

A REVIEW OF POLICY AND INTERNATIONAL INSTRUMENTS ON
CLIMATE CHANGE AND DISASTER RISK MANAGEMENT IN MALAWI:
TOWARDS DEVELOPMENT OF COMPREHENSIVE POLICY FRAMEWORKS

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1. INTRODUCTION

The global climate is subject to increasing change mostly attributed to global warming. The concentrations of greenhouse gases namely, carbon dioxide, methane and nitrous oxide are increasing at an alarming rate. The latest climate projection models of the UN Intergovernmental Panel on Climate Change (IPCC) suggest that if no action is taken now to reduce greenhouse gases, air surface temperatures could rise to levels that will significantly alter ecosystems. No one will be immune from the overall impacts of climate change, but it will have a disproportionate effect on the lives of poor people in the developing countries, where poverty increases people's vulnerability to develop adaptation and mitigation strategies.

Vulnerability and adaptation to the adverse effects of climate change are the most crucial concerns for many developing countries to date. Despite, ratifying international legal instruments on climate change, most developing countries have not developed national frameworks regulating climate change. Developed countries on the other hand have fairly detailed policies and very comprehensive national laws regulating climate change. The United Nations Framework Convention on Climate Change (UNFCCC) adopted at the Rio Summit in 1992 and its Kyoto Protocol of 1997 provides not only state commitments but also useful guidance in terms of principles and guidelines for developing national policies.

On the other hand disasters, while mostly local, may have international ramifications such as where they are transboundary. They may also be caused by climate change and therefore have their origin in the global commons for which no one country is responsible. A number of international law principles have been developed to regulate state relations in times of disasters. Further, disasters attract international attention and a number of international organizations get involved to provide much needed relief and support. Norms and practices have evolved such that though there is no binding international agreement the global trend has taken certain directions which

Malawi must consider. The United Nations adopted the Hyogo Framework for Action 2005-2015 which gives very useful guidance for policy development within member states.

This paper reviews international and Malawi policy and legal instruments addressing climate change and disaster risk reduction. The paper further analyses the obligations of parties under international instruments as well as Malawi's commitments under these several policy and legislation frameworks the country has adopted over the years. The analysis identifies gaps requiring policy intervention and makes preliminary suggestions on some key elements for climate change and disaster risk reduction policy framework.

2. CLIMATE JUSTICE AND INTERNATIONAL LEGAL FRAMEWORK

Issues of equity have become a key component of the discourse on climate change impacts, adaptation to climate change and climate change mitigation. The concept of equity denotes what is regarded as fairness or justice in responsibility for these aspects of environmental change. Assisting those most vulnerable to climate change requires an understanding of the complex and often intertwined equity issues on who is most affected, who has the capacity to cope and who decides what action is to be taken to mitigate environmental hazards. Most importantly equity allocates duties based on causation responsibilities and ability. Thus those whose actions are most directly connected to the changing climate must not only take the most mitigation measures; they must also pay for the ensuing damage including measures to cope with the impacts of changes in climate brought about by their respective actions. Further, the vulnerable communities who did not contribute to the anthropogenic changes in climate system should have a voice on how mitigation and adaptation measures and funding thereof are structured and decided. Both the Kyoto Protocol and the UNFCCC take account of atmospheric responsibility in explicit terms. The UNFCCC and the Kyoto Protocol were premised on various important principles such as the

“polluter pays”, the “state responsibility” and the ‘common but differentiated responsibility’ principles all of which provide guidance on the application of equity in climate justice. These are discussed later in detail.

The UNFCCC entered into force on 21 March 1994. It was conceived at the United Nations Conference on Environment and Development (UNCED) also referred to as “the Earth Summit”, held in Rio de Janeiro in June 1992. The UNFCCC was signed by 54 member countries, which upon ratification committed these countries to a voluntary “non-binding aim” to reduce atmospheric concentrations of greenhouse gases with the goal of “preventing dangerous anthropogenic interference with the climate system”.

The UNFCCC notes in its preamble that the largest share of historical and current global emissions has originated in developed countries. Recognizing where the responsibility for causing climate change lies is the major concern of the UNFCCC and the Kyoto Protocol. Both international treaties divide parties into two groups namely, Annex 1 (developed countries) and Non Annex 1 Countries (Less developed and developing countries). The UNFCCC in Art 3.1 further states that,

“Parties should protect the environment on the basis of equity in accordance with their common but differentiated responsibilities and respective capabilities.”

Differential responsibility aims to promote substantive equality between developed and developing states within a regime, rather than mere formal equality. There is also a practical reason for the differentiated state responsibility principle, namely that developed countries have greater capacity and wider resource bases to support sustainable development programmes in developing countries rather than developing countries themselves.

States have common responsibility to protect the environment and promote sustainable growth but due to different social, economic and ecological situations, countries must shoulder climate responsibilities differently. It also applies very appropriately to the common duty of all states to protect neutral space which no state can claim but which contributes to the balance of the environment, such as the moon. This was emphasized in the 1987 Montreal Protocol.

Interpretation of the States' Common but Differentiated Responsibilities.

The principle of Common but Differentiated Responsibility (CBDR) is one of the cornerstones of sustainable development. It has emerged as a principle of international environmental law and has been explicitly formulated in the context of the 1992 Rio Earth Summit. It finds its origins in equity considerations and equity principles in international law. It informs in particular the United Nations Framework Convention on Climate Change (UNFCCC) and the Kyoto Protocol.

The Principle

Principle 7 of the Rio Declaration provides the first formulation of the CBDR, and it states:

"In view of the different contributions to global environmental degradation, States have common but differentiated responsibilities. The developed countries acknowledge the responsibility that they bear in the international pursuit of sustainable development in view of the pressures their societies place on the global environment and of the technologies and financial resources they command."

The CBDR has two matrices. The first is the common responsibility, which arises from the concept of common heritage and common concern of humankind, and reflects the duty of States of equally share the burden of environmental protection for common resources; the second is the differentiated responsibility, which addresses substantive

equality: unequal material, social and economic situations across States; different historical contributions to global environmental problems; and financial, technological and structural capacity to tackle those global problems. In this sense the principle establishes a conceptual framework for an equitable allocation of the costs of global environmental protection.

Particularly important is the relationship that the CBDR establishes between the past economic exploitation of global commons and the responsibility to carry out actions that remedy or mitigate the consequences of such exploitation. It anchors responsibility on past harm done, or culpability. Prior to Rio differentiated responsibilities were based on different capabilities and needs were often recognized in international agreements through differential treatment provisions. The novelty of the CBDR is the emergence of the historical responsibility dimension. This aspect and the inequality of economic, social and institutional development conditions generate different priorities and agendas across countries, which must be reconciled in the international forum where nations meet to tackle common environmental, economic and social issues. Another consequence of the principle is, for some scholars, that it entails a duty to participate in international efforts to address global environmental problems.

The CBDR can be said, in synthesis, to express the need to evaluate responsibility for the remediation or mitigation of environmental degradation based on both historical contribution to a given environmental problem and present capabilities: it is a guiding principle of international cooperation and solidarity.

As for the legal status of the principle, it is a generally recognized principle of international environmental law, as supported by growing evidence of state practice. However the belief that such practice is determined by a legal obligation (*opinio iuris*) is questioned by some members of the international community. Notably, the United States has issued an interpretative statement at the UNCED, stating as follows: "The

United States understands and accepts that Principle 7, highlights the special leadership role of the developed countries, based on our industrial development, our experience with environmental protection policies and actions, and our wealth and technical expertise capabilities. The United States does not accept any interpretation of principle 7 that would imply a recognition or acceptance by the United States of any international obligations or liabilities, or any diminution in the responsibilities of developing countries". The same approach is shared by a number of other developed countries. This makes it difficult to configure the CBDR as a norm of customary international law.

Common but Differentiated Responsibility and Sustainable Development

The recognition of the importance of the inextricable links that tie the CBDR to all three pillars of sustainable development (environmental protection, economic development and social progress) brings forth the understanding that the historical responsibilities for environmental degradation are but one of a larger set of consequences stemming from an unequal distribution of the benefits deriving from the exploitation of natural resources along the North-South axis, and the second sentence of Principle 7 of the Rio Declaration clearly provides a normative framework in this respect: "The developed countries acknowledge the responsibility that they bear in the international pursuit of sustainable development in view of the pressures their societies place on the global environment and of the technologies and financial resources they command".

The International Law Association in its 2002 New Delhi Declaration of Principles of International Law Relating to Sustainable Development, maintains that the principle entails "a duty to co-operate in the achievement of global sustainable development," and requires the recognition of "the special needs and interests of developing countries and of countries with economies in transition," and those "affected adversely by environmental, social and developmental considerations."

Application of the Principle in the Climate Regime

The practical consequences of the CBDR are that differential obligations are imposed on the parties to a Multilateral Environmental Agreement. The prime example is the [Kyoto Protocol](#), where only countries listed in Annex I (developed countries and countries with economy in transition) have quantified emissions reduction obligations under the agreement. Additionally, the UNFCCC and the Kyoto Protocol establish general obligations of cooperation towards technology transfer, and provide for financial assistance for mitigation and adaptation to developing countries through the Global Environmental Facility (GEF). The GEF operates two funds under the UNFCCC, the Special Climate Change Fund and the Least Developed Countries Fund. It also operates the Kyoto Protocol Adaptation Fund. These are all mechanisms aimed at operationalizing the CBDR.

The preamble of the UNFCCC acknowledges "that the global nature of climate change calls for the widest possible cooperation by all countries and their participation in an effective and appropriate international response, in accordance with their common but differentiated responsibilities and respective capabilities and their social and economic conditions". Article 3(1) of the Convention adds the leadership role that developed countries should take, and after reaffirming the principle of common but differentiated responsibility, it states that "the developed country Parties should take the lead in combating climate change and the adverse effects thereof."

The Polluter Pays

The "Polluter pays" principle basically states as follows: "*National authorities should endeavour to promote the internationalisation of environmental costs and the use of economic instruments, taking into account the approach that the polluter should, in principle, bear the cost of pollution, with due regard to the public interest and without distorting international trade and investment*" (Rio, Principle 16).

This principle applies both in an internal or transnational context. The central feature is that the polluter must be identified and the amount of pollution over a given time-period must be quantified. The principle requires the polluter to then take full responsibility for effecting preventive and remedial measures. The rationale is that the larger part of the greenhouse gases emitted into the atmosphere are as a result of combustion of fossil fuels. And since the developed countries have large economies which produces the greater share of these fossil fuels, from the polluter pays principle, the developed countries should therefore shoulder the costs involved in managing climate change. Therefore although change in the Earth's climate and the adverse effects thereof is of common concern, it recognizes that developed countries contribute most to the problem and must therefore pay, even for pollution that they cause in other countries. This is because negative impacts of climate change are oblivious to a country's borders.

International assistance, including financial aid and technology transfer is a direct result of this concept that the polluter must pay. It is intertwined with the principle of common but differentiated responsibility in that since developed countries played the greatest role in creating most global environmental problems and have superior ability to address them, they must therefore pay. Further the principle is borne out of the contention that, vulnerability to climate hazards caused by global warming and environmental degradation is not equal between developed and the developing world. Adaptability or the ability of human beings to adapt to and cope with climate change depends on factors such as wealth, technology, education, information, skills, infrastructure and access to resources.

Adaptive Capacities and Mechanisms

However, it remains commendable that there has been a lot of international support for the concept of sustainable development in the developing countries. The developed

countries have continued to reaffirm their previous commitments to reach the accepted UN target of contributing 0.7% of their annual Gross National Product to official development assistance in the developing countries. One way of ensuring that global environmental care and management remains a priority is to make this part of the assistance agreement. The Global Environment Facility is the financial mechanism of the UNFCCC. It was created to assist non Annex 1 countries in the management of the global environmental commons, by providing financial assistance to developing countries to comply with their obligations as stipulated under the convention. The GEF was established to forge international cooperation and to finance action to redress biodiversity losses, climate change, degradation of international waters and ozone depletion.

The Clean Development Mechanism is a mechanism in the Kyoto Protocol conceived to allow for and ultimately address divergent priorities between developed and developing countries. The CDM is a bilateral agreement between a developed and developing country; under this the industrialized countries invest in projects that increase economic activity while at the same time reducing local environmental problems in developing countries. The CDM encourages developing countries to integrate the concept of sustainability into their overall development priorities.

In 2001 a fund was proposed under the Kyoto Protocol for the protection and adaptation of the environment to climate change. However; it is not yet operational. The stated main objective of this fund is to finance implementation of concrete adaptation projects and programmes. According to the Kyoto Protocol, the funds would be generated by 2% share of proceeds on CDM project activities and additional funding. A separate Special Climate Change Fund, and a Least Developed Countries Fund would be created. Further, this fund might contribute towards an implicit recognition of an ecological debt. The fund only deals with future cases and not the past.

The State Responsibility Principle

Closely linked to the principle of common but differentiated state responsibilities is the principle of state responsibility which states that states owe each other a duty of care, to ensure that they prevent, minimize or effectively control the damage to the ecosystem of other states caused by their activities. It is stated thus:

“States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental and developmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction” (Principle 2, Rio)

Although there is room for compensation for historical damage to the environment due to exploitation, this is rare in international law. There has been an isolated case concerning rehabilitation of certain phosphates lands in Nauru (Nauru v. Australia), ICJ, 1989-1993. This case was solved by an out of court settlement between the parties concerned hence no judicial precedent was set. Australia paid \$A 57 million in cash and pledged \$A 50 million over a period of 20 years. It is submitted that it would make greater impact if damages for ecosystem damage were available as a matter of course in international law. However, one might understand the shortcomings of enforceability mechanisms in international law in this regard which would hamper the efficacy of such a damages system.

The Precautionary Principle

This principle states that every precaution should be taken to anticipate, prevent or minimize the causes of climate change and mitigate its adverse effects. Significantly, the principle requires where there are threats of serious or irreversible damage, lack of full scientific certainty should not be used as a reason for postponing such measures taking into account that policies and measures to deal with climate change should be cost

effective so as to ensure global benefits at the lowest possible cost¹. This principle has ignited controversy in international law not least because of the declaration that the absence of scientific certainty should not be the sole reason for not taking measures to address the potential impacts of climate change. In the climate change regime acceptance of the principle would have enabled nations to curb global warming without waiting for conclusive evidence of the impacts of climate. As it is, due to denial by the developed world, especially the United States, on the causal connection between global warming and greenhouse gas emissions, it is now impossible to reverse the concentration of greenhouse gases to levels that would prevent adverse impacts from occurring.

The Right to Sustainable Development

The UNFCCC provides for the right to sustainable development and calls upon state parties to promote it. The Convention requires that policies and measures for protecting the climate system should be appropriate for conditions in a particular country and should be integrated in national development programmes. This principle further strengthens the common but differentiated responsibilities of parties to the convention. Most significantly, the convention recognizes that economic development is essential for adopting measures to address climate change². In this regard the convention calls upon states to cooperate in establishing a supportive and open international economic system so as to enable all parties, particularly developing countries, better address the problems of climate change³. The UNFCCC further directly addresses the international trading regime and requires that measures to address climate change should not constitute a means of arbitrary restriction or discrimination on international trade⁴. Measure to protect natural resources and the environment may not fall foul of this requirement since they are expected under the

¹ Article 3.3 of the UNFCCC

² Article 3.4

³ Article 3.5

⁴ Ibid

World Trade Organization GATT rules which allow exceptions to the non discrimination in international trade so long as these are used to protect human health or the environment

The Principle of Intergenerational Equity

This principle requires that the management and utilization of the environment and natural resources should be undertaken in such a way as to meet the present development interests without jeopardizing the interests of those future generations⁵. The UNFCCC states that '*parties should protect the climate system for the benefit of present and future generations of humankind on the basis of equity on the basis of their common but differentiated responsibilities*⁶ this Article of course expresses both the domestic and international dimension of the principle. At national level, the principle requires that activities to fulfill the demands of economic growth and development should be sustainable and not merely focus on the short term needs of the present generation. It also focuses on equity concerns of development activities; in fact sustainable development cannot be attained without fairness in intra and inter generational aspects of time and scale. At international level, the principle incorporates equity to higher levels: countries that have developed by exploiting the climate system have more responsibilities and must contribute more to reversing the adverse impacts of climate change than those less fortunate.

The Enhanced Technology Architecture

Many of the concerns of developing countries are mainly in developing adaptation and mitigation strategies to climate change. This is due to their dependence on the environment for food and livelihood security. However as pointed out earlier, developing countries lack adequate technology and financial resources to provide

⁵ see also A Sen (2000) Development as Freedom (Oxford)

⁶ Article 3.1

sufficient adaptation measures. Having regard to the inequities faced by developing countries the UNFCCC provides for the development of enhanced technology architecture in Article 4.1, 4.3, and 4.5.

The enhanced technology architecture development is based on the fundamental principles that require developed countries to assist developing countries. Specifically it requires that developed countries⁷:

- I. must make technology transfer accessible to developing countries at most affordable costs;
- II. assist developing countries to develop their own technologies by ensuring the accessibility, affordability, appropriateness and adaptability of technologies required by developing countries for enhanced action on mitigation and adaptation;
- III. Ensure provision of full incremental costs of technology required to support developing countries to implement measures covered by Article 4.1 of the Convention;
- IV. Evaluate the adequacy and predictability in the flow of funds for technology transfer and appropriate burden sharing among the developed country Parties;
- V. Support technology development and transfer in all relevant sectors, including the energy, transport, industry, agriculture, forestry and waste management sectors; and
- VI. Operate under the authority and guidance of and be fully accountable to the Conference of Parties.

⁷ See Third World Network, Climate Change: Talks in Accra 21-27 August (Briefing Paper No. 3), www.twinside.org.sg

States Commitments

Article 4 (1) provides specific commitments of parties and states that all parties, taking into account their common but differentiated responsibilities and their specific national and regional development priorities, objectives and circumstances, shall:

- a) Develop, periodically update, publish and make available to the Conference of the Parties, in accordance with Article 12, national inventories of anthropogenic emissions by sources and removals by sinks of all greenhouse gases not controlled by the Montreal Protocol, using comparable methodologies to be agreed upon by the Conference of the Parties;
- b) Formulate, implement, publish and regularly update national and, where appropriate, regional programmes containing measures to mitigate climate change by addressing anthropogenic emissions by sources and removals by sinks of all greenhouse gases not controlled by the Montreal Protocol, and measures to facilitate adequate adaptation to climate change;
- c) Promote and cooperate in the development, application and diffusion, including transfer, of technologies, practices and processes that control, reduce or prevent anthropogenic emissions of greenhouse gases not controlled by the Montreal Protocol in all relevant sectors, including the energy, transport, industry, agriculture, forestry and waste management sectors;
- d) Promote sustainable management, and promote and cooperate in the conservation and enhancement, as appropriate, of sinks and reservoirs of all greenhouse gases not controlled by the Montreal Protocol, including biomass, forests and oceans as well as other terrestrial, coastal and marine ecosystems;
- e) Cooperate in preparing for adaptation to the impacts of climate change; develop and elaborate appropriate and integrated plans for coastal zone management, water resources and agriculture, and for the protection and rehabilitation of areas, particularly in Africa, affected by drought and desertification, as well as floods;

- f) Take climate change considerations into account, to the extent feasible, in their relevant social, economic and environmental policies and actions, and employ appropriate methods, for example impact assessments, formulated and determined nationally, with a view to minimizing adverse effects on the economy, on public health and on the quality of the environment, of projects or measures undertaken by them to mitigate or adapt to climate change;
- g) Promote and cooperate in scientific, technological, technical, socio-economic and other research, systematic observation and development of data archives related to the climate system and intended to further the understanding and to reduce or eliminate the remaining uncertainties regarding the causes, effects, magnitude and timing of climate change and the economic and social consequences of various response strategies;
- h) Promote and cooperate in the full, open and prompt exchange of relevant scientific, technological, technical, socio-economic and legal information related to the climate system and climate change, and to the economic and social consequences of various response strategies;
- i) Promote and cooperate in education, training and public awareness related to climate change and encourage the widest participation in this process, including that of non-governmental organizations; and
- j) Communicate to the Conference of the Parties information related to implementation, in accordance with Article 1.

Commitments under the Kyoto Protocol

The Kyoto Protocol to the United Nations Framework Convention on Climate Change was adopted by the third Conference of Parties (COP-3), in December 1997 in Kyoto, Japan after intensive negotiations. Annex B countries, mostly industrialized nations and some central European economies in transition agreed to legally binding reductions in greenhouse gas emissions of an average of 6 to 8% below 1990 levels between the years 2008-2012, defined as the first emissions budget period. The United

States would be required to reduce its total emissions an average of 7% below 1990 levels. However, there have been implementation problems with the argument that the obligations placed upon the developed countries in terms of both the UNFCCC and the Kyoto Protocol are too onerous and that they unfairly overburden their economies. Attempts to develop mitigation strategies expose the power inequalities within the international system. The United States government under the Bush administration explicitly rejected the protocol in 2001.

The unilateral position taken by the United States a major polluter demonstrates how economic considerations of powerful countries can derail mitigation efforts. This also shows the importance of political and economic power in the success of mitigation efforts.

The resistance of the United States negatively impacted the implementation of the UNFCCC and the subsequent Kyoto protocol. This for some time jeopardized the entry into force of the Kyoto Protocol not only because the United States emits approximately 22% of the world's greenhouse gases but also because of its strong influence on the policy of other States as a super power. The case of Australia illustrates this point.

Australia has played an active role in international efforts to address the problems of climate change. It signed the *Kyoto Protocol to the United Nations Framework Convention on Climate Change* ('Kyoto Protocol') in 1991. In 1992 Australia became a party to the *United Nations Framework Convention on Climate Change* ('UNFCCC') and undertook a number of commitments in accordance with its provisions. These include the responsibility to formulate and publish national programs with measures to mitigate and facilitate adaptation to climate change, and to cooperate with other Parties in practices that reduce greenhouse gas emissions. Like other developed countries, Australia has additional responsibilities under the UNFCCC to limit greenhouse gas emissions and to protect greenhouse gas sinks and reservoir. The Parties are also

required to report the progress and implementation of policies and measures to the Secretariat of the UNFCCC, and to provide an inventory of greenhouse gas emissions. Australia has submitted two such national communications to date: the first in 1994, and the second in 1997. However, the Australian Government has recently indicated that it may not ratify the *Kyoto Protocol* unless the United States ('US') is involved. Thus the compliance of not only Australia but also many other developed nations with their obligations in issues of global environmental care depends on the current trends of policy in the developed world as a whole, often led by the United States.

This is problematic especially given that the enforceability of international law depends on the willingness of state parties to recognize that law. To a large extent, international environmental law, like any other type of international law depends on the goodwill and co-operation of member states to implement it.

International Instruments on Disaster Risk Reduction

Malawi signed the United Nations Framework Convention on Climate Change. In addition to the provisions considered in the paper entitled 'Review of Policy and Legal Instruments on Climate Change in Malawi', the UNFCCC has specific provisions dealing with climate related disaster risk reduction. Article 4.1.e dealing with parties commitments calls upon state parties to cooperate in preparing for adaptation to impacts of climate change and specifically develop integrated plans for coastal zone management, water resources and agriculture, and for protection and rehabilitation of areas, particularly in Africa affected by drought and desertification, as well as floods.

Article 4.1.f calls upon state parties to take into account where feasible in their relevant social, economic and environmental policies, impact assessments, to minimize the adverse effects of climate change on the economy on public health and on the quality of environment. These provisions urge and mandate state parties to make adaptation

to climate change a key component of the development process. But they also specifically address the key causes of disasters and propose appropriate measures to deal with these.

Article 4.8 provides specific measures for assisting developing countries including funding, insurance and transfer of technology targeting inter alia, small island countries; countries with low lying coastal areas, countries with area prone to natural disasters, countries with areas liable to drought and desertification.

A major concern with these international instruments is how Malawi can take advantage of the provision such as the commitments under Article 4. The commitments are subject, inter alia, to the common but differentiated responsibilities of the parties. In addition, Article 4.3 to 4.5 calls upon developed country parties to provide new and additional funding, assist developing countries that are more vulnerable to impacts of climate change and take steps to promote, facilitate and finance transfer of technology, to enable them adapt to the impacts of climate and in general implement the convention.

Malawi is therefore entitled to seek funding under the UNFCCC for climate related disaster risk reduction. The UNFCCC has put together the Least Developed Countries Fund and the Special Climate Change Fund from which developed countries such as Malawi can benefit. However, as pointed out below, the GEF, which is responsible for allocating these funds, has strict guidelines for project developments which often adversely affects the uptake of these funds by countries with poor or inadequate project development and implementation capacity. On the other hand, at national level the UNFCCC focal point (the Environmental Affairs Department) is not responsible for disaster risk reduction though it is required to coordinate with other sectors. Experience however shows that with limited staff capacity, coordination is rarely

effective. The end result is that the climate change focal point will tend to focus on projects that address its core business.

The Hyogo Framework for Action 2005 – 2015: Building Resilience of Nations and Communities to Disasters was adopted by the United Nations World Conference on Disaster Reduction held in Japan from 18 – 22 January 2005. The Framework was adopted to promote a strategic and systematic approach to reducing vulnerabilities and risks to hazards. It acknowledges that efforts to reduce disaster risks must be systematically integrated into policies, plans and programmes for sustainable development and poverty reduction, as well as good governance. The aim is to build capacity at community and national levels to manage and reduce risk.

The Framework for Action is not a binding instrument but provides a useful guide for developing policy responses to disaster risk reduction. In developing the Framework the Conference considered the following gaps and challenges in disaster risk reduction:

- (a) Governance : organizational, legal and policy frameworks;
- (b) Risk identification, assessment, monitoring and early warning;
- (c) Knowledge management and education;
- (d) Reducing underlying risk factors; and
- (e) Preparedness for effective response and recovery.

These gaps and challenges provide a framework for developing policy responses at national level. In fact the Hyogo Framework itself is good guide to development of national policy on disaster risk reduction.

Malawi's Compliance Progress

Malawi prepared an inventory of greenhouse gas emissions from various sectors under a study commissioned in 1999 and proposed mitigation and adaptation measures. This was followed in 2003 by the preparation and submission of the Initial National Communication to the UNFCCC in accordance with Article 12 of the UNFCCC. A Second National Communication is currently under preparation and seeks to address the climate change issues that have direct impact on the six priority areas of the Malawi Growth and Development Strategy, 2005, which is Malawi's guiding document for sustainable economic development⁸. In addition to addressing gaps identified in the INC of 1999 the SNC will focus on:

- (a) capacity development of public and private sector institutions in mainstreaming climate change issues;
- (b) contributing to global efforts of stabilizing greenhouse gas emissions under the UNFCCC through better understanding of various sources and sinks of greenhouse gases;
- (c) enhancing general awareness of climate change , enhancing dialogue, information exchange, networking and cooperation among public, private and civil society institutions; and
- (d) proposing project to facilitate adaptation to impacts of climate change and mitigation⁹.

The preparation of the SNC has so far assisted Malawi to establish a Climate Change Project Office; convening Climate Project Steering Committee meetings and establishing thematic areas and expert reviews to address these and preparing a national greenhouse gas inventory. Through publications and these meetings, climate change issues will become more visible. However it is necessary to mainstream the

⁸ See CEPA (2009) Review of National Policy and Legislation on Climate Change and Disaster Risk Reduction: Towards Policy Framework for Climate (CEPA, Blantyre)

⁹ A R Saka (2007) Implementation Progress of the Second National Communication of Malawi Project and Stakeholder Expectations (Environmental Affairs Department, Lilongwe2)

activities of the SNC to ensure that the closure of the project does not adversely affect Government compliance with its commitments under the UNFCCC.

Malawi already prepared and submitted its National Adaptation Programme of Action in 2006 in accordance with the UNFCCC requirements. This has funding opportunities that can be accessed through the Global Environmental Facility. Malawi has made some progress in this regard in that it has finalized the required procedures to enable the country submit a proposal. Up to \$1 million may be accessed if the country submits a fundable proposal to the GEF. However Malawi faces human resources challenges such that it may not commit the required staffing levels to focus on the rigorous project development procedures of the GEF. The EAD as the focal point for climate change has very limited staffing levels, currently at about 26 professionals at both its head office and the district assemblies.

In addition, there are discussions towards creating a funding basket for climate change activities in Malawi. The aim of these would be to pool funds together to maximize investment in climate change. Whether this would attract investment into climate change projects on its own is debatable. Funding agencies will however be attracted by capacity and a conducive investment climate including accountability and transparency¹⁰.

Finally Malawi has also started to undertake activities to address climate change mitigation through the Tree Planting and Management for Carbon Sequestration and other Ecosystems Programme launched in January 2007. The objective of this programme is to increase the country's forest cover to enhance carbon sequestration

¹⁰ See W Chadza and G Banda (2008) 'Financing Adaptation to Climate Change in Malawi' in *Financing the Cost of Adaptation: Two Perspectives on Who, What and How* (Development Fund, Norway)

and other ecosystem services that may contribute to the reduction of greenhouse gasses¹¹.

Summary

It is quite clear that building the necessary capacity to enable the least developed countries to cope with negative impacts of climate change are a priority to developing countries. Climate change is treated as a scientific event yet in reality its implications have far reaching human dimension especially on the poor people from the developing world. Developing countries have left the regulation of climate change in the realm of international law. There is real need to have national laws at local level that takes into account the socio economic reality of people in the developing world. The capacity to cope and the potential to recover or adapt to ecological hazards are affected by access to education, information, and access to material and productive resources among other things. Until recently international responses to climate change focused mainly on greenhouse gas mitigation at country level at the expense of adaptation measures and support. This is however changing in that much greater attention has turned to adaptation financing especially after COP 12 and 13.

However international law is inadequate to force polluting countries to pay for the impacts of global warming they have caused. Hence policy makers should focus on leveraging the country's capacity to access funds from the international community by enhancing their respective sector agency project development and implementation capacity and making climate investment attractive at country level. Malawi should in particular address climate change as a precondition precedent to its poverty reduction efforts consideration how quickly poverty reduction gains can be eroded in the face of climate change and disasters.

¹¹ See A Mwenifumbo (2007) 'Reflection on the International and National Policy and Legal Framework on Climate Change in Malawi' in W Chadza & M Ng'ambi (eds) Climate Change and Rural Communities In Malawi: Towards Policy Implementation (CEPA, Blantyre)

There has been further discussion of concepts such as “ecological debt”. However, there is no clear legal obligation in Multilateral Environmental Agreements or international case law. Since, for the time being there also no political support to introduce the concept of “ecological debt” in international law, the principle of common but differentiated responsibilities and polluter pays seem for the moment the most suitable principles to provide a legal basis for “ecological debt” and to be effective in ensuring co-operation between states in combating global environmental challenges.