

Malawi

Africans on Private Estates Act

Chapter 33:01

Legislation as at 31 December 2014

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Malawi

Africans on Private Estates Act

Chapter 33:01

Commenced on 17 August 1962

[This is the version of this document at 31 December 2014.]

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

An Act to regulate the conditions on which Africans may reside on Private Estates, the Orderly Development of Agricultural Land and Matters connected therewith

1. Short title

This Act may be cited as the Africans on Private Estates Act.

2. Application of the Act

- (1) This Act shall apply to such part or parts of Malawi as the Minister may, by notice published in the *Gazette*, direct.
- (2) This Act shall not apply to any African who is in occupation of land on an estate by virtue of a valid lease or tenancy agreement for a period of not less than two years.
- (3) The Minister may by notice published in the *Gazette* suspend or rescind the application of this Act to any part or parts of Malawi to which it has been applied.

3. Interpretation

In this Act, unless the context otherwise requires—

“**African**” means any person who is a member of an African community indigenous to Malawi, Tanzania, Zambia or Mozambique;

“**economic crops**” means such crops as are grown for sale and not for the consumption of the grower or his family;

“**estate**” means an undivided area of land, the legal right to occupy which is vested in some person other than the Government;

“**exempted African**” in relation to an estate means any African employee serving the owner of such estate otherwise than under this Act and living in a dwelling constructed at the expense of the owner and, during the registration period referred to in [section 5](#), includes an African residing on an estate in pursuance of a contract which was a special agreement under the Africans on Private Estates Ordinance, 1952 (now repealed);

[8 of 1952]

“**operative date**” means the date upon which this Act comes into operation in relation to any estate by reason of its application to such estate under [section 2](#) (1);

“**owner**” means any person, other than the Government, having a legal right, otherwise than under this Act, to occupy the estate in respect of which such term is used;

“**resident African**” means any African who is entitled to be registered as such under this Act;

“**Tribunal**” means the Africans on Private Estates Tribunal established under [section 18](#);

“**special agreement**” means a written agreement made in accordance with [section 25](#);

“**unmarried woman**” means a woman who has not married and includes—

- (a) a widow who has not remarried;
- (b) a divorced woman who has not remarried;
- (c) a woman whose husband has been absent from Malawi for a continuous period of two years or upwards and is still absent;
- (d) a woman the whereabouts of whose husband have been unknown for a continuous period of two years or upwards and whose whereabouts are still unknown.

4. Registers to be kept

- (1) Every owner shall register all resident Africans on his estate in a register which shall be in such form and contain such particulars as the Minister may prescribe.
- (2) Every resident African registered under subsection (1) shall be supplied by the owner with a document in the form prescribed by the Minister certifying his registration.
- (3) Every owner shall keep a separate register, which shall be in such form and contain such particulars as the Minister may prescribe, of all Africans who enter his estate under a special agreement.
- (4) Every owner who contravenes this section shall be guilty of an offence.

5. Who may apply for registration

- (1) Every male African over the apparent age of 18 years and every unmarried African woman over the apparent age of 18 years who, on the operative date, was resident on an estate, shall be entitled, on application to the owner of the estate, to be registered as a resident African. Every application for registration shall, subject as hereinafter provided, be made within the period (hereinafter referred to as the registration period) of six months after the operative date:

Provided that—

- (a) an exempted African shall not be entitled to apply for registration;
 - (b) an African, who was party to an agreement, in force on the operative date, for which approval was applied under [section 25](#) but which was not approved before the expiration of the registration period, may apply, within one month after such expiration, for registration as a resident African.
- (2) No African shall be deemed to be resident on any estate for the purposes of subsection (1) unless he was, on the operative date, residing in a dwelling on the estate constructed by him while he was not employed by the owner, or was residing on the estate with the knowledge of the owner.
 - (3) Any African who satisfies the Tribunal that he has resided on an estate continuously since the 1st day of January, 1962, shall be deemed to have been residing on that estate with the knowledge of the owner on the operative date.
 - (4) Any person applying for registration shall supply full particulars of the members of his family residing with him on the estate, including wives, children and any other dependants and the approximate ages of such children and dependants and of the dwellings and other buildings occupied or used by him.

6. Newcomers and trespassers

- (1) Any owner who consents to any African, other than an exempted African, residing, after the expiration of the registration period, on his estate, for the purpose of growing any economic crop for sale to, or performing any agricultural work for, that owner shall be guilty of an offence, unless such African is a person in respect of whom particulars have been registered under this Act, or in respect of whom application for registration or for approval of a special agreement is pending.
- (2) After the operative date, any African who resides on or cultivates any estate or part thereof or exercises any rights conferred by [section 10](#) (2) on resident Africans over or in relation to any estate shall be a trespasser, and guilty of an offence, unless he is a person of whom particulars have been registered under this Act or in respect of whom application for registration or for approval of a special agreement is pending.

7. Applications to Tribunal

- (1) Any African who has applied unsuccessfully to an owner for registration may, within one month after refusal of registration, apply to the Tribunal for an order that the owner grant his application.
- (2) An application for registration shall, for the purposes of [section 6](#), be deemed to be pending from the time when it is made until it is granted or refused by the owner and, if refused, until the time for application to the Tribunal under subsection (1) has expired and, if application is so made to the Tribunal, until the Tribunal has given its decision on such application.

8. Additions to register

Any African who, after the operative date, comes to reside on an estate, in pursuance of a valid marriage to an unmarried woman who is registered as a resident African, shall apply to the owner for and shall be entitled to registration as a resident African. No other person shall be entitled to registration as a resident African after the expiration of the registration period except in pursuance of an order of the Tribunal, or in accordance with proviso (b) to [section 5](#) (1). A child, or other dependant brought up as a child, of a registered resident African may on attaining the age of 18 years apply to the owner for the occupation of land on the estate under a special agreement and such application shall be granted.

9. Right of Minister to enter and obtain information

- (1) The Minister or any other person duly authorized by him in that behalf shall have the right to enter upon any estate at all reasonable times for the purpose of inspecting the registers and enforcing this Act, and investigating the conditions of Africans residing or working on the estate.
- (2) The owner of every estate shall furnish, on demand, to the Minister or any person duly authorized by him, full information regarding entries in the registers maintained by him and regarding matters which are required to be entered in such registers.
- (3) Any owner who fails to comply with the requirements of this section shall be guilty of an offence.

10. Allocation of land

- (1) Every registered resident African shall be entitled to the continuous use, on the estate in respect of which he is registered, of a suitable site for a dwelling and reasonable outbuildings for himself and each registered wife and, if practicable, of an area of land for cultivation adequate for growing the usual food crops for the sustenance of himself and those of his wives and dependants whose particulars have been registered, and at a reasonable distance from his dwelling.