

**Assessment of Policy Implementation and Legal Compliance in the
Environment and Natural Resources Management Sector**

Analytical Report

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Acronyms

BVC	Beach Village Committee
CBO	Community Based Organization
CCA	Community Conservation Area
CEPA	Centre for Environmental Policy and Advocacy
COMPASS	Community Partnerships for Sustainable Resource Management
CRSP	Chambo Restoration Strategic Plan
DHA	Danish Hunters Association
DNPW	Department of National Parks and Wildlife
EAD	Environmental Affairs Department
EAT	Environmental Appeals Tribunal
EDO	Environmental District Officer
EIA	Environmental Impact Assessment
EMA	Environment Management Act
MK	Malawi Kwacha
NBSAP	National Biodiversity Strategy and Action Plan
NEAP	National Environmental Action Plan
NEP	National Environmental Policy
NFP	National Forestry Programme
NGO	Non Governmental Organization
NSOER	National State of the Environment Report
NSSD	National Strategy for Sustainable Development
ORT	Other Recurrent Transactions
SOER	State of the Environment Report
VNRMC	Village Natural Resources Management Committee
USAID	United States Agency for international Development
US\$	United States Dollar

1.0 Introduction

Malawi has developed a number of policy and legal instruments to guide environment and natural resources management. Sectoral instruments have either been reviewed or developed for environment, fisheries, forestry, parks and wildlife. These instruments have significantly improved the policy and legislation profile of Malawi. The formulation of these instruments was prompted by national and international developments such as the development of the National Environmental Action Plan (NEAP), the Republic of Malawi Constitution at national level; and the Rio declaration and the World Summit on Sustainable Development at the international level.

The typical process for policy development in Malawi involves the drafting of policy that is approved by cabinet, followed by enactment of a statute, which must be approved by the National Assembly. The implementing ministry issues a strategy to implement the law and promulgates any needed regulations. Although most of the sectors have followed this process, a few have followed different processes in which legislation was enacted before a policy was issued as happened in the case of fisheries and biotechnology.

Whilst conducting this assessment it has become apparent that most of the policies are yet to be fully implemented. Policy implementation failure is arising from a number of reasons. The availability and amount of funding for the implementation of policies and enforcement of legislation and other related instruments pose a major challenge. Sadly there is almost general paralysis in some sectors within the environment and natural resources management which do not have donor funded projects. This affects policy implementation and enforcement of legislation. In addition, the environment and natural resources management sector has remained subservient to sectors that are perceived to be money-makers; as such it has little influence over national economic policy.

2.0 Purpose of the Report

This document reports work undertaken as part of CEPA's policy research analysis, monitoring, advocacy and lobbying. The work is undertaken to specifically contribute to the following on going activities:

- (a) Conducting regular reviews and monitoring the state of implementation of the existing policies and legislation on environment, fisheries, forestry and wildlife;
- (b) Monitoring government compliance with environmental and natural resources management policy and legislation and publish findings; and
- (c) Lobbying government to allocate adequate resources for policy implementation to various departments working on environment and natural resources and monitoring the implementation of these policies.

3.0 Context of Sectoral Policy and Legislation

Environmental Management

A National Environmental Policy (NEP) was approved in 1996 and revised in 2004. The NEP was perhaps the first ever clear statement from Government of Malawi of its principles for environment and natural resources management in the country.

The Environment Management Act (EMA) was enacted in 1996. Amendments were drafted in 2006¹. The main reason for these amendments is to eliminate gaps,

¹ Awaiting enactment by the Malawi National Assembly;

overlaps, areas of contradiction, account for emerging issues and address inconsistencies in the existing environment and natural resources legislation. All this is being done in an attempt to harmonise environment and natural resources management legislation. The other key problem that the review of EMA will seek to address is ineffective implementation and enforcement of environmental legislation. The amendments also provide for farmers' rights and access and benefit sharing.

In addition, the Environmental Affairs Department (EAD) also developed a number of strategies. These include the National Strategy for Sustainable Development (NSSD), 2004; NEAP (1994, 2002); National Biodiversity Strategy and Action Plan (NBSAP), 2006; National State of the Environment Reports (NSOER), 1998, 2001, and 2002; Decentralized Environmental Management Manual (2002) and Guidelines for Environmental Impact Assessment (EIA) in a number of sectors in 2002.

Fisheries

In 2001, cabinet approved the National Fisheries and Aquaculture Policy. The Fisheries Conservation and Management Act was passed in 1997. In addition, there are Fisheries Conservation and Management Regulations (2000) and Fisheries Conservation and Management (Local Community Participation) Rules, 2000. The fisheries sector is already considering revising its policy and legal instruments. This is meant to align itself to the new home it has found in the Ministry of Agriculture and Food Security. In addition, it would like to accommodate large scale fish farming, since the current policy is limited to small scale fisheries.

There has been one significant policy development in the fisheries sector since the National Fisheries and Aquaculture Policy in 2001. The Chambo Restoration Policy approved by cabinet in 2003 set within the Chambo Restoration Strategic Plan (CRSP), 2003 – 2015. The bulk of the Chambo Restoration Policy is a re-statement of existing policy framed specifically in terms of the perceived Chambo problem.

Forestry

A National Forestry Policy was approved in 1996, followed by a Community Based Forest Management – A Supplement to the National Forestry Policy in 2003. The Forestry Act was passed in 1997. There are also Forestry (Community Participation) Rules, 2001 and Forestry (Amendment) Rules 2003. Progressive steps have been undertaken within the Forestry Department; currently there are drafts of Forestry (Community Participation) Rules 2008 being considered.

The Forestry Department also developed the National Forestry Programme in 2000. The Programme was developed as a means to put the 1996 Forestry Policy and the Forestry Act (1997) into practice. It provides a framework of priorities and actions for improving the management of forest goods and services and for strengthening their contribution to livelihoods and the rural economy.

Wildlife

The most recent Wildlife Policy is dated 2000. In 2004, a National Parks and Wildlife (Amendment) Act was passed by the National Assembly. This amended the previous Act of the same name dated 1992. Although the latter was relatively modern it did not provide for community participation in wildlife management. In 2007, the Department of National Parks and Wildlife (DNPW) finalized the preparation of Access and Benefit Sharing Guidelines.

DNPW would like to amend the National Parks and Wildlife regulations to reflect the amended National Parks and Wildlife Act (2004). This will ease implementation of the current Act and enable the department to apply new fees. Considering that the Act

was amended in 2004, the department seems to be moving at a very slow pace in coping up with policy and legislative reforms.

4.0 Overview of Implementation of Policy and Legislation

4.1 Environmental Management

Environmental management has an overarching influence on all sectors of natural resources management. EAD within the Ministry of Lands and Natural Resources coordinates environmental programmes, oversees the impact assessment process, and monitors development plans in Malawi. Apart from its central office in Lilongwe, EAD also operates through its 28 Environmental District Offices (EDO) across the country. The local village institution responsible for implementation is the Village Natural Resources Management Committee² (VNRMC). There are however a number of institutional challenges.

Firstly, the institutional framework for implementation is constrained. There have been concerns of incompatibility regarding ministries to which EAD has always been appended to. Often EAD has been appended to ministries that are extractive in nature and whose use and management of natural resources EAD is required to supervise. For instance currently it is located in the Ministry of Lands and Natural Resources. Given the scope of work within lands, EAD has almost become an insignificant attachment as it does not bring any reasonable resources or influence events in the new parent ministry.

The preparation of the NEAP in 1994 was a major landmark for the environment and natural resources management sector. This led to a number of initiatives being developed by the department and other sectors. These include the NEP (1996), EMA (1997) and preparation of the NSOER. NSOERs and NEAP were expected to be produced annually and every five years respectively. However, production of both documents has been erratic. The NEAP was produced in 1994 and 2002. The first NSOER in Malawi was produced in 1998, the next was produced in 2001 (this was later updated in 2002 to incorporate urban environment especially along the lakeshore areas). Section 8 (e) of EMA 1996 requires that the Minister must prepare and present once a year a report on the state of the environment; as indicated above this provision has not been complied with. Lack of funds has been raised as the major reason limiting compliance. The production of both the NEAP and NSOERs were supported by the Danish International Development Agency. With the withdrawal of Danish funding to Malawi Government, that also marked the end of support.

In terms of staffing EAD is currently at its lowest level. Over the past decade the department has lost nearly over 50% of its personnel especially at district level. As at the beginning of 2008 only 9 of the 28 districts had EDOs in place. This tends to pile pressure on senior personnel at headquarters as they have to cope up with all the demands from the districts and in addition to their expected mandates. Staff exodus is blamed on the grading system within the department. Although EAD employs highly trained and qualified personnel their system does not provided for them to be promoted beyond certain levels. As a result the officers get frustrated and resign. Some of them even transfer to different departments within the same district assemblies. Then too, at district level, EDOs have been experiencing a general lack of resources to work with.

² This is the same institution established under the Forestry Act, 1997;

Levels of national budgetary allocations have not been corresponding with the growing mandate of the department. For instance, when EAD had one single office in Lilongwe in 1994 it was receiving MK6.0 million, but with an additional 28 district offices in the 2007/2008 Financial Year it received MK14.0 million.

One of the major steps which would have ensured improved access to environmental justice through the establishment of an Environmental Appeals Tribunal (EAT) has not taken off. Although it was provided for in the 2007/2008 financial year, the resources allocated could not allow it to be operationalized. The tribunal was allocated MK60, 000.00. This appears to be a mockery looking at its expected composition and mandate³.

Inspection to monitor compliance to environmental standards by industry has been another major constraint EAD is continuously encountering. Lack of inspectors in the department and resources to support their work has been a major challenge. As a result there are a lot of instances when polluters go unpunished. In extreme instances members of the public have had to take to task responsible agencies to comply with legislation. One of the cases is illustrated below.

Box 1: Case Study on Civil Cause No. 528 of 2008, High Court of Malawi

The Blantyre City Assembly is responsible for sanitation and waste management in the City. It operates a waste disposal site at Mzedi in the outskirts of the City. The site lies along the Zomba – Blantyre road, but it is so poorly managed that waste materials sometimes overflow into the road. There are a lot of scavengers who have camped at the site hence posing a major health hazard. The Blantyre City Assembly has not carried out its statutory duties under the Public Health Act and the Environmental Management Act. This has prompted University of Malawi students to take legal action to compel it carry out its legal duties. The case was filed in the High Court of Malawi on 7th March 2008.

4.2 Forestry

The government institution responsible for forest management is the Forestry Department located in the Ministry of Energy and Mines. Its principal functions include forest reserve management, forest policy development and planning, plantation management, training, research and extension. There are 3 Regional Forestry Offices and 28 District Forest Offices. The department also manages the Forest Research Institute of Malawi based in Zomba. In addition, there is a great number of staff located in forest reserves and plantations dotted across the country. The major one is the Viphya Forest Plantation covering 53, 000 hectares.

The most significant step since the National Forestry Policy (1996) has been the development of the Community Based Forest Management – A Supplement to the Forest Policy in 2003. The main issue which this supplement dealt with was co-management and community management of forest resources. There have been apparent constraints in the implementation of both community management and co-management of forest resources. The Forestry Act allows for co-management of forest reserves but to date co-management has been instituted only on a tiny scale.

In addition, in 2005 with support from the COMPASS USAID Project and European Union, the Forestry Department developed Standards and Guidelines for Participatory Forestry in Malawi. These are meant to guide the practice of promoting

³ See Part XII, Environment Management Act (1997);

community based management of forest resources both on customary land and in Forest Reserves, but also establish standards for forestry extension service delivery and improved forest management. An evaluation of level of compliance to these guidelines might require a formal survey.

The policy strategy which aims to *enact a law that removes restrictions to access to the use of forests and forest products, and promote equity and participation by local communities*⁴ was achieved in the form of the Forestry Act (1997). However, the reforms which were envisaged both in the Policy and Act have not taken off at the expected scale. There have been constraints related to lack of operational funds, inadequate capacity in the department to implement the participatory forestry management which the Act provides for⁵ and limited capacity in the communities to respond to the aspirations of the policy. Communities and most Forestry Department staff do not know the policy and do not know the implications of the opportunities which the policy offers.

The main local village level institution responsible for forest management is the VNRMC. As was noted in CEPA, 2008, the main observation is that VNRMCs are playing a valuable role. But most of these institutions are only active where there are donor funded projects. There are many villages in Malawi with no VNRMCs and there are others with VNRMCs who do not know what they should be doing, are not organized, have no skills or knowledge concerning natural resources, leadership, and bookkeeping or community mobilization, have no “credibility” with the community or are simply defunct. The cause of this is lack of “intrinsic” capacity to manage natural resources and inability of the Forestry Department to build the capacity (Lowore & Wilson, 2000).

Compared to other sectors forestry seems to have enjoyed better funding specifically for projects supported by the European Commission. After phasing out of the Social Forestry Training and Extension Project, the department is now implementing the Improved Forest Management for Sustainable Livelihoods. These projects have proved to be major vehicles for implementation of the National Forestry Policy, specifically addressing areas of community participation in forest management.

4.3 Fisheries Management

The Fisheries Department within the Ministry of Agriculture and Food Security has jurisdiction for fisheries management within the Malawi Government. The Department was recently relocated to the Ministry of Agriculture and Food Security perhaps for purposes of developing the aquaculture sector. Fisheries Department exercises regulatory functions for vessel registration, licensing, and enforcement of fishing prohibitions. It also performs policy development, research and extension functions.

The Fisheries Department operates through its two divisional offices, one in the south and another in the north. It also has technical staff although at different grades in almost all the 28 districts. All district offices along the lake are manned by professional officers. 30 to 40% of the posts are vacant in the department. Some of these positions are very critical. It was indicated that the department is now in the process of filling them.

⁴ See Forestry Policy (1996), *Strategy 2.2.1.1*;

⁵ The Forestry Act announces itself as “**an Act to provide for participatory forestry, forest management, forestry research, forestry education, forest industries, protection and rehabilitation of environmentally fragile areas and international co-operation in forestry and for matters incidental thereto or connected therewith**”;

The local village level implementing institution is the Beach Village Committee (BVC). Fisheries Associations are responsible for fisheries management at traditional authority level. These associations are supposed to develop by-laws with district assemblies. However, although a number of them have drafted by-laws, these cannot be endorsed by the assemblies because the latter have not formulated their own by-laws⁶.

To date no single fisheries management agreement has been signed between the department and any fisheries management authority. The department has only managed to draft a management agreement for Lake Malombe (2004). It must be noted that this was heavily driven by a donor funded project and the agreements have remained in draft for a long time⁷.

Although, the Fisheries Conservation and Management Act (1997) provides for revenue sharing, the Ministry of Finance issued instructions curtailing any revenue sharing because of what was perceived as double funding. The ministry argues that all fisheries management authorities should be funded by district assemblies. It is expected that all those who have been issued with licences by the Fisheries Department should be registering with assemblies where they would also pay a district fee. In turn assemblies will be expected to provide funds to fisheries management authorities. There are already doubts if this may take off.

The department has developed a number of strategies. These include the National Aquaculture Strategic Plan, 2006, out of which came the Presidential Initiative on Aquaculture Development. In 2007, the department also developed the Fisheries HIV and AIDS Strategy.

The Fisheries Department is facing severe limitations in Other Recurrent Transactions (ORT) funds. Currently the Department is estimated to be receiving 10 to 20% of what they ideally need. Fisheries blame priority setting by Government and lack of linkages between approved policy instruments and national budgetary allocations as being the major reasons why they are not allocated adequate resources. Like with all other sectors during time for budgeting Ministry of Finance just issues instructions regarding ceilings. Little is known how the Ministry of Finance is informed in order to make a decision as to what ceilings should be put in place for each respective sector. Most of the policy implementation for the department rely on donor funded projects. At the moment the major project being implemented by the department is the Lake Malawi Artesinal Fisheries Project being funded by the African Development Bank.

4.4 Wildlife Management

DNPW in the Ministry of Tourism, Wildlife and Culture operates five national parks and four wildlife reserves. It has four management zones.

With new ABS guidelines in place the department has been carrying out sensitization meetings. The department is drafting constitutions for a number of local groups with support from Danish Hunters Association (DHA). There are revenue sharing mechanisms in place in pilot sites in Nyika/Vwaza protected areas although the whole issue of being a pilot is now under question as these have been the only ones in such a state for almost over a decade. Revenue generated in the protected area is shared at 50 – 50 between the department and communities. In future they will be

⁶ This seems to have also affected the Forestry Department, see CEPA (2008), Institutional Framework for Community Based Forest Management;

⁷ Financial support was provided by the German Government under the National Aquatic Resources Management Project;

expected to give 5% to district assemblies. This seems to be in contrast to information from the Fisheries Department, where Ministry of Finance has advised them not to implement any revenue sharing systems.

Although the Wildlife Policy (2000) provides for the signing of Wildlife Management Agreements between DNPW and communities no single agreement has been signed to date. At the beginning of 2008 DNPW had developed a paper notifying government that it intends to pilot Community Conservation Areas (CCA) in Mpatsanjoka dambo and Lake Chilwa area in Salima and Zomba districts respectively. It must be noted that all this work is being funded by DHA.

DNPW entered into co-management agreements with a number of community based organizations in the Lower Shire protected areas and Nyika/Vwaza with support from donors. The main observation is that although DNPW was able to put policy into practice by signing various agreements with community groups, it has been extremely challenging to implement such agreements. Progress has been made in the case of Nyika/Vwaza, while implementation has been slow in the Lower Shire, obviously because the project which spearheaded the initiative phased out. Another observation was that CBOs capacity is inadequate. There is a delicate balance between transferring responsibilities to communities and the existing capacity within the communities to take up new responsibilities.

Apart from working closely with DHA, currently the department has no donor funded projects in relation to policy implementation specifically in areas of community participation. Resources from ORT to support this have not been adequate to warrant any significant impact.

In terms of staffing levels, DNPW has in place just over 50% of the numbers of personnel it requires to effectively run. Most of the vacancies are in the professional level as many young graduates are not willing to stay in remote areas where protected areas are located. Currently there are a number of training programmes running for technical assistants.

5.0 Financing for Policy Implementation

It was established that there is no link between approved government policy for the different environment and natural resources management sectors and national budgetary allocations. Ceilings for each sector are set by Ministry of Finance with virtually no input from the concerned sectors. As such sectors which do not fall within the Malawi Government development priorities⁸ are not allocated significant resources. For instance in the 2007/08 from a total national budget of MK172.8 billion (US\$1.23 billion) the agricultural sector was allocated MK21.0 billion (12 % of the entire budget) while MK1.7 billion (0.98% of the entire budget) was allocated to the environment, fisheries, forestry and wildlife sectors combined.

Box 2: Case Study: National Budgetary Allocations - 2007 / 2008 Financial Year

In 2007/2008 the Environmental Affairs Department was allocated a total budget of MK316, 973, 773.00. Personal emoluments were MK35, 229, 248.00; its development budget was MK266, 948, 000.00; and funds meant for ORT were MK14, 796, 525.00. The entire development budget was expected to come from donors.

⁸ The Malawi Government priorities are agriculture, irrigation and water development, road infrastructure, energy and rural development;

In 2007/2008 the total budget to the Department of Fisheries was MK623, 584, 142.00: personal emoluments were MK110, 514, 233.00; development budget was MK469, 016, 533.00; and the funds meant for ORT totalled MK44, 053, 376.00. Most of the funds under development came from donors.

In the 2007/2008 budget, the Forestry Department estimated spending a total of MK758, 458, 009.00: personal emoluments were MK566, 852, 161.00; its development budget was MK130 million; and the funds meant for ORT totalled MK61, 605, 848.00. It must be noted that most of the development funds came from donors.

In the 2007/2008 Financial Year, DNPW was allocated a total of MK280 million: personal emoluments were MK115 million; development budget was MK115 million; and funds meant for ORT totalled MK50 million.

Comment

Fisheries had the largest development budget, followed by forestry, although by a very big margin. In contrast forestry and parks and wildlife were allocated the largest ORT figures.

One of the major observations is that although in general national budgetary allocations are low, for the past three years there has been consistent in-flow of the allocated funds as compared to previous years. Once allocations have been approved by the National Assembly, the sectors are assured that they will receive all the entire allocation by the end of the financial year.

Outlook for 2008/09

Although it was not easy to get ceilings for the 2008/2009 Financial Year which Ministry of Finance has provided to sectors, it was established that DNPW seems to be the only sector which has received a higher ceiling in terms of development funds amounting to K529 million. This is very significant considering that it will come from the national budget alone. EAD is expected to get ORT funds amounting to K17 million. This still appears to be on the lower side, given its mandate and assuming the revised EMA is passed, responsibilities would be enormous.

6.0 Monitoring Policy Implementation

Current mechanisms for monitoring policy implementation by sectors are inadequate and largely ad hoc. Most of the sectors indicated that they had translated policies into strategic plans and that each year they pick on an objective and implement it. Of course during consultations none of them had the plan handy for reference. Sectors also submit highlights of activities carried out each month for purposes of the minister to prepare a report to the State President. Overall it would appear there is no systematic way of tracking progress on implementation of the respective policies in each resource sector.

7.0 Constraints to Implementation and Compliance

There are a number of challenges which are constraining policy implementation and compliance to legislation by key environment and natural resources management sectors. These include:

- Lack of links between approved policy and national budget allocations. Despite approving several policy instruments, these has never been reflected during national budgetary allocations;

- The environment and natural resources are not recognized as a basis for success of the Government of Malawi development priorities. As such they are not allocated adequate resources;
- Limited influence over national economic policy by environment and natural resources management institutions due to little recognition by the political leadership on the role of the environment and natural resources in guaranteeing success of the Government of Malawi development priorities. Environmental management remains subservient to sectors that are perceived to be money-makers;
- Ministry of Finance decides on ceilings for sectoral budgets with little knowledge of demands required by each sector;
- There has been an increase in responsibilities to sectors overtime. For instance ill funded institutions, such as EAD, now have to deal with more challenging and sensitive issues such Kayerekera Uranium Mine;
- Institutional framework for environmental management constraints its ability to effectively operate. For instance EAD is appended to ministries that are extractive in nature and whose use and management of natural resources it is required to supervise;
- Capacity for staff in sectors such as wildlife is only limited to wildlife management than community participation which the new policy emphasises; and
- New policies which advocate for community participation are being challenged by socio economic factors such as poverty and rapid population growth.

8.0 Recommendations

The following recommendations are being proposed in order to address some of the challenges being encountered:

- Some direct engagement between ill funded sectors and Ministry of Finance would yield results as the finance would be adequately informed about the needs of the sectors. This should eventually result in considerable increase in budgetary allocations to such sectors;
- Environment and natural resources management departments need to make stronger cases for increased funding by showing the linkage between better stewardship of environment and natural resources on the one hand and economic growth and sustainable development on the other hand. This would be better done by providing data showing costs of environmental degradation and benefits of sound environmental management;
- EAD should become autonomous so that it is beyond the influence of vested interests. This should ensure that it is able to make decisions for the effective management of the environment. The revised Environment Management Act provides for the establishment of a National Environmental Protection Authority; and
- There is need for civil society to support implementation for the policies especially in the wildlife sector where as a result of almost solely relying on ORT, progress has been extremely slow.

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2. Policy and Legislation:

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- Forestry Act (No. 11 of 1997);
- National Fisheries and Aquaculture Policy (2001);
- National Forestry Policy, (1996);
- National Parks and Wildlife Act (1992);
- National Parks and Wildlife Amendment Act (2004); and
- Wildlife Policy (2000).

3. Subsidiary Legislation:

- Forestry (Community Participation) Rules (2001); and
- Fisheries (Local Community Participation) Rules (2000).

Annex 1: Persons Consulted

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