

**THE ENVIRONMENT MANAGEMENT BILL, 2013**

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A BILL

Entitled

An Act to make provision for the protection and management of the environment and the conservation and sustainable utilization of natural resources and for matters connected therewith and incidental thereto-

ENACTED by the Parliament of Malawi as follows-

Short title and commencement

1. This Act may be cited as the Environment Management Act, 2013, and shall come into force on such date as the Minister may, by notice published in the Gazette, appoint and the Minister may appoint different dates for the coming into force of different parts of this Act.

Interpretation

2. In this Act unless the context otherwise requires -

“ambient air” means the atmosphere surrounding the earth but does not include the atmosphere within a structure or within any underground space;

“access” means obtaining, possessing and using biological and genetic resources conserved including traditional knowledge whether derived products, intangible components or parts thereof for purposes of research, bio-prospecting, conservation, industrial application or commercial use;

“access to environmental information” means a free or inexpensive means to obtain environmental information held by a public authority, the private sector or non-governmental organization;

“alien species” means species that do not naturally occur within an area and that have usually arrived in the area as a result of human intervention, whether deliberate or accidental;

“analysis” means the examination of any matter, substance or process for the purpose of determining its composition or quality or its effect, whether physical, chemical or biological on any segment of the environment;

“applicant” means a person, institution or organization seeking access;

“assembly” means an Assembly established under the Local Government Act;

“Authority” means the National Environmental Protection Authority established under section 7;

“benefit sharing” means the sharing of any benefit that accrues from the utilization of biological and genetic resources, traditional knowledge, technologies, innovations or practices;

“Board” means the Board of the Authority established under section 8;

“biological diversity” means the variability among living organisms from all sources including, inter alia, terrestrial, marine and other aquatic ecological systems and the ecological complexes of which they are part, and includes diversity within or between species and of ecosystems;

“climate change” means change of climate which is attributed directly or indirectly to human activity that alters the composition of the atmosphere in addition to natural climate variability observed over comparable time periods;

“community rights” mean those rights held by local communities over their biological and genetic resources, parts or derivatives thereof, and over their practices, innovations, knowledge and technologies;

“conservation” means the preservation of natural resources and their protection from misuse, fire or waste;

“dangerous” means harmful or dangerous to public health, plant or animal life or to the environment and “danger” shall be construed accordingly;

“developer“ means any person who has proposed or has undertaken to implement a project;

“Director General” means the Director General of the Authority appointed under section 11;

“District Environment Sub Committee” means the committee established under section 20;

“ecosystem” means a dynamic complex of plant, animal, microorganism in a community and their non-living environment interacting as a functional unit;

“effluent” means waste water or other fluid originating from a domestic or an agricultural or industrial activity, whether treated or untreated and whether discharged directly or indirectly into the environment;

“endangered species” means any species which is in danger of extinction throughout all or a significant portion of its range due to man-made or natural changes in their environment;

“environment” means the physical factors of the surrounding of the human being including land, water, atmosphere, climate, sound, odour, taste, and the biological factors of fauna and flora, and includes the cultural, social and economic aspects of human activity, the natural and the built environment;

“environmental audit” means the systematic documentation and periodic and objective evaluation of the protection and management of the environment and the conservation and sustainable utilization of natural resources;

“environmental easement” means an easement imposed under section 81;

“environmental impact assessment” means a systematic evaluation of a project to determine its impact on the environment and the conservation of natural resources;

“environmental impact assessment licence” means the environmental impact assessment licence issued under section 31;

“environmental impact assessment report” means the environmental impact assessment report required under section 27;

“environmental monitoring” means the continuous or periodic assessment of the actual and potential impact of any activity on the environment;

“environmental planning” means planning that takes into account environmental issues;

“environmental information” means information in any category or form whether written, electronic, audio-vision or in any other processed or unprocessed form relating to elements of the human or natural environment, factors that affect the environment, and environmental decision-making;

“ex-situ” means conservation outside the natural habitat of a biological organism;

“genetic material” means any material of plant, animal, microbial or other origin containing functional units of heredity;

“genetic resource” means any genetic material of actual or potential value;

“hazardous substance” means any chemical, waste, gas or gaseous matter, plant, animal or micro-organism which is injurious to human health or the environment;

“hazardous waste” means waste which is poisonous, corrosive, noxious, explosive, inflammable, radioactive, toxic or harmful to the environment;

“in-situ” means conservation within the natural ecological system and habitat of a biological organism;

“inspectorate” means the inspectorate established under section 82;

“invasive species” means any species, and includes its seeds, eggs, spores, or other biological material capable of propagating that species, that is not native to that ecosystem; and whose introduction does or is likely to cause economic or environmental harm or harm to human health;

“lead agency” means any public office or organization including every Ministry or Government Department listed in the First Schedule which is conferred by any written law or policy with powers and functions for the protection and management of any segment of the environment and the conservation and sustainable utilization of natural resources of Malawi;

“licensing authority” means any person on whom is conferred power under any written law to issue licences in respect of any thing or activity required under that written law to be done or carried out otherwise than in accordance with a licence;

“local community” means human population in a distinct geographical area, with control or custody over its biological and genetic resources, innovations, practices, knowledge, and technologies governed partially or completely by its own customs, traditions or laws;

“local environment and natural resources committees” means the Village and Area Development committees as established under the Local Government Act of 1998 to initiate, coordinate and mobilize local community participation in environment and natural resources management issues and to represent interests of such local communities and includes any local community institution participating in the management and protection of the environment and natural resources under any written law;

“National Environmental Action Plan” means the national environmental action plan prepared under section 23 (1) of this Act, outlining environmental strategies, measures and programmes necessary for promoting the protection and management of the environment and the conservation and sustainable utilization of natural resources;

“natural resources” means the natural resources of Malawi wherever located;

“occupier” means a person in occupation or control of any premises, and, in relation to premises different parts of which are occupied by different persons, means the person in occupation or control of each such different part;

“oil” includes -

(a) crude oil, diesel oil, fuel oil, lubricating oil, petrol and paraffin, and any other petroleum product capable of causing pollution whether in a solid or liquid form; and

(b) any other substance which may be prescribed by the Minister, by notice published in the Gazette, to be oil for the purposes of this Act;

“owner”, in relation to any premises, means-

- (a) the registered owner of the premises in question;
- (b) the lessee or sub-lessee of the premises in question;
- (c) the agent, attorney or the personal representative of the owner of the premises;
- (d) the person in actual possession of the premises or entitled to receive the rent of the premises, whether on his own account or as agent or trustee of any other person or as receiver;
- (e) in relation to any vessel, includes the charterer, pilot or other person in actual control of the vessel, whether or not the vessel is registered in or outside Malawi;

“ozone layer” means the ozone layer as defined in the Vienna Convention for the Protection of the Ozone Layer, 1985;

“pollutant” means any substance whether in a liquid, solid or gaseous form which directly or indirectly-

- (a) adversely alters or destroys the quality of the environment; or
- (b) is dangerous or potentially dangerous to public health, plant or animal life

and includes objectionable odours, noise, vibration, or any substance or particle that causes temperature change or physical, chemical or biological change to the environment;

“pollution” means any direct or indirect alteration of the physical, thermal, chemical or biological environment caused by the discharge, emission or deposit of waste or a pollutant into the environment in such amounts and for such duration and under such conditions as to cause an actual or potential danger to the environment;

“participation” means the opportunity and ability of any member of the public to influence the outcome of decision-making processes and implementation thereof;

“premises” includes any land, whether covered by buildings or not, any place underground and any land covered by water and hereditament of any tenure and description;

“prior informed consent” means procedure for exchanging, receiving and handling notification or information by a competent authority;

“project” means a development activity or proposal which has or is likely to have an impact on the environment;

“project brief” means the project brief required under section 26;

“proprietary information” means any proprietary information protected by law or by any international treaty or convention to which Malawi is a party;

“protected area” means area of land, lake or river declared by the Minister to be a protected area under this Act;

“public” includes individuals, non-governmental organizations and private and public institutions concerned with environmental management and related issues;



“public authority” means a government agency, department or entity that exercises public functions under any policy or legislation;

“segment” in relation to the environment, means any portion or part of the environment expressed in terms of volume, space, area, quantity, quality or time or any combination thereof;

“sustainable utilization” means the use or exploitation of natural resources which guards against the extinction, deletion or degradation of any natural resource of Malawi and permits the replenishment of natural resources by natural means or otherwise;

“strategic environmental assessment” means an assessment of the positive and adverse effects or impact that the implementation of policies, legislation, programmes or development plans and physical plans has or is likely to have on the protection and conservation of the environment or on the sustainable management of the environment;

“Technical Committee” means any Technical Committee established under section 18;

“threatened species” means any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range;

“traditional knowledge” means the accumulated knowledge associated with conservation and sustainable use of biological and genetic resources which has been developed over time by indigenous or local communities;

“Tribunal” means the Environment Tribunal established under section 114;

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“vehicle” has the meaning ascribed to it in the Road Traffic Act;

“vessel” includes a ship, boat, floating structure or aircraft;

“waste” includes commercial or industrial waste whether in a liquid, solid or gaseous form which is discharged, emitted or deposited into the environment in such volume, composition or manner as to cause pollution; and

“water” includes surface and underground water, drinking water and water in a river, stream, watercourse, public reservoir, well, dam, canal, channel, lake, swamp or open drain and water in a gaseous or solid form.

## **PART II – GENERAL PRINCIPLES**

Principles of  
environmental  
management

3.- (1) It shall be the duty of every person, lead agency, public authority, local environment and natural resources committee, non-governmental organization or the private sector to take all necessary and appropriate measures to protect and manage the environment and to conserve natural resources and to promote sustainable utilization of natural resources in accordance with the National Environmental Policy (hereinafter called “the Policy”), the National Strategy for Sustainable Development (hereinafter called “the Strategy”) , and any other written law or policy relating to the protection and management of the environment or the conservation and sustainable utilization of natural resources.

(2) Without prejudice to the generality of subsection (1), every person, lead agency, public authority, local environment and natural resources committee, non-governmental organization or the private sector required under any written law to exercise power or perform functions relating to the protection and management of the environment or the conservation and the sustainable utilization of natural resources shall take such steps and measures as are necessary for -

- (a) promoting a clean and healthy environment in Malawi;
- (b) ensuring the sustainable utilization of the natural resources of Malawi;
- (c) facilitating the restoration, maintenance and enhancement of the ecological systems and ecological processes essential for the function of the biosphere, and the preservation of biological diversity;
- (d) ensuring that true and total costs of environmental pollution and degradation are borne by the person responsible;
- (e) promoting public awareness and participation in the formulation and implementation of environmental and conservation policies of the Government;
- (f) promoting co-operation with foreign governments and international or regional organizations in the protection of the environment and the conservation and sustainable utilization of natural resources;
- (g) promoting cultural or social principles applied by any community in Malawi for the management of the environment or natural resources in so far as the same are relevant and promoting sustainable utilization and management of the environment or natural resources;
- (h) using and conserving the environment and natural resources of Malawi equitably and for the benefit of both present and future generations taking into account the rate of population growth and productivity of the available resources;

- (i) promoting community based management of natural resources and ensuring equitable sharing of costs and benefits of sustainable management of natural resources;
- (j) ensuring that precautionary measures are taken to prevent or mitigate possible deleterious environmental effects of any project, even where scientific evidence is not certain;
- (k) ensuring that development planning at all levels takes into account environmental conservation;
- (l) requiring prior environmental impact assessments of proposed projects which may significantly affect the environment or use of natural resources; and
- (m) promoting scientific research, technological development and training relating to the protection and management of the environment or the conservation and sustainable utilization of natural resources.
- (n) ensuring that social issues including gender, health, human rights, HIV and AIDS are taken into consideration in the protection and management of the environment and conservation and sustainable utilization of natural resources.

Right to a clean and healthy environment

4.- (1) Every person in Malawi shall have the right to a clean and healthy environment and has the duty to safeguard and enhance the environment.

(2) The right to a clean and healthy environment under subsection (1) includes the access by any person in Malawi to the various public elements or segments of the environment for recreational, educational, health, spiritual and cultural purposes.

(3) The duty to enhance and safeguard the environment imposed under subsection (1) includes the duty to inform the Authority or a relevant lead agency of all activities or phenomena that may affect the environment significantly and shall be exercisable by individual persons, public authorities, non-governmental organizations or local environment and natural resources committees.

(4) In furtherance of the right to a clean and healthy environment and the enforcement of the duty to safeguard and enhance the environment, the Authority or the lead agency so informed under subsection (3) or any person interested in enforcing the right to a clean and healthy environment shall be entitled to bring an action against any person whose activities or omissions have or are likely to have a significant impact on the environment-

- (a) to prevent or stop any act or omission which is deleterious or injurious to any segment of the environment or likely to accelerate unsustainable depletion of natural resources;
- (b) to procure any public officer to take measures to prevent or stop any act or omission which is deleterious or injurious to any segment of the environment for which the public officer is responsible under any written law;
- (c) to require that any on-going project or other activity be subject to an environmental audit or monitoring in accordance with this Act; or
- (d) to seek a court order for the taking of other measures that would ensure that the environment does not suffer significant harm.

(5) Any person proceeding under subsection (4) shall have the capacity to bring an action notwithstanding that such person cannot show that the defendant's act or omission has caused or is likely to cause him any personal loss or injury:

provided that such legal action-

(a) is not frivolous or vexatious; or

(b) is not an abuse of the court process:

Provided further that in every case the determining factor shall be whether such person is acting in the best interest of the environment and in exercise of the duty to safeguard and enhance the environment.

(6) Any person who has reason to believe that his right to a clean or healthy environment has been violated by any person may, instead of proceeding under subsection (4), file a written complaint to the Environmental Tribunal created outlining the nature of his complaint and particulars.

(7) The Environmental Tribunal shall, within thirty (30) days from the date of the complaint filed under subsection (6), institute an investigation into the activity or matter complained about and shall give a written response to the complainant indicating what action the Tribunal has taken or shall take to restore the claimant's right to a clean and healthy environment, including instructing the Authority to take such legal action on the matter as the Authority may deem appropriate.

(8) Subsection (6) shall not be construed as limiting the right of the complainant to commence an action under subsection (2):

Provided that an action shall not be commenced before the Environmental Tribunal has responded in writing to the complainant, or where the Authority has responded in writing to the complainant or where the Authority has commenced an action against any person on the basis of a complaint made to the Environmental Tribunal.

Public participation in environmental management

5.- (1) For purposes of ensuring effective public participation, enforcement of rights and duties created under this Act, the Authority shall promote-

- (a) the right of every person to access environmental information and lead agencies, private sector and non-governmental organizations shall have a duty to provide such information in a timely manner;
- (b) the right of every person to participate in environmental decision-making processes directly or through representative bodies and mechanisms for effective, direct and indirect public participation shall be created by lead agencies; and
- (c) the right of every person to be afforded an adequate and effective administrative or judicial remedy for any harmful or adverse effects resulting from acts or omissions affecting the environment.

(2) The Authority shall establish guidelines and, where necessary, promulgate regulations for ensuring the realization and implementation of the provisions of subsection (1).

(3) The Authority shall be a repository of all environmental information in Malawi including policy documents, legislation as well as all

bilateral, regional and international agreements, treaties and conventions to which Malawi is a party.

(4) No derogation from the rights and duties provided for in subsection (1) shall be valid unless the same are necessary in a free, accountable and democratic society and in accordance with the Constitution.

Inconsistent provisions in other laws

6. Where a written law on the protection and management of the environment or the conservation and sustainable utilization of natural resources is inconsistent with any provision of this Act, such written law shall be invalid to the extent of the inconsistency.

## **PART II – INSTITUTIONAL ARRANGEMENTS**

Establishment of National Environmental Protection Authority

7.- (1) There is hereby established an Authority to be known as the National Environmental Protection Authority which shall be the principal agency in Malawi for the protection of the environment and sustainable utilization of natural resources and shall coordinate, monitor and supervise all activities relating to the utilization and management of the environment and natural resources.

(2) The Authority shall be a body corporate with perpetual succession and a common seal and shall in its corporate name, be capable of-

(a) suing and being sued;

(b) taking, purchasing, charging and disposing movable and immovable property;

(c) borrowing money;

(d) entering into contracts; and



(e) doing or performing all such other things or acts for the proper administration of this Act.

(3) The Authority shall perform its functions and exercise its powers independent of any person or authority, but shall give effect to any policy direction relating to its powers and functions which may be issued to it by the President in accordance with this Act.

Board of the  
Authority

8.- (1) The Authority shall be managed by a Board which shall consist of-

(a) seven (7) members who shall be appointed by the President subject to confirmation by the Public Appointments Committee;

(b) the Principal Secretary of the Ministry responsible for environment as an ex-officio member; and

(c) the Director General appointed under section 11 (2).

(2) No person shall be appointed under subsection (1) unless such person holds at least a postgraduate degree in fields of environmental sciences, law, natural resource management or a relevant social science degree and at least a minimum of five (5) years related experience in the same.

(3) The Board shall elect a Chairperson and Vice Chairperson from among the members appointed under section 8 (1) (a).

(4) The Board shall meet at least four (4) times in every financial year in ordinary sessions.

(5) The Chairperson shall preside at every meeting of the Board at which he is present, but in his absence the Vice Chairperson shall preside, and in the absence of both the Chairperson and the Vice Chairperson the members present shall elect one of their members, who shall with respect to that meeting and the business transacted thereat have all the powers of the Chairperson.

(6) Unless a unanimous decision is reached, a decision on any matter before the Board shall be by a majority of votes of the members present and in the case of an equality of votes, the Chairperson or person presiding shall have a casting vote in addition to his deliberative vote.

(7) The quorum for the transaction of the business of the Board shall be five (5) members including the person presiding; and all acts, matters or things authorized or required to be done by the Board, shall be effected by a resolution passed by a majority of the members present and voting.

(8) If any person is present at any meeting of the Board, or any of its committees at which any matter for which that person or his spouse is directly or indirectly interested in a private capacity is the subject of consideration he shall, as soon as practicable after the commencement of the meeting, disclose that interest and shall not, unless the Board or committee otherwise directs, take part in any consideration or discussion of, or vote on, any question touching that matter.

(9) A disclosure of interest made under subsection (8) shall be recorded in the minutes of the meeting at which it is made.

(10) A member who fails or neglects to disclose his interest under section (8) shall be removed from the Board.

(11) The Director General shall not be entitled to vote on any matter before the Board.

(12) Where a member of the Board dies or resigns or otherwise vacates office before expiry of the term of his office, the appointing authority shall appoint another person in place of such member subject to the terms and conditions of this Act.

(13) Where the Director General is unable to perform the functions of his office due to any temporary incapacity which is likely to be prolonged, the Board may appoint a person to act in that position with full powers of the Director General until such time as the Board determines that the incapacity has ceased.

(14) The members of the Board shall receive such remuneration and allowances as may, from time to time, be determined by the Board.

(15) The Board may at its discretion, at any time and for any length of time invite any person, and the Minister may in the like manner nominate a competent officer in the public service, to attend any meeting of the Board and take part in the deliberations of the Board, but such person shall not vote at the meetings of the Board.

(16) Subject to subsections (5), (6), (7), (8) and (9) the Board shall regulate its own procedure.

#### Functions of the Board

9.- The functions of the Board shall be-

- (a) to oversee the implementation and successful operation of the policy and functions of the Authority;
- (b) to review the policy and strategic plan of the Authority;
- (c) to provide guidance to the Director General and staff;

(d) to approve the annual budget and plans of the Authority;

(e) to monitor and evaluate the performance of the Authority against budgets and plans;

(f) to establish and approve rules and procedures for the appointment, discipline, termination and terms and conditions of service of the staff, administrative matters and financial matters;

(g) any other duties assigned to it by this Act.

Tenure and vacation of office of members of the Board

10.- (1) The members appointed under section 8 (1) (a) shall hold office for a term of three (3) years but shall be eligible for re-appointment for one more term.

(2) The office of a member of the Board, other than the ex-officio member, shall become vacant -

(a) upon his death;

(b) if he is convicted of an offence and sentenced to imprisonment for a term of six (6) months or more without the option of a fine;

(c) if he is incapacitated by prolonged physical or mental illness for a continuous period of six (6) months from performing his duties as a member of the Board;

- (d) if he becomes, for any reason, incompetent of performing the functions of his office;
- (e) if he is adjudged bankrupt;
- (f) if he is absent, without valid excuse, from three (3) consecutive meetings of the Board of which he has had notices; or
- (g) upon expiry of one (1) months notice in writing to the appointing authority of his intention to resign.

Secretariat of the  
Authority

11.- (1) The Secretariat of the Authority shall consist of the Director General and other employees of the Authority appointed under this Act.

(2) The Board shall appoint a Director General, subject to confirmation by the Public Appointments Committee, on such terms and conditions as may be approved by the Minister. The Minister shall appoint the Director General on the recommendation of the Board, subject to confirmation by the Public Appointments Committee

(3) No person shall be appointed a Director General unless such a person holds at least a post graduate degree in the fields of environmental sciences, law, natural social science degree and at least ten (10) years of experience in the relevant field of environmental management.

(3) The Director General shall serve for a renewable term of four (4) years up to a maximum of two terms.

(4) The Board shall appoint, on such terms and conditions as it may determine and approved by the Minister, such other staff of the Authority subordinate to the Director General as the Board considers necessary for the

proper discharge of the functions of the Authority and the Board may delegate to the Director General the appointment of certain categories of the staff of the Authority.

(5) The Director General may appoint consultants or temporary employees of the Authority as he considers necessary for the discharge of the functions of the Authority subject to confirmation by the Board.

(6) The Director General shall report to the Board every appointment made by him of any person under subsection (4) or (5).

(7) The Board shall exercise disciplinary control over the staff appointed by the Board and by the Director General under subsection (4) and the Director General shall, at his sole discretion, exercise disciplinary control over the staff appointed by him under subsection (5).

(8) The Director General shall -

- (a) be the chief executive officer of the Authority and as such he shall be responsible for the day-to-day administration and management of the affairs of the Authority and in that regard he shall be answerable to the Board;
- (b) Subject to this Act and the general supervision and control of the Board, the Director General shall be responsible for the management of the funds, property and business of the Authority and for the administration, organisation and control of the staff of the Authority.
- (c) serve as Secretary to the Board and to any committee of the Board

- (d) on the instructions of the Chairperson or the chairperson of any committee of the Board, as the case may be convene meeting of the Board and meetings of the committees and in carrying out his duties as secretary, the officer shall be entitled to attend all meetings of the Board and of the committees.
- (e) subject to the special or general directions of the Board, do or perform any duty which he considers to be expedient for the purposes of the Authority;

Functions of the Authority

12.- (1) The functions of the Authority are to-

- (a) Advise the Minister on the formulation and implementation of policies for the protection and management of the environment and the conservation and sustainable utilization of natural resources;
- (b) initiate legislative proposals, standards and guidelines on the environment in accordance with this Act;
- (c) enforce the right to a clean and healthy environment and other provisions of this Act and monitor compliance with environment and natural resources related policies and legislation by lead agencies;
- (d) coordinate and monitor all activities concerning the protection and management of the environment and the conservation and sustainable utilization of natural resources;

- (e) prepare plans and develop strategies for the protection and management of the environment and the conservation and sustainable utilization of natural resources, and facilitate co-operation between the Government, local authorities, private sector and the public in the protection and management of the environment and the conservation and sustainable utilization of natural resources;
- (f) review and approve environmental impact assessments, strategic environmental assessments and other relevant environmental assessments in accordance with this Act;
- (g) promote integration and mainstreaming of environmental concerns into overall national planning through coordination with relevant ministries, departments and agencies of Government;
- (h) initiate, facilitate or commission research and studies on any aspect of the protection and management of the environment and the conservation and sustainable utilization of natural resources;
- (i) prepare and publish an annual summary report on the status of the environment in Malawi and in this regard may direct any lead agency to prepare and submit to it a report on the state of the sector of the environment under the administration of that lead agency;
- (j) coordinate the promotion of public awareness and education on the protection and management of the



environment and the conservation and sustainable utilization of natural resources;

- (k) monitor state and trends in the utilization of natural resources and the impact of such utilization on any segment of the environment;
- (l) receive and investigate any complaint by any person relating to the protection and management of the environment and the sustainable utilization of natural resources and take appropriate action;
- (m) promote international and regional co-operation in the protection and management of the environment and the conservation and sustainable utilization of natural resources shared between Malawi and other countries;
- (n) advise the Government on regional and international environmental conventions, treaties and agreements to which Malawi should be a party and follow up implementation of such agreements to which Malawi is a party;
- (o) coordinate and monitor trans-boundary environment and natural resources management initiatives including providing advice on negotiating, signing and implementation of any agreements that may be entered into between Malawi and a neighboring state.
- (p) prescribe, by notice published in the Gazette, environmental quality criteria and standards necessary

for the maintenance of essential ecological processes and a healthy environment;

- (q) render advice and technical support, where possible, to entities engaged in environment and natural resources management so as to enable them carry out their functions satisfactorily; and
- (r) carry out such other activities and take such other measures as may be necessary or expedient for the administration and achievement of the objects of this Act.

(2) The Minister shall lay a summary report on the state of the environment prepared under subsection (1) (i) before the National Assembly as soon as reasonably practicable after its publication when the National Assembly is in session.

(3) In discharging its duties and functions under this section, the Authority shall promote the general principles of environmental management stipulated in section 3 and shall liaise with the Minister and, where appropriate, consult the lead agency responsible for the relevant segment of the environment.

#### Powers of the Authority

13. The Authority shall have all powers necessary for the proper performance of its functions under this Act, and in particular, but without prejudice to the generality of the foregoing, the Authority shall have power to-

- (a) control, supervise and administer the assets of the Authority in such manner as best promotes the purpose for which the Authority is established;

- (b) appoint such officers and staff and determine conditions of their service as may be deemed necessary for the better carrying out of its functions under this Act;
- (c) determine the provisions to be made for capital and recurrent expenditure and for reserves of the Authority;
- (d) receive any grants, gifts, donations or endowments and make legitimate disbursements therefrom;
- (e) co-operate with other bodies or organizations within or outside Malawi as the Authority may consider desirable or appropriate and in furtherance of the purposes for which the Authority is established;
- (f) open and operate bank accounts for the funds of the Authority; and
- (g) invest any funds of the Authority not immediately required in accordance with section 103 of this Act.

Powers in respect of lead agencies

14. The Authority may after giving reasonable notice to do so, direct any lead agency to perform, within such time and such manner as the Authority shall specify, any of the duties imposed on the lead agency by or under this Act or by any written law relating to environment and natural resources related matters and if the lead agency fails or neglects to comply with such directions, the Authority may itself perform or cause to be performed the duties in question, and the expense incurred by it in so doing shall be a civil debt recoverable by the Authority from the lead agency.

Roles of lead agencies

15.- (1) Nothing in this Act shall be construed as divesting any lead agency of the powers, functions, duties or responsibilities conferred or imposed on it by any written law relating to the protection and management

of the environment and the conservation and sustainable utilization of natural resources or limiting such powers.

(2) In the exercise by the Authority of its coordinating, monitoring and supervisory functions under this Act, a lead agency shall not be released from performing its duties as prescribed by law.

(3) Lead agencies listed in the First Schedule hereto shall perform functions and responsibilities as provided under relevant written laws and this Act and, without derogating from the generality of the foregoing, shall-

- (a) ensure sustainable realization of national development by preventing activities that degrade the environment;
- (b) undertake appropriate precautionary measures and enforcement of standards applicable to their sector;
- (c) report on their implementation and enforcement activities to the Authority in accordance with section 16 of this Act.

(4) The Authority shall, in consultation with lead agencies issue guidelines for elimination of gaps, conflicts, inconsistencies and duplications in environment and natural resources policies and legislation and their implementation and enforcement.

(5) No lead agency responsible for promotion of utilization of segments of the environment or natural resources shall undertake regulatory functions over that segment of the environment or natural resource.

(6) The lead agencies, shall, in consultation with other relevant agencies and the Authority develop guidelines and best practices for management and monitoring of environment and natural resources

(7) The Authority may amend the First Schedule by notice in the Gazette.

Delegation  
functions of the  
Authority

16. The Authority may in the performance of its functions under subsection (1) delegate any of those functions to a lead agency, relevant Technical Committee or any other public officer under this Act. Such functions when so delegated and performed shall be deemed always to have been performed by the Authority.

Reporting  
responsibilities  
of lead agencies

17. Each lead agency charged with the management of any segment of the environment under any written law shall submit to the Authority-

- (a) within two (2) months after the expiry of each year, a report on its operations during that period, including progress on integrating and mainstreaming environmental concerns in its plans, projects and programmes; and
- (b) such other reports as may be prescribed by the Authority and at such times as may be prescribed, on the state of that segment of the environment and the measures taken by the lead agency to maintain or improve the environment.

Technical  
Committees

18.- (1) The Board shall, on the advice of the Director General, appoint such technical committees, as it shall consider necessary to give advice on various subjects relating to environment and natural resources management under this Act.

(2) Without prejudice to the generality of subsection (1), the Board shall appoint under that subsection-

- (a) Technical Committee on Environmental Impact Assessment;
- (b) Technical Committee on Community Based Natural Resources Management;
- (d) Technical Committee on Biodiversity Conservation;
- (e) Technical Committee on Pollution Control, Hazardous Wastes, Chemicals and other Toxic Substances;
- (f) Technical Committee on Soil and Water Conservation;
- (g) Technical Committee on Environmental Information, Education and Communication; and
- (h) Technical Committee on Climate Change.

(3) The Authority shall specify the terms of reference of each technical committee appointed under subsection (1).

(4) Each technical committee shall adopt its own rules of procedure.

Composition of  
Technical  
Committees

19.- (1) Each Technical Committee shall consist of not less than twelve members and not more than fifteen members each of whom shall have sufficient knowledge, training and experience in the protection and management of the environment and the conservation and sustainable utilization of natural resources.

(2) The members of a Technical Committee shall be appointed by the Board and shall serve in a personal capacity for such period and shall be paid such allowances and remuneration as the Board shall determine.

(3) A member of the Technical Committee may by written notice to the Board at any time resign his position.

(4) Each Technical Committee may co-opt any person to attend its meetings and a person so co-opted shall participate at the deliberations of the Committee but shall have no vote.

District  
Environment Sub  
Committee  
Cap. 22:01

20.- (1) Notwithstanding the Local Government Act, the Authority shall, in consultation with local authorities, issue guidelines for the establishment of a committee on the environment for each District in this Act referred to as the “District Environment Sub Committee”.

(2) The functions of the District Environment Sub Committee shall include the following-

(a) coordinate the activities of the local authorities relating to the management of the environment and natural resources;

(b) ensure that environmental concerns are integrated in all plans, programs and projects of the local authorities;

(c) assist in development and formulation of by-laws relating to the protection and management of the environment and the conservation and sustainable utilization of natural resources;

(d) promote dissemination of information about the environment through education and outreach programs;

- (e) liaise with the Authority on all matters relating to environmental management in the District;
- (f) coordinate the activities of local environment and natural resources environment committees in the management of the environment and natural resources;
- (g) receive reports from and advise local environment and natural resources committees on their plans and programs;
- (h) prepare District Environment Action Plans every five (5) years which shall be consistent with the National Environmental Action Plan; and
- (i) compile District State of the Environment Reports every five (5) years to be integrated into the National State of the Environment Report.

Environmental District Officers

21. The Authority shall, in consultation with a local authorities provide guidelines for the appointment of a Environment District Officer for the local authorities whose functions shall include-

- (a) to advise the District Environment Sub Committee on all matters relating to the environment and natural resources management;
- (b) to liaise with the Authority on all matters relating to the environment and natural resources management;
- (c) to make such reports to the Authority as may be prescribed;
- (d) to promote environmental education and public awareness;



- (e) to assist local environment and natural resources committees in the performance of their functions as provided for in this Act;
- (f) to gather and manage information on the environment and utilization of natural resources in the district;
- (g) to serve as Secretary to the District Environment Sub Committee; and;
- (h) such other functions as may be prescribed by the local authority in accordance with this Act.

Local Environment  
and Natural  
Resources  
Committee

22.- (1) Each local authority shall on the advice of the District Environment Sub Committee establish local environment and natural resources committees at such level in its area of jurisdiction as it may deem expedient which shall be responsible for undertaking environment and natural resources management activities in their jurisdiction.

(2) Local Environment and Natural Resources Committees shall be established with special recognition of the roles and responsibilities of traditional leaders and the need to integrate traditional knowledge in environment and natural resources management strategies, plans and programs.

(2) The functions of Local Environment and Natural Resources Committees shall include the following-

- (a) to prepare a local environmental action plan which shall be consistent with the District Environmental Action Plan and the National Environment Action Plan
- (b) to carry out public environmental education and outreach programs;

- (c) to mobilize local communities within its jurisdiction to sustainably manage and conserve the environment and natural resources and restore degraded environmental resources through self-help;
- (e) to mobilize and provide guidance to local communities in its jurisdiction to participate in implementation and enforcement of environment and natural resources related policies and legislation;
- (f) to monitor all socio-economic activities in its jurisdiction to ensure that they do not adversely affect the environment;
- (g) to report any events or activities which have or are likely to have significant environmental impacts to the Environmental District Officer or to the Assembly or the Authority; and
- (h) to carry out any such other duties as may be provided in any written law relating to environment and natural resources management or as may be prescribed by the Assembly in consultation with the Authority or a lead agency.

(3) Local Environment and Natural Resources Committees shall establish sector environment and natural resource sub-committees whose responsibilities shall be to promote local participation in the management of various sectors of the environment such as water, forestry, fisheries and wildlife in its area.

#### **PART IV – ENVIRONMENTAL PLANNING**

23.- (1) The Authority shall prepare and publish a National Environmental Action Plan, other relevant plans and a National State of the Environment and Outlook Report every three (3) years or such other lesser period as may be considered necessary by the Authority.

(2) The National Environmental Action Plan shall-

(a) cover all matters affecting the environment in Malawi and shall contain guidelines for the management and protection of the environment and natural resources as well as strategies for controlling, preventing or mitigating any deleterious effects;

(b) respond to and address environment and natural resources issues raised in the National State of the Environment Report;

(c) take into account District Environment Action Plans as provided for under section 24;

(d) be binding upon all persons in the public and private sector including private companies, non-governmental organizations and government departments;

(e) without prejudice to subsection (1), be reviewed and modified from time to time to take into account emerging knowledge and scientific data;

(f) be in such form and contain such other matters as the Authority may prescribe;

(g) upon Cabinet approval be laid before the National Assembly;  
and

(h) be disseminated to the public.

(2) The Authority shall monitor activities, plans and programs of lead agencies to ensure that they conform to the strategies, plans and programs under the National Environmental Action Plan and the District Environmental Action Plan and respond to the National State of the Environment Report and District State of the Environment Reports as the case may be.

Environmental  
planning at  
district level

24.- (1) Every District Environment Sub Committee shall, in consultation with the Authority, prepare a District Environmental Action Plan and District State of the Environment Report which shall be revised every five (5) years or such other lesser period as may be considered necessary by the Authority.

(2) The District Environmental Action Plan shall-

(a) be in conformity with the National Environmental Action Plan and the District Development Plan;

(b) be binding on all persons in public and private sector in the district including private companies, non-governmental organizations, local environmental and natural resources committees and government agencies;

(c) be in such form and contain such matters as the Authority may prescribe;

(d) respond to and address environment and natural resources issues raised in the District State of the Environment Report.

(e) upon approval by the District Environment Sub Committee be laid before the Assembly; and

(f) be disseminated to the public.

(2) No person shall implement a development activity or project in any district that has been deemed in accordance without the District Environment Action Plan without consulting the District Environmental Sub-Committee

(3) A District Environment Sub Committee may recommend the issuance of a stop order to the Director General, in respect of any development activity which does not comply with the District Environment Action Plan for the district.

Strategic  
Environmental  
Assessment

25. (1) Any institution which intends to develop policies, legislation, programmes, development plans and physical plans that are likely to have an adverse effect on the management, conservation and enhancement of the environment or sustainable management of natural resources shall conduct a strategic environmental assessment of the draft policies, programmes, legislation, development plan and physical plans and submit the draft to the Director General for approval

(2) The institution referred to in subsection (1) shall not adopt or implement a policy, legislation, programme, development plan and physical plan which is not approved by the Authority.

(3) A strategic environmental assessment made under this section shall include-

(a) a full description of a policy, legislation, programme, development plan and physical plan and the objectives it intends to achieve;

(b) an identification, description and assessment of the positive and adverse effects that implementation of the proposed policy,

legislation, programme, development plan and physical plan is likely to have on the environment and to the sustainable management of natural resources;

(c) an identification, description and assessment of likely effects of alternative means to achieve the objectives of the policy, legislation, programme, development plan and physical plan;

(d) an identification, description and assessment of a range of practicable measures that could be taken to avoid, mitigate or remedy any adverse effect that may occur as a result of the implementation of the policy, legislation, programme, development plan and physical plan; and

(e) any other information that the Minister may by regulations prescribe.

(4) Where an institution responsible for the policy, legislation, programme, development plan and physical plan, considers that it does not require a strategic environmental assessment under this section, it shall submit a draft of the relevant document to the Director General who shall, as soon as practicable, determine whether or not an assessment is required and shall furnish his decision and the reasons for it.

(5) Upon receipt of the strategic environmental assessment report referred to in subsection (4), the Director General shall review the policy, legislation, programme, development plan and physical plan and determine whether an assessment is necessary. The Director General shall inform the institution concerned, in writing, of his decision and reasons for his decision.

(6) An institution, after receipt of the decision of the Authority in relation to the strategic environmental assessment report, shall comply with

recommendations made and shall be required to submit a fresh report to the Authority, indicating-

- (a) the revisions that have been made to the original document in order to promote environmental management and the sustainable management of natural resources or to avoid, mitigate or remedy any adverse effects which implementation of the original policy, legislation, programme, development plan and physical plan may have had;
- (b) any other measures that have to be taken to avoid, mitigate or remedy any adverse effects on the environment and when these will be taken or will not be taken, the reasons for not doing so
- (c) a revised version of the policy, legislation, programme, development plan and physical plan.

(7) Where the Authority considers that the environmental concerns raised during the strategic environmental assessment process are not adequately addressed by the policy, legislation, programme, development plan and physical plan, and that additional cost-effective measures to avoid or mitigate the adverse effects should be taken, the Agency shall, within thirty days of the receipt of the documents referred to in subsection (5), lodge an objection with the institution concerned and consult with the institution concerned with a view to reaching an agreement on the amendments to be made to the policy, legislation, programme, development plan and physical plan in order to give full effect to the purpose and principles of this Act.

(8) Where the Authority and the institution concerned are unable to reach agreement on the amendments to be made to the revised policy, legislation, programme, development plan and physical plan or the measures to be taken, the Director General or the proponent may lodge a notice of objection with the Minister or refer the matter to the Environmental Tribunal.

(9) The Minister may, upon receipt of the notice under subsection (7), order the documents referred to in subsection (5) to be subjected to public review or a public hearing before making a final determination.

## **PART V– ENVIRONMENTAL IMPACT ASSESSMENT, MONITORING AND AUDITING**

Projects for which an environmental impact assessment is required

26.- (1) No person shall implement any project listed in the Second Schedule hereto, as amended from time to time, unless an environmental impact assessment is carried out.

(2) Every licensing authority shall display a copy of the Second - Schedule at a prominent place on its premises.

(3) The Authority may amend the Second Schedule by notice published in the Gazette.

(4) A developer shall, before implementing any project for which an environmental impact assessment is required under subsection (1), submit to the Authority, a project brief stating in a concise manner-

(a) the description of the project;

(b) the activities that shall be undertaken in the implementation of the project;

(c) the likely impact of those activities on the environment;

(d) the number of people to be employed for purposes of implementing the project;



(e) the segment or segments of the environment likely to be affected in the implementation of the project;

(f) such other matters as the Director General may in writing require from the developer or any other person who the Director General reasonably believes has information relating to the project.

(5) Where, upon examining the project brief, the Director General considers that further information is required to be stated in the project brief before an environment impact assessment is conducted, the Director General shall require the developer, in writing, to provide such further information as the Authority shall deem necessary.

Environmental  
Impact Assessment  
Reports

27.- (1) Where the Director General considers that sufficient information has been stated in the project brief under section 30, the Director General shall require the developer, in writing, to conduct, in accordance with such guidelines as the Authority may, by notice published in the Gazette prescribe, an environmental impact assessment and to submit to the Director General, in respect of such assessment, an environmental impact assessment report giving-

(a) a detailed description of the project and the activities to be undertaken to implement the project;

(b) the description of the segment or segments of the environment likely to be affected by the project and the means for identifying, monitoring and assessing the environmental effects of the project;

(c) the description of the technology, method or process to be used in the implementation of the project and of any available

alternative technology, method or process, and the reasons for not employing the alternative technology, method or process;

(d) the reasons for selecting the proposed site of the project as opposed to any other available alternative site;

(e) a detailed description of the likely impact the project may have on the environment and the direct, indirect, cumulative, short-term and long-term effects of the project;

(f) an identification and description of measures proposed for eliminating, reducing or mitigating any anticipated adverse effects of the project on the environment;

(g) an indication of whether the environment of any other country or of areas beyond the limits of national jurisdiction is or are likely to be affected by the project and the measures to be taken to minimize any damage to the environment;

(h) an outline of any gaps, deficiencies and the adverse environmental concerns arising from the environmental impact assessment and from the compilation of the environmental impact assessment report;

(i) a concise description of the method used by the developer to compile the information required under this section.

(j) environmental mitigation and management plans in such form and manner as the Authority may prescribe.

(2) The environmental impact assessment report prepared under subsection (1) shall be submitted to the Director General in the prescribed

form, giving the prescribed information and shall be accompanied by a prescribed fee payable by the developer to the Authority.

Registration of persons who can conduct environmental assessment studies and Reports

28.- (1) Environmental impact assessment reports required under this Part shall be conducted or prepared respectively by individual experts or a firm of experts authorized in that behalf by the Authority.

(2) The Authority shall maintain a register of all individual experts or firms of experts duly authorized by it to conduct or prepare environmental impact assessment and reports respectively. The register shall be a public document.

(3) The Authority may, in consultation with the lead agencies, approve any application by an expert wishing to conduct environmental impact assessment. Such application shall be made in the prescribed form and accompanied by any fees that may be prescribed.

Publication of environmental impact assessment report

29.- (1) Upon receipt of an environmental impact assessment report from any developer, the Authority shall where necessary, cause to be published in at least one widely circulating newspaper, or any other appropriate media in the area or proposed area of the project, at the expense of the developer a notice which shall state-

(a) a summary description of the project;

(b) the place where the project is to be carried out;

(c) the place where the environmental impact assessment evaluation or review report may be inspected; and

(d) a time limit not exceeding thirty (30) days for submission of oral or written comments on the environmental impact study, evaluation or review report;

(2) The environmental impact assessment report shall be open to the public for inspection:

Provided that no person shall be entitled to use any information contained therein for personal benefit except for purposes of civil proceedings brought under this Act or under any written law relating to the protection and management of the environment or the conservation or sustainable utilization of natural resources.

(3) The Authority may, on application of any person, extend the period stipulated in subparagraph (d) for another thirty (30) days so as to afford the person opportunity to submit oral or written comments on the environmental impact assessment or report.

Comments on the environmental impact assessment report by lead agencies

30.- A lead agency shall, upon the written request of the Director General, submit written comments on the environmental impact assessment report within thirty (30) days of the written request.

Review of environmental impact Assessment report and issuance of license

31.- (1) Upon receiving the environmental impact assessment report, the Director General shall invite written or oral comments from the public thereon, and where necessary, shall conduct public hearings at such place or places as the Director General deems necessary for purposes of assessing public opinion thereon and may thereafter-

(a) require the developer to redesign the project or to do such other thing as the Director General considers desirable taking into account all the relevant environmental concerns highlighted in the environmental impact assessment report, any comments made by the public and the need to achieve the objectives of this Act;

- (b) require the developer to conduct a further environmental impact assessment of the whole project or such part or parts of the project as the Director General may deem necessary, or to revise the information compiled in the environmental impact assessment report;
- (c) approve the project and grant an environmental impact assessment licence subject to such conditions as the Director General may deem necessary; or
- (d) refuse to approve the project.

(2) In considering whether or not to issue an environmental impact assessment license or to impose any condition, the Director General shall take into account any likely impact of the project on the environment and the actual impact of any existing similar project on the environment.

(3) A licensing authority shall not issue any licence under any written law with respect to a project for which an environmental impact assessment is required under this section unless an environmental impact assessment licence issued under this Part is produced or the Director General has certified in writing that an environmental impact assessment is not required under this Act.

(4) Any license issued in contravention of subsection (3) shall be void.

Validity of an environmental impact assessment license

32. An environmental impact assessment licence granted under section 31 shall be valid for such period as may be stipulated in the licence and may be subject to renewal at the end of such period.

Revocation or modification of environmental impact assessment licence

33. (1) The Authority may, at anytime, revoke an environmental impact assessment licence or modify any condition attached to the licence if-

- (a) the activity in respect of which the licence is issued constitutes an imminent, actual or potential hazard to the environment or natural resources or
- (b) if the licensee fails to comply with any condition endorsed on the licence.

(2) The Authority shall not revoke or modify the an environmental impact assessment licence granted to a developer until the Authority has, by notice in writing, given the opportunity to the developer concerned, to —

- (a) rectify any contravention; or
- (b) show cause, within a period not exceeding 14 days from the date of such notice, why the environmental impact assessment licence should not be revoked or modified.

(3) The Authority shall, where necessary, cause to be published in at least one widely circulating newspaper or any other appropriate media, a notice of revocation or modification made under this section.

Transfer of environmental impact assessment licences

34.- (1) No person shall transfer an environmental impact assessment licence, without the written consent of the Director General and payment of a prescribed fee to the Authority.

(2) The proposed transferor and transferee shall jointly apply to the Authority in writing giving particulars of the transferee and the reason for the proposed transfer and such other details as the Director General may require.

(3) The registered holder of the licence shall be deemed always to be the owner or having charge, control or management of the project as the case may be until the Director General has approved the transfer and payment of the prescribed fee has been made in accordance with this Act.

(4) The Director General may approve transfer of an environmental impact assessment licence subject to any terms and conditions as he may impose including the requirement for an environmental audit or full environmental impact assessment to be conducted.

(5) Any person who contravenes this section commits an offence.

Limitation of liability in respect of an environmental impact assessment licence

35.- (1) No civil or criminal liability in respect of a project or consequences of a project shall be incurred by the Government, the Authority, a public officer or any lead agency by reason of the approval of an environmental impact assessment, evaluation or review report or grant of an environmental impact licence or by reason of any condition attached to such licence.

(2) The grant of an environmental impact assessment licence in respect of a project shall afford no defence to any civil action or to a prosecution that may be brought or preferred against a developer in respect of the manner in which the project is executed, managed or operated.

(3) Notwithstanding subsection (1) of this section, where the Government, the Authority, public authority or any lead agency is a developer as defined under this Act, it shall be liable in the same manner as any other person.

Environmental audits

36.- (1) The Authority shall, in consultation with such lead agency as it may consider appropriate, carry out or cause to be carried out periodic environmental audits of any project for purposes of enforcing the provisions of this Act.

(2) The owner of the premises or operator of a project for which an environmental impact assessment has been made shall keep records and make annual reports to the Authority describing how far the project conforms in operation with the statements made in the environmental impact statement.

(3) A developer shall take all reasonable measures for mitigating any undesirable effects in the environment arising from the implementation of a project which could not reasonably be foreseen in the process of conducting an environmental impact assessment and shall, within a reasonable time, report to the Authority such effects and measures.

(4) An environmental inspector appointed under this Act may enter any land or premises for the purpose of determining how far the activities carried out on that land or premises conform to the statements made in the environmental impact assessment.

Environmental  
monitoring

37.- (1) The Authority shall, in consultation with any lead agency, monitor-

(a) all environmental phenomena with a view to making an assessment of any possible changes in the environment and their possible impacts; and

(b) the operation of any industry, project or activity with a view to determining its immediate and long term effects on the environment.

(2) The Authority shall require any developer whose project requires an environmental impact assessment license to prepare and submit to the Authority environmental management plans in such form and manner as the Authority may prescribe.



(3) An environmental inspector appointed under this Act may enter upon any land or premises for the purpose of monitoring the effects on the environment of any activities carried out on that land or premises and to enforce compliance with the environmental mitigation and management plans prescribed under subsection (2).

Fees

38. The Authority shall, by notice published in the Gazette, prescribe such fees as may be necessary for conducting environmental impact studies and for covering reasonable costs for scrutinizing environmental impact assessment reports and for the subsequent monitoring of a project which has been approved for implementation under this Act.

#### **PART VI – ENVIRONMENTAL STANDARDS**

Basis for  
Environmental  
quality  
standards

39.- (1) The prescription of the environmental quality standards under this Part shall be based on scientific and environmental principles and shall take into account the practicability and availability of appropriate technology for ensuring compliance with such standards.

(2) The Authority may prescribe different environmental quality standards to apply in different areas of Malawi with respect to different segments of the environment and the Authority may from time to time vary such standards.

Air quality

40. The Authority shall, in liaison with relevant lead agencies-

- (a) establish criteria and procedures for the measurement of air quality;
- (b) establish-

- (i) ambient air quality standards;
- (ii) occupational air quality standards;
- (iii) emission standards for various sources;
- (iv) criteria and guideline for air pollution control for both mobile and stationery sources; and
- (v) any other air quality standards as may be prescribed.

- (c) take measures to reduce existing sources of pollution by requiring the redesign of plants or the installation of new technology or both, to meet the requirements of standards established under subsection (1);
- (d) develop guidelines to minimize emissions of greenhouse gases and identify suitable technologies to minimize air pollution and;
- (e) monitor the enforcement of standards.

Water quality standards

41.- (1) The Authority shall in liaison with lead agencies, establish-

- (a) criteria and procedures for the measurement of water quality;
- (b) minimum quality standards for all the waters of Malawi; and
- (c) minimum quality standards for different uses, including-
  - (i) drinking water;

- (ii) water for industry;
- (iii) water for agricultural purposes;
- (iv) water for recreational purposes;
- (v) water for fisheries;
- (vi) water for wildlife; and
- (vii) any other prescribed water use.

Standards for discharge of effluent into water

42. The Authority shall, in liaison with relevant lead agencies-
- (a) establish standards for the discharge of any effluent into the water bodies of Malawi; and
  - (b) prescribe measures for pre-treatment of effluent before discharge into the sewerage system;

Standards for control of obnoxious smells

43. The Authority shall, in liaison with relevant lead agencies, establish-
- (a) procedures for measurement and determination of obnoxious smells;
  - (b) minimum standards for control of pollution of the environment by smell; and
  - (c) guidelines for measures leading to the abatement of obnoxious smells, whether from human activities or naturally occurring phenomena.

Standards for control of noise and vibration

44. The Authority shall, in liaison with lead agencies, establish-
- (a) criteria and procedures for the measurement of noise and vibration pollution;

- (b) minimum standards for the emission of noise and vibration pollution into the environment; and
- (c) guidelines for the abatement of unreasonable noise and vibration pollution from any source -

Soil quality standards

45.- (1) The Authority shall, in liaison with relevant lead agencies establish-

- (a) criteria and procedures for the measurement and determination of the quality of soil;
- (b) minimum standards for the management of the quality of soil;
- (c) procedure for undertaking clean up and remedial action of contaminated soil; and
- (d) guidelines for the disposal of any waste in the soil, the optimal utilization of any soil, identification of the various soils and practices that are necessary in order to conserve soil and prohibition of activities that may degrade the soil and for monitoring and control of soil degradation.

Standards for minimization of radiation

46.- (1) Without prejudice to the Atomic Energy Act No. 16 of 2011, the Authority shall in liaison with relevant lead agencies, establish;

- (a) criteria and procedures for the measurement of ionizing and other radiation; and
- (b) standards for the minimization of ionizing and other radiation in the environment.

Other environmental quality standards

47.-(1) The Authority shall, in liaison with relevant lead agencies, establish

(a) other standards that may affect the environment.

(b) such criteria and procedures as it may consider necessary for the determination of the standards provided for under subsection (1)(a).

Standards under other written law

48.-(1) Notwithstanding the provisions of sections 40,41,42,43,44,45 and 46 the Authority shall not establish separate standards in relation to matters already dealt with under rules, regulations or standards under other written laws.

(2) The Authority shall, where regulations, rules or standards are issued under any other laws as provided in subsection (1), have the general power to supervise, monitor and enforce the regulations, rules and standards, as if issued under this Act.

## **PART VII - MANAGEMENT OF ENVIRONMENT AND NATURAL RESOURCES**

Regulations of use and management of rivers and lakes

49.- (1) The Authority shall, in liaison with relevant lead agencies issue guidelines and prescribe measures for the management of rivers and lakes.

(2) No person shall, in relation to a river or lake, carry out any of the following activities-

(a) use, erect, reconstruct, alter, place, extend, remove or demolish any structure or part of any structure in, on, under, or over the bed;

- (b) excavate, drill, tunnel, or disturb the bed or otherwise;
- (c) introduce or plant any part of a plant whether alien or indigenous in a lake or river;
- (d) introduce any animal or micro-organisms, whether alien or indigenous in any river or lake, or on, in or under its bed;
- (e) deposit any substance in a river or lake or in, on or under its bed, if that substance would or is likely to have adverse effects on the environment;
- (f) divert, block any river from its normal course; or
- (g) drain any lake or river.

(2) The Authority may, in consultation with a relevant lead agency, in writing waive any of the restrictions in subsection (1) in respect of any person subject to conditions prescribed by the Authority.

(3) For the purpose of this Part-

“lake” includes natural lakes, artificial lakes, dams, canals, gulfs, bays, inlets, lagoons; and

“river” includes streams, canals or brooks..

(4) Any person who shall contravene this section or any guideline issued under this section shall commit an offence.

Protection of traditional and indigenous interests and Rights

50. The Authority shall, in liaison with relevant lead agencies, issue guidelines and prescribe measures for the recognition and protection of traditional and indigenous interests and rights of local communities customarily resident within or around a lake shore, wetland or river bank or forest.

Management of river banks and lake shores

51.- (1) The Authority shall, in liaison with relevant lead agencies, take all measures necessary in order to protect the banks of rivers and the shores of lakes in Malawi from human activities that adversely affect the rivers and lakes.

(2) The Authority, shall with assistance and participation of various lead agencies, identify the banks of rivers and the shores of lakes within its jurisdiction which are at risk from environmental degradation or which have other value to the local communities and shall take necessary measures to minimize or eliminate the risk and protect those areas.

(3) The Authority, in consultation with lead agencies, by notice in the Gazette declare protected zones along banks of rivers and shores of lakes within such limits as it may be considered necessary to protect those rivers and lakes from deleterious human activities.

(4) In declaring protected zones on the banks of a river or the shores of a lake under subsection (3), the Authority shall take into account-

(a) the size of the river or the lake in determining the area of the protected zone;

(b) existing interests in the land covered by the proposed protected zone;

(c) nature of the proposed activity within the river bank or lake shore; and

(d) geographical location of a river or a lake.

(5) Notwithstanding the provisions of this section, sustainable use of any protected zone which does not adversely affect the river or the lake may be permitted by the Authority subject, where necessary, to environmental impact assessment conducted in accordance with this Act.

(5) Any person who shall contravene this section shall commit an offence.

Regulation of use and management of wetlands

52.- (1) No person shall-

(a) reclaim any wetland;

(b) erect, reconstruct, alter, place, extend, remove or demolish any structure that is fixed in or part of any structure in, on, under, or over any wetland;

(c) excavate, drill, tunnel, or disturb the wetland in a manner that has an adverse effect on the wetland;

(d) deposit any substance in a wetland or in, on or under its bed, if that substance would or is likely to have adverse effects on the environment of the wetland; or

(e) introduce or plant any exotic or introduced plant or animal in a wetland unless he has written approval from the Authority given in consultation with a relevant lead agency in accordance with subsection (3) of this provision.



(2) The Authority may, in liaison with a relevant lead agency, and upon an application to carry on an activity referred to in subsection (1), make any investigation it considers necessary, including an environmental impact assessment under this Act to determine the effects of that activity on the wetland and the environment in general for the purposes of granting authorization.

(3) The Authority shall, in liaison with relevant lead agencies, establish guidelines for identification and sustainable management of all wetlands in Malawi.

(4) The Authority shall, in liaison with the relevant lead agency, and by notice in Gazette, specify the traditional uses of wetlands which shall be exempted from the application of subsection (1) and declare any wetland to be a protected wetland thereby excluding or limiting human activity in that wetland.

(5) Any person who shall contravene this section shall be guilty of an offence.

Protection of  
natural heritage  
sites

53.- (1) The Authority shall, in liaison with relevant lead agencies and with the assistance and participation of the Local Environmental and Natural Resources Committees and the District Environment Sub Committee, identify those elements, objects and sites in the natural environment which are of cultural importance to the people of Malawi.

(2) The Authority shall, in such manner as may be prescribed, maintain a register of all elements, objects and sites identified under subsection (1).

(3) The Authority shall, in liaison with a relevant lead agency, issue guidelines and prescribe measures for the management or protection of cultural elements, objects and sites registered under this section.

Identification of hilly and mountainous areas

54.- (1) Each District Environment Sub Committee shall, with the assistance and participation of a Local Environment and Natural Resources Committee within the district and relevant lead agencies, identify the hilly and mountainous areas which are at risk from environmental degradation.

(2) A hilly or mountainous area is at risk from environmental degradation if -

(a) it is prone to soil erosion;

(b) landslides have occurred in such area;

(c) vegetation cover has been removed or is likely to be removed at a faster rate than it is being replaced; or

(d) any other land use activity in such area is likely to lead to environmental degradation.

(3) Each District Environment Sub Committee shall notify the Authority of the hilly and mountainous areas it has identified as being at risk from environmental degradation.

(4) The Authority shall maintain a register of hilly and mountainous areas at risk from environmental degradation.

Measures for the management of hill tops, hill sides and mountainous areas

55.- (1) The Authority shall, in liaison with relevant lead agencies, issue guidelines and prescribe measures for the sustainable use and management of hillsides, hilltops and mountainous areas.

(2) The guidelines and measures issued and prescribed under sub-section (1) shall include-

- (a) the appropriate farming methods;
- (b) the carrying capacity of the areas described in subsection (1) in relation to animal husbandry;
- (c) measures to curb soil erosion;
- (d) disaster preparedness in areas prone to landslides;
- (e) the protection of the areas referred to in subsection (1);
- (f) the protection of catchment areas; and
- (g) any other measures the Authority considers necessary.

(3) The District Environment Sub Committee and a Local Environment and Natural Resources Committee shall be responsible for ensuring that the guidelines and measures prescribed under subsection (2) are implemented and enforced.

(4) Each District Environment Sub Committee shall, in its District Environment Action Plan prepared under this Act, specify which of the areas identified under section 108 shall be targeted for forestation or reforestation.

(5) Each District Environment Sub Committee shall take measures through encouraging self-help in the community, to plant trees and other vegetation in any area specified under sub-section (1) which are within the limits of its jurisdiction and not subject to any personal interest in land.

(4) Where the areas specified under subsection (1) are subject to leasehold, freehold or any other interest in land including customary tenure,

the holder of that interest shall be responsible for taking measures to plant trees and other vegetation in those areas.

(5) Where a holder of an interest in land fails to comply with subsection (3) the District Environment Sub Committee may mobilize the community to ensure compliance and may, in an appropriate case, recover the costs of such work from the holder of such interest.

(6) Any person who contravenes the guidelines and measures issued and prescribed under this section or who fails to comply with a lawful direction issued by a local environment and natural resources committee under this section shall commit an offence and may be required to perform community work under the Criminal Procedure and Evidence Code.

Cap. 8:01

Conservation of energy and use of renewable sources

56. The Authority shall, in liaison with relevant lead agencies, promote renewable sources of energy by-

- (a) promoting research and use of appropriate renewable sources of energy;
- (b) creating incentives for the use of renewable sources of energy;
- (c) promoting measures for the conservation of non-renewable sources of energy; and
- (d) taking measures to encourage the planting of trees and woodlots by individual land users, institutions and community groups.

Protection of the ozone layer

57.- (1) The Authority, in consultation with lead agencies, shall carry out national studies on substances, activities and practices that deplete or are likely to deplete the stratospheric ozone layer and other components of the stratosphere.

(2) The Authority shall, in consultation with lead agencies, make regulations-

- (a) restricting or prohibiting the use of any appliance, equipment or any other thing which uses ozone depleting substances;
- (b) requiring any person to make, in such manner and in such form as the Authority may determine, regular reports to the Authority on the generation, consumption and importation of ozone depleting substances;
- (c) providing for the progressive reduction and eventual elimination of substances that deplete the ozone layer;
- (d) providing for the control of activities and practices likely to deplete the ozone layer; and
- (e) providing for such other matters as are necessary for protecting the stratospheric ozone layer.

Cap. 18:08

(3) Notwithstanding the provisions of the Control of Goods Act, no person shall import or export any appliance, equipment or any other thing which uses substances that deplete the stratospheric ozone layer except under a licence issued by the Authority and subject to such conditions as the Authority may determine.

Control and management of factors affecting climate change

58.- (1) The Authority, shall in consultation with lead agencies, develop guidelines and prescribe measures for the control and management of factors affecting climate change.

(2) The guidelines and measures provided for in subsection (1) shall-

- (a) identify activities, practices and substances that cause climate change and measures for reducing or eliminating their effects;
- (b) prescribe measures for reduction of greenhouse gas emissions from any sector;
- (c) prescribe measures to enhance greenhouse gas sinks;
- (d) promote assessment and monitoring of the potential impact of climate change on the functioning of ecosystems, vegetation sinks and net carbon sinks.

(3) The Authority may commission national studies on activities, practices or substances that cause climate change and develop necessary policy and legislation for effective control, management and monitoring of such activities, practices or substances.

Duty to  
minimize and  
manage wastes

59.- (1) Every person has the duty to manage any waste generated by his activities or the activities of those persons working under his direction in such a way and in such a manner that he does not cause ill health to persons or damage to the environment.

(2) No person shall dispose of any waste whether generated within or outside Malawi except in accordance with this Act and as may be prescribed.

(3) Every person whose activities generate waste shall employ measures for the minimization of waste through treatment, reclamation and recycling.

(4) Any person who contravenes this section commits an offence.

Waste  
management

60.- (1) The Authority shall, in liaison with lead agencies and operators by regulations published in the Gazette, control the management, transportation, treatment and recycling, reduction of waste, safe disposal of waste and for prohibiting littering of public places.

(2) The Authority shall in consultation with relevant lead agencies and operators promulgate such rules or formulate such measures as are necessary to regulate the collection, storage, transportation, reduction and safe disposal of waste.

(3) The Authority shall, in consultation with relevant lead agencies-

(a) formulate criteria and standards for the classification and analysis of waste and shall, subject to the rules or measures referred to in subsection (2), determine the method or methods for safe disposal of waste;

(b) control the handling, storage, transportation, classification, importation, exportation and destruction of waste;

(c) control the reduction of waste;

(d) monitor any waste disposal site and direct the control of any such site if its continued use as a waste disposal site constitutes or is likely to constitute a hazard to the health of the people living in the vicinity of, or to the environment adjacent to, the site.

Licence for  
wastes

61.- (1) No person shall handle, store, transport, classify or destroy waste other than domestic waste, or operate a waste disposal site or plant, or generate waste except in accordance with a licence issued under this section.

(2) The Authority may, in consultation with relevant lead agencies, grant to any person a licence to handle, store, transport, classify or destroy any waste, except domestic waste, or to generate waste or to operate a waste disposal site or plant, subject to such conditions as the Authority may determine.

(3) An application for a licence under this section shall be in the prescribed form or, if no such form is prescribed, in such form as the Authority may determine, and the form shall contain the applicant's full names, postal and physical address and such other particulars as the Authority may require.

(4) Any person who, at the commencement of this Act, is carrying on the business of handling, storing, transporting, classifying, destroying or disposing of waste shall apply for a licence under this section within six (6) months from the date of the commencement of this Act.

(5) The Authority may, at anytime, revoke any licence issued under this section or vary any condition attached to the licence if the activity in respect of which the licence is issued constitutes an imminent, actual or potential hazard to the environment or natural resources or if the licensee violates any condition endorsed on the licence.

(6) The Authority may delegate the power to issue a licence under this section to the Director General and any thing done by the Director General in the exercise of that power shall be valid for all purposes as if it had been done by the Authority.

Importation and  
exportation of  
hazardous wastes  
Cap. 18:08

62 (1) Notwithstanding the Control of Goods Act, no person shall import or export any hazardous waste or substance, except under a permit issued by the Authority subject to such conditions as the Authority may determine, and in the case of exportation, the exporter shall, before a



permit is issued, produce to the Authority written confirmation from an appropriate authority of the receiving country that the hazardous waste or substance may be exported to that country.

(2) No person shall transport within Malawi hazardous waste or substances, except under a permit issued by the Authority subject to such conditions as the Authority may impose.

Classification of hazardous substances

63.- (1) The Authority shall, in liaison with relevant lead agencies, issue guidelines and prescribe measures for hazardous substances, and for determining their toxicity.

(2) Without prejudice to the generality of subsection (1), the guidelines and measures may make provision-

(a) requiring the registration, labeling and packaging of hazardous substances;

(b) for measures for controlling the manufacture, importation and exportation of hazardous substances;

(c) for the distribution, storage, handling and transportation of hazardous substances;

(d) for monitoring the impact of hazardous substances and their residuary effect on public health, the environment and natural resources;

(e) for restricting or banning hazardous substances.

64.- (1) The Authority shall, in consultation with a relevant lead agency, establish criteria for the classification of toxic and hazardous substances in accordance with their toxicity and the hazards they present to human health and the environment.

(2) The Authority shall, in consultation with the lead agency, on the basis of criteria established under subsection (1), issue guidelines and prescribe measures for the management of toxic and hazardous substances.

(3) The guidelines issued and the measures prescribed under subsection (2) shall include guidelines and measures on-

(a) registration of chemicals and materials;

(b) labeling of chemicals and materials;

(c) packaging for chemicals and materials;

(d) advertising of chemicals and materials;

(e) control of imports and exports of toxic and hazardous chemicals and materials;

(f) distribution, storage, transportation and handling of chemicals and materials;

(g) monitoring the effects of chemicals and materials and their residue on human health and the environment;

(h) disposal of expired and surplus chemicals and materials; and

(i) restricting and banning of extremely toxic and hazardous chemicals and materials.

Prohibition of discharge of hazardous substances or oil or mixture containing oil into the environment

65.- (1) No person shall discharge any hazardous substance, oil or other mixture containing oil in any waters or any other segment of the environment except in accordance with the guidelines prescribed by the Authority in consultation with a relevant lead agency.

(2) Any person who discharges a hazardous substance, oil or mixture containing oil into the environment contrary to subsection (1) commits an offence and shall, upon conviction, and in addition to any other sentence the court may impose-

(a) pay the costs of removal, including any costs that may be incurred by any Government agency or organ in the restoration of the environment damaged or destroyed as a result of the discharge;

(b) the costs of third parties in form of reparation, restoration, restitution or compensation as may, from time to time, be determined by the Authority.

(3) The owner or operator of a production or storage facility, motor vehicle or vessel from which a discharge occurs contrary to this section shall mitigate the impact of the discharge by-

(a) giving immediate notice of the discharge to the Authority and other Government officers;

(b) immediately commencing clean up operations using the best available clean techniques; and

(c) complying with such directions as the Authority may from time to time prescribe.

(4) Until the owner or operator of the production or storage facility, motor vehicle or vessel has taken the mitigation measures prescribed in subsection (3), the Authority may seize the production or storage facility, motor vehicle or vessel.

(5) Where the owner or operator fails to take the necessary measures under subsection (3) after the expiry of a reasonable time in all the circumstances, the Authority may, upon an order of the court or the Tribunal, dispose of the production or storage facility, motor vehicle or vessel to meet the costs of taking the necessary measures under subsection (3) and other remedial and restoration measures.

(6) The court or the Tribunal in convicting or sentencing a person of an offence under this subsection shall take into account the measures taken by that person to comply with subsection (3).

(7) The Authority may, by notice published in the Gazette, prescribe such fees as it shall deem necessary for the monitoring, cleaning up, removing hazardous substances or oil discharged into the environment.

## **PART IX – POLLUTION CONTROL**

Discharge of  
pollutants

66.- (1) No person shall discharge or emit any pollutant into the environment, except in accordance with this Act.

(2) It shall be the duty of person to prevent the discharge or emission of any pollutant into the environment otherwise than in accordance with this Act and to comply with such general or specific directions of the Authority or the Director General for preventing, minimizing or cleaning up, removing or disposing of any pollutant discharged or emitted into the environment.

(3) Any person who discharges or emits any pollutant into the environment otherwise than in accordance with this Act may be required by the Authority to clean up, remove or dispose of the pollutant in such manner and within such period as the Authority shall direct and to pay the full costs of cleaning the polluted environment and of removing the pollution.

(4) The Authority may, by notice published in the Gazette, prescribe such fees as it shall deem necessary for the monitoring, cleaning up, removing or disposing of pollutants discharged or emitted into the environment

Discharge of pollutants into aquatic environment

67.- (1) No person shall discharge, dump or emit any pollutant into aquatic environment except in accordance with this Act.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable upon conviction to a fine not exceeding MK50,000,000.00 or imprisonment for a period not exceeding ten years, or to both.

Discharge of effluent

68.- (1) No person shall discharge or emit effluent into the aquatic environment except under a licence issued by the Authority subject to such conditions as the Authority shall determine.

(2) Any person who owns or operates an industrial undertaking shall discharge any effluent or other pollutants originating from the trade or industrial undertaking only into existing sewerage system after pre-treatment to meet sewerage discharge standards;

(3) The Authority may revoke any licence issued under this section if the licensee fails to comply with the conditions of the licence or any provision of this Part:

Provided that no licence shall be revoked without the licensee being given a reasonable opportunity to be heard.

(4) The Authority may, by notice published in the Gazette, prescribe such fees as it shall deem necessary for the monitoring, cleaning up, removing or disposing of effluent discharged or emitted into the aquatic environment

(5) Any person who contravenes subsections (1) and (2) shall be guilty of an offence and shall be liable to a fine not exceeding MK10,000,000.00 or to imprisonment for a term not exceeding 2 years or to both.

#### Air Pollution

69.-(1) No person shall emit a gas or gaseous substances, or any other pollutant which causes or is likely to cause air pollution into the atmosphere except in accordance with this Act.

(2) Any person who owns, occupies or operates any industrial or trade premises or any other undertaking that causes or is likely to cause air pollution into the environment shall put in place appropriate measures to control air pollution.

(3) Any person who owns or operates any industrial or trade premises or any other undertaking that is likely to emit or discharge any pollutant or contaminant that causes or is likely to cause air pollution into the environment shall have the duty to inform the Authority of the intention during the early planning stage.

(4) The Authority, upon receiving and considering the submitted information under subsection (2), may require the developer of the trade or industrial facility or other such undertaking to undertake an environmental impact assessment in accordance with the provisions of this Act and any other written law.

(5) Any person who contravenes subsection (1) and (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding MK50,000,000.00 or imprisonment for a period not exceeding ten, years, or to both.

Noise pollution emissions in excess of the established standards

70.-(1) No person shall emit noise in excess of the noise emission standards established in accordance with this Act and any other written law.

(2) The Authority may upon submission of a written request grant a permit allowing emission of noise above prescribed or established noise standards.

(3) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable upon conviction to a fine not exceeding MK500, 000.00

Environmental emergencies

71.- (1) The Authority shall, in consultation with relevant lead agencies, prepare guidelines or plans for coordination, prevention, mitigation and management of environmental emergencies including-

(a) oil spills and gas leakages;

(b) spills of toxic and hazardous substances;

(c) industrial accidents;

(d) natural and climate change related to disaster such as floods, cyclones, droughts and major pest infestations or the introduction and spread of invasive alien species;

(e) the influx of refugees; and

(f) fire.

(2) Notwithstanding subsection (1), the Authority shall not issue separate regulations, guidelines or plans in relation to the matters to be prescribed where similar regulations, guidelines or plans have been issued under another law dealing with the particular subject matter.

(3) The Authority shall, where regulations are issued under other laws, have the general power to supervise and enforce those regulations to ensure adequate and effective protection of the environment as if issued under this Act.

(4) In preparing the guidelines under subsection (1) the Authority shall consult the following-

(a) the lead agencies;

(b) the Malawi Defence Force;

(c) the Malawi Police Service;

(d) District Assemblies;

(e) organizations providing health care whether governmental or non-governmental; and

(f) any other organization the Authority may consider necessary.

Environmental  
incentives

72. (1) The Authority shall, in consultation with lead agencies, recommend to the Minister responsible for finance to include in annual budget proposals-



- (a) fiscal incentives as are necessary for promoting the protection and management of the environment and the conservation and sustainable utilization of natural resources;
- (b) economic instruments to ensure an appropriate pricing of environmental resources;
- (c) economic instruments to ensure that the costs of pollution are paid by the polluter; and
- (b) necessary measures for preventing the unsustainable use of natural resources and controlling the generation of pollutants.

(2) The instruments shall include:

- (a) tax incentives to encourage use of environmentally sound technology in production processes;
- (b) tax incentives to encourage behavior including conservation of natural resources and the prevention or abatement of pollution;
- (c) tax disincentives to discourage or deter bad environmental behavior that causes pollution and/or leads to the depletion of environmental resources;
- (d) user fees to ensure that those who use environmental resources pay proper value for the utilization of the resources;
- (e) customs and excise waiver in respect of imported capital goods which prevent or substantially reduce pollution caused by an activity; or

- (f) bonds to ensure the reclamation, restoration and rehabilitation of the environment;
- (g) tax rebates to industrial or other establishments that invest in plant, equipment and machinery for recycling and reuse of water, water use and conservation, prevention of floods, afforestation and for using renewable resources as a substitute for hydrocarbons.

(3) Notwithstanding subsection (2), economic instruments, such as subsidies to the private sector, should not encourage over-investment in sectors that are likely to have high adverse environmental impact.

(4) The measures for the management of the environment and natural resources provided for under this Part shall be exercised in conjunction with the measures, incentives, fees and disincentives that may be included in annual budget proposals by the Minister responsible for finance under section 71.

## **PART VII -BIOLOGICAL AND GENETIC RESOURCES**

Biological and genetic resources

73. The biological and genetic resources of Malawi shall constitute an integral part of the natural wealth of the people of Malawi and-

- (a) shall be protected, conserved and managed for the benefit of the people of Malawi; and
- (d) shall only be exploited or utilized in accordance with provisions in this Act and any other written law.

Access to genetic resources

74. The Authority shall, in liaison with relevant lead agencies initiate legislative proposals, issue guidelines and prescribe measures for the

protection, conservation and sustainable management and utilization of genetic resources for the benefit of the people of Malawi and for access to genetic resources which shall include measures:

(a) for appropriate arrangements for access to genetic resources by non-citizens or nonresidents of Malawi and fees to be charged for that access;

(b) to ensure that prior informed consent of communities is obtained and is an essential component for any arrangement in bio-prospecting;

(c) to ensure effective equitable sharing of benefits, sustainable business mechanisms for the transfer of biotechnology;

(d) to protect indigenous property rights of communities;

(e) to prohibit or restrict any trade or traffic in any component of biological diversity;

(f) to provide for fees payable in respect of accessing the resources and the export therefore;

(g) to provide guidelines for reviewing of genetic materials and patenting requirements for indigenous species;

h) for the collection, characterization, evaluation and documentation of plant genetic resources for food, agricultural and medicinal purposes; and

i) any other matters that the Authority may consider necessary for the sound management of the genetic resources of Malawi.

Conservation of  
biological  
resources

75. The Authority shall, in consultation with relevant lead agencies-
- (a) identify, prepare and maintain an inventory of biological diversity of Malawi
  - (b) determine the component or components of biological diversity which is or are threatened with extinction;
  - (c) determine actual and potential threats to the biological diversity of Malawi and devise such measures as are necessary for preventing, removing or mitigating the effect of those threats;
  - (d) devise measures for the better protection and conservation of rare and endemic species of wild fauna and flora;
  - (e) develop national strategies, plans and programmes for the conservation of the biological diversity of Malawi;
  - (f) require in writing any developer, including the Government, to integrate the conservation and sustainable utilization of the biological diversity of Malawi in any project the implementation of which has or is likely to have detrimental effects to the biological diversity of Malawi

Conservation of  
biological  
resources in situ

76. The Authority shall, in consultation with relevant lead agencies, prescribe measures and issue guidelines to promote the conservation of biological resources in situ in relation to-
- (a) land use methods that are compatible with conservation of biological diversity;
  - (b) the selection and management of protected areas so as to promote the conservation of various terrestrial and aquatic ecosystems of Malawi;

- (c) selection and management of buffer zones near protected areas;
- (d) protection of species, ecosystems and habitats threatened with extinction;
- (e) prohibiting or controlling the introduction of alien animal and plant species; and
- (f) identifying, promoting and integrating traditional knowledge into conservation and sustainable use of biological diversity.

Conservation of biological resources ex situ

77. The Authority shall, in consultation with relevant lead agencies-
- (a) prescribe measures for the conservation of biological diversity ex situ especially for species threatened with extinction;
  - (b) issue guidelines for the establishment of-
    - (i) germplasm;
    - (ii) botanical gardens;
    - (iii) zoos;
    - (iv) animal orphanages;
    - (v) any other facilities the Authority considers necessary;
  - (c) ensure that species threatened with extinction which are conserved ex situ are re-introduced into their native habitats and ecosystems where-
    - (i) the threat to the species has been terminated; and
    - (ii) a viable population of the threatened species has been achieved.

Control and management of alien and invasive species

78.- (1) The Authority shall, in consultation with relevant lead agencies take measures for control, eradication or management of alien and invasive species in order -

(a) to prevent the unauthorized introduction and spread of alien and invasive species to the ecosystem;

(b) to manage and control alien and invasive species to prevent or minimize harm to the environment;

(c) to eradicate alien and invasive species from ecosystems and habitats where they may harm such ecosystems and habitats; and

(d) to ensure that environmental and risk assessments are conducted for purposes of permits under the Biosafety Act.

(2) No person shall carry out an activity involving a specimen of an alien species or an invasive species without a permit issued by the Authority in accordance with Act.

(3) A permit referred to in subsection (1) may only be issued after a prescribed assessment of risks and potential impacts on biodiversity is carried out.

(4) The Authority may, by notice in the Gazette, exempt from the provisions of subsection (2), any alien species or invasive species specified in the notice or any alien or invasive species of a category specified in the notice.

(5) The Authority shall regularly review a notice published under subsection (2).

(6) The Authority shall, by notice in the Gazette, publish a list of alien and invasive species in respect of which a permit mentioned in subsection (4) may not be issued.

(7) A person authorized by a permit under subsection (2) to carry out an activity involving a specimen of an alien or invasive species must take all required steps to prevent or minimize harm to biodiversity.

(8) A person who is an owner, occupier or lessee of land on which a listed invasive species occurs shall notify any relevant competent authority such as an agriculture extension officer, or an environmental inspector, in writing, of the listed alien or invasive species on that land and shall-

(a) take steps to control and eradicate the listed alien or invasive species to prevent it from spreading; and

(b) take all the necessary steps to prevent or minimize harm to biodiversity.

(9) A competent authority which is satisfied that any person has failed to comply with the provisions of subsections (8) (a) or (b) or has contravened subsection (2) shall take such steps as may be necessary to remedy any harm to biodiversity caused by the actions of the person or the occurrence of the listed alien or invasive species on land of which he is the owner, occupier or lessee, as may be specified in the directive.

(10) If the person in respect of whom the directive has been issued by the competent authority fails to comply with the directive, the competent authority may implement the directive and recover all costs reasonably incurred by the competent authority in implementing the directive from that person or proportionately from that person and any other person who benefited from implementation of the directive.

(11) If an alien species establishes itself as an invasive species due to actions of a specific person, such person shall be liable for all costs incurred in the control and eradication of that species.

(12) The control and eradication of a listed invasive species shall be carried out by methods and procedures approved by the Director General in consultation with a relevant lead agency and shall be carried out with caution and in a manner that causes the least possible harm to biodiversity and damage to the environment.

(13) Subject to subsection (12), the methods and procedures used to control and eradicate a listed invasive species shall be directed at the offspring, propagating material and re-growth of such invasive species in order to prevent such species from producing offspring, seed, regenerating, or re-establishing itself in any manner.

(14) The Director General shall ensure the coordination and implementation of programmes for the prevention, control or eradication of listed invasive species.

## **PART VIII – ENVIRONMENTAL PROTECTION ORDERS AND ENVIRONMENTAL EASEMENTS**

Environmental protection orders

79.- (1) The Director General shall have power to issue environmental protection orders against any person whose acts or omissions have or are likely to have adverse effects on the protection and management of the environment and the conservation and sustainable utilization of natural resources, and the environmental protection orders shall be in the prescribed form and, if no such form is prescribed, in such form as the Director General may determine.



(2) Notwithstanding the provisions of any other law to the contrary, the environmental protection order may require the person against whom it is made to-

(a) take such measures as are necessary for the restoration of any land degraded by reason of the activities of the person against whom the environmental protection order is made including the replacement of soil, the replanting of trees and other flora, and the restoration, as far as may be possible, of unique geological, physiographical, ecological or historical features of the land and of waste disposal sites;

(b) stop, prevent or modify any action or conduct which causes or contributes or is likely to cause or contribute to pollution;

(c) remove, at the expense of the person against whom the environmental protection order is made, any waste or refuse deposited by that person, or with his or her knowledge or authority, in a place specified in the environmental protection order and to dispose of the waste or refuse in such manner and place and within such period as may be specified in the environmental protection order;

(d) pay such compensation as may be specified in the environmental protection order to any person whose land is degraded by the action or conduct of the person against whom the environmental protection order is made.

(3) An environmental protection order issued under subsection (1) shall, in addition to the matters referred to in that subsection, specify-

- (a) the activity considered by the Director General to be detrimental to the protection and management of the environment and the conservation and sustainable utilization of natural resources;
- (b) the particulars of the person or persons against whom it is made;
- (c) the period within which anything required to be done by the person against whom it is made shall be done;
- (d) the penalties which may be imposed for non-compliance with the environmental protection order; and
- (e) such other matters as the Director General may consider necessary for the protection and management of the environment and the conservation and sustainable utilization of natural resources.

(4) The Director General shall have power to inspect, at any reasonable time, any activity on any premises for purposes of determining whether the activity is harmful to the environment or the conservation of natural resources or whether to make an environmental protection order under subsection (1).

(5) For purposes of subsection (4) the Director General may enter any premises at any reasonable time to enforce the environmental protection order and the Director General shall not be responsible for the consequences of any action reasonably taken by him in good faith under this section.

(6) Subject to subsection (5), any person aggrieved with the environmental protection order may, within thirty days from the date on

which it is made, appeal to the Chief Resident Magistrate Court or Tribunal, and the appellant shall indicate whether the appeal is against the whole environment protection order or against only a part or parts thereof and, if so, which part or parts.

(7) The Director General may delegate the power referred to in subsections (4) and (5) to an inspector or any person duly authorized by him and anything done by that person shall be deemed to be done by the inspector or by the Director General and shall be valid for all purposes.

(8) An environmental protection order shall be served on the person against whom it is made or his agent or legal practitioner.

Enforcement of  
environmental  
protection orders

80.- (1) Where a person against whom an environmental protection order is served fails, neglects or refuses to take the action specified in the environmental protection order, the Director General shall take such action as he deems appropriate for achieving the purposes for which the environmental protection order is made.

(2) Where the Director General has taken action pursuant to subsection(1), he shall be entitled to recover in full from the person against whom the environmental protection order is made the expenses reasonably incurred by the Director General for taking such action, and if the expenses remain unpaid for a period of more than thirty days from the date of first demand in writing by the Director General, the amount in respect of the expenses shall be recoverable by the Government as a civil debt.

Environmental  
easements

81.- (1) The Tribunal or the court may, on application made under this Part, grant an environmental easement subject to provisions of this Act.

(2) The object of an environmental easement is to further the principles of environmental management set out in this Act by facilitating conservation and enhancement of the environment, in this Act referred to as the benefited environment, through the imposition of one or more obligations

in respect of use of land, in this Act referred to as the burdened land, being the land in the vicinity of the benefited environment.

(3) An environmental easement may be imposed on and shall thereafter attach to the burdened land in perpetuity or for a term of years or for an equivalent interest under customary law.

(4) Without prejudice to the generality of subsection (3), an environmental conservation order may be imposed on the burdened land so as to:

- (a) preserve fauna and flora;
- (b) preserve the quality and flow of water in a dam, lake, river or aquifer;
- (c) preserve any outstanding geological, physiographical, ecological, archeological or historical features of the burdened land;
- (d) preserve scenic views or open space;
- (e) preserve natural contours and features of the burdened land;
- (f) permit persons to walk in a defined path across the burdened land;
- (g) prevent or restrict the scope of any activity on the burdened land which has as its effect the mining and working of minerals or aggregates;
- (h) prevent or restrict the scope of any agricultural activity on the burdened land;

(i) create and maintain works on burdened land so as to limit or prevent harm to the environment; or

(j) create and maintain migration corridors for wildlife.

(5) Where an environmental easement is imposed on burdened land whose effect will be to restrict or curtail the enjoyment of an existing right or interest enjoyed by any person, there shall be paid to such person, by the applicant for the environmental easement, such compensation as may be determined in accordance with this Act.

(6) An environmental easement may exist in gross; that is to say, the validity and enforceability of the easement shall not be dependent on the existence of a plot of land in the vicinity of the burdened land which can be benefited, or of a person with an interest in that plot of land who can be benefited by the environmental easement.

Application for  
an environmental  
easement

82.- (1) Any person or group of persons may apply to the High Court or the Tribunal for one or more environmental easements.

(2) The court or the Tribunal may impose such conditions on the grant of an environmental easement as it considers to be best calculated to advance the object of an environmental easement.

Enforcement of  
environmental  
easement

83.- (1) Proceedings to enforce environmental protection orders may be commenced only by the person in whose name the environmental easement has been registered.

(2) Proceedings to enforce an environmental easement may request to-

(a) grant an environmental restoration order; or

(b) grant any remedy available under law relating to easements in respect of land.

(3) The court or Tribunal shall have discretion to adapt and adjust, so far as seems necessary to it, the law and procedure relating to the enforcement of the requirements of an environmental easement.

Registration of environmental easements

84.- (1) Where an environmental easement is imposed on land, the title of which is registered under any written law, the environmental easement shall be registered in accordance with that written law applicable to registration of easements.

(2) Where an environmental easement is imposed on any land other than land referred to in subsection (1), the District Environment Sub Committee of that area in which that land is situated shall register the environmental easement in a local register established for the purpose.

(3) In addition to any matter which may be required by any law relating to the registration of easements to be included in the registration of an environmental easement shall include the name of the grantee for the environmental easement as the person in whose name the environmental easement is registered.

Compensation for environmental easements

85.- (1) Any person who has a legal interest in the land which is the subject matter of an environmental easement, shall, in accordance with this Act, be entitled to compensation commensurate with the lost value of the use of the land.

(2) A person described in subsection (1) may apply to the Chief Resident Magistrate Court or the Tribunal that granted the easement for

compensation stating the nature of his legal interest in the burdened land and the compensation sought.

(3) The court or Tribunal may order that the applicant for the environmental easement bear the cost of compensating the person described in subsection (1).

(4) Where the court or Tribunal is satisfied that the environmental easement is of national importance, it may order the Government to compensate the person described in subsection (1).

(5) In determining the compensation due under this section, the court or the Tribunal shall take into account the provisions of the Constitution and any other laws relating to compulsory acquisition of land.

## **PART X – INSPECTION, ANALYSIS AND RECORDS**

### **Inspectorate**

(1) The Authority shall establish an inspectorate with the necessary facilities to administer, monitor and enforce measures for the protection and management of, and for the prevention and control of, pollution to, the environment;

(2) For purposes of ensuring compliance with the provisions of this Act the Board may appoint or designate such number of public officers as it may consider necessary to be environmental inspectors.

(3) Every inspector shall be issued with an identity card, and the identity card shall constitute prima facie evidence that the holder thereof is an inspector duly designated by the Authority under subsection (1).

(4) An inspector shall, on demand by any person affected by the exercise of the powers of the inspectors under this Act, produce for inspection, the identity card referred to in subsection (2).

Powers of  
inspectors

87.- (1) An inspector may in the performance of his or her duties under this Act or any regulations made thereunder-

- (a) enter, at any reasonable time, any premises without warrant or previous notice, to examine any activity which the inspector reasonably considers to be detrimental to the environment or natural resources and to collect therefrom samples of any pollutant or other substance for analysis at any laboratory;
- (b) carry out with or without notice periodic inspections to ensure whether the provisions of this Act and Regulations are being complied with;
- (c) inspect and examine any vehicle or vessel, in or upon which he has reasonable cause to believe that a pollutant or other article or substance which he believes to be a pollutant is being or has been transported;
- (d) order the production of any document pertaining to the transportation of the pollutant or such other article or substance;
- (e) collect any sample of the pollutant of any such substance from the vehicle, vessel or place where it has been derived for analysis at a laboratory designated by the Authority under section 89;



- (d) request information from any person who has, or appears to have, custody or control of the pollutant or such other article or substance or the vehicle or vessel in which it is or has been transported;
- (f) require the owner or occupant or the agent of the owner or occupant of the premises to produce for inspection any book, document or record or copies thereof for retention by the inspector concerning any matter relevant to the administration of this Act;
- (g) make examinations and enquiries to determine whether this Act is being complied with;
- (h) seize any plant, equipment, substance or any other thing which he believes has been used in the commission of an offence against this Act or regulations made thereunder;
- (i) serve an order on the owner, user or occupier of any land or premises requiring the owner, user, occupier to take such measures as may be specified in the order for the prevention of harm to the environment and natural resources;
- (j) close any facility which pollutes or is likely to pollute the environment contrary to this Act;
- (k) require the owner or operator of the facility referred to in subsection (j) to implement remedial measures that the environmental inspector may, in the notice closing down that manufacturing plant undertaking or establishment, direct; and
- (l) cause a police officer to arrest any person whom he believes has committed an offence under this Act.

(2) It shall be the duty of the owner or occupant of the agent or the owner or occupant of, the premises to render an inspector reasonable assistance in the performance by the inspector of the functions referred to in section 87 (1).

Procedures for taking samples

88.- (1) An inspector shall, before collecting from the premises, vessel or vehicle a sample of any pollutant or other article or substance which the inspector believes to be a pollutant, inform the owner or occupier of the premises, vessel or vehicle or other person in control of the vehicle or vessel from which the sample is to be taken of his intention to do so.

(2) The inspector shall place the sample in three separately sealed packages and shall deliver one package each to the Director General, to the Laboratory at which the sample will be tested or analyzed and to the owner or occupier of the premises or vehicle or other person in control of the vehicle.

(3) Any dispute arising from the manner in which a sample is collected by an inspector or in connection with the results of any laboratory test or analysis of the sample shall be referred by the aggrieved person or the Director General, as the case may be, to the Tribunal.

Establishment or designation of laboratories

89. The Authority may, by notice published in the Gazette, establish, or where he deems it necessary, designate such laboratories as it thinks fit to be analytical laboratories or reference laboratories at which samples taken under this Act may be tested or analyzed.

Certificate of analysis, etc.

90.- (1) There shall be issued by designated laboratories in respect of any test or analysis, a certificate showing the results of the test or analysis.

(2) The certificate shall state the method or methods used in carrying out the test or analysis and shall be signed by the analyst who carried out the test or analysis.

(3) A certificate issued under this section shall be prima facie evidence of the results of any test or analysis carried out under this Act.

Keeping of records

91.- (1)The Director General shall, by notice published in the Gazette, prescribe the activities in respect of which records shall be kept for the purposes of this Act and may require any person in possession or control of such records to transmit the records to the Director General at such intervals as the Director General may determine;

(2) The records shall be used by the Director General or an inspector for purposes of environmental auditing, monitoring, control and inspection and such other purposes related to the protection and management of the environment and the conservation and sustainable utilization of natural resources.

Public access to information and prohibition of disclosure

92.- (1) Subject to subsection (3), every person shall have access to any information submitted to the Authority or any lead agency relating to the implementation of the provisions of this Act or any other law relating to the protection and management of the environment and to the conservation and sustainable utilization of natural resources.

Cap. 49:01  
Cap. 49:02

(2) Notwithstanding subsection(1), no person shall be entitled to have access to proprietary information, to which the Trade Marks Act or the Patents Act applies, submitted to or received by the Director General under this Act unless with the prior written consent of the owner of the proprietary information.

(3) A person desiring the information shall apply to the Authority or a lead agency and may be granted access on payment of a prescribed fee.

(4) No person shall, without the consent of the Director General, publish or disclose to any person, otherwise than in accordance with the provisions of this Act, the contents of any document, communication or information which relates to and which has come to his knowledge in the course of his duties under this Act.

(5) Any person who contravenes subsection (4) commits an offence and upon conviction, shall be liable to a fine of one hundred thousand Kwacha (K100,000.00) and to imprisonment for twelve (12) months.

#### **PART XI – FINANCIAL PROVISIONS**

Establishment of  
Environmental  
Fund

93.- (1) There is hereby established a fund to be known as the Environmental Fund (in this Act otherwise referred to as the “Fund”).

(2) The Fund shall consist of-

(a) such sums as shall be appropriated by Parliament for the purposes of the Fund;

(b) advances made to the Fund under section;

(c) environmental levies on products, industries and activities that adversely affect the environment as the Minister responsible for finance may, in consultation with the Authority, impose;

(d) such sums or other assets as may be received for the purposes of the Fund by way of voluntary contributions or donations; and

(e) such sums as are paid by way of fees or other penalties in respect of licenses issued under this Act.

Vesting of the Fund in the Authority  
Act No. 8 of 2003

94. The Fund shall be vested in the Authority and, subject to this Act and the Public Finance Management Act, 2003 shall be administered in accordance with its direction.

Advances to the Fund

95. If in any financial year the income of the Fund together with any surplus income brought forward from a previous year, is insufficient to meet the actual or estimated liabilities of the Fund, the Minister responsible for finance shall make advances to the Fund in order to meet the deficiency or any part thereof and such advances shall be made on such terms and conditions, whether as to repayment or otherwise, as the Minister responsible for finance may determine.

Objects of the Fund

96. The Fund shall be utilized for the operational costs and expenses of the Authority and the protection and management of the environment and the conservation and sustainable utilization of natural resources.

Application of the Fund

97.- (1) Without derogation from the generality of section 96, the Fund, may be applied to-

(a) research and training which is calculated to promote the protection and management of the environment and the conservation and sustainable utilization of natural resources;

(b) the acquisition of land, equipment, materials and other assets and the construction of buildings in order to promote the objects of the Authority;

(c) the cost of any scheme which the Authority considers to be in the interest of the protection and management of the

environment and the conservation and sustainable utilization of natural resources;

(d) meeting any expenses arising from the establishment and operations the Authority; and

(e) any purpose which the Authority considers to be in the interest of the objects of the Fund.

(2) The Authority shall, in consultation with relevant lead agencies, prescribe operational guidelines for the distribution and monitoring utilization of the funds under the Fund.

Books and other records of account, audit and reports of the Fund  
Act No. 8 of 2003

98.- (1) The Authority shall cause to be kept proper books and other records of account in respect of receipts and expenditures of the Fund in accordance with the Public Finance Management Act, 2003.

Act No. 8 of 2003

(2) The accounts of the Authority and the Fund shall be audited by the Auditor General who shall have all the powers conferred upon him by the Public Finance Management Act, 2003.

(3) The Authority shall cause to be prepared, as soon as practicable, but not later than six (6) months after the end of the financial year, an annual report on all the financial transactions of the Authority.

(4) The report referred to in subsection (3) shall include a balance sheet, an income and expenditure account and the annual report of the Auditor General and shall be laid by the Minister before the National Assembly.

Holdings of the Fund

99.-(1) All sums received for the purposes of the Fund shall be paid into a bank account and no amount shall be withdrawn there from except by means

of cheques signed by such persons as are authorized in that behalf by the Authority.

(2) Any part of the Fund not immediately required for the purposes of the Fund may, on the recommendation of the Board, be invested in such manner as the Authority, after consulting with the Minister responsible for finance, may determine.

Financial Year

100. The financial year of the Authority shall be the period of twelve months commencing on 1<sup>st</sup> July in one year and ending on the 30<sup>th</sup> June of the following year:

Provided that the first financial year of the Authority may be a period shorter or longer than twelve months as the Minister shall determine, but in any case not longer than eighteen months.

Duty to operate on sound financial principles

101 (1) The Authority shall perform its functions in accordance with sound financial principles and shall ensure, as far as possible, that its revenue is sufficient to meet its expenditure properly charged to revenue.

(2) The Authority may invest money from the Fund in conformity with good commercial practice.

Estimates

102. (1) The Director General shall, not later than three (3) months before the end of each financial year, prepare and submit to the Board for its approval, estimates of income and expenditure of the Authority for the next ensuing year and may, at any time before the end of a financial year, prepare and submit to the Board for approval, any estimates supplementary to the estimates of the current year.

(2) No expenditure shall be made out of funds of the Authority unless that expenditure is part of the expenditure approved by the Board under the estimates for the financial year in which the expenditure is to be made or in the estimates supplementary to it.

## **PART XII - OFFENCES**

General offences

103.-(1) Any person who contravenes any provision of this Act for which no other penalty is specifically provided commits an offence and shall, upon conviction, be liable to a fine of one million five hundred thousand kwacha (K1, 500,000) and to five (5) years imprisonment.

(2) Any person who is convicted of an offence under subsection (1) shall, in addition to the fine provided for in that subsection, be liable to a fine of ten thousand kwacha (K10,000) for each day the offence continues to be committed.

Hindering,  
obstructing of  
inspectors

104. Any person who-

(a) hinders or obstructs an inspector in the execution of his or her duties under this Act;

(b) fails to comply with a lawful order or requirement made by an inspector in accordance with this Act;

(c) prevents the Director General or an inspector or any person duly authorized by the Director General or inspector from gaining entry upon or into any premises which he or she is empowered under this Act to enter;

(d) impersonates the Director General or an inspector or any person duly authorized by the Director General or inspector;



- (e) prevents an inspector from having access to any record or document required by the inspector for purposes of this Act;
- (f) misleads or gives false information to the Director General or an inspector or any person duly authorized by the Director or inspector under this Act; or
- (g) fails to comply with measures directed by the Authority, the Director General or any inspector for the protection and management of the environment and the conservation and sustainable utilization of natural resources,

commits an offence and, upon conviction, shall be liable to a fine of five hundred thousand kwacha (K500,000) and to two (2) years imprisonment and, in addition shall, for each day the offences continues shall be liable to a fine of ten thousand kwacha (K10, 000).

Offence related to environmental impact assessment

105. Any person who contravenes section 26 or carries out a project that requires an environmental impact licence without such licence or knowingly gives false information in an environmental impact assessment report contrary to section 27 commits an offence and upon conviction, shall be liable to a fine of two million kwacha (K2,000,000) and to six (6) years imprisonment.

Offences relating to records

106. Any person who-

- (a) fails to keep or furnish the Authority with records required under this Act or under any regulations made under this Act;
- (b) fraudulently or knowingly alters any such records,

commits an offence and upon conviction, shall be liable to a fine of five hundred thousand kwacha (K500,000) and to two (2) years imprisonment.

Offences relating to environmental standards and guidelines

107. Any person who-

- (a) violates any environmental standard established under this Act;
- (b) violates any measure prescribed under this Act; or
- (c) uses natural resources otherwise than in accordance with guidelines issued under this Act,

commits an offence and upon conviction, shall be liable to a fine of five hundred thousand kwacha (K500,000) and to two (2) years imprisonment.

Offences relating to hazardous substances and wastes

108. Any person who-

- (a) fails to manage hazardous substances or materials, processes and wastes in accordance with this Act;
- (b) knowingly or fraudulently mislabels wastes or chemicals;
- (c) aids or abets the illegal trafficking in wastes, chemicals, or hazardous substances or wastes ,

commits an offence and shall, upon conviction, be liable to a fine of six million kwacha (K6,000,000) and to eight (8) years imprisonment.

Offences relating to pollution

109. Any person who discharges or emits any pollutant into the environment otherwise than in accordance with this Act commits an offence and shall, upon conviction, shall be liable to a fine of six million kwacha (K6, 000,000) and to imprisonment for eight (8) years.

Offences relating to access to genetic or biological resources

110. Any person who-

- (a) trades in any component of genetic or biological resources contrary to the provisions of this Act or any other written law;
- (b) unlawfully obtains access to genetic or biological resources without providing any equitable benefit contrary to the provisions of this Act or any other written law;
- (c) obtains and utilizes community rights or traditional knowledge without the prior informed consent of a local community as stipulated under this Act or any other written law;
- (d) unlawfully possesses any biological resources; or
- (e) unlawfully disturbs the habitat of a biological resource in contravention of this Act;

commits an offence and shall be liable, upon conviction, to a fine of two million kwacha (K2,000,000) and to five (5) years imprisonment.

Provided that in fixing a fine, a court shall take into account the value of the product of the genetic or biological resource collected from Malawi.

### **PART XIII – INTERNATIONAL TREATIES, CONVENTIONS AND AGREEMENTS**

Conventions, treaties and agreements on environment

111.-(1) Where Malawi is a party to an international treaty, convention or agreement, whether bilateral or multilateral, concerning the management of the environment, the Authority shall-

- (a) initiate proposals for legislation for consideration of the Attorney General for purposes of giving effect to such treaty, convention or agreement in Malawi or for enabling Malawi to perform her obligation or exercise her rights under such treaty, convention or agreement; and
- (b) identify other appropriate measures necessary for the national implementation of such treaty, convention or agreement.

(2) The Authority shall keep a register and database of all international treaties, conventions and or agreements on the environment to which Malawi is a party.

(3) The Authority shall coordinate and provide advice in relation to the negotiation and ratification of trans-boundary environment and natural resources management agreements, projects, programs or activities.

## **PART XVI – LEGAL PROCEEDINGS**

Immunity of  
officials

112. No legal proceeding shall be brought against the Authority, Director General, lead agency, an inspector, an analyst or any other person duly authorized by the Authority, the Director General, inspector or analyst to do anything authorized under this Act, in respect of anything done in good faith under the provisions of this Act.

Establishment of  
an  
Environmental  
Tribunal

113. There is hereby established an Environmental Tribunal (in this Act otherwise referred to as the “Tribunal”) which shall-

- (a) consider appeals against any decision or action of the Authority, lead agency, Director General or inspector under this Act;
- (b) consider appeals against the refusal by the Authority or Director General to issue a licence under this Act;
- (c) hear and determine petitions on violation of the right to a clean and healthy environment or any other provision of this Act and any written law relating to environment and natural resources management;
- (d) consider appeals against the revocation by the Authority or Director General of a licence issued under this Act;
- (e) consider appeals against the closure of any premises pursuant to this Act;
- (f) receive complaints from the general public, lead agencies, private sector or nongovernmental organizations relating to implementation and enforcement of environment and natural resources management policies and legislation under this Act
- (g) consider such other issues and make declaratory orders as the Authority, the Director General, lead agency or any person may refer to it under this Act.

Composition of  
the Tribunal

114.-(1) The Tribunal shall consists of-

(a) a suitably trained and qualified person appointed by the President, on the recommendation of the Judicial Service Commission, who shall be the Chairperson and who shall be conversant in environmental law and qualify to be appointed Judge of the High Court; and

(b) two (2) other members appointed by the President, on the recommendation of the Judicial Service Commission, both of whom shall be sufficiently qualified in the protection and management of the environment and the conservation and sustainable utilization of natural resources; and the appointment of each member of the Tribunal shall be subject to confirmation by the Public Appointments Committee.

(2) The decisions of the Tribunal shall be by a majority.

(3) The Tribunal shall not be bound by rules of evidence and shall admit as evidence any matter which in its opinion shall assist it to arrive at a just and equitable decision for the advancement of the purposes of this Act.

(4) The Tribunal shall make its own rules of procedure and shall have power to-

(a) summon any person to give evidence in any proceedings before the Tribunal or to produce to the Tribunal any document relevant to the proceedings before it;

(b) require the disclosure of information and production of documents of any kind from any person;

(c) investigate any matter either upon request or by its own motion any violation or potential violation of this Act or any other written law relating to environment and natural

resources management and take such action to redress the violation as it may deem fit;

(d) investigate on its own motion or through media reports or any other publication, any suspected case of environmental degradation or violation of or non-compliance with environment and natural resources related policies and legislation;

(e) investigate any allegations or complaints against any person, lead agency or public authority or against the Authority in relation to the condition of the environment in Malawi;

(f) confirm, vary, amend or alter a decision made by the Authority, the Director General, lead agency or inspector or reverse or substitute such decision or any decision which is just and equitable and which is in the interest of the protection and management of the environment or the conservation and sustainable utilization of natural resources.

(g) declare any activity or practice that violates any provision of this Act or any other written law illegal and void; and

(h) order such remedy, compensation including an injunction or similar order as it may deem necessary to advance the objects and principles provided for under this Act or any other written law relating environment and natural resources management.

(7) Any person aggrieved with the decision of the Tribunal may appeal to the Supreme Court on point of law within thirty (30) days from the date of the decision of the Tribunal.

115. The chairman of the Tribunal may appoint any persons with special skills or knowledge on environmental issues which are subject matter of any inquiry or proceedings before the Tribunal to act as assessors in an advisory capacity in any case where it appears to the Tribunal that such special skills or knowledge are required for proper determination of the matter.

Power to seek direction of Tribunal in complex matters

116.-(1) When any matter to be determined by the Authority under this Act appears to it to involve a point of law or to be of unusual importance or complexity, it may, after giving notice to concerned parties, refer the matter to the Tribunal for direction.

(2) Where any matter has been transferred to the Tribunal under subsection (1), the Authority and the parties thereto shall be entitled to be heard by the Tribunal before any decision is made in respect of such matter and may appear personally or may be represented by a legal practitioner.

Failure to attend

117. If a party fails to attend or to be represented at the proceedings of the Tribunal without good cause, the tribunal may proceed in the absence of that party or representative.

Representation of parties

118. A party to any proceedings before the Tribunal may-

(a) appear personally; or

(b) be assisted or represented by a legal practitioner.

Enforcement of orders

119. Any decision or order of the Tribunal shall have the same force and effect as any other decision or order of a competent court and shall be enforceable accordingly.

Costs



120.-(1) Subject to subsection (2), the Tribunal shall not make any order as to costs but nothing in this subsection shall prevent a legal practitioner from agreeing with his client the payment of solicitor and own client costs.

(2) The Tribunal may make an order as to costs where a party fails to attend, without good cause, any proceedings of the Tribunal or where the matter is vexatious or frivolous.

Liabilities of  
bodies  
corporate

121.-(1) Where an offence under this Act is committed by a body corporate or a partnership-

(a) in the case of the body corporate, every director, manager or similar officer of the body corporate shall be guilty of the offence; and

(b) in the case of a partnership, every partner shall jointly and severally be guilty of the offence.

(2) A person shall not be guilty of an offence under subsection (1), if he proves to the satisfaction of the court that the act constituting the offence was done without his knowledge, consent or connivance and that he did his part to prevent the commission of the offence having regard to all the circumstances of the case.

## **PART XV - MISCELLANEOUS**

Closure of  
premises

122.-(1) Where the Director General believes, on reasonable grounds, that this Act or any regulations made thereunder, have been contravened, the Director General may, subject to subsection (2), order the closure of any

premises by means of, or in relation to which the Director General reasonably believes the contravention was committed.

(2) The closure of any premises shall cease after the provisions of this Act or any regulations made thereunder have, in the opinion of the Director General, been complied with, unless before that time court proceedings have been instituted in respect of the contravention, in which event the premises shall remain closed until the proceedings are finally concluded.

Regulations

123. The Authority may make regulations for the better carrying out of the purposes of this Act.

Amendment  
of sectoral  
law

124. Each lead agency shall ensure that any laws, rules and regulations on the protection and management of the environment, or the conservation and utilization of natural resources existing immediately before the coming into operation of this Act, shall be amended to facilitate the operation of this Act, and shall for the time being apply subject to such modification as may be necessary to give effect to this Act

Repeal and  
savings  
Cap. 60:02

125.-(1) The Environment Management Act is repealed.

(2) All subsidiary legislation made under the Environment Management Act repealed by subsection (1) and in force immediately before the commencement of this Act, shall so far as it is not inconsistent with the provisions of this Act, continue in force as if made under this Act.

**FIRST SCHEDULE**  
**REPUBLIC OF MALAWI**  
**ENVIRONMENT MANAGEMENT ACT, 2013**  
**ACT NO. ... OF 2013**  
**LIST OF LEAD AGENCIES**

(s.2)

Government Departments or Statutory Bodies responsible for the following matters and functions-

1. Agriculture
2. Economic Planning and Development
3. Energy
4. Environment
5. Finance
6. Fisheries
7. Forestry
8. Gender
9. Health
10. Nutrition, HIV and AIDS
11. Justice
12. Local Government
13. Lands and Settlement
14. Mines
15. Natural Resources
16. Public Works
17. Parks and Wildlife
18. Research and Technology

19. Tourism

20. Water resources

**SECOND SCHEDULE**

**REPUBLIC OF MALAWI**

**ENVIRONMENT MANAGEMENT ACT, 2013**

**ACT NO. ... OF 2013**

**LIST OF PROJECTS WHICH REQUIRE ENVIRONMENT IMPACT  
ASSESSMENT**

(s. 26)

**1. AGRICULTURE/AQUACULTURE PROJECTS**

- (a) agricultural drainage projects of more than 1 ha;
- (b) irrigation schemes designed to serve more than 10 ha;
- (c) land development for the purposes of agriculture on greater than a 20 ha land holding;
- (d) agricultural projects necessitating the resettlement of 20 or more families;
- (e) any change from one agricultural land use to another on a piece of land greater than a 20 ha land holding;
- (f) use of more than 1 tone of fertilizer/ha/annum on a piece of land greater than a 20 ha land holding except for lime applications;
- (g) use of the following concentrations of pesticides on greater than a 5 ha land holding-
  - (i) more than 5 litres/ha of ultra-low volume pesticides per application;
  - (ii) more than 1 litre/ha of aerial application of pesticides; or
  - (iii) more than 20kg/ha for each application of granular pesticides;
- (h) construction of fish-farming or ornamental pond(s) where the capacity is greater than 100m<sup>3</sup> or where there is any direct discharge from a fishpond to a receiving water body; and
- (i) any proposal to introduce fish species in an area where they do not presently exist.

**2. PROJECTS IN THE FOOD AND BEVERAGE PRODUCTION INDUSTRY**

Construction of –

- (a) new abattoirs or slaughtering houses with a capacity of greater than 100 animals/day and expansions to existing abattoirs or slaughtering houses to a capacity of greater than 100 animals/day;
- (b) new canning and bottling operations with a work space of greater than 5,000m<sup>2</sup> or expansion to an existing canning or bottling operation to a work space of greater than 5,000m<sup>2</sup>;
- (c) new breweries and distilleries with a production capacity of greater than 25,000litres/day, or expansions to existing breweries or distilleries to a production capacity of greater than 25,000 litres/day;
- (d) new sugar production operations or expansions to existing sugar production operations by greater than 10%; and
- (e) or expansion to, tea or coffee producing industries.

### **3. WATER RESOURCES DEVELOPMENT PROJECTS**

- (a) construction of, or expansion of, ground water utilization projects where the utilisation will be greater than 15 litres/second or where the well is 60m or deeper;
- (b) construction of new water pipelines or canals longer than 1 km, or expansion to existing water pipelines or canals by longer than 1 km, or where the cross-sectional area is greater than 20m<sup>2</sup> and the volume of water to be carried will be greater than 50m<sup>3</sup>/second;
- (c) water pumping stations adjacent to lakes, rivers, and reservoirs, which withdraw more than 2m<sup>3</sup>/second;
- (d) drinking water supply schemes to serve a population of greater than 10,000 people, or expansions of existing schemes to serve such a population, or water reticulation networks with more than 10 km of pipeline;
- (e) construction of reservoirs with capacity of more than 500,000 litres or with a surface area of greater than 100 ha, or expansions of existing reservoirs by greater than 500,000 litres or greater than 100 hectares; and
- (f) Construction or expansion of dams with a height of 4.5 m or higher.

### **4. INFRASTRUCTURE PROJECTS**

#### CONSTRUCTION OF –

- (a) new sanitary sewerage works, or expansion of existing sanitary sewerage works, to serve a population of more than 5,000 people;
- (b) new storm sewerage works, or expansion of existing storm sewerage works, to drain an area of greater than 10 ha;

- (c) new sewage outfall to a receiving water body or location of sewerage systems or septic tanks within 1 km of a water body;
- (d) or expansion of septic tanks servicing more than 100 people or 20 homes or which receive more than 100 m<sup>3</sup>/day of waste water;
- (e) new highways and feeder roads or expansion of existing highways and feeder roads;
- (f) new airports and airstrips or expansion of existing airports and airstrips and their ancillary facilities;
- (g) hospitals with a bed capacity of greater than 200 beds, or expansions of existing hospitals with a bed capacity of greater than 200 beds;
- (h) new or expansions to existing, railway lines;
- (i) new, or expansions to existing port or harbour facilities; and
- (j) Establishment or expansion of industrial estates.

## **5. WASTE MANAGEMENT PROJECTS**

Establishment or Expansion of –

- (a) any of the following hazardous waste management facilities-
  - (i) incineration plant;
  - (ii) off-site recovery plant;
  - (iii) off-site waste disposal facility;
  - (iv) off-site storage facility; and
  - (v) landfill site;
- (b) any of the following municipal solid waste management facilities serving a population of greater than 1,000 people-
  - (i) landfill site;
  - (ii) incineration facility;
  - (iii) composting facility;
  - (iv) recovery/recycling facility;
  - (v) waste depots/transfer stations; and

- (c) on-site waste treatment facilities.

## **6. ENERGY GENERATION, TRANSMISSION AND STORAGE PROJECTS**

Construction or expansion of-

- (a) electrical generating facilities designed to operate at greater than 4 MW or, in the case of hydroelectric generating facilities, where the total head is greater than 20 m or, where there is a firm flow of 100 m<sup>3</sup>/second or greater;
- (b) electrical transmission facilities operating at a voltage of 132 kV or greater;
- (c) oil and gas pipelines longer than 1 km;
- (d) storage facilities (excluding service stations) for oil, gas, petrol or diesel located within 3 km of commercial, industrial or residential areas and with a storage capacity of 500,000 litres or more; and
- (e) nuclear power development and all activities associated with nuclear power.

## **7. INDUSTRIAL PROJECTS**

Construction of or expansions to-

- (a) industries involving the use, manufacturing, handling, storage, transport or disposal of hazardous or toxic chemicals as regulated under the hazardous chemicals regulation under the Act;
- (b) any of the following industrial operations-
  - (i) tanneries;
  - (ii) pulp and paper mills;
  - (iii) lime plants;
  - (iv) cement plants;
  - (iv) all types of smelters;
  - (vi) soap and detergent plants;
  - (vii) fertilizer manufacturing operations;
  - (viii) petrochemical plants; and
  - (ix) chemical plants; and



- (c) construction of textile manufacturing operations (including carpet- making) which consume greater than 5,000 m<sup>2</sup> of surface area, or expansions to existing textile manufacturing operations to a capacity of more than 5,000 m<sup>2</sup>.

## **8. MINING AND QUARRYING PROJECTS**

- (a) all mining and quarrying activity for which an exclusive prospecting license, a mining claim license or a mining license is required or any major amendments to any of the above licenses;
- (b) any extraction of sand, gravel and clay or topsoil material (be it from the ground, banks or beds of water bodies) by means of any explosive or heavy machinery; and
- (c) any explosive manufacturing and blasting operation.

## **9. FORESTRY PROJECTS**

Establishment or expansion of-

- (a) logging operations covering an area of greater than 50 ha;
- (b) to existing, logging operations on hillsides with a slope of greater than 10% covering an area of greater than 10 ha or any conversion of forested land with a slope of greater than 10% to another land use on a piece of land of greater than 10 ha.
- (c) logging or conversion of forested land to another land use within the catchment area of reservoirs; and
- (d) forest plantations of greater than 50 ha.

## **10. LAND DEVELOPMENT, HOUSING AND HUMAN SETTLEMENT PROJECTS**

- (a) Establishment of, or expansions to an existing; housing development of a size greater than 5 ha or where more than 500 people are intended to be housed;
- (b) Resettlement programmes for 500 or more people or the creation of refugee camps intended to shelter 500 or more people;
- (c) Filling in of water bodies for the purposes of land development where the surface area of the gross fill deposit is greater than 50 ha; and
- (d) Land reclamation projects greater than 100 ha.

## **11. REMEDIAL FLOOD AND EROSION CONTROL PROJECTS**

- (a) Construction of breakwaters, sea walls, jetties, dikes and groynes of greater than 2 m in height or 1 km in length to remedy shoreline erosion or flooding;

- (b) construction of dams or weirs with a height of greater than 2 m, or which divert more than 20 m<sup>3</sup> of water per second, or any bypass channels or channel realignments to remedy riverine erosion or flooding; and
- (c) shoreline stabilization projects where the shoreline involved is greater than 50m.

## **12. TOURISM DEVELOPMENT PROJECTS**

- (a) construction of resort facilities and hotels with a capacity of more than 50 people, or expansions to existing facilities by a factor of greater than 50 people;
- (b) construction of safari lodges and operations with a capacity of more than 50 people, or expansions to existing facilities by factor of greater than 50 people;
- (c) construction of marine facilities with more than 10 boat slips, or expansion of existing marine facilities by more than 10 boat slips; and
- (d) development of tourism master plans, which have several projects, associated with them.

## **13. PROJECTS IN PROXIMITY TO OR WHICH HAVE THE POTENTIAL TO AFFECT**

- (a) Areas of unique historical, cultural, scientific or geographical significance or which have received some kind of world heritage designation;
- (b) national parks, game reserves and protected areas;
- (c) wetlands;
- (d) water bodies;
- (e) flood zones;
- (h) major sources of drinking water, including communal wells;
- (f) cemeteries or ancestral shrines; and
- (g) residential, school and hospital areas, as designated in local planning documents.

## **14. MAJOR POLICY REFORMS**

Policy reforms relating to-

- (a) degazettement of forestry reserves;
- (b) changes to zoning plans; and
- (c) proposed introduction of exotic species.