In this Act, unless the context otherwise requires-

"adjudication officer" means a person appointed to be an adjudication officer under section 56 of this Act;

"certificate of approval to a derivative right" means a certificate granted under section 31 of this Act;

"certificate of customary right of occupancy" means a certificate issued under section 29 of the Land Act Cap. 113*;

"certificate of village land" means a certificate issued under section 7 of this Act;

"Commissioner" means the Commissioner of Lands appointed under section 9 of the Land Act Cap. 113*;

"communal right of way" has the meaning ascribed to it by section 157 of the Land Act;

"communal village land" has the meaning ascribed to it by section 13 of this Act;

"Constitution" means the Constitution of the United Republic of Tanzania Cap. 2*;

"Court" means the Court established under section 167 of the Land Act Cap. 113* to hear and determine land disputes and includes the Ward Tribunals, the Village Land Council, the District Land and Housing Tribunal, and the Land Division of the High Court;

"customary law" has the meaning ascribed to it by the Interpretation of Laws Act Cap. 1*;

"customary lease" means a lease the mode of creation and incidents of which including its termination are governed by customary law;

"customary mortgage" means a mortgage the mode of creation and incidents of which are governed by customary law;

"customary right of occupancy" means right of occupancy created by means of the issuing of a certificate of customary right of occupancy under section 27 of this Act and includes deemed right of occupancy;

"deemed right of occupancy" means the title of a Tanzanian citizen of African descent or a community of Tanzanian citizens of African descent using or occupying land under and in accordance with customary law;

"derivative right" means a right to occupy and use land created out of a right of occupancy and includes a lease, a sublease, a licence, a usufructuary right and any interest analogous to those interests;

"disposition" means, in relation to a right of occupancy, any sale, mortgage, transfer, grant, partition, exchange, lease, assignment, surrender, or disclaimer and includes the creation of an easement, a usufructuary right, or other servitude or any other interest in a right of occupancy and any other act by an occupier of a right of occupancy whereby his rights over that right of occupancy are affected but does not include an agreement to undertake any of the dispositions so defined;

"district adjudication" has the meaning ascribed to it under section 56;

"district authority" means a district council, a township authority or a village council;

"Elders Council" means the Elders council established under section 60;

"Gazette" has the meaning ascribed to it by the Interpretation of Laws Act Cap. 1*;

"general land" means all public land which is not reserved land or village land;

"hazard land" means land declared to be hazard land under section 6 of this Act;

"immediate family" means, in relation to a person, any other person related to that person in the third or a closer degree of affinity or consanguinity and in all cases shall include persons within those degrees of affinity and consanguinity whether born in or out of wedlock, whether born in or outside Tanzania, and where any person referred to above has had more than one spouse, shall include all such spouses and persons to the fourth or closer degree of affinity thereto;

"joint village land use agreement" means the agreement made, adopted and approved under section 11 of this Act;

"land" includes the surface of the earth and the earth below the surface, things naturally growing on the land, buildings and other structures permanently affixed to or under land and land covered by water;

"land sharing arrangement" means a land sharing arrangement prepared under section 58;

"lender" means a person to whom a mortgage has been given as security for the payment of an advance of money or money's worth or to secure a condition;

"lessee" means a person to whom a lease is granted and includes a person who has accepted a transfer or assignment of a lease;

"lessor" means a person by whom a lease is granted and includes a person who has accepted the transfer or assignment of the reversion of a lease;

"lien" means the holding by a lender of any document of title relating to a right of occupancy or a lease as security for an advance of money or money's worth or the fulfilment of a condition;

"local government authority" means a district authority or an urban authority;

"Minister" means the Minister for the time being responsible for land;

"mortgage" means an interest in a right of occupancy or a lease securing the payment of money or money's worth or the fulfilment of a condition and includes a submortgage and the instrument creating a mortgage;

"notice of temporary assignment" means a notice issued under section 43 of this Act;

"non-village organisation" means an organisation referred to by section 18 of this Act;

"Operation Vijiji" means and includes the settlement and resettlement of people in villages commenced or carried out during and at any time between the first day of January, 1970 for or in connection with the purpose of implementing the policy of villagisation, and includes the resettlement of people within the same village, from one part of the village land to another part of that village land or from one part of land claimed by any such person as land which he held by virtue of customary law to another part of the same land, and the expropriation of it in connection with Operation Vijiji so defined;

"order of abandonment" means an order made under section 45 of this Act and includes a provisional and a final order of abandonment;

"order of temporary assignment" means an order issued under section 43 of this Act;

"public land" means and includes all the land of Tanzania;

"register" means a register prescribed under section 21 of this Act for the recording of rights and interests in and dispositions of and in connection with customary rights of occupancy;

"reserved land" means land referred to by section 7 of this Act;

"right of occupancy" means a title to the use and occupation of land and includes the title of a Tanzanian citizen of African descent or a community of Tanzanian citizens of African descent using or occupying land in accordance with customary law;

"spot adjudication" has the meaning ascribed to it by section 49 of this Act;

"supervision order" means an order issued under section 42 of this Act;

"transfer land" means general or reserved land which is to be transferred to become a part of village land;

"unexhausted improvement" means any thing or any quality permanently attached to the land directly resulting from the expenditure of capital or labour by an occupier or any person acting on his behalf and increasing the productive capacity, the utility, the sustainability or the environmental quality thereof and includes trees, standing crops and growing produce whether of an agricultural or horticultural nature but does not include the results of ordinary cultivation;

"village" means a village registered as such under the Local Government (District Authorities) Act Cap. 287*;

"village adjudication" means the process of adjudication provided for by sections 51 to 55 of this Act;

"village adjudication adviser" means the person appointed to be a village adjudication adviser under section 52 of this Act;

"village adjudication committee" means the committee established under section 53 of this Act;

"village assembly" has the meaning ascribed to it by the Local Government (District Authorities) Act Cap. 287*;

"village council" has the meaning ascribed to it by the Local Government (District Authorities) Act, 1982;

"village land" means the land declared to be village land under and in accordance with section 7 of this Act and includes any transfer land transferred to a village;

"village land council" means the village land council established under section 60 of this Act;

"village register" means the register of interests and rights in village land kept in accordance with section 21 of this Act;

"village transfer land" means village land which is to be transferred to become part of general or reserved land;

"villager" means a person ordinarily resident in a village or who is recognised as such by the village council of the village concerned.

PART II

APPLICATION OF FUNDAMENTAL PRINCIPLES OF THE NATIONAL LAND POLICY (s 3)

3. Fundamental principles of National Land Policy
 - (1) The fundamental principles of National Land Policy which are the objectives of the Land Act Cap. 113*, to promote and to which all persons exercising powers under, applying or interpreting this Act are to have regard to are-
 - (a) to make sure that there is established an independent, expeditious and just system for adjudication of land disputes which will hear and determine land disputes without undue delay;
 - (b) to recognise that all Land in Tanzania is public Land vested in the President as trustee on behalf of all citizens;
 - (c) to ensure that existing rights in and recognised long standing occupation or use of Land are clarified and secured by the law;
 - (d) to facilitate an equitable distribution of and access to land by all citizens;
 - (e) to regulate the amount of land that any one person or corporate body may occupy or use;
 - (f) to ensure that land is used productively and that any such use complies with the principles of sustainable development;
 - (g) to take into account that an interest in land has value and that value is taken into consideration in any transaction affecting that interest;

- (h) to pay full, fair and prompt compensation to any person whose right of occupancy or recognised long-standing occupation or customary use of land is revoked or otherwise interfered with to their detriment by the State under this Act or is acquired under the Land Acquisition Act Cap. 118*;
 - (i) to provide for an efficient, effective, economical and transparent system of Land administration;
 - (j) to enable all citizens to participate in decision making on matters connected with their occupation or use of land;
 - (k) to facilitate the operation of a market in Land;
 - (l) regulate the operation of a market in Land so as to ensure that rural and urban small-holders and pastoralists are not disadvantaged;
 - (m) to set out rules of Land Law accessibly in a manner which can be readily understood by all citizens;
 - (n) to establish an independent, expeditious and just system for the adjudication of Land disputes which will hear and determine cases without undue delay;
 - (o) to encourage the dissemination of information about land administration and Land Law as provided for by this Act through programmes of public and adult education, using all forms of media.
- (2) The right of every adult woman to acquire, hold, use, deal with and transmit by or obtain land through the operation of a will, shall be to the same extent and subject to the same restrictions as the right of any adult man.

PART III
TRANSFERS AND HAZARD LAND (ss 4-6)

4. Transfer of village land to general or reserved land and vice versa
- (1) Where the President is minded to transfer any area of village land to general or reserved for public interest, he may direct the Minister to proceed in accordance with the provisions of this section.
 - (2) For the purposes of subsection (1), public interest shall include investments of national interest.
 - (3) The Minister shall cause to be published in the Gazette and sent to the village council having jurisdiction over the land which is the subject of the proposed transfer, hereinafter called "village transfer land" a notice specifying-
 - (a) the location of the area of the village transfer land;
 - (b) the extent and boundaries of the village transfer land;
 - (c) a brief statement of the reasons for the proposed transfer;

- (d) the date, being not less than sixty days from the date of the publication of the notice, when the President may exercise his power to transfer the land or a part of it.
- (4) Where any portion of the village transfer land has been allocated to a villager or a group of villagers under a customary right of occupancy or a derivative right or a person or a group of persons to use the land, the village council shall inform those villagers or, where any one of those villagers is absent, a member of the family occupying or using the land with that villager, of the contents of the notice.
- (5) Any person referred to in subsection (4) may make representations to the Commissioner and to the village council on the proposed transfer of the land and the persons to whom those representations are made shall take them into account in any decisions or recommendations that they may make on the proposed transfer.
- (6) Where the village transfer land is-
 - (a) less than 250 hectares in extent, the village council shall prepare and submit recommendations for the proposed transfer to the village assembly for it to approve or refuse and the village assembly shall hold a meeting under section 103(3) of the Local Government (District Authorities) Act Cap. 287* to consider the recommendations of the village council and any representations made by the district council of the area where the land is situate, and decide whether to approve or refuse to approve the proposed transfer;
 - (b) greater than 250 hectares, the Minister shall, after considering any recommendations made by the village assembly through the village council, district council and any representations on the matter made by the village and district councils of the area where the land is situate, by resolution, signify his approval or refusal to approve the proposed transfer.
- (7) The Commissioner or an authorised officer shall be under a duty to attend a meeting of the village council or village assembly as the case may be to explain the reasons for the proposed transfer and answer questions thereon and any person or a representative of any organisation who or which is proposing to use and occupy the village transfer land under a right of occupancy may, at the invitation of the village council or village assembly as the case may be, address the meeting and answer questions if any about the proposed use of the land.
- (8) No village transfer land shall be transferred-
 - (a) until the type, amount, method and timing of the payment of compensation has been agreed upon between-
 - (i) the village council and the Commissioner; or

- (ii) where subsection (3) and (9) apply, the persons referred to in those subsections and the Commissioner; or
 - (b) if the matters of compensation referred to in paragraph (a) cannot be agreed until the High Court has agreed as an interim measure, pending final determination of the matters of compensation, to the payment of any sum on account which it thinks proper by the Commissioner to the village council and to the persons referred to in subsection (3) as the case may be; or
 - (c) if general or reserved land is to be exchanged with the village transfer land, that general or reserved land has been identified and is ready to be transferred to the village.
- (9) Where the relevant body under subsection (5) has, by resolution, approved the transfer of the village transfer land or a part of it, the President may exercise his power to transfer that village land or a part of it to general or reserved land.
- (10) Where village transfer land or any part of it is occupied by persons to whom subsection (3) applies, the President shall, where he is minded to exercise his power to transfer that land to general or reserved land, 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 President may direct that any compensation payable under this section shall be paid by the person or organisation to whom or which the village transfer land which has been transferred to general land is granted by a right of occupancy.
- (12) The President may direct the Minister to appoint an inquiry under section 19 of the Land Act Cap. 113* into a proposed transfer and where that inquiry has been appointed, no further action in accordance with this section shall be taken on that proposed transfer until after the inquiry has reported.
- (13) A transfer of village land to general 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.
- (14) The provisions of this section shall be in addition to any provisions in any Act referred to in section 7 which set out the manner in which land is brought under any of those Acts and any powers which may be exercised under any of the provisions of those Acts shall be exercised in a manner which will ensure that the provisions of this section are complied with.

5. Transfer of general or reserved land to village land
The President may direct the transfer of any area of general or reserved land to village land subject to the provisions of section 6 of the Land Act Cap. 113*.
6. Declaration of hazard land
 - (1) The Minister may declare any area of a village land to be hazard land subject to the provisions of subsection (3).
 - (2) Notwithstanding the provisions of subsection (1), any local authority having jurisdiction in any village may advise the Minister to declare any of the Village Land as hazard Land if in its opinion it is necessary to do so.
 - (3) For purposes of this section, hazard land is land the development of which is likely to pose a danger to life or to lead to the degradation of or environmental destruction on that or contiguous land and includes but is not limited to-
 - (a) mangrove swamps and coral reefs;
 - (b) wetlands and offshore islands in the sea and lakes;
 - (c) land designated or used for the dumping of hazardous waste;
 - (d) land within sixty metres of a river bank or the shoreline of an inland lake;
 - (e) land on slopes with a gradient exceeding any angle which the Minister shall, after taking account of proper scientific advice, specify;
 - (f) land specified by the appropriate authority as land which should not be developed on account of its fragile nature;
 - (g) land specified by the appropriate authority as being land which should not be developed on account of its environmental significance.
 - (4) The declaration of any land to be hazard land shall be in accordance with the provisions of this section.
 - (5) Where the Minister considers that an area of land should be declared to be hazard land, in this section referred to as 'proposed hazard land' he shall publish a notice in the Gazette specifying-
 - (a) the location of the proposed hazard land;
 - (b) the boundaries and extent of the proposed hazard land;
 - (c) a brief statement of the reasons for the proposed declaration;
 - (d) the date, being not less than sixty days from the date of the publication of the notice, when the declaration may be made.
 - (6) A copy of the notice referred to in subsection (5) shall be-
 - (a) served on all persons occupying and using the proposed hazard land in a manner and form as will be understandable to those persons;

- (b) on all local authorities having jurisdiction in the area of the proposed hazard land;
 - (c) put up in conspicuous places within the area of the proposed hazard land.
- (7) All persons and authorities on whom a notice has been served and all persons and organisations on whom a notice should have been served but was not and any other person or organisation with an interest in land may, within not less than thirty days after the date of the service of the notice, make representations to the Commissioner on the proposed declaration and the Commissioner shall be under a duty to 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 it be declared to be hazard land.
- (8) Where the Minister, after considering a report prepared by the Commissioner under subsection (7) determines that the proposed hazard land or a part of it shall be declared to be hazard land, he may, subject to subsection (9), make a declaration accordingly.
- (9) Where the proposed hazard land or a part of it is occupied and used by any person under a granted or customary right of occupancy, the Minister shall, if he considers that that land or a part of it should be declared to be hazard land, report the matter to the President.
- (10) The President may, after considering the report of the Minister, declare any land to which subsection (9) applies to be hazard land and any such declaration shall operate to compulsorily acquire, subject to compensation, any right of occupancy in that land.
- (11) A notice of a declaration of hazard land shall be published in the Gazette and shall come into force thirty days after the date of the publication of the notice.

PART IV **VILLAGE LANDS (ss 7-59)**

A: Management and Administration (ss 7-21)

7. Village land
- (1) Village land shall consist of-
 - (a) land within the boundaries of a village registered in accordance with the provisions of section 22 of the Local Government (District Authorities) Act Cap. 287*;
 - (b) land designated as village land under the Land Tenure (Village Settlements) Act, 1965 Act No. 27 of 1965*;

- (c) land, the boundaries of which have been demarcated as village land under any law or administrative procedure in force at any time before this Act comes into force, whether that administrative procedure based on or conducted in accordance with any statute law or general principles of either received or customary law applying in Tanzania and whether that demarcation has been formally approved or gazetted or not;
 - (d) land, the boundaries of which have been agreed upon between the village council claiming jurisdiction over that land and-
 - (i) where the land surrounding or contiguous to that village is village land, the village councils of the contiguous village;
 - (ii) where the land surrounding or contiguous to that village is general land, the Commissioner; or
 - (iii) where the land surrounding or contiguous to that village is reserved land, the official or public organisation for the time being responsible for that reserved land; or
 - (iv) where the land which is claimed as a part of the land of, or is surrounding or contiguous to, that village is land which has been declared to be urban land or pre-urban land, the local authority having jurisdiction over that urban land or peri-urban land; or
 - (v) where the land which is claimed as a part of the land of or is surrounding or contiguous to that village is land which is occupied and used by a person or body under a right of occupancy, that person or body;
 - (e) land, other than reserved land, which the villagers have, during the twelve years preceding the enactment of this Act been regularly occupying and using as village land, in whatever manner such persons or the village assembly or village council were allocated such land including land-
 - (i) lying fallow at any time during the said preceding twelve years;
 - (ii) used for depasturing cattle belonging to villagers or to persons using that land with the agreement of the villagers or in accordance with customary law;
 - (iii) land customarily used for passage to land used for depasturing cattle.
- (2) Where a village claiming or occupying and using land as village land is unable to agree with or is in dispute with a person or body referred to in paragraph (c) of subsection (1) as to the boundaries of the land which it is claiming or occupying and using as village land, or wishes to determine the boundaries of the land it is occupying and using in accordance with

paragraph (d) of subsection (1), the Minister shall, on being satisfied that every effort has been made to try and reach an agreement on the boundaries either-

- a) appoint a person to act as a mediator between the village and the person or body with which the village is unable to reach agreement, the function of that person shall be to work with and persuade the village authorities and that person or body to reach a compromise over the boundaries; or
 - (b) where the mediator reports to the Minister that despite his best endeavours, he is unable to persuade the parties to the dispute to reach a compromise on the boundaries, advise the Minister to appoint an inquiry under section 18 of the Land Act Cap. 113* to adjudicate on and demarcate the boundaries of that village land.
- (3) An inquiry appointed under section 18 of the Land Act Cap. 113* to adjudicate and demarcate the boundaries of village land shall conduct such an inquiry in accordance with any specific directions and procedures set out in the document appointing the person or persons to conduct that inquiry.
 - (4) Where the Minister has exercised any of his powers under subsection (2), all parties to a dispute shall forthwith refrain from taking any action which may or is calculated or likely to affect the outcome of the dispute and where any party to a dispute takes such action, the mediator or as the case may be the inquiry shall hold that action against the party that took it in conducting the mediation or as the case may be in determining any recommendations at the conclusion of the inquiry.
 - (5) The Minister shall, unless there are overriding reasons of public interest to the contrary, accept the recommendations of the inquiry appointed under paragraph (b) of subsection (2) as to the boundaries of the village land which was the subject of the inquiry.
 - (6) The Commissioner shall issue to every village in respect of which the boundaries to village land have been demarcated or agreed in accordance with the provisions of this section or under any law or administrative procedure referred to in this section, a certificate of village land in the prescribed form.
 - (7) A certificate of village land shall-
 - (a) be issued in the name of the President;
 - b) confer upon the village council the functions of management of the village land;
 - (c) affirm the occupation and use of the village land by the villagers under and in accordance with the customary law applicable to land in the area where the village is situate;

- (d) where the villagers are pastoralists or have a predominantly pastoral way of life, shall affirm the use, for purposes of depasturing cattle, of land other than village land which is customarily so used by those persons.
- (8) It shall be the responsibility of the village council of the village to which a certificate of village land has been granted to maintain and at all times to keep secure that certificate of village land.
- (9) Where the boundaries of any village land are altered or amended, the Commissioner shall direct the village council of the village, the boundaries of whose land has been altered to send the certificate of village land to the Commissioner for endorsement on that certificate of the alteration or amendment of the boundaries and the village council shall comply with that direction.
- (10) The Commissioner shall maintain a register of village land in accordance with such rules as may be prescribed.
- (11) References to the boundaries of village land in this Part shall be to general boundaries.
- (12) A certificate or other document of registration issued to any village registered under the provisions of section 22 of the Local Government (District Authorities) Act Cap. 287* shall, where the Ministry responsible for Lands approves that it satisfies the conditions for the grant of certificate of village land, have the same effect and force as regards village land as a certificate of village land issued to a village under this section.

8. Management of village land

- (1) The village council shall, subject to the provisions of this Act, be responsible for the management of all village land.
- (2) The village council shall exercise the functions of management in accordance with the principles applicable to a trustee managing property on behalf of a beneficiary as if the council were a trustee of, and the villagers and other persons resident in the village were beneficiaries under, a trust of the village land.
- (3) In the management of village land, a village council shall have regard to-
 - (a) the principle of sustainable development in the management of village land and the relationship between land use, other natural resources and the environment in and contiguous to the village and village land;
 - (b) the need to consult with and take account of the views and, where it is so provided, comply with any decisions or orders, any public officer or public authority having jurisdiction over any matter in the area where the village land is;

- (c) the need to consult with and take account of the views of other local authorities having jurisdiction in the area where the village land is.
- (4) A village council may establish a committee to advise and make recommendations to it on the exercise of any of the functions of the management of village land but, notwithstanding the provisions of section 110 of the Local Government (District Authorities) Act Cap. 287* such committee shall have no power to take any decisions concerning the management of village land.
- (5) A village council shall not allocate land or grant a customary right of occupancy without a prior approval of the village assembly.
- (6) A Village Council shall-
 - (a) at every ordinary meeting of the Village Assembly, report to and take account of the views of the Village Assembly on the management and administration of the Village land; and
 - (b) brief the Ward Development Committee and the District Council, having jurisdiction in the area where the village is situated on the management of the village land.
- (7) The Commissioner may give any advice, either generally to all village councils or to a specific village council on the management of village land which he considers necessary or desirable and all village councils to which that advice is given shall have regard to that advice.
- (8) Where on a complaint made to a district council by a village assembly or by not less than one hundred villagers that the village council is not exercising the function of managing village land in accordance with this Act and other laws applying to village land or with due regard to the principles applicable to the duties of a trustee, the district council shall inform the Commissioner of the matter and subject to any agreement he may make with that district council, the council shall either:
 - (a) advise the complainants to amicably settle the matter with the machinery of village or other local government authority to resolve the issue; or
 - (b) through a full meeting of the district council, use its best endeavours to resolve the issue and advise the village council as to its future conduct of the management of village land; or
 - (c) request the Commissioner to issue a directive to the village council on the management of that village land which that village council shall be required to comply with; or
 - (d) recommend to the Commissioner on the appointment of an inquiry under section 18 of the Land Act Cap. 113*, to investigate the complaint and make recommendations on it.

- (9) An inquiry appointed under paragraph (d) of subsection (8) may recommend to the Minister that the management of the village land be removed from the jurisdiction of the village council the subject of the inquiry either for a fixed or an indeterminate period and transferred to either-
 - (a) the district council having jurisdiction in the area where the village whose village council is being inquired into is situate; or
 - (b) the Commissioner.
- (10) Where the Commissioner, or an inquiry, determines that the village council has taken or omitted to take any action on village land which is contrary to law, the Commissioner shall take all such action as may be necessary to re-establish the lawful management of that village land and the proper allocation of interests in that village land.
- (11) The Minister may, in consultation with the Minister responsible for local government, by regulations, make arrangements for the management of village lands jointly between-
 - (a) two or more villages; or
 - (b) between one or more village and the district council having jurisdiction in the area where the village or villages which are to be part of an arrangement of joint management are situate; or
 - (c) between one or more village and an urban authority within whose boundaries that village or those villages are situate, and that arrangement may provide for the Commissioner to be involved in that joint management of village land.
- (12) Any villager who is aggrieved by the management of village land by a village council, including management by a village council as part of any arrangement for joint management has standing to sue that village council in respect of the management of that village land.

9. Advice by the district council

- (1) A district council may provide advice and guidance to any village council situate within its area of jurisdiction concerning the administration by that village council of village land, either in response to a request for that advice and guidance from a village council or of its own motion and any village council to which that advice and guidance is given shall have regard to that advice and guidance.
- (2) No advice and guidance given by a district council shall contradict or conflict with any directive or circular issued by the Commissioner under subsection (3) of Section 11 of the Land Act Cap. 113*.
- (3) Where a conflict of interest arises in respect of administration of village land, any member of a village council who or a committee of the council dealing with land which is covered by that description shall declare his

conflict of interest and shall take no further part in nor attend any meeting of the village council or its committee where the land the subject of the conflict of interest is on the agenda, and any person who fails to declare that conflict of interest or who contravenes this provision shall render himself liable to disciplinary proceedings applicable to a member of the village council.

10. Conflict of interest

- (1) Where any matter concerning land in which any member of the village council exercising functions under this Act or any member of his immediate family has an interest is allocated to, referred to or otherwise comes to that member of the village council for his advice, assistance or decision that member shall not exercise any function under this Act in respect of that land.
- (2) For the purposes of this section "immediate family" means, any other person related to that person as a father or mother, son or daughter, wife or husband and brother or sister whether born in or out of wedlock, whether born in or outside Tanzania, and where any person referred to above has more than one spouse, shall include all those spouses.

11. Joint village land use agreements between villages

- (1) In the exercise of the powers of management, a village council shall have power to enter into an agreement, to be known as a joint village land use agreement with any other village council concerning the use by any one or more groups of persons, of land traditionally so used by those groups, being the land which is partly within the jurisdiction of one village and partly within the jurisdiction of another village with which an agreement is to be entered into and that agreement may be amended, modified or varied from time to time.
- (2) Where an agreement which is referred to in subsection (1) is to be entered into, the village councils proposing to enter into that agreement shall-
 - (a) first, 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 groups an opportunity to make representations about their use of land and the content of any agreement about that use;
 - (ii) explain the nature, purpose and proposed content of that agreement to those groups;
 - (b) second, prepare a draft agreement which shall take account of any representations made at any meeting convened under subparagraph (i) of paragraph (a);

- (c) third, inform the district council or district councils having jurisdiction in the area where the land covered by the proposed agreement is located of the contents of the draft agreement;
 - (d) fourth, place that draft agreement before a meeting of the village assembly of each of the villages proposing to enter into an agreement for the approval of each such village assembly.
- (3) An agreement made in accordance with this section shall not take effect unless and until it is approved by each village assembly of the villages proposing to enter into that agreement.
- (4) An agreement made under and in accordance with 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 so use the land or part of it including arrangement for the dual use of land or part of it by one or more group of persons using that land for different purposes at the same time;
 - (c) the nature and scope of any rights to or interests in land recognised 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 sets of rules;
 - (d) the manner of resolving disputes about the use of the land covered by the agreement;
 - (e) any other matters which may be prescribed or which the village councils shall consider necessary and desirable.
- (5) An agreement reached by villagers of two or more villages about the use, by those villagers jointly of village land which falls within the jurisdiction of two or more villages or an agreement reached between the traditional leaders of a group of persons using village land which falls within the jurisdiction of two or more villages and the village councils of those villages may be adopted and approved as a joint village land use agreement by the village assembly of the village of those villagers or, as the case may be, of that village council.
- (6) A district council having jurisdiction in the area where the land covered by a proposed agreement is located may require the village council to place any comments which that district council may have about the proposed agreement before the meeting of the village assembly called to approve the agreement.

12. Division of village land

- (1) Village land shall be divided into-
 - (a) land which is occupied and used or available for occupation and use on a community and public basis, to be known as communal village land, by all villagers and any other persons who are, with the agreement of the village council, living and working in the village whether those persons are occupying and using village land under a derivative right or not and that communal village land shall not be made available for individual occupation and use by any person through a grant of a communal or individual customary right of occupancy or a derivative right or any other disposition;
 - (b) land which is being occupied or used by an individual or family or group of persons under customary law; or
 - (c) land which may be made available for communal or individual occupation and use through allocation by the village council in accordance with the provisions of this Part.
- (2) Village land referred to in paragraphs (b) and (c) of subsection (1) may be made the subject of a grant, in accordance with the provisions of this Part, by a village council to the occupier of that land or a citizen who is a villager or a group of citizens who are villagers or any other citizens who may be provided for in this Part, of a customary right of occupancy, by means of a document to be known as a "certificate of customary title".
- (3) Village land referred to in paragraph (c) of subsection (1) may be made the subject of a derivative right granted by a village council in accordance with the provisions of this Part.

13. Communal village land

- (1) The village council shall recommend to the village assembly what portions of village land shall be set aside as communal village land and for what purposes.
- (2) The recommendations of the village council may be put forward as-
 - (a) a land use plan for the village or part of it; or
 - (b) specific recommendations on specific portions of village land; or
 - (c) partly in accordance with paragraph (a) and partly in accordance with paragraph (b).
- (3) The district council shall provide advice and guidance to village councils on the exercise of their functions under this section.
- (4) A village council shall, when exercising functions under this section, have regard to any advice and guidance provided under subsection (3).
- (5) On receipt of the recommendations of the village council under this section, the village assembly shall-
 - (a) approve;

- (b) approve with amendments;
- (c) refer back for further consideration; or
- (d) reject,

the recommendations and where the village assembly rejects the recommendations, the village council shall bring forward, as soon as may be, different recommendations.

- (6) The village council shall maintain a register of communal village land in accordance with any rules which may be prescribed.
- (7) Any land which has been set aside by a village council or village assembly for community or public occupation and use or any land which is and has been, since the formation of the village, habitually used whether as a matter of practice or under customary law or regarded by village residents as available for use as community or public land before the enactment of this Act, shall be deemed by this Act to be communal village land approved as such by the village assembly and shall be registered by the village council under subsection (6).
- (8) Where there is a dispute between a person occupying land which is claimed as communal village land under subsection (7) and the village council, the Minister may, on being satisfied that-
 - (a) the dispute cannot be resolved through the organs of village government; or
 - (b) the continuation of the dispute may lead to serious disruption in the village,
 exercise his powers or direct the Commissioner to exercise his powers under the provisions of subsections (6) to (10) of section 8 of this Act in relation to that dispute.

14. Land which is or may be held for customary rights of occupancy

- (1) Land which is or may be held for a customary right of occupancy shall be-
 - (a) any village land;
 - (b) any general land occupied by persons who immediately before the coming into operation of this Act held that land under and in accordance with a deemed right of occupancy.
- (2) It is hereby affirmed that, notwithstanding any of the provisions of-
 - (a) the Town and Country Planning Act Cap. 355*; and
 - b) Part III of the Land Acquisition Act Cap. 118*,
 a person who occupies and has for not less than a total of ten out of twelve years immediately preceding the enactment of this Act, occupied land in an urban or peri-urban area as his principal place of residence and does not occupy that land as a tenant of another person to whom the Urban Leaseholds (Acquisition and Regrant) Act Cap. 62* could be applicable, or

under a granted right of occupancy, occupies that land under a customary right of occupancy and shall-

- (i) where that land or part of it is from the date of the enactment of this Act to be compulsorily acquired; or
 - (ii) has been or is to be declared to be a part of any scheme which involves the extinguishing of all private rights in the land or any injury to the land or the occupation and its use under the provisions referred to in this subsection or any other law, be entitled to receive full, fair and prompt compensation from the loss or diminution of the value of that land and the buildings and other improvement on it.
- (3) For purposes of subsection (2) occupation by the family of the person claiming to have been in occupation for the specified time shall be deemed to be occupation by that person.
 - (4) If any question arises as to whether a person in occupation of land is a person to whom the provisions of subsection (2) applies, that person shall be deemed to be the person unless the contrary is proved to the satisfaction of a court and he and all parties claiming under him or consistently with his occupation shall be deemed to be entitled to compensation.
 - (5) Any rights in relation to land which have been determined under section 6 of the Forests Act Cap. 323* to be lawfully exercisable within any area declared to be a forest reserve by any person or group of persons are hereby affirmed to be and to have always been rights arising from a customary right of occupancy.
 - (6) In section 8 of the Ngorongoro Conservation Area Act Cap. 413*, the reference to land held under a right of occupancy granted under the Land Act Cap. 113*, shall be deemed to include land held under a customary right of occupancy.
 - (7) Persons who traditionally and in accordance with customary law occupied and used land in any National Park or in the land under the jurisdiction of the Ngorongoro Conservation Area Authority but who, since the enactment of the National Parks Act Cap. 412* and the Ngorongoro Conservation Act Cap. 284* may occupy that land only with the permission of or under a licence from the Director of the National Parks or the Ngorongoro Conservation Area Authority shall be deemed to occupy that land under a customary right of occupancy.
 - (8) Any person or group of persons occupying land under the provisions of section 5 of the Public Land (Preserved Areas) Act Cap. 338*, shall be deemed to be occupying and to have always occupied that land under a customary right of occupancy.

- (9) Nothing in subsections (5), (6) and (7) shall affect the power of authorities exercising functions under the statutes referred to in those provisions from continuing to regulate the use of land by persons, who by virtue of this section, are occupying land under a customary right of occupancy.
15. Confirmation of validity of interests in land created under and by Operation Vijji
- (1) An allocation of land made to a person or a group of persons residing in or required to move to and reside in a village at any time between first day of January, 1970 and the thirty-first day of December, 1977, whether made under and in pursuance of a law or contrary to or in disregard of any law, is hereby confirmed to be and to have always been a valid allocation capable of and in law giving rise to rights and obligations in the party to whom the allocation was made and extinguishing any rights and obligations vested in any person under any law which may have existed in that land prior to that allocation.
- (2) A granted right of occupancy made to a person or group of persons residing in or required to move to and reside in a village at any time between first day of January, 1970 and the thirty-first day of December, 1977 whether granted in accordance with the procedures of the Land Act Cap. 113* or not, and whether registered under and in accordance with the provisions of the Land Registration Act Cap. 334*, or not is hereby confirmed to be and to have always been from the time of the grant a valid granted right and obligations in the grantee as from the date of the grant and extinguishing any rights and obligations vested in any person under any law which may have existed in that land prior to that grant.
- (3) A written offer of a granted right of occupancy or a letter of offer of a granted right of occupancy issued by an officer authorised to do so, made to a person or group of persons residing in or required to move to and reside in a village between the first day of January, 1970 and the thirty-first day of December, 1977, whether made in accordance with the provisions of the Land Act Cap. 113* or not, and whether registered under and in accordance with the provisions of the Registration of Documents Act Cap. 117*, or not is hereby confirmed to be and to have always been a valid offer or as the case may be, a valid letter of offer which may, at any time before first day of January 2000, be acted upon so as to create a right of occupancy which shall be a customary right of occupancy and that customary right of occupancy shall extinguish any rights and obligations vested in any person by any law which may have existed prior to the written offer of or the letter of offer for a granted right of occupancy.
- (4) The interest in land created by an allocation of land to which subsection (1) refers and the right of occupancy to which subsection (2) refers are

hereby confirmed to be and to have always been a customary right occupancy.

- (5) A person or group of persons who, by virtue of this section occupy land under a customary right of occupancy may, subject to and in accordance with the provisions of this Part, obtain a certificate of customary title in respect of that occupation of land.
- (6) Where a customary right of occupancy confirmed by subsections (1) and (2) or capable of being created under subsection (3) is or would be held in respect of an acreage of land which exceeds the maximum acreage of village land which a person is permitted under this Act to occupy, that customary right of occupancy shall, subject to the payment of any compensation or that grant of a right of occupancy in general land which is provided for by this Part, and taking account of the views of the customary right holder as to the portion of land to be exercised as excess land, be terminated in respect of that exercised land by the village council exercising management powers over that village land.
- (7) Every derivative right granted out of a customary right of occupancy confirmed by this section is hereby confirmed to be and to have always been a valid derivative right in any manner it was created and to whom it was granted.
- (8) A derivative right referred to in subsection (7) which conflicts with any of the provisions of this Act relating to the persons to whom, the period for which and amount of land which a derivative right granted out of a customary right of occupancy is required to comply with, may subject to the payment of any compensation which is required by this Act and any other conditions which may be prescribed, be terminated by the village council having management powers over the land.
- (9) Where there is a dispute between two or more persons, family units or groups of persons as to which of the parties is entitled to land under any of the provisions of subsections (1), (2) or (3), the village council shall refer the matter to the Village Land Council to mediate between the parties and where the Village Land Council is unable to resolve the dispute between the parties, the village council shall refer the dispute to the Ward Tribunal and may further refer the matter to court having jurisdiction in the area where the land is situated.
- (10) For the avoidance of doubt, this section does not apply to-
 - a) any right to occupy or use any land in accordance with any custom or rule of customary law existing in any village which existed before and was not established or transformed by the addition of significant numbers of persons from outside the district as a result of Operation Vijiji or in any land which was not brought within the jurisdiction of any village established as a result of Operation Vijiji;

- (b) any right to occupy and use land in accordance with any custom or rule of customary law which existed prior to first day of January, 1970, where that right was being exercised.

16. Confirmation of validity of allocations of land made by village councils since 1 January 1978

For the avoidance of doubt and in order to facilitate security of tenure and contribute to the development of village land, the provisions of section 15, other than subsections (2) and (3), shall apply to any and every allocation of village land made by village council or by any other authority on and after the first day of January, 1978 until the date of the commencement of this Act as if for the dates referred to in subsection (1) of that section, there were substituted the dates between the first day of January, 1978 and the date of commencement of this Act.

17. Occupation of village land by non-village organisation

- (1) A non-village organisation to which this Part applies is-
 - (a) a government department or any office or part of it;
 - (b) a public corporation or other parastatal body or any office, part, division or its subsidiary body;
 - (c) a corporate or other body, a majority of whose members or shareholders are citizens registered or licensed to operate under any law for the time being in force in Tanzania applicable to that corporate or other body which does not consist of a majority of the members of the village; or any similarly composed subsidiary of that corporate or other body.
- (2) Where, at the commencement of this Act, any non-village organisation occupies village land under a granted right of occupancy, that granted right of occupancy shall, notwithstanding that it exists in village land, continue to be a granted right of occupancy for the remainder of its term.
- (3) Subject to the provisions of the Land Act Cap. 113*, relating to disposition of a right of occupancy the Commissioner shall continue to be responsible for the management of the right of occupancy to which this section applies.
- (4) Where the Commissioner is satisfied that a village council is managing the village land in an efficient manner, he may, in writing delegate his functions of managing a right of occupancy to which this section applies to that village council subject to any conditions which he shall think fit to include in the instrument of delegation.
- (5) On and after the coming into operation of this Act, a non-village organisation which wishes to obtain a portion of village land for the better carrying on of its operations may apply to the village council for that land,

and the village council shall recommend to the Commissioner for the grant or refusal of such grant.

- (6) Any association of persons formed in accordance with customary law for the purpose of occupying, using and managing land or any association which has come together and is recognised with 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 registers it in accordance with the provisions of the Trustees Incorporation Act Cap. 318*, be recognised as such by this Act and according the provisions of that Act shall apply in relation to such associations.

18. Incidents of customary right of occupancy

- (1) A customary right of occupancy is in every respect of equal status and effect to a granted right of occupancy and shall, subject to the provision of this Act, be-
- (a) capable of being allocated by a village council to a citizen, a family of citizens a group of two or more citizens whether associated together under any law or not, a partnership or a corporate body the majority of whose members or shareholders are citizens;
 - (b) in village land, general land or reserved land;
 - (c) capable of being of indefinite duration;
 - (d) governed by customary law in respect of any dealings, including intestate succession between persons residing in or occupying and using land-
 - (i) within the village having jurisdiction over that land; or
 - (ii) where the customary right of occupancy has been granted in land other than village land, contiguous to or surrounding the land which has been granted for a customary right of occupancy;
 - (e) subject to any conditions which are set out in section 29 or as may be prescribed and to any other conditions which the village council having jurisdiction over that land shall determine;
 - (f) may be granted subject to a premium and an annual rent, which may be varied from time to time;
 - (g) capable of being assigned to a citizen or a group of citizens, having a residence or place of business in the village where the land is situate, or a body corporate the majority of whose shareholders or members are citizens having a place of business in that village;
 - (h) inheritable and transmissible by will;

- (i) liable, subject to the prompt payment of full and fair compensation, to acquisition by the State for public purposes in accordance with any law making provision for that action.
 - (2) The Minister shall make regulations providing for an area of land which a person can hold under a single right occupancy or derivative right of occupancy or in any way otherwise disposed of to any person or body of persons.
- 19. Incidents of a customary lease Act No. 1 of 1965
Subject to the provisions of Part IX of the Land Act, 1998, a lease and a sublease granted out of a customary right of occupancy shall be called a "customary lease" and "customary sublease", as the case may be, and shall be governed by the customary law applying to the land out of which a lease or sublease, as the case may be, has been granted provided that this section shall not be taken to affect any customary leaseholds enfranchisement under the Nyarubanja Tenure (Enfranchisement) Act, 1965 Act No. 1 of 1965* or the Customary Leaseholds (Enfranchisement) Act Cap. 377*, or to permit or sanction the reintroduction of any form of customary leaseholds similar in nature to Nyarubanja tenure.
- 20. Law applicable to customary right of occupancy Act No. 14 of 1973
 - (1) Subject to the provisions of this Act, on any matter concerning the rights and obligations of a person, a group of persons or a non-village organisation occupying land under a customary right of occupancy or of any person in dispute with any persons referred to above or of any person alleging that he or she is entitled to succeed to or otherwise occupy that land on the death or permanent incapacity of a person occupying land under a customary right of occupancy or on another matter affecting land held under a customary right of occupancy and persons ordinarily resident in the village where the land is situate shall, where that matter is not otherwise provided for under this Act or any other enactment determined in accordance with customary law.
 - (2) Any rule of customary law and any decision taken in respect of land held under customary tenure, whether in respect of land held individually or communally, shall have regard to the customs, traditions and practices of the community concerned to the extent that they are in accordance with fundamental principles of the National Land Policy and of any other written law and subject to the foregoing provisions of this subsection, that rule of customary law or any such decision in respect of land held under customary tenure shall be void and inoperative and shall not be given effect to by any village council or village assembly of any person or body of persons exercising any authority over village land or in respect of any court or other body, to the extent to which it denies women, children or

persons with disability lawful access to ownership, occupation or use of any such land.

- (3) Notwithstanding the provisions of the Judicature and Application of Laws Act Cap. 358* no Act of the Parliament of the United Kingdom referred to in that Act shall apply to land held for a customary right of occupancy or otherwise governed by customary law.
- (4) The customary law which shall be applied to determine any matters referred to in subsections (1), (2) and (3) shall be-
 - (a) in the case of a village not established as a result of Operation Vijiji, the customary law which has hitherto been applicable in that village;
 - (b) in the case of a village established in whole or in part as a result of Operation Vijiji, the customary law applicable in the village immediately before the extinguishing of customary rights in the land under any rules or regulations made under the Rural Lands (Planning and Utilisation) Act, 1973 or the enactment of the Regulation of Land Tenure (Established Villages) Act Cap. 267*;
 - (c) in the case of general land held for a customary right of occupancy, the customary law recognised as such by the persons occupying that land;
 - (d) in the case of any land customarily used by pastoralists, the customary law recognised as such by those pastoralists.
- (5) The grantor and grantee of of a derivative right may stipulate as a condition of that derivative right that the law applicable to it shall be the provisions of Parts VIII which relates to Dispositions affecting Land and Part IX which relates to leases of the Land Act Cap. 113* and other relevant parts of the laws of Tanzania to the exclusion of customary law.

21. Register of village land

- (1) A village council shall maintain a register of village land in accordance with any rules which may be prescribed by the Minister and the village executive officer shall be responsible for keeping that register.
- (2) The village executive officer shall not make any entry on the register in respect of any customary right of occupancy unless and until he is satisfied that any premia, rent, taxes and dues payable in respect of that customary right of occupancy or that derivative right in respect of that customary right of occupancy or that derivative right in accordance with the customary rules applicable in that area have been paid and a receipt or acknowledgement for the same has been validly endorsed on the certificate of customary title or of that derivative right.
- (3) A registry for the purpose of records under this section shall be a village branch of the district land registry for the district in which that village is

situate and all persons working in that district land registry shall fall under the jurisdiction and be subject to the supervision and direction of the Registrar.

B: Grant and Management of Customary Right of Occupancy (ss 22-47)

22. Application for customary right of occupancy in village land

- (1) A person, a family unit, a group of persons recognised as such under customary law or who have formed themselves together as an association, a primary co-operative society or as any other body recognised by any law which permits that body to be formed, who is or are villagers, or if a married person who has been divorced from, or has left for not less than two years, his or her spouse, was, prior to the marriage, a villager, and all of whom are citizens, may apply to the village council of that village for a customary right of occupancy.
- (2) A person or group of persons not ordinarily resident in a village may apply for a customary right of occupancy.
- (3) An application for a customary right of occupancy shall be-
 - (a) made on a prescribed form;
 - (b) signed-
 - (i) by the applicant; or
 - (ii) where the application is made by a family unit, by not less than two persons from the family unit; or
 - (iii) where the application is by a group of persons recognised as such under customary law, by not less than two persons who are recognised by that law as leaders or elders of the group; or
 - (iv) where the application is by a group of persons formed into an association, a primary co-operative society or a body under a law which recognises that body, by not less than two duly authorised officers;
 - (v) where the applicant is a person or group of persons referred to in subsection (2), by not less than five villagers who are not related to any of those applicants; or
 - (vi) a duly authorised agent of any of the applicants referred to in paragraphs (i) to (iv);
 - (c) supported by a declaration concerning any other land in Tanzania held by the applicant;
 - (d) accompanied by any documents and information which may be prescribed or which the village council may require;
 - (e) accompanied by any fee which may be prescribed;

- (f) where the applicant is a person or group of persons referred to in subsection (2), accompanied by a signed and witnessed statement that the applicants intend to establish or commence the construction of their principal place of residence in the village within three months of obtaining a customary right of occupancy;
 - (g) submitted to the village council or its authorised officer.
- (4) A village council may require any applicant to submit any further relevant information which it may specify and shall not be obliged to determine an application until that further information has been submitted or a satisfactory explanation has been submitted as to why that further information cannot be submitted.

23. Determination of application for customary right of occupancy

- (1) A village council shall, within ninety days of the submission of an application or within ninety days of the submission of further information or a satisfactory explanation for its non-availability, determine that application.
- (2) In determining whether to grant a customary right of occupancy, the village council shall-
 - (a) comply with the decisions that have been reached by any committee or other body on the adjudication of the boundaries to and rights in the land which is the subject of the application for a customary right of occupancy;
 - (b) have regard to any guidance from the Commissioner concerning an application from a non-village organisation;
 - (c) have special regards in respect of the equality of all persons, such as-
 - (i) treat an application from a woman, or a group of women no less favourably than an equivalent application from a man, a group of men or a mixed group of men and women; and
 - (ii) adopt or apply no adverse discriminatory practices or attitudes towards any woman who has applied for a customary right of occupancy;
 - (d) where the application is from a non-village organisation in respect of which no guidance under paragraph (b) has been received, have regard to-
 - (i) any advice which has been given to the application by the district council or as the case may be the urban authority having jurisdiction in the area where the village is situate;
 - (ii) the contribution that the non-village organisation has made or has undertaken to make to the community and public facilities of the village;

- (iii) the contribution to the national economy and well-being that the development for which the customary right of occupancy is being applied for is likely to make;
- (iv) whether the amount of land in respect of which the non-village organisation is seeking a customary right of occupancy is so extensive or is located in such an area that it will or is likely to impede the present and future occupation and use of village land by persons ordinarily resident in the village;
- (v) any other matters which may be prescribed;
- (e) 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 village land under a customary right of occupancy whether the allocation of additional land under a customary right of occupancy would cause that applicant to exceed the prescribed amount of land which a person or group of persons may occupy in that village.
 - (ii) where the applicant already occupies land under a customary right of occupancy, whether all the terms and conditions subject to which that right of occupancy is held and all other regulations relating to the use of that land have been strictly complied with and if they have not, the reasons for any non-compliance;
 - (iii) whether the applicant has or is likely to be able to obtain access to the necessary skills and knowledge to be able to use the land applied for productively and in accordance with the terms and conditions subject to which the customary right of occupancy will be granted and all other regulations applying to the use of the land for which the right of occupancy is being applied for;
 - (iv) the extent and manner in which the applicant, if an individual, intends to make provision for any dependants that the applicant may have or will, if the applicant dies, have, out of the land;
 - (v) any other matters which may be prescribed,
- (f) where the applicant already occupies village land under a customary right of occupancy consider whether the allocation of additional land under a customary right of occupancy would cause that applicant to exceed the prescribed amount of land which a person or group of persons may occupy in that village;

- (g) where the applicant is a person or group of persons referred to in subsection (2) of section 21 have regard to-
 - (i) the amount and location of the land the applicant is applying for;
 - (ii) the purpose for which the applicant is intending to use the land and whether that purpose accords with any village development or land use plan;
 - (iii) the matters referred to in subparagraphs (i) and (iii) of paragraph (d); and subparagraphs (iii) and (iv) of paragraph (e);
 - (iv) any other matters which may be prescribed.
- (3) A village council shall, after considering an application in accordance with subsection (2)-
 - (a) grant in respect of all or a part of the land applied for subject to any conditions which-
 - (i) are set out in section 29 or which may be prescribed;
 - (ii) the village council is directed by the Commissioner to impose in respect of a grant to a non-village organisation; and
 - (iii) may be prescribed; or
 - (b) refuse to grant, a customary right of occupancy to the applicant.
- 4) Where an application is refused, the village council shall, at the request of the applicant, furnish that applicant with a statement of reasons for the refusal.

24. Contract for a customary right of occupancy

- (1) Where a village council has determined to grant a customary right of occupancy to an applicant, it shall send or deliver to the applicant an offer in writing, signed by the chairman and secretary of the village council, in a prescribed form, setting out the terms and conditions subject to which it will grant that customary right of occupancy to that applicant.
- (2) Where an applicant has received an offer in writing under subsection (1), he shall, within not more than ninety days, reply in writing signed by the person or persons required under paragraph (b) of subsection (3) of section 21 to sign an application for a customary right of occupancy to that offer in the prescribed form either-
 - (a) accepting that offer; or
 - (b) refusing to accept that offer,
 and send or deliver that reply to the village council or its authorised officer.
- (3) Where the acceptance of an offer made under subsection (1) is conditional upon the payment of a sum of money by way of a premium, an advance

payment of rent, a deposit or any tax or due to the village council or any other person or organisation named in the offer, that acceptance shall not operate to conclude a contract for the grant of a customary right of occupancy unless and until that sum of money is paid in full to the payee.

- (4) A payee who has received a sum of money under subsection (3) shall immediately provide a receipt for that payment to the person who has made that payment.
- (5) Where, at any time after the conclusion of a transaction it is shown to the satisfaction of that person or organisation charged with the responsibility for preventing or combating corruption that any part of the process of obtaining a customary right of occupancy was effected by a corrupt practice, that customary right of occupancy shall without any further action, and notwithstanding any other rule of law to the contrary, be deemed to be void and of no effect and the grantee of that void customary right of occupancy shall, without prejudice to any action which may be taken against that person under any law dealing with corruption, immediately become a trespasser on that land, liable to suffer all such action and penalties applicable to trespassers.

25. Grant of a customary right of occupancy

- (1) Where a contract for a grant of a customary right of occupancy has been concluded, a village council shall, within not more than ninety days of that conclusion, grant a customary right of occupancy to the applicant who accepted the offer referred to in section 23 by issuing a certificate, to be known as a 'certificate of customary right of occupancy' to that applicant.
- (2) A certificate of customary right of occupancy shall be-
 - (a) in a prescribed form;
 - (b) signed by the Chairman and secretary of the village council;
 - (c) signed or marked with a personal mark by the grantee of the customary right of occupancy to which it relates at the foot of each page of the certificate;
 - (d) signed, sealed and registered by the District Land Officer of the district in which the village is situate.

26. Payment of premium on grant of a right of occupancy to a non-village organization

- (1) Subject to the provisions of subsections (3), (4) and (5) of section 17 the village council may, require the payment of a premium on the grant of a customary right of occupancy to a non-village organisation or a person or group of persons referred to in subsection (3) of section 22.

- (2) In determining the amount of any premium, the village council shall seek and take account of the advice of the Commissioner, who in giving that advice which may be in the form of published advice to all village councils shall have regard to the principles governing the determination of a premium in respect of granted rights of occupancy set out in subsection (3) of section 31 of the Land Act Cap. 113*.
- (3) Where the payment of a premium as aforesaid is required, a demand for that payment shall be sent or delivered to the person to whom the certificate of customary title is to be sent or delivered at the same time as or before that certificate is sent or delivered to that person.
- (4) No certificate of customary right of occupancy shall be valid or of any effect and no occupation of land under a contract for a customary right of occupancy or otherwise shall be lawful until a premium which has been demanded in accordance with subsection (2) has been paid in full or in any other way which may be provided in the contract for the grant of a customary right of occupancy.
- (5) Where it has been provided under a contract for a customary right of occupancy that a premium may be paid in instalments or in some other manner than in full at the time of or before the issuing of a certificate of customary right of occupancy, and failure to comply with any term of that contract shall be deemed to be a failure to comply with a condition of the right of occupancy which shall give rise to revocation by the village Council.

27. Length of term of customary right of occupancy

- (1) A customary right of occupancy may be granted-
 - (a) for a term which may be indefinite or any length of time less than an indefinite term to a person who is a citizen or a group of persons all of whom are citizens provided that there shall be a presumption that that person or group of persons shall be granted a customary right of occupancy for an indefinite term;
 - (b) for a term together with an option for a further term or terms which together with the original term may be up to but shall not exceed ninety-nine years;
 - (c) from year to year or for periods of less than a year determinable by the village council by one year's notice or less, whether or not the grant includes an initial fixed term does not exceed four years.
- (2) Where a right of occupancy has been granted for a term certain, with or without an option for a further term or terms certain, no reduction in the length of that term certain or the term or terms certain contained in the option or options shall be made to or introduced in the option or options

shall be made to or introduced into that right of occupancy by the village council without the agreement of the occupier.

28. Rent

- (1) The village council may require the payment of an annual rent—
 - (a) for a right of occupancy from a person or group of persons referred to in subsection (2) of section 23;
 - (b) from a non-village organization, subject to the provisions of subsections (3), (4) and (5) of section 17.
- (2) The rent shall be paid in any instalments and at any intervals of time during the year which shall be provided in the certificate of customary title.
- (3) The rent shall be paid to the village council or an authorised officer of that council and a signed receipt in respect of each payment of rent that is made shall be given to the payer of that rent.
- (4) In determining the amount of any rent, the village council shall—
 - (a) comply with any directives from the Commissioner on the amount of, or the method of, or the factors to take into account in, determining the amount of any rent which is to be paid;
 - (b) where no such directives have been issued, take account of—
 - (i) any advice given by the Commissioner on the amount of, or the method of or the factors to take into account in determining any rent which is to be paid;
 - (ii) the use of land permitted by the customary right of occupancy which has been granted;
 - (iii) the value of land as evidenced by any dispositions of land in the area where the customary right of occupancy has been granted, whether those dispositions were made in accordance with customary law or not;
 - (iv) an assessment by a qualified and authorised value or other person with knowledge of the value of land of the appropriate amount of rent which should be paid for land;
 - (v) the amount of any premium required to be paid on the grant of a customary right of occupancy.
- (5) Notwithstanding anything to the contrary contained in any certificate of customary right of occupancy or in any of the provisions of any conditions of a customary right of occupancy, in every case in which the village council requires the payment of a rent, that council shall, subject to the approval of the Commissioner, have the power to revise that rent at intervals of not less than five years and in any exercise of that power, the determination of any revised rent shall be in accordance with subsection (4).

- (6) Where the village council determines to grant a customary right of occupancy to any person or organisation of land which is to be used exclusively for religious worship or for burial or exclusively both for religious worship and for burial, that council shall not require the payment of any rent in respect of that customary right of occupancy.
- (7) The village council may grant a customary right of occupancy at a nominal rent if the land is to be used exclusively for a charitable purpose by a non-village organisation and is empowered to review and increase that rent if the land ceases to be used exclusively for a charitable purpose.
- (8) Where any rent or instalment of any rent payable in respect of a customary right of occupancy or any part of that rent or instalment remains unpaid for a period of six months after the date on which the same is required to be paid, interest at a rate of two per centum a month or part of it, or at any other rate which the Minister may by order prescribed, shall be payable on the amount of the arrears as it is from time to time until payment of the whole amount is made from the date from which the rent or instalment first fell into arrears and shall be collected and recoverable in the same manner as rent.
- (9) The acceptance by or on behalf of the village council of any rent shall not be held to operate as a waiver by that council of any right to revoke the customary right of occupancy accruing by reason of the breach of any covenant or condition, express or implied in any contract for a customary right of occupancy or in any certificate of customary title granted under this Act.
- (10) The provisions of section 50 of the Land Act Cap. 113* in relation to the summary proceedings for recovery of rent shall apply to rent due and owing under this Part as they apply to rent due and owing under Part VI of the Land Act.

29. Conditions

- (1) Every customary right of occupancy shall be granted subject to the conditions set out in this section and any other conditions which may be prescribed.
- (2) Every grant of a customary right of occupancy shall contain the implied conditions that-
 - (a) the occupier will use and will take steps to ensure that those persons occupying and working the land with him or occupying and working the land with his permission will-
 - (i) keep and maintain the land in good state; and
 - (ii) in the case of land to be used for farming, farm the land in accordance with the practice of good husbandry customarily used in the area; and

- (iii) in case of land to be used for pastoral purposes, use the land in a sustainable manner in accordance with the highest and best customary principles of pastoralism practised in the area;
 - (b) any permissions that are required to be obtained before any buildings are erected will be obtained and no building will be erected until those permissions have been so obtained;
 - (c) the occupier will pay any rent, fees, charges, taxes and other required payments due in respect of his occupation of the land as and when such imposts fall due;
 - (d) the occupier will comply with all rules, including all rules of customary law and all by-laws applicable to the land and all lawful orders and directions given to him by the village council or any person acting with the authority of the village council relating to his use and occupation of the land or any orders of any local or other authority having jurisdiction over land in the area where the land is situate or any orders of any officer exercising powers under this Act;
 - (e) the occupier will retain and keep safe all boundary marks, whether natural or otherwise on or at the boundaries to the land;
 - (f) the occupier will remain residing in the village but where he is to be temporarily absent, will make all proper arrangements for the land to be managed and used in accordance with the conditions set out in this subsection.
- (3) A person who signs a certificate of customary right of occupancy in accordance with the provisions of section 24 shall, where he signs on his own behalf, be deemed to have bound himself and, be deemed to have bound that group of village organisation, be deemed to have bound that group of persons or that non-village organisation as the case may be, to the village council to observe and comply strictly with each and every condition contained in that certificate of customary right of occupancy.
- (4) The Commissioner and any authorised officer of the village council or other department of government may, subject to the provisions of section 171 of the Land Act Cap. 113* relating to the right of entry enter on land the subject of customary right of occupancy and to inspect whether the conditions under which the customary right has been granted are being complied with.

30. Assignment of customary right of occupancy by villager

- (1) A villager or group of villagers or a lender of monies on the security of a mortgage exercising the powers of sale provided for by sections 131 to 133 of the Land Act Cap. 113* in relation to power of sale may assign a

customary right of occupancy in the land held for that customary right of occupancy or a part of it to-

- (a) a villager or a group of villagers;
 - (b) the village council;
 - (c) a person or group of persons, being citizens, to whom subsection (2) applies.
- (2) An assignment of a customary right of occupancy may be made to a person or group of persons not ordinarily resident in a village if and only if-
- (a) the village council approves of the assignment;
 - (b) there is an agreement prior to the assignment;
 - (c) in event of termination of the agreement the assignment shall be made to a citizen;
 - (d) that person or the authorised representative of that group of persons make and sign a deposition that he or they will make that village his or their principal place of residence or work or commence the construction of one or more houses to be a principal place of residence within six months of that deposition; or
 - (e) that person or that group of persons make and sign a deposition that he or they will within six months of the making of that deposition commence the construction of some industrial, commercial or other building which is likely to provide benefit for villagers or the village; or
 - (f) that person or that group of persons make and sign a deposition that he or they intend within six months of the making of that deposition to commence some agricultural, mining, tourist or other development which is be likely to provide benefit to villagers or the village.
- (3) The parties to a proposed assignment shall notify the village council on a prescribed form of that proposed assignment not less than sixty days before it is proposed.
- (4) The village council shall disallow an assignment which-
- (a) would result in the assignee occupying an amount of land in excess of the prescribed maximum for that village;
 - (b) would operate or would be likely to operate to defeat the right of any woman to occupy land under a customary right of occupancy, a derivative right or as a successor in title to the assignor;
 - (c) would result in the assignor occupying an amount of land insufficient to provide for his livelihood or where he has a family or other dependants, for their livelihood;
 - (d) is to be made to a person or group of persons referred to in subsection (2) and-

- (i) those persons have not made the required deposition; or
 - (ii) the village council is in possession of clear evidence that, notwithstanding that a deposition has been made, the person or persons who made the deposition do not intend to comply with it;
 - (e) is to be made to a person who occupies land under a customary right of occupancy but is and has been for not less than six months in breach of-
 - (i) one or more terms and conditions subject to which he occupies land under that customary right of occupancy; or
 - (ii) any rules applicable to the land or the use of the land which he occupies under that customary right of occupancy;
 - (f) does not comply with any other matters which may be prescribed.
 - (5) Where a village council determine to disallow an assignment, it shall send or deliver to the parties within sixty days of the receipt of a notice of assignment, a notice to disallow the proposed assignment in the prescribed form.
 - (6) An assignment that infringes the criteria set out in subsection (4) or that is made notwithstanding the service of a notice to disallow on one or both parties to the assignment shall be void.
 - (7) A village council shall-
 - (a) send a copy of any notification of assignment and any notice to disallow to the Commissioner;
 - (b) record any assignment of a customary right of occupancy and any notice to disallow in the register of village land.
31. Approval required for private disposition of derivative right
- (1) This section applies to the disposition, by the holder of a certificate of occupancy or right of occupancy, of a derivative right in the land held for a customary right of occupancy.
 - (2) A disposition of a derivative right to which this section applies shall-
 - (a) comply with the provisions of this section and the sections 32 and 33;
 - (b) be void if the provisions of the sections referred to in paragraph (a) are not complied with.
 - (3) Unless otherwise provided for by this Act or regulations made under this Act, a disposition of a derivative right shall require the approval of the village council having jurisdiction over the village land out of which that right may be granted.
 - (4)(a) The grant of a lease, a licence, a usufruct or an equivalent interest in customary law from year to year or for a lesser period to a person

ordinarily residing in the village from a person ordinarily residing in the village; and

- (b) The creation of-
 - (i) a small mortgage; or
 - (ii) a mortgage for an amount equal to or less than the amount for which a small mortgage may be created; or
 - (iii) a mortgage, reasonable sale or pledge under and in accordance with customary law in favour of a person ordinarily residing in the village by a person ordinarily residing in the village for a sum not greater than the sum which may be obtained by a loan through a small mortgage;
 - (iv) a lease for not more than ten years by a lender exercising the powers of leasing contained in section 29 of the Land Act Cap. 113* relating to the lender's power of leasing, shall not require the approval of the village council.
- (5) An application for approval to a grant of a derivative right shall be-
 - (a) made to the village council on a prescribed form;
 - (b) signed by the applicants;
 - (c) accompanied by a simple plan showing the location and boundaries of the land and any further information which may be prescribed;
 - (d) accompanied by any fees which may be prescribed.
- (6) The village council may require relevant information additional to that which is referred to in subsection (5) and shall not be under any obligation to determine an application in respect of which it has required additional information until that additional information has been submitted to it or a satisfactory explanation of why that additional information cannot be submitted to it has been submitted to it.
- (7) The village council may consult with any person or organisation on an application for an approval to which this section applies but shall not be obliged to accept any advice received as a result of any consultation, nor, shall it be obliged to delay a determination on the application where it has requested for an advice within a certain time and that advice has not been submitted within that certain time.
- (8) An approval of a derivative right under this section shall-
 - (a) be personal to the applicant; and
 - (b) not be assignable.
- (9) An approval of a derivative right shall be-
 - (a) in the prescribed form to be known as a 'certificate of approval to a derivative right' with the specific derivative right for which approval has been given named in brackets;
 - (b) signed by the chairman and secretary of the village council;

- (c) accompanied by a demand for any premium, rent, taxes or dues which may be prescribed or which may be determined by the village council;
 - (d) delivered or sent by registered letter to the holder of the certificate of customary right of occupancy to his last known abode or his usual place of business;
 - (e) entered in a register of appeals to be kept by the village council.
- (10) A derivative right shall be made subject to any terms and conditions which may be prescribed or which the grantor shall determine.
- (11) Where the derivative right permits the grantee to occupy and use any land in the village, that occupation and use shall be subject to the provisions of section 29 of this Act.
- (12) A derivative right may be registered in the register of village land and that registration shall-
- (a) constitute notice of the existence and content of that derivative right;
 - (b) confer priority on that derivative right as against any derivative right created out of the same customary right of occupancy before the registered derivative right which has not been registered, whether or not that prior created derivative right was known to the grantee of the later created derivative right.

32. Grant of derivative right by village council

- (1) This section applies to the grant by a village council of a derivative right in village land.
- (2) An application for a grant of a derivative right shall be-
 - (a) made to the village council on a prescribed form;
 - (b) signed by the party applying for the derivative right or his duly appointed agent or representative;
 - (c) accompanied by simple plan showing the location and boundaries of the land and any other information which may be prescribed or which may be required by the village council;
 - (d) accompanied by any fees which may be prescribed;
 - (e) notified to the members of the village by any means of publicity which will bring the matter to their attention.
- (3) The village council may require any relevant information additional to that referred to in paragraph (c) of subsection (2) and shall not be under any obligation to determine an application in respect of which additional information has been required until that information has been submitted to it or a satisfactory explanation as to why it cannot be submitted has been submitted to it.

- (4) The village council may consult with any person or organisation on an application made for a derivative right under this section but shall not be obliged to accept any advice which it obtains as a result of any consultation, nor, shall it be obliged to delay making a determination if it has requested for an advice within a specific period and that advice has not been received within that period.
- (5) An application for the grant of a lease under this section-
 - (a) of five hectares or less and for five years or less, to be known as a class A application, shall be determined by the village council;
 - (b) of more than five but less than thirty hectares and for more than five but less than ten years, to be known as a class B application, shall be determined by the village council subject to confirmation by the village assembly;
 - (c) of more than thirty hectares or for more than ten years, to be known as a class C application, shall be determined by the village council subject to confirmation by the village assembly and the advice of the Commissioner.
- (6)(a) A Class A application shall be-
 - (i) determined within sixty days of the receipt of the application or within sixty days of the receipt of additional information required under subsection (3);
 - (ii) deemed to be approved if the village council does not determine it within the period referred to in paragraph (i);
- (b) A class B application shall be-
 - (i) determined by the village council upon that determination being submitted for confirmation to the village assembly within ninety days of the receipt of the application or within ninety days of the receipt of additional information required under subsection (3);
 - (ii) submitted to the village assembly not less than seven days before the meeting at which that application is to be considered for approval;
 - (iii) approval or refused by the village assembly within thirty days of the period referred to in paragraph (i);
 - (iv) deemed to be determined in accordance with the decision of the village council if it is refused by the village assembly within the periods referred to in paragraph (i);
- (c) A Class C application shall be-
 - (i) determined by the village council and that determination submitted to the village assembly to be considered for confirmation within one hundred and twenty days of the receipt of the

- application or within one hundred and twenty days of the receipt of additional information required under subsection (3);
- (ii) submitted to the village assembly not less than fourteen days before the meeting at which that application is to be considered for approval;
 - (iii) approval or refused by the village assembly within sixty days of the periods referred to in paragraph (i);
 - (iv) submitted to the Commissioner, together with all information for his advice if any within thirty days of the approval by the village assembly;
 - (v) approval or refused by the village council within thirty days or any longer period which may be determined by village council;
 - (vi) deemed to be refused if the Commissioner advises the village council against it and the village council agrees with him within two hundred and ten days or any longer period which is referred to in paragraph (v) of the receipt of the application by the village council or of the receipt by the village council of additional information required under subsection (3).
- (7) A grant of a derivative right under this section shall be-
- (a) personal to the applicant;
 - (b) not assignable without the consent of the village council after the approval of the village assembly.
- (8) An application for an approval to assign a derivative right granted under this section shall be made on a prescribed form and shall comply in every respect with and be governed by the provisions of this section as if it were an application for a grant of a derivative right.
- (9) A grant of a derivative right shall be-
- (a) in the prescribed form;
 - (b) signed by the chairman and secretary of the village council;
 - (c) accompanied by a demand for any premium, rent, fees, taxes and dues which are prescribed or which may be determined by the village council;
 - (d) where it is the grant of a lease for which a Class C application had been made, counter-signed by the Commissioner and shall unless and until it is so counter signed;
 - (e) delivered or sent to the applicant at his last known abode or usual address;
 - (f) entered in the register of village land.
- (10) A grant of a derivative right under this section shall be made subject to section 29 and such other terms and conditions as may be prescribed or as are determined by the village council.

33. Criteria for determining application for approval or for a grant of a derivative right
- (1) A village council and, in respect of a Class B and Class C application under section 32, a village assembly, shall, in determining whether to give approval to a private disposition of a derivative right under section 34 or to grant a derivative right under section 32 have regard to all or any of the following matters which appear to the village council to be relevant to the application, that is to say-
 - (a) any land use plan prepared or in the process of being prepared by or for the village;
 - (b) the likely benefits to be derived by the village as a whole by the grant of the derivative right;
 - (c) the need to ensure the maintenance of sufficient reserve of land for occupation and use by villagers and for community and public use by those persons;
 - (d) the need to ensure that the special needs of women for land within the village is and will continue to be adequately met;
 - (e) the need to ensure that the special needs of landless people and the disabled within the village will continue to be adequately met;
 - (f) any advice received from any person or organisation which has been consulted on the application;
 - (g) any advice or information given by any department of Government on the application;
 - (h) any other matters which may be prescribed.
 - (2) Where the derivative right which is the subject of an application is a lease for more than ten years to be granted by a lender exercising the powers of leasing contained in section 181, of the Land Act Cap. 113* relating to lenders power of leasing there shall be a presumption that, notwithstanding the provisions of subsection (1), approval will be given to the lease and notwithstanding the provisions of subsection (3), that approval will be deemed to have been given if the village council have not made a decision on the application within sixty days of the receipt.
 - (3) A village council shall, in determining an application under sections 31 and 32-
 - (a) grant, subject to any conditions which may be prescribed or determined by the village council; or
 - (b) refuse,the application and unless this Act provides otherwise, a failure to make a decision within the time specified in this section shall operate as a refusal to approve an application.
 - (4) Where a consent to a grant of a derivative right is refused by a village council or, in the case of a class B or class C application made under

section 32 is not confirmed by the village assembly or in case a class C application, is not confirmed by the Commissioner, the village council or as the case may be the Commissioner shall, at the request of the applicant furnish that applicant with reasons for the refusal or non-confirmation of that application.

34. Duties of grantee of derivative right

- (1) A grantee of a derivative right shall pay all the premia, rent, taxes and dues which are required to be paid in connection with that grant and no such grant shall be valid or effective to transfer any interest in any village land or give rise to any rights in the grantee unless and until all the premia, rent, taxes and dues have been paid accordingly.
- (2) The chairman and secretary of the village council or any other officer of the village council to whom any premia, rent, taxes or dues are required to be paid under this section shall endorse and sign a receipt for that premium, rent, tax or due on the certificate of the grant of the derivative right.
- (3) A grantee of a derivative right shall comply with-
 - (a) all the terms and conditions subject to which the derivative right has been granted;
 - (b) all lawful orders issued and all bye-laws made by the village council of the village having jurisdiction over the land subject to the derivative right or any local or other authority having jurisdiction over land in the area or any orders issued by an official exercising powers under any Law in the United Republic;
 - (c) all directives issued to him by any public officer or public body exercising powers under any Act, if the derivative right is a lease for which a class C application was made.
- (4) A grantee who does not comply with the provisions of this section shall be liable to suffer the termination of his derivative right.

35. Surrender of customary right of occupancy by villager

- (1) A villager or group of villagers or any other person or persons holding a customary right of occupancy may, subject to the provisions of this section, at any time surrender the customary right of occupancy which has been granted to him or them.
- (2) A surrender of land held under a customary right of occupancy, whether made in accordance with customary law or otherwise which has or which it is reasonable to deduce has its purpose or its effect the depriving, or the placing of impediments in the way of a woman from occupying land which she would, but for that surrender of land, be entitled to occupy under customary law or otherwise shall not operate and shall be of no

effect to prevent that woman from occupying that land in accordance with customary law or otherwise.

- (3) A surrender of land held under a customary right of occupancy, whether made in accordance with customary law or otherwise which has or which it is reasonable to deduce has as its purpose or its effect the fraudulent, dishonest or unjust deprivation of a derivative right-holder of his derivative right shall not be a valid surrender and shall not operate to deprive that right-holder of his derivative right.
- (4) Anybody referred to in subsection (1) who surrender land held under a customary right of occupancy shall remain liable to pay all rent, interest on a loan taken out on the security of the customary right of occupancy, taxes, fees and dues owing and due for payment at the time of the surrender of the customary right of occupancy, and-
 - a) a village council shall continue to be able to exercise all the powers provided for by this Act to recover rent owned by an occupier of land held for a customary right of occupancy; and
 - (b) a lender who has lent money on the security of the customary right of occupancy shall continue to be able to exercise all the powers of a lender in respect of that loan.
- (5) Any person who surrenders a customary right of occupancy shall remain liable for any breaches of any conditions subject to which the customary right of occupancy was granted and for breaches of any rules relating to the use of that land which occurred during the occupation or to the use of the land for which he was responsible up to the time of the surrender of the customary right of occupancy.
- (6) Where a villager surrenders a customary right of occupancy for reasons of age, infirmity, disability, poverty or other similar grounds, the village council may, take over from that villager the responsibility for paying any debts to which subsection (4) refers.
- (7) A surrender of a customary right of occupancy shall be-
 - (a) made on a prescribed form;
 - (b) signed by the person or the authorised representatives of the group of persons surrendering the customary right of occupancy;
 - (c) accompanied by any evidence which may be prescribed or which is considered by the village council to be satisfactory that all persons-
 - (i) dependent on a person who is surrendering that customary right of occupancy are aware of the surrender and have agreed to it;
 - (ii) having derivative rights in that customary right of occupancy are aware of the surrender;
 - (d) any other information which may be prescribed;

- (e) send or delivered to the village council of the village where the land is situate.
 - (8) The Village Council shall make entries prescribed in the register of village land recording the surrender of customary right of occupancy.
 - (9) A derivative right granted out of a customary right of occupancy which is surrendered under this section, shall, as from the date of the surrender, be held on the village council on the same terms and conditions which it was held on the person who has surrendered the customary right of occupancy.
36. Regrant of surrendered customary right of occupancy
- (1) The regrant of a surrendered customary right of occupancy by a village council shall be in accordance with the provisions of this Part applicable to the grant of a customary right of occupancy.
 - (2) Where the person who has surrendered a customary right of occupancy has dependants, or if a woman, a spouse and if a man one or more spouses, the village council shall, before publicising the fact that the land is available to be granted to any villager or other person to whom section 22 refers first offer the land to the following persons in the following order, that is to say-
 - (a) where the person who has surrendered the customary right of occupancy 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, his dependants;
 - (b) where the person who has surrendered the customary right of occupancy is a woman-
 - (i) her husband;
 - (ii) where she has no husband or is divorced from her husband or her husband has declined to accept the offer, her dependants in accordance.
 - (3) A customary right of occupancy to which this section applies shall be granted to a person other than a person referred to in subsection (2), free of any outstanding debts which may have burdened the surrendered customary right of occupancy.
37. When breach of condition of customary right of occupancy arises
- (1) A breach of a condition requiring continuous performance shall arise as soon and continue as long as the condition is not complied with.
 - (2) A breach of a condition subject to a fixed term shall arise-

- (a) in the case of a condition requiring the doing of any act within any time specified and upon that time being extended by the village council, within that extended time, upon the expiry of that time without that act having been done;
- (b) in the case of a condition requiring any act to be refrained from until any time specified in the condition or where that time has been extended by the village council, within that extended time, upon the doing of that act before that time.
- (3) Where any condition consists of two or more separate obligations or liabilities, a failure to fulfil any of those obligations or liabilities shall constitute a breach of the condition.
- (4) Where any condition consists of an obligation to comply with regulations made by any local or other authority or the lawful orders of a village council having jurisdiction in the area where the land held for a customary right of occupancy is situated, a failure to comply with any of those regulations or any lawful order shall constitute a breach of a condition, whether that failure is made the subject of criminal proceedings or not.
- (5) Where any condition consists of an obligation to comply with any rule of customary law applicable to the land held for a customary right of occupancy, or to the person occupying that land, a failure to comply with that rule shall constitute a breach of condition.

38. Remedies for breach of condition

- (1) Upon any breach of any condition subject to which any customary right of occupancy has been granted, or upon any failure to pay any rent, taxes or other dues, the village council may-
 - (a) exercise any remedy available under customary law;
 - (b) impose a fine on an occupier in accordance with section 40;
 - (c) serve a notice on the occupier in accordance with section 41 requiring the breach to be remedied;
 - (d) serve a supervision order on the occupier in accordance with section 42;
 - (e) temporarily assign the customary right of occupancy to another person in accordance with section 43.
- (2) The village council may take action under sections 39 to 43 in respect of the same breach.
- (3) The village council may, at any time, withdraw from taking action under sections 39 to 43.
- (4) For purposes of this section and sections 39 to 43, every breach of condition shall be taken as capable of being remedied, and the action required for remedying any breach shall be taken to consist-

- (a) in the case of a positive condition or a requirement in a regulation or order, to do some act or thing, or the doing of any act or thing the omission of which constituted or formed part of the breach;
 - (b) in the case of a negative condition, or a prohibition in a regulation or order, of the doing of those acts and things which are necessary or which the village council may direct to be done to put the land into the state in which it would be if the breach had not occurred.
- (5) The Commissioner may provide advice, in writing, either generally or to a specific village on any remedies referred to in this section and all village councils shall have regard to that advice in so far as it applies to their exercise of power under this section or sections 39 to 43.
- (6) Before proceeding to take any action in respect of a breach of a condition of the customary right of occupancy, the village council shall consider-
- (a) the nature and gravity of the breach and whether it could be waived;
 - (b) the circumstances of the occupier;
 - (c) whether the condition that has been breached could be remedied so as to obviate the breach,

and shall in all cases where the village council is minded to proceed to take action on a breach, first issue a warning to the occupier advising him that he is in breach of the conditions of the customary right of occupancy and how he may rectify that breach.

39. Remedies in accordance with customary law

- (1) Where a village council proposes to exercise any customary law remedy or a breach of a condition imposed under and in accordance with customary law, it shall-
- (a) inform the person alleged to have committed the breach of-
 - (i) the alleged breach;
 - (ii) the proposed remedy;
 - (iii) where some act or thing is required to be done, the time, being not less than twenty-one days, within which it must be done;
 - (iv) the consequences of a failure to remedy the alleged breach;
 - (b) give the person alleged to have committed the breach an opportunity, of not less than fourteen days notice, to make representations on the matter;
 - (c) take all such representations into account before determining whether to proceed to exercise a customary law remedy.
- (2) A customary law remedy which permits or requires that a person be deprived of his land, either for a stated period or permanently, shall not

take effect unless and until the Commissioner has assented to that remedy.

- (3) Where the village council propose to exercise the remedy referred to in subsection (2), it shall-
 - (a) inform the Commissioner in writing of the proposal and the reasons for it;
 - (b) provide the Commissioner with any material which was before it, including a summary of any representations made under paragraph (b) of subsection (1), when it determined to exercise that remedy;
 - (c) provide the Commissioner with any additional information which the Commissioner may, in writing within twenty-one days of the receipt of the information and material referred to in paragraphs (a) and (b), require;
 - (d) not exercise the remedy unless and until the Commissioner has signified, in writing, his assent to that remedy.
- (4) Where a village council is required by the Commissioner to provide additional information under paragraph (c) of subsection (3), it shall provide that additional information within forty days of the receipt of the request from the Commissioner.
- (5) The Commissioner shall signify, in writing, that he assents or that he does not assent to the remedy referred to in subsection (2) within thirty days after he has received all that information which is referred to in subsection (3).

40. Fine for breach of condition

- (1) Where any breach of a condition has arisen, the village council may serve a notice in the prescribed form on the occupier who has committed the breach requiring him to show cause as to why a fine should not be imposed upon him in respect of that breach.
- (2) The occupier shall, within the time specified in the notice, respond to the notice.
- (3) Where the occupier has not responded to the notice or where he has failed to show cause, to the satisfaction of the village council, as to why a fine should not be imposed, the village council may serve a notice on the occupier requiring him to pay a fine within any time which may be specified in the notice and in the case of a continuing breach, the occupier shall be liable without further notice to pay a further during which the breach continues.
- (4) The Minister may make regulations prescribing fines which may be imposed by a village council in respect of breach of conditions.

- (5) The village council may, where the occupier has not committed any other breach of a condition of the customary right of occupancy, suspend the payment of any fine of up to two years if the occupier does not commit that breach again within the period during which the fine is suspended, the fine shall lapse and shall no longer be payable.
- (6) Where the fine is paid in full, no further action shall be taken by the village council in respect of that breach.
- (7) If the village council is satisfied, after due inquiry, which shall include an opportunity for the occupier to make representations on the matter, that the breach in respect of which a fine has been paid is continuing or has recommenced, it may take action in respect of that continuing or recommenced breach under section 39 or 41 to 43.

41. Summary action to remedy breach of condition

- (1) Where any breach of condition has arisen, and it appears to the village council that the breach is capable of being remedied by the occupier who has committed the breach within a reasonable time, it may serve a notice in the prescribed form on the occupier specifying the action required for remedying the breach and requiring the occupier to take that action within the time specified in the notice.
- (2) The occupier on whom a notice under this section is served shall comply strictly with the notice.
- (3) Where a notice served under this section is strictly complied with, no further action shall be taken by the village council in respect of that breach.
- (4) Where it appears to the village council that the notice has not been strictly complied with or that the breach in respect of which the notice was served is continuing or has recommenced, it shall take action in respect of that continuing or recommenced breach in accordance with section 42 or 43.

42. Supervision order to remedy breach of condition

- (1) Where any breach of condition has arisen and it appears to the village council that the occupier who has committed the breach is unlikely or is not capable of remedying the breach unless his use of the land is supervised, it may serve an order, to be known as a "supervision order" in the prescribed form on that occupier.
- (2) A supervision order shall-
 - (a) specify the acts or things that must be undertaken to remedy the breach;
 - (b) the time, being not less than sixty days, within which the acts or things must be undertaken;
 - (c) the person, being an officer from-

- (i) the village council; or
 - (ii) another local authority having jurisdiction in the area; or
 - (iii) a department of government,

who will supervise the undertaking of the acts or things that must be undertaken.
- (3) Where the village council is of the opinion that the breach of condition is of such a severity or of such a technical nature or that the occupier is unlikely to comply with any orders of an officer of the village council that an officer referred to in subparagraphs (ii) and (iii) of paragraph (c) of subsection (2) should supervise the remedying of the breach, it shall-
 - (a) inform that local authority or department of Government of the facts of the case;
 - (b) request that local authority or department of government to provide an officer to supervise the remedying of the breach; and
 - (c) take no further action on the matter unless and until it is informed that an officer referred to in paragraph (b) has been authorised to exercise the functions of supervision under this section.
- (4) A local authority or government department shall, on receipt of a request referred to in paragraph (b) of subsection (3), inform the village council as soon as may be as to whether it will or will not accede to the request and authorise an officer to exercise the functions of supervision.
- (5) Where a local authority or government department informs the village council that it will not accede to the request referred to in paragraph (b) of subsection (3), the village council may either-
 - (a) authorise an officer employed by the village council to exercise the functions of supervision; or
 - (b) withdraw from taking action under this section and take-
 - (i) no further action; or
 - (ii) action under sections 39 to 42 or 43.
- (6) At the end of the period referred to in paragraph (b) of subsection (2) or any longer period which may be agreed to by the village council, the supervising officer shall report to the village council on whether the occupier has completed the acts or things which he was required to undertake by the supervision order.
- (7) Where the report of the supervising officer is to the effect that-
 - (a) the occupier has completed the acts or things required to be undertaken, the village council shall take no further action under the supervision order;
 - (b) the occupier has not completed the acts or things required to be undertaken, the village council shall either-

- (i) extend the operation of the supervision order for any period which it considers necessary to ensure compliance with the order; or
 - (ii) take action under section 42.
 - (8) The provisions of subsection (6) shall apply to a supervision order extended under the provisions of subparagraph (i) of paragraph (b) of subsection (7).
 - (9) Where it appears to the village council that the breach in respect of which a supervision order was served has recommenced, it shall either-
 - (a) reactivate the supervision order and the provisions of this section shall apply to any reactivated order;
 - (b) take action under section 43.
43. Temporary assignment of customary right of occupancy on account of breach of condition
- (1) Where any breach of condition has arisen and it appears to the village council that, notwithstanding any action taken against the occupier in breach of those conditions under sections 39 to 42, the breach is-
 - (a) seriously affecting the sustainable productivity of the land; or
 - (b) seriously harming the land of persons occupying land contiguous to the land where the breach is taking place; or
 - (c) continuing on account of the continued refusal or neglect of the occupier to undertake the necessary acts or things to remedy the breach,
 the village council may determine to take action in respect of that breach under this section.
 - (2) Where the village council determines to take action under this section, it shall-
 - (a) inform the Commissioner of-
 - (i) all the facts of the case;
 - (ii) the actions the village council has hitherto taken to remedy the breach;
 - (iii) the reasons why action under this section is necessary;
 - (b) request the authorisation of the Commissioner to proceed under this section;
 - (c) take no further action unless and until it receives an authorisation to proceed from the Commissioner.
 - (3) On receipt of the information and request under subsection (2), the Commissioner-
 - (a) may direct the village council to send any further information within any time which is specified in the direction;

- (b) shall within forty days of the receipt of the information and request under subsection (2) or the receipt of further information under paragraph (a), send or deliver to the village council a notice in writing either-
 - (i) authorising action to be taken under this section; or
 - (ii) forbidding action to be taken under this section.
- (4) A village council shall comply with any directive or notice received from the Commissioner under subsection (3).
- (5) Where a village council has been authorised to proceed under this section, it shall serve a notice, to be known as a 'notice of temporary assignment' in the prescribed form on the occupier referred to in subsection (1) requiring him to show cause as to why his customary right of occupancy should not be assigned to another person ordinarily residing in the village for a specified period of time.
- (6) The occupier who has been served with a notice of temporary assignment shall respond to that notice, either in person or through a representative within the time specified in the notice, and may adduce any evidence which he considers necessary to enable him to show cause as to why a temporary assignment of his customary right of occupancy should not take place.
- (7) Where the occupier has not responded to the notice or has failed to show cause, to the satisfaction of the village council as to why a temporary assignment of his customary right of occupancy should not take place, the village council shall serve on that occupier an order, to be known as a 'conditional order of temporary assignment' in the prescribed form.
- (8) A conditional order of temporary assignment shall-
 - (a) specify the length of time, being a period of not less than one year nor more than for the duration of the life of the occupier, for which his customary right of occupancy is to be temporarily assigned;
 - (b) state the name of the person or persons to whom the customary right of occupancy is to be temporarily assigned;
 - (c) set out the rights and duties of the person against whom the order is being made in relation to the assignee;
 - (d) specify the date, being not less than sixty days from the date of the conditional order, on which the village council will apply to the court for the conditional order to be made absolute.
- (9) The persons to whom a temporary assignment of a customary right of occupancy shall be made and the order in which they shall be offered that temporary assignment are-
 - (a) where the occupier has a spouse living with the occupier and working on the land, that spouse;

- (b) where the occupier is a man and has more than one spouse living with him and working on the land, those spouses as joint occupiers without the power to sever the joint occupancy;
 - (c) where the occupier has no spouse or if a man spouses, living with that occupier and working on the land, or the spouse, as the case may be, all the spouses decline to take the customary right of occupancy on a temporary assignment, those of the adult dependants of the occupier living with that occupier and working on the land as joint occupier without the power to sever the joint occupancy;
 - (d) where there are no persons in the categories set out in paragraphs (a), (b) or (c) or all those persons have declined to take the customary right of occupancy on a temporary assignment, not more than two of the persons who may be a brother, half-brother, sister or half-sister to the occupier, who are ordinarily residing in the village as joint occupiers without the power to sever the joint occupancy;
 - (e) where there are no persons in the categories set out in paragraphs (a), (b), (c) or (d), or all those persons have declined to take the customary right of occupancy on a temporary assignment, not less than two or more than four villagers, who shall be from the same clan as the occupier nominated by the village council and approved by the Commissioner as joint occupiers without the power to sever the joint occupancy.
- (10) Any person who takes a temporary assignment of a customary right of occupancy shall act as and shall be deemed to be, in relation to the land which is the subject to the temporary assignment, a trustee of that land, the beneficiary of which is the person from whom the temporary assignment has been taken.
- (11) A person shall not be disqualified from taking a temporary assignment of a customary right of occupancy under this section only on the grounds that by so doing, he would be occupying land in excess of the prescribed maximum for that village.
- (12) Any person may make an application to a court having jurisdiction over land matters to make a conditional order of temporary assignment absolute that court shall consider the matter de novo and hear the occupier and the village council and may-
- (a) make absolute the order specified by the village council;
 - (b) amend the order specified by the village council and make that amended order absolute;
 - (c) suspend the operation of the order for a specified period;
 - (d) substitute an alternative remedy for the order;

- (e) dismiss the application and rule that the order be discharged;
 - (f) make any ancillary order which appear to the court to be just and proper in all the circumstances of the case.
- (13) An order of temporary assignment absolute shall, without more, operate as an assignment of the customary right of occupancy to which it refers to the assignee or assignees named in the order.
- (14) A village council shall-
- (a) hold that customary right of occupancy on the same terms and conditions as the occupier who, prior to the assignment, held that customary right of occupancy;
 - (b) have no power to assign that customary right of occupancy;
 - (c) where the former occupier wishes to continue to reside on the land-
 - (i) grant that former occupier a residential licence to reside on the land subject to any terms and conditions which the village council shall approve or which may be prescribed;
 - (ii) provide that former occupier with sufficient income for him to be able to meet his basic needs;
 - (d) apply any surplus income derived from the land in the following order to-
 - (i) paying any taxes or other public imposts owned by the former holder of the customary right of occupancy;
 - (ii) repairing any damage done to the land by the former holder of the customary right of occupancy;
 - (iii) meeting any obligations which the former holder of the customary right of occupancy has to his family which he has not met or is not meeting;
 - (iv) paying the residue to the former holder of the right of occupancy.
44. Revocation of customary right of occupancy
- (1) The President may revoke a customary right of occupancy granted to a non-village organisation or a group of persons not being villagers.
 - (2) The provisions of sections 46 and 47 of the Land Act Cap. 113*, which relates to fines for breach of condition and to summary action to remedy breach of condition of customer right of occupancy respectively shall, as near as may be, apply to the revocation of a customary right of occupancy as they apply to the revocation of a granted right of occupancy provided for in those sections.
 - (3) The Commissioner may direct the village council of the village where the land held of a customary right of occupancy which may be revoked is situate to give him any information and documents and take any action in

any time which may be specified in the direction, being not less than forty days, to enable him to exercise his functions under sections 46 and 47 of the Land Act Cap. 113*, in relation to that customary right of occupancy.

- (4) A village council in receipt of which the directive is referred to in subsection (3) shall comply with that directive in every particular.

45. Abandonment of land held for a customary right of occupancy

- (1) Land held for a customary right of occupancy shall be taken to be abandoned where one or more of the following factors are present:
- (a) The occupier has not occupied or used the land for any purpose for which land may lawfully be occupied and used, including allowing land to lie fallow, in the village for not less than five years;
 - (b) the occupier, other than a villager whose principal means of livelihood is agricultural or pastoral, owes any rent, taxes or dues on or in respect of the land and has continued to owe that rent, taxes or dues or any portion of it for not less than two years from the date on which that rent, taxes or dues or any portion of it first fell to be paid;
 - (c) the occupier has left the country without making any arrangement for any person to be responsible for the land and for ensuring that the conditions subject to which the customary right of occupancy was granted are complied with and has not given any appropriate notification to the village council.
- (2) In determining whether land has been abandoned in terms of paragraph (a) and (b) of subsection (1), regard shall be had 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 customary practices, particularly practices amongst pastoralists which may have contributed to the non-use of the land during the preceding three years;
 - (d) any advice on the matter sought by the village council or given to it by the Commissioner.
- (3) Land shall not be taken to be abandoned under subsection (1) where a spouse or dependants of the occupier are occupying and using that land, notwithstanding that the occupier-
- (a) is not and has not for not less than three years occupied or used that land; or
 - (b) owes, in accordance with paragraph (b) of that subsection any rent, taxes, fees or dues on that land; or
 - (c) has not specifically appointed a spouse or a dependant to manage the land in his absence.

- (4) Where a village council considers that any village land held for a customary right of occupancy has been abandoned, it shall publish a notice in the prescribed form at the offices of the village council and affix a copy of the notice in a prominent place on that land-
 - (a) stating that the question of whether that land has been abandoned will be considered by the village council at a time which shall be not less than thirty days from the date of the publication of the notice;
 - (b) inviting any person in the village with an interest in that land to show cause as to why that land should not be declared to be abandoned.
- (5) A copy of a notice referred to in subsection (3) shall be sent to the Commissioner who shall be entitled to make representations to the village council on the matter.
- (6) Where either no person interested in the land has shown cause or a person interested in the land has shown cause to the satisfaction of the village council as to why the land should not be declared to be abandoned, the village council may make an order, to be known as a 'provisional order of abandonment' in the prescribed form declaring the land to be abandoned.
- (7) A copy of a provisional order of abandonment shall be-
 - (a) posted up in the offices of the village council;
 - (b) affixed in a prominent place on the land to which it refers;
 - (c) sent to the Commissioner.
- (8) A provisional order of abandonment shall, without more, unless a person claiming an interest in the land applies to the court for relief against that order, become a final order of abandonment ninety days from the date of the declaration of the provisional order.
- (9) On the coming into effect of a final order of abandonment-
 - (a) the customary right of occupancy in the land which has thereby been declared to be abandoned, shall immediately and without further action being required stand revoked; and
 - (b) the land which has been declared to be abandoned shall, immediately and without any further action being required, revert back to land held by the village council as available for allocation to persons ordinarily resident in the village.
- (10) The village council shall, on a claim being made within sixty days of the coming into effect of a final order of abandonment by an occupier of land declared by that final order to be abandoned, on being satisfied by that claim, pay compensation for any unexhausted improvements on that land at the time of the coming into effect of the final order, but shall, where the occupier is an individual after taking account of the means, age and

physical condition of that occupier, deduct from any payment or compensation-

- (a) all the costs incurred by the village council in the process of declaring the land to be abandoned, including any costs incurred in any action in court where a person claiming an interest in the land is applying for relief from a provisional order;
 - (b) all the costs incurred in restoring the land or any buildings on the land to the condition that it would be reasonable to expect they should have been in if they had not been abandoned, any rent, taxes, fees or other dues owing and not paid by the occupier.
- (11) A village council shall record a provisional and a final order of abandonment in the register of village land.

46. Application for relief

- (1) An occupier referred to in sections 39 to 45 may apply to a Court having jurisdiction for relief against any of the actions, notices, orders, or declarations which may be made against him by the village council or the Commissioner under any of those sections.
- (2) Where the effect of an action, notice, order or declaration made under any of the referred sections adversely affects any other person with an interest in land of the occupier against whom the action, notice, order or declaration has been made, that other person may, with leave of the court, apply for relief against so much of the action, notice, order or declaration that affects him.
- (3) Where an application is made by one or more but not all co-occupiers, then unless the court orders otherwise, that application must be served on every co-occupier who is not already a party.
- (4) An application for relief is not to be taken as an admission by the occupier or any other person applying for relief that-
 - (a) there has been a breach of condition or an abandonment of land in respect of which the action, notice order or declaration has been served;
 - (b) by reason of that breach or abandonment, the village council or Commissioner has the right to revoke the customary right of occupancy or make a declaration of abandonment;
 - (c) all notices which were required to be served by the village council were properly served;
 - (d) a period for remedying the breach was reasonable.
- (5) A court may grant any relief against the operation of an action, notice, order, or declaration which the circumstances of the case require and without limiting the generality of that power, may-
 - (a) cancel that notice, order or declaration;

- (b) vary the operation of that action, notice, order or declaration;
- (c) postpone the operation of that notice, order or declaration;
- (d) substitute a different remedy for the one determined upon by the village council or Commissioner;
- (e) confirm the action, notice, order, or declaration made, notwithstanding that some procedural errors took place during the making of that action, notice, order or declaration if the court is satisfied that-
 - (i) the occupier or other person applying for relief was made fully aware of the substance of the action, notice, order or declaration; and
 - (ii) no injustice will be done by confirming that action, notice, order or declaration, and may grant that relief on any condition as to expenses, damages, compensation or any other relevant matter which the court thinks fit.

47. Appeals

- (1) An applicant for-
 - (a) the grant of a customary right of occupancy; or
 - (b) approval to the assignment of a customary right of occupancy;
 - (c) approval to any disposition of a derivative right which requires consent;
 - (d) the grant of a derivative right by a village council, who is refused that grant or approval by a village council or where that grant or approval requires the confirmation or approval of the village assembly, is refused that confirmation or approval may appeal against that refusal to the District Council having jurisdiction over where the land the subject of appeal is situate and may further appeal to the Commissioner and further to the Court.

C: Adjudication of Interest in Land (ss 48-59)

48. Application of this Subpart

Except where the boundaries of and interest in land is registered under any law applicable to the registration of village land, or notwithstanding such registration, the boundaries and interests in land are fully accepted and agreed to by all persons with an interest in that land and in respect of the boundaries of that land and land bordering that land, no grant of a customary right of occupancy shall be made to any person, group of persons or non-village organisation unless and until the boundaries of and interest in that land have been adjudicated in accordance with the provisions of this Subpart.

49. Spot adjudication

- (1) A person, group of persons or non-village organisation may, on making an application to a village council for a customary right of occupancy, apply, on a prescribed form to that village council for adjudication, to be known as "spot adjudication" to be applied to that land in respect of which they have applied for a customary right of occupancy.
- (2) The village council shall 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 to land in a proper and just manner, to apply adjudication to land contiguous to or in the vicinity of the land for which adjudication has been requested.
- (3) Where the village council determines that spot adjudication may be applied to the land, it shall commence the process of adjudication in respect of that land.
- (4) Where the village council determines that it is necessary to apply adjudication to land contiguous to and in the vicinity of the land for which adjudication has been requested, it shall-
 - (a) submit the determination in the form of a recommendation to the village assembly for its approval;
 - (b) inform the District Council having jurisdiction over that village of the determination and the reasons for it;
 - (c) inform the applicants of the determination and the reasons for it.
- (5) Where, either-
 - (a) a village assembly rejects the recommendation of the village council submitted to it under paragraph (a) of subsection (3); or
 - (b) an applicant for adjudication submits an objection, in writing, to the determination to the village council, that village council shall report that rejection or as the case may be send a copy of that objection to the District Council having jurisdiction over that village.
- (6) The District Council may, if that considers that spot adjudication ought to be applied to land for which it has been requested, notwithstanding the determination by the village council made under subsection (2), after taking account of the rejection by the village assembly of, or the objection by an applicant for spot adjudication to that determination by the village council, direct that village council to apply spot adjudication to the land of the applicant.
- (7) A village council shall comply with a directive issued to it by the district council under this section.

50. Village or district adjudication
- (1) Adjudication shall be either-
 - (a) village adjudication; or
 - (b) district adjudication.
 - (2) The responsibility for village adjudication is hereby vested in the village council and shall be conducted in accordance with the provisions of this section or section 54.
 - (3) The responsibility for central adjudication is hereby vested in the District Council and shall be conducted in accordance with the provisions of section 56.
 - (4) Where a complaint is made to the district council by not less than twenty persons with interests in land to which village adjudication is being applied that the village adjudication is being applied improperly or unfairly, the district council shall investigate the complaint and on being satisfied of the accuracy of the complaint, the district council shall-
 - (a) issue any directive which it considers necessary to the village council to correct and improve the process of village adjudication; or
 - (b) issue a directive to the village council to-
 - (i) cease exercising any powers under the process of village adjudication;
 - (ii) send all records and other information specified in the directive to the district council;
 - (iii) cooperate fully with any officers whom the district council shall authorise to apply central adjudication to the land to which village adjudication was being applied.
 - (5) The issuing of a directive under paragraph (b) of subsection (4) shall operate to-
 - (a) terminate forthwith village adjudication;
 - (b) apply central adjudication, to the land to which village adjudication was being applied.
 - (6) Where central adjudication has been applied to land under subsection (5), the district council shall thereupon be empowered to-
 - (a) re-examine;
 - (b) cancel;
 - (c) revise;
 - (d) add to;
 - (e) make any other decisions which seem just on, any determination made by any person or body in the village in connection with village adjudication of that land.

51. Determination to apply village adjudication
- (1) A village council may, either of its own motion and shall, on the application of not less than fifty villagers, recommend to the village assembly that a process of village adjudication be applied to the whole or a defined portion of village land available for grants of customary rights of occupancy.
 - (2) A recommendation made 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 village adjudication;
 - (c) summarise the procedures to be followed in the process of village adjudication;
 - (d) be posted in a public place within the village and explained to villagers so that the members of the village assembly may have notice of the recommendation not less than fourteen days before the meeting of the village assembly which is to vote on the recommendation;
 - (e) be copied to the Commissioner.
 - (3) Where the village assembly approves a recommendation made under this section, the village council shall, as soon as may be after that, begin the process of village adjudication.
 - (4) A refusal by the village assembly to approve a recommendation of the village council shall not operate to bar any villager or group of villagers from applying for spot adjudication to be applied to land in respect of which any of those persons have applied for a customary right of occupancy.
52. Appointment and functions of village adjudication adviser
- (1) Where a village assembly has approved a recommendation that a village adjudication process shall take place, the village council of that village shall appoint a villager-
 - (a) known and respected for his knowledge of and impartial judgment about land matters in that village;
 - (b) qualified in a prescribed discipline or profession; or
 - (c) any public servant appointed by the Commissioner at the request of the village council, to act as a village adjudication adviser; or
 - (d) an official with responsibilities for land matters of a local authority having jurisdiction in the area where the land to be adjudicated is situate; or
 - (e) a magistrate appointed by the Judicial Service Commissioner at the request of the village council to act as a village adjudication adviser.

- (2) A village adjudication adviser shall be responsible to the village adjudication committee and shall assist that committee to implement and manage the village adjudication process and without limiting the generality of that function, shall-
 - (a) carry out any lawful orders and directions from the village adjudication committee on any matters connected with the village adjudication process which appear to the committee to be necessary;
 - (b) draw to the attention of the committee any error or omission in any adjudication register at any time before it is completed;
 - (c) make a claim or otherwise act on behalf of any person who is absent or under a disability if he considers it necessary to avoid injustice;
 - (d) attempt to resolve any dispute concerning the boundaries of or interests in land arising out of the village adjudication process through conciliation before it is referred to a village adjudication committee;
 - (e) conduct any inquiries which he may be directed to conduct by the committee to implement a village adjudication process.

53. Village adjudication committee

- (1) Where a village assembly which has approved a recommendation that a village adjudication process shall take place, the village council shall establish a village adjudication committee, the members of which shall be elected by the village assembly.
- (2) A village adjudication committee shall consist of not less than six nor more than nine persons, of whom not less than three persons shall be women, who shall serve for a term of three years and shall be eligible to be re-elected for one further term of three years.
- (3) The functions of a village adjudication committee shall be to-
 - (a) determine the boundaries of and interest in land which is the subject of a village adjudication;
 - (b) set aside or made reservations of land or demarcate rights of way and other easements which it considers necessary for the more beneficial occupation of land;
 - (c) adjudicate upon and decide in accordance with customary law any question referred to it by any person with an interest in land which is the subject of a village adjudication;
 - (d) advise the village adjudication adviser or any person subordinate to him who is assisting in the village adjudication process upon any question of customary law as to which its guidance has been sought;

- (e) safeguard the interests of women, absent persons, minors and persons under a disability;
 - (f) take account of any interest in land in respect of which for any reason, no claim has been made.
- (4) Each village adjudication 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 over that meeting.
 - (5) The quorum of a village adjudication committee shall, where the number of the committee is six members, be four, of which at least two members shall be women and where the number of the committee is greater than six members, be five, of which at least two members shall be women.
 - (6) In the event of an equality of votes, the chairman or other member presiding shall have a casting vote as well as an original vote.
 - (7) Any decision of a village adjudication committee shall be signed by the chairman or other member presiding and the village adjudication adviser.
 - (8) The village adjudication adviser shall be the executive officer for the village adjudication committee and shall keep the records of the committee.
 - (9) The village adjudication committee shall in the exercise of any of its powers under this section which involve a hearing comply with the rules of natural justice and, subject to that duty, may-
 - (a) hear evidence which would not be admissible in a court of law;
 - (b) call evidence of its own motion;
 - (c) use evidence contained in any official record or adduced in any other claim; and
 - (d) generally, determine its own procedures.
 - (10) A village adjudication committee shall have jurisdiction over all claims made during the course of a village adjudication process and for this purpose and in order to discharge the functions referred to in subsection (3), the chairman of that committee shall be legally competent to administer oaths and to issue summonses, notices and orders requiring the attendance of any persons and the production of any documents which he may consider necessary for the carrying out of the village adjudication.

54. Procedures for village adjudication

- (1) The chairman of a village adjudication committee shall be responsible for ensuring that the procedures set out in this section and any other procedures that may be prescribed are complied with.

- (2) Where village adjudication is to be applied to village land or a portion of that land, a notice shall be published and posted in a prominent place in the village and on the land which is to be adjudicated—
 - (a) specifying the approximate area of land to be adjudicated (the adjudication area);
 - (b) requiring all persons who claim any interest in the land to attend a meeting of the village adjudication committee at a specified time and put forward their claims;
 - (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 by the notice.
- (3) On the specified date, the village adjudication committee shall hear and determine all claims made under paragraphs (b) and (c) of subsection (2).
- (4) The village adjudication committee may adjourn any hearing into any claim and direct the village adjudication adviser to conduct further investigations into that claim.
- (5) In hearing and determining any claim, the village adjudication committee shall use its best endeavours to mediate between and reconcile parties having conflicting claims to the land.
- (6) The village adjudication committee shall cause to be prepared a provisional adjudication record in the prescribed manner of the claims to the adjudicated land which it has determined under subsection (3) and shall post that record in a prominent place within the village.
- (7) A provisional adjudication record shall, unless an appeal is made under the provisions of section 55, become a final adjudication record thirty days after it has been published and shall thereupon become a part of the register of village land.
- (8) A provisional adjudication record shall, where any appeal has been made under section 55, become a final adjudication record thirty days after the final disposition of that appeal.

55. Appeals

- (1) Any person who is aggrieved by a determination of a village adjudication committee may, within thirty days of the publication of the adjudication record, appeal to the village land council against that determination.
- (2) The village land council shall, in hearing any appeal—
 - (a) have all the powers and comply with all the procedures applicable to a village adjudication committee; and
 - (b) reach any decision which appears to it to be just in all the circumstances, and, without limiting the generality of that power, may—

- (i) amend the adjudication record;
 - (ii) correct any error in the adjudication record;
 - (iii) direct that the village adjudication adviser conduct further investigations into the subject matter of the appeal.
- (4) Where the village land council proposes to make a decision which may adversely affect the interests of any person in the adjudication area who has not appealed, the panel shall give that person an opportunity to be heard before it shall make that decision.
- (5) Any applicant or person referred to in subsection (4) aggrieved by a decision of the village land council given under this section may, with the leave of the district land court, appeal to that court against that decision and the court may make any decision or order which it considers just in all the circumstances and to that end may make any rectification of the provisional adjudication record which it considers will achieve a just result.

56. District adjudication

- (1) Where the District Council has issued a directive under paragraph (b) of subsection (4) of section 50 or where a village assembly has determined that district adjudication shall be applied to land within the village, the provisions of this section shall apply to the process of district adjudication.
- (2) The District Council shall appoint a public officer to be an adjudication officer for that village land, and that officer shall be in charge of and shall exercise general supervision and control over the adjudication process and without limiting the generality of that power, that officer may-
- (a) where a village adjudication adviser has been appointed-
 - (i) give that adviser orders and directives which that adviser shall comply with;
 - (ii) dispense with the services of that adviser;
 - (b) where a village adjudication committee has been elected-
 - (i) appoint further members to that committee;
 - (ii) remove all or any elected members from that committee;
 - (iii) arrange for the election of new members to that committee by the village assembly;
 - (iv) nominate a chairman of the committee who will replace the chairman elected by that committee;
 - (v) appoint an executive officer for the committee who will replace a village adjudication adviser;
 - (c) where a village adjudication committee has not been elected, appoint a village adjudication committee the composition, powers and procedures of which shall, with the exception of paragraphs (a)

- and (b) of subsection (3) of section 53 comply with the provisions of that section;
- (d) exercise those powers of the village adjudication committee-
 - (i) to the exclusion of that committee, set out in paragraphs (a) and (b) of subsection (3) of section 53; and
 - (ii) in conjunction with that committee set out in paragraphs (a) and (b) of subsection (3) of section 53;
 - (e) refer any matter to a village adjudication committee for its opinion;
 - (f) exercise, to the exclusion of the chairman of a village adjudication committee, the responsibility for ensuring compliance with subsection (2) of section 57;
 - (g) exercise, to the exclusion of a village adjudication committee, the powers set out in subsections (3), (4) and (5) of section 54, and accordingly substitute a reference to himself for a reference to a village adjudication committee in a notice published under subsection (2) of section 54;
 - (h) prepare, to the exclusion of a village adjudication committee, the provisional adjudication record under subsection (6) of section 54;
 - (i) issue any orders to any officer subordinate to him and to a village adjudication committee which he thinks necessary for the carrying out of the process of adjudication;
 - (j) at any time before a provisional adjudication record becomes final, correct any error or supply any omission occurring in that provisional record.
- (3) An adjudication officer shall have jurisdiction in all claims made under a process of central adjudication relating to interests in land in an adjudication area, with power to determine any question that needs to be determined in connection with any claims and for that purpose he shall be legally competent to administer oaths and to issue summonses, notices or orders requiring the attendance of any persons or the production of any documents which he may consider necessary for the carrying out of that adjudication.
- (4) Any person who has made a claim under a process of district adjudication who is aggrieved by any act or decision of an adjudication officer done or taken under the process of district adjudication may, within thirty days of the publication of a provisional adjudication record, appeal to the Commissioner and may further appeal to the High Court.
- (5) On any appeal which is made under subsection (4), the court may make any decision or order which it may consider just in all the circumstances and to that end it may make any rectification of the provisional adjudication record which it considers necessary to achieve a just result.

- (6) The provisions of subsections (7) and (8) of section 54 shall apply to a provisional adjudication record prepared by an adjudication officer under this section.

57. Principles of adjudication

- (1) In preparing the provisional adjudication record, a village adjudication committee, or as the case may be, an adjudication officer, if it or he is satisfied that-
 - (a) a person is and has been or his predecessor in title was in peaceable, open and uninterrupted occupation of village land under customary law for not less than twelve years, shall determine that person to be entitled to a customary right of occupancy;
 - (b) a person is in occupation of village land allocated to him or his predecessor in title during Operation Vijiji, shall determine that person to be entitled to a customary right of occupancy;
 - (c) a group of persons are and have been in peaceable, open and uninterrupted occupation of or have similarly used the village land for pastoral purposes for not less than twelve years, shall determine that group of persons to be entitled to a customary right of occupancy over that land;
 - (d) a group of persons are in occupation of or have been using for pastoral purposes, village land allocated to them during Operation Vijiji, shall determine that group of persons to be entitled to a customary right of occupancy over that land;
 - (e) a person or group of persons are in peaceable, open and uninterrupted occupation of land or are similarly using the land under an arrangement or as a result of a transaction whether under customary law or any written law relating to land, and whether that occupation can be evidenced by a document in writing or not which does not fall within any of the above categories of land occupancy, shall determine the nature, incidents and extent of that occupancy and declare that person or group of persons to occupy that land under the type of occupancy so determined, whether it be a customary right of occupancy or a derivative right;
 - (f) a person or group of persons or a non-village organisation are in occupation of or are using village land without any right or interest so to be, shall determine those persons or non-village organisation to be unauthorised occupiers, permitted to remain on the land temporarily as licensees;
 - (g) a person or group of persons are entitled to an interest in village 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 or persons entitled to benefit from it;
- (h) the village land is entirely free of any occupation or use or any right of occupation or use by any person or group of persons, shall determine that land to be communal village land;
 - (i) the village land is entirely free of any occupation or use by any person or group of persons shall determine that land to be communal land;
 - (j) the land alleged to be village land is not village land, shall declare that land to be general land.
- (2) In making any determinations under subsection (3), a village adjudication committee or as the case may be an adjudication officer shall have regard treat the rights of women and the rights of pastoralists to occupy or use or have interest in land not less favourably than the rights of men or agriculturalists to occupy or use or have interests in land.
- (3) In determining whether occupations of land has been peaceable, open and uninterrupted-
- (a) no account shall be taken of any order, declaration or scheme issued or made under the Town and Country Planning Act Cap. 355*, which purports to alter, amend or add to the incidents of any deemed right of occupancy or other right to occupy land of any person so as to render any aspect of that occupation unlawful;
 - (b) a person occupying land in an urban or peri-urban area at the will or sufferance of or as a trespasser (relative to a person or organisation having a title to that land) but whose occupation is recognised and accepted as being in accordance with the customs of the community of which he is a part, shall be deemed to be in peaceable open and uninterrupted occupation of that land;
 - (c) it shall not be necessary that occupation be continuous provided that when land is not occupied by a person or group of persons claiming peaceable, open and uninterrupted occupation of that land, it is not occupied by any other person or group of persons claiming peaceable open and uninterrupted occupation.
- (4) A village adjudication committee or an adjudication officer may record that two or more persons or groups of persons are co-occupiers and users of land, whether those persons or groups of persons have claimed to be co-occupiers or are disputing occupation or use of that land and where that determination is made, the committee or adjudication officer as the case may be, shall determine and record the nature, incidents and extent of that co-occupation and whether those persons and group of persons are joint occupiers or occupiers in common as provided for in Part XIII of the

Land Act Cap. 113*, relating to co-occupancy whose rights between themselves are governed by customary law.

- (5) References to "land" in this section are to land the boundaries of which have been agreed to by the parties claiming an interest in that land and contiguous land or have, in the absence of that agreement, been determined by a village adjudication committee or an adjudication officer.
- (6) Where a provisional adjudication record has been completed, it shall be signed by the Chairman and executive officer of the village adjudication committee and by each person or an authorised representative of each person or group of persons or non-village organisation whose interests in land have been adjudicated.

58. Land sharing arrangements between pastoralists and agriculturalists

- (1) Where, in respect of any land the subject of adjudication, the village adjudication committee or, as the case may be, the adjudication officer is satisfied that there is a dual use of the land between groups of persons using the land for pastoral purposes and groups of persons using the land for agricultural purposes and that both groups claim to be using that land in accordance with customary law applicable to their respective uses, the committee or, as the case may be the adjudication officer shall-
 - (a) determine and record the nature, extent and incidents of each use and so far as it is possible to do so, the length of time that each group has used or claimed the use of that land for their respective uses;
 - (b) where the village adjudication committee or the adjudication officer is satisfied that the groups of persons so using the land have in the past and are likely to continue in the future to carry out their respective uses of the land in co-operation with each other, he or as the case may be it prepare an arrangement for that continued dual use which records-
 - (i) the rights to the use and occupation of the land by each group as recognised by each group; and
 - (ii) the arrangements for resolving any disputes between the dual uses adopted and used by those groups;
 - (c) where the village adjudication Committee or an adjudicating officer or he is satisfied that the groups of persons using the land are in continuous dispute about the uses of the land, it or he as the case may be, shall-
 - (i) record the rights to the use and occupation of the land claimed by each group; and
 - (ii) prepare a draft sharing arrangement for the continued dual use of the land either for a limited period or indefinitely

- based on the claimed uses of the land modified so as to reduce the likelihood of disputes; and
- (iii) discuss the arrangement with each group of persons or their representatives with a view to obtaining their agreement to the said arrangement or the said arrangement modified to take account of the views of those groups their representatives; and
 - (iv) adopt the draft arrangement as a scheme.
- (2) An arrangement prepared or adopted under subsection (1) shall be known as a "land sharing arrangement" and shall provide-
- (a) for each group using the land to which it relates, rights to the occupation and use of that land based on the provisions on easements and analogous rights and on co-occupancy contained in Parts XI and XII of the Land Act Cap. 113*, respectively;
 - (b) arrangements for the resolution by a joint mediation panel composed of equal members of each group, of disputes about the rights so provided for by the scheme.
- (3) A land sharing arrangement may, notwithstanding the provisions of Part XI of the Land Act Cap. 113*, provide that different groups of persons may occupy or use different parts of the land the subject of the scheme exclusively for specified purposes or for a specified period.
- (4) A land sharing arrangement shall be registered in the Village Land Registry and in the District Land Registry.

59. Staying of suits

- (1) Except with the consent of the chairman of the village adjudication committee or where central adjudication is taking place, of the adjudication officer, no person shall institute any civil action or proceedings of any kind concerning land or any interest in land which is the subject of an adjudication process until the adjudication record is final.
- (2) Where any action or proceedings has begun before the publication of a notice under section 51 or section 54, they shall be discontinued unless the Chairman of the village adjudication committee or, as the case may be, the adjudication officer, having regard to the stage which the action of proceedings have reached, otherwise directs.
- (3) Any persons who is aggrieved by a refusal of the Chairman of the village adjudication committee or, as the case may be, the adjudication officer to give his consent under subsection (1) or make a direction under subsection (2), within fourteen days of the refusal, may appeal to the village land council against that refusal and may further appeal to the Court having jurisdiction over land matters.

PART V
DISPUTE SETTLEMENT (ss 60-62)

60. Village land council

- (1) For the purposes of this Part, every village shall establish a village land council to mediate between and assist parties to arrive at a mutually acceptable solution on any matter concerning village land.
- (2) Where a village council establishes a village land council, that council shall consist of not less than five nor more than seven persons, of which not less than two shall be women, who shall be-
 - (a) nominated by the village council; and
 - (b) approved by the village assembly.
- (3) Where a person is not approved as a member of village land council or, a member of a Council resigns dies or falls within one of the categories set out in), the village council shall nominate another person to be a member of the village land council and that person shall be required to be approved in accordance with subsection (2).
- (4) In determining persons to be nominated as members of the village land council, a village council shall have regard to the standing and reputation of a nominee in the village as a person of integrity and with knowledge of customary land law.
- (5) No person shall be eligible to be nominated as a member of the village land council or continue as a member of a traditional Elders Council if he is-
 - (a) not ordinarily resident in the village in which the village land council is to function;
 - (b) a member of the National Assembly;
 - (c) a magistrate having jurisdiction in the district in which the village council is to function is situate;
 - (d) a person under the apparent age of eighteen years;
 - (e) a mentally unfit person;
 - (f) a person who has been convicted of a criminal offence involving dishonesty or moral turpitude;
 - (g) a person who is not a citizen.
- (6) A person who falls within one of the categories set out in subsection (5) while serving as a member of the village land council shall automatically cease to be a member of that Council but where that person was acting as a mediator in any case, then, except where the provisions of paragraphs (e) or (f) of subsection (5) apply that person may continue to act as a mediator in that case until the process of mediation has been concluded.
- (7) A member of an appointed village land council shall, unless he sooner resigns, dies or falls within a category set out in subsection (5), serve for

three years and shall be eligible for reappointment which shall comply with the provisions of subsections (2) and (3).

- (8) An appointed village land council shall elect one of its members to be convener of the Council who shall keep the records of the Council and preside at all meetings at which he is present; and if at any meeting the convener is absent, the members present shall elect one of themselves to preside at that meeting.
- (9) The quorum of a meeting of the village land council shall be four persons, of which at least one shall be a woman.
- (10) In the event of an equality of votes, the Chairman or other member presiding shall have a casting vote as well as an original vote.
- (11) The provisions of section 10 shall apply to the members of a panel.

61. Functions of the village land council

- (1) Where any villager or person residing or working in a village or the village council or a non-village organisation within the village or a person coming within an agreement made under section 11 or an arrangement made under section 58 has a dispute with any other villager or person residing or working in a village or with the village council or a non-village organisation within the village or a person coming within an agreement made under section 11 or an arrangement made under section 58 over any matter concerning village land within that village or land to which sections 11 or 58 apply, all parties to that dispute may agree to call in the services of the village land council or its member to mediate between and assist those parties to arrive at a mutually acceptable solution to the dispute.
- (2) Where the parties to a dispute referred to in subsection (1) agree to call in the village land council, the convener of the village land council shall, after discussing the matter with the parties to the dispute, either-
 - (a) convene a meeting of the village land council; or
 - (b) appoint one or more members of the village land council, to act as mediators between the parties to the dispute.
- (3) Where the convener or any member of the Village Council becomes aware of or is informed of a dispute as referred to in subsection (1), the convener shall use his best endeavours to persuade all parties to the dispute to make use of the services of the village land council or one or more of its members to act as mediators in the dispute.
- (4) The village land council shall exercise its functions of mediation in accordance with-
 - (a) any customary principles of mediation;
 - (b) natural justice in so far as any customary principles of mediation do not already provide for them;

- (c) any principles and practices of mediation in which the members may have received any training.
- (5) A member of an village land council shall not act as a mediator in any case in which he or a member of his immediate family has interest and for the avoidance of doubt, a member of the village land council who is a member of or an employee of the village council or any non-village organisation which is involved in a case, the subject of mediation by the Council, is deemed to have an interest in that case.
- (6) No person or non-village organisation shall be compelled or required to use the services of the village land council for mediation in any dispute concerning village land.

62. References of disputes from council to Court

- (1) Where the parties or any of them do not accept the conclusions of any mediation into a dispute or wish to cease to make use of the services of the village land council, they may refer the dispute to a court having jurisdiction over the subject matter of the dispute.
- (2) The following courts are hereby vested with exclusive jurisdiction, subject to the provisions of Part XIII of the Land Act, 1999, to hear and determine all manner of disputes, actions and proceedings concerning land, that is to say-
 - (a) the Court of Appeal;
 - (b) the Land Division of the High Court;
 - (c) the District Land and Housing Tribunal;
 - (d) the Ward Tribunal; and
 - (e) the Village Land Council.

PART VI
MISCELLANEOUS PROVISIONS (ss 63-66)

63. Offences

- (1) Any person who-
 - (a) knowingly makes any false statement, orally or in writing, in connection with any disposition or other transaction affecting land or any other matter arising under this Act; or
 - (b) knowingly gives any false information or makes any false statement, either orally or in writing, in connection with any call for information or in connection with any investigation into the commission of any offence under this Act; or

- (c) fraudulently procures-
 - (i) the registration or issue of any certificate of occupancy, customary certificate of occupancy or any other document or instrument relating to land; or
 - (ii) the making of any entry or the endorsement or any matter on any such document or instrument referred to in subparagraph (1);
 - (iii) the cancellation or amendment of any of the aforesaid documents or instruments or entries or endorsements;
 - (d) fraudulently alters, adds to, erases, defaces, mutilates or destroys any documents or instrument relating to land or any entry on or endorsement of any such document or instrument;
 - (e) suppresses or conceals from the Commissioner, the Registrar, any authorised officer or any officer of a village council exercising powers under this Act or assists or joins in so doing, any material document, fact or matter, commits an offence and upon conviction is liable to a fine not exceeding one million shillings or imprisonment for a term not exceeding three years or to both, the fine and imprisonment.
- (2) Any person who without reasonable excuse, fails to produce any document as required under this Act an offence and upon conviction is liable to a fine not exceeding fifty thousand shillings or imprisonment for a term not exceeding three months or to both the fine and imprisonment.
 - (3) Any person who unlawfully occupies land an offence and upon conviction is liable, to a fine not exceeding ten thousand shillings, and in the case of a continuing offence to an additional fine not exceeding five hundred shillings for every day during which the offence continues.
 - (4) Any person who wrongfully obstructs or encroaches on a public right of way and who does not within the time specified in any notice served on him remove that obstruction or cease that encroachment commits an offence and upon conviction is liable, to a fine not exceeding ten thousand shillings and in the case of a continuing offence, to an additional fine not exceeding two hundred shillings for every day during which the offence continues.
 - (5) Any person who wilfully-
 - (a) delays; or
 - (b) obstructs; or
 - (c) hinders; or
 - (d) intimidates; or
 - (e) assaults,
 any person authorised under this Act to enter and inspect any land in the lawful exercise of power in that behalf commits an offence and upon

conviction is liable, to a fine not exceeding one hundred thousand shillings or to a term of imprisonment not exceeding one year or to both the fine and imprisonment.

- (6) Any person who, under this Act, whether generally or for a specific function, in the course of any official function or otherwise, unlawfully or with force enters on the land of any person or while on land, wilfully commits any damage to the land or anything on the land, whether naturally on the land, or stock owned by any person using the land or crops planted or buildings erected on the land commits an offence and upon conviction is liable to a fine not exceeding fifty thousand shillings or to imprisonment not exceeding three months or to both the fine and imprisonment.
- (7) Where a court has convicted any person of an offence under this section and the commission of that offence enabled that person to obtain or retain or regain any interest in land which he would otherwise not have been able to obtain, retain or regain, the court may in addition to any punishment provided for by this section imposed on that person, make any order in relation to that interest in land so obtained, retained or regained by that person as appears to the court necessary to ensure that that person does not profit by the offence of which he has been convicted.

64. Corrupt transactions

- (1) Nothing in this Act shall be taken or construed to validate, affirm, authenticate or give any legal effect to any grant of a customary certificate of occupancy, or any disposition, or any contract for any of transaction which was obtained or induced by any corrupt action, on the part of any government or public or local government official and such a transaction is hereby declared to be and to have been from its inception an illegal transaction, void and having absolutely no legal effect.
- (2) For purposes of this section, a transaction shall be taken to be affected or tainted by corruption when either-
 - (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 and all final appeals arising from that conviction have been concluded; or
 - (b) any public servant or other public official is interdicted, or is retired in the public interest, from his post on the grounds that he has been engaged in corrupt actions and that these actions involved that transaction; or
 - (c) an investigatory body reports that it is satisfied or that transaction was procured by corrupt practices.

- (3) Any person occupying land which he obtained as a consequence of participating in any of the transactions covered by subsections (1) and (2) shall be liable to forfeit that land to the President without any entitlement to any compensation.
- (4) Notwithstanding that a transaction covered by this section is void, a person occupying land as a consequence of that transaction shall be and shall always have been obliged to comply with all the terms and conditions of the transaction as if it had been a valid transaction and shall be liable to all the remedies which may be applied to a person who fails to comply with the terms and conditions of a valid transaction in addition to any penalties which may be applied under this section.

65. Regulations

- (1) The Minister may make regulations generally for the better carrying into effect of the purposes and provisions of this Act and without prejudice to the generality of the foregoing, such regulations may prescribe—
 - (a) the forms to be used in connection with this Act;
 - (b) the procedures to be followed by village adjudication committees, village adjudication advisers and other officers exercising powers under of Part IVC of this Act;
 - (c) procedures to be followed with respect to the making of any claim for compensation and the payment of any compensation under this Act;
 - (d) the alteration from time to time of the amount which may be advanced by way of a small mortgage;
 - (e) the form and scope of joint village land use agreements.
- (2) A village council may, with the approval of the district council and subject to any general directive of the Minister, make by-laws for the better management and administration of land matters within the jurisdiction of the village land.
- (3) The procedure for making by-laws under subsection (2) shall be as prescribed *mutatis mutandis*, by the provisions of Part VI of the Local Government (District Authorities) Act Cap. 287*.

66. Translation

- (1) The Minister shall as soon as practicable after the enactment of this Act cause this Act to be translated into Kiswahili and such translation shall be published in the Gazette and in such other manner and form as will enable the citizens of Tanzania to gain access to such translation.
- (2) The Minister shall, by order published in the Gazette cause to be incorporated into the Kiswahili version of this Act and published in the Gazette any amendments made to this Act.

- (3) Any form prescribed under this Act shall be made available to the members of the public in both English and Kiswahili.