

# ASSESSMENT OF POLICY IMPLEMENTATION FOR ENVIRONMENT AND NATURAL RESOURCES MANAGEMENT IN MALAWI



**Analytical Report**  
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## **About CEPA**

CEPA is a public interest policy think tank working on issues of sustainable environment and natural resources management. The vision of CEPA is to create a just and equitable society that promotes development. The core business of CEPA is to facilitate policy dialogue and formulation, analysis and implementation of sustainable environment and natural resources management to increase the resilience of rural communities to adverse impacts such as climate change.

**Influencing Policy and Practice in Climate Change Adaptation in Malawi** - CEPA carries out activities which enhance the capacity of civil society organizations in influencing policy and practice in climate change adaptation in Malawi. The specific activities revolve around: enhancing civil society lobbying and advocacy work in climate change policy debate at international, national, regional level and increasing levels of awareness in climate change management.

**Institutional and Governance:** The Access initiative - CEPA facilitates preparation of necessary memorandum and instruments to appoint members of the EAT and put the EAT into operation; setting out the statutory obligations, procedures and budgets; criteria and qualifications of the Tribunal.

**Enhancing the Capacity of CEPA and its Partners' Engagement in Constituency Environmental Management and Natural Resources Advocacy: Towards Enhanced Constituency Representation for Sustainable Livelihoods** - some of the activities under this project include evaluation of governance in legislative representation to enhance sustainable environment and natural resources management and reviewing and analyzing policy implementation and existing gaps in environment and natural resources management.

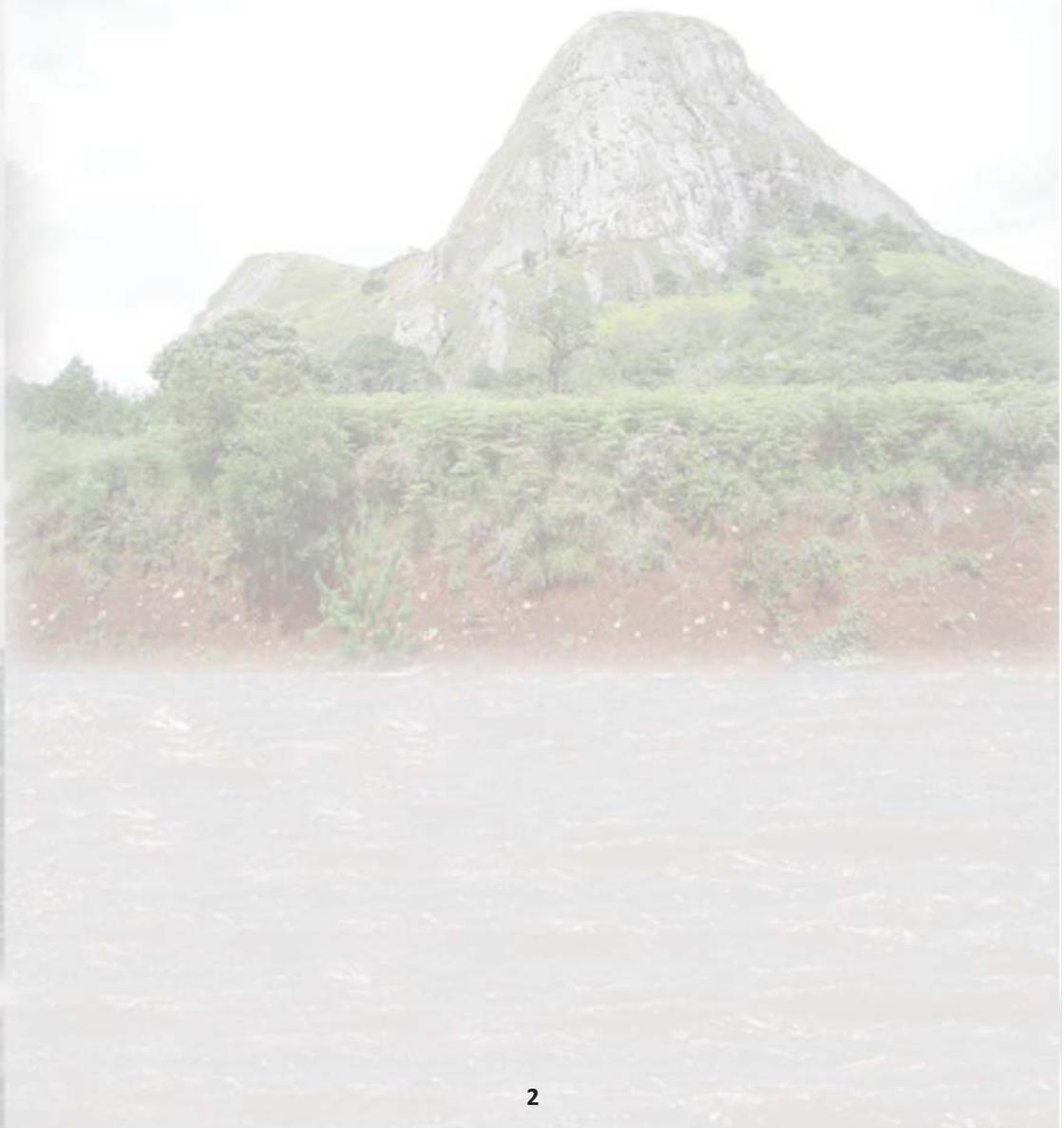
**Southern Africa Biodiversity Policy Initiative** – this is a sub-regional network of civil society organizations working in biodiversity, biosafety, trade, development and environmental issues in Southern Africa. Under this initiative, CEPA is currently conducting research on the impact of agrofuels, climate change and modern biotechnology on biodiversity conservation and food security.

**Land and Agrarian Reform Initiative** - CEPA is facilitating momentum on the enactment of the revised Land Bill in Malawi. This is being done through holding stakeholder workshops and providing capacity building sessions for key institutions working in land and agrarian reform.

**Enhancing Capacity for Sustainable Environmental and Natural Resources Management Policy Making and Implementation** - The overall goal of the project is to achieve sustainable development through sound

management of the environment and natural resources. The project is intended to enhance the institutional capacity of CEPA in facilitating formulation, analysis, monitoring and implementation of environment and natural resources management policies.

You can also find newsletters, policy briefs and other publications produced by CEPA. All publications including journals, books, policies, newsletters, reports are stored in the resource centre.



## 1.0 Background

Environment and natural resource management are the bedrock of national wealth especially for an agro based economy such as Malawi. As confirmed by a recent report<sup>1</sup> the costs of environmental degradation are very high though rarely highlighted owing to the widespread conception that environmental resources are a free good. These costs exact a heavy toll on the poor who are entirely dependent on these resources and therefore exacerbate the problem of environmental degradation. An example is soil erosion which necessitates increased use of chemical fertilizers which most poor people can hardly afford, hence requiring state subsidies which in turn divert funding from other prop-poor expenditures such as health, education and public infrastructure. Despite the clear connection between the environment on the one hand and economic growth and development on the other hand, official statistics and government prioritization of programmes<sup>2</sup> continue to treat environment as a side show and environmental institutions no more than nuisance.

Malawi has adopted and enacted policies and legislation on environment and natural resources including the National Environmental Policy and the Environment Management Act, the National Forestry Policy and the Forestry Act, the National Water Policy and the Water Resources Act, the Wildlife Policy and the National Parks and Wildlife Act. These provide different mechanisms and strategies for implementing and enforcing these various instruments. Many of the policies and legislation are however not implemented. As the National Environmental Action Plan, 1994, 2002 noted, Malawi continues to face increasing environment and natural resources degradation including soil erosion, water pollution, deforestation, overfishing, poaching

There are a number of challenges to effective implementation of environment and natural resources management policies and legislation. Poverty, overpopulation and the resulting resource scarcity, capacity constraints within the relevant institutions as well as inherent policy incoherence that make coordination difficult to achieve. Various institutions continue to improve on their respective policy and legislation framework as well as the systems to ensure effective implementation and enforcement . We analyze here some of the main mechanisms these policy and legislation framework utilize for implementation and enforcement<sup>3</sup>; we will assess the effectiveness of these instruments and the opportunities available to improve the governance of environment and natural resources in Malawi. We also consider the need for the revision of the Environment Management Act as the anchor for the ENRM legal framework and make proposals for facilitating its enactment and implementation.

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<sup>1</sup> Gil Yaron et al (2010) *Malawi Poverty and Environment Initiative: Economic Study* (Ministry of Development Planning and Cooperation, Lilongwe).

<sup>2</sup>The *Malawi Growth and Development Strategy (2006 – 2011)* was amended to include environment as one of the priorities among Government priorities. Nevertheless the sector has not received the attention it requires to

## 2. Policy Implementation in the Environment Sector

### 2.1 Institutional Coordination

The Environment Management Act 1996 provides the coordinating framework for the effective management of the environment and natural resources. The Act entrusts the Minister responsible for environment and natural resources with the duty to promote the protection and management of the environment and the conservation and sustainable utilization of natural resources. Among the duties of the Minister as stipulated in section 8 are:

- Formulating and implementing policies for the protection and management of the environment;
- Coordinating and monitoring activities concerning the protection and management of the environment;
- Planning, developing strategies as well as facilitating cooperation between Government, local authorities and the private sector and the general public on the protection and management of the environment;
- Initiating, facilitating or commissioning research on any aspect of the protection and management of the environment;
- Preparing and laying before the National Assembly at least once every year a report on the state of the environment;
- Coordinating and promoting public awareness;
- Monitoring trends in the utilization of natural resources and impact on the environment; and
- Investigating any complaints by any person relating to the protection of the environment.

The foregoing shows that the principal obligations of the Minister revolve around policy making, planning, monitoring, and facilitating and ensuring environmental accountability. In practical terms the outputs from these obligations should include policy instruments, mechanisms for implementing these, specific instruments for carrying out monitoring activities, state of environment reports, investigations and outcomes of compliance monitoring undertaken among others. Of these instruments and mechanisms it is quite clear that development and adoption of policy instruments has been fairly successfully done. In the environment sector alone several policy instruments have been developed; these include the National Environmental Policy 1996 revised in 2004, the Environment Management Act 1996 currently being revised, and the National Strategy for Sustainable Development 2004. In addition and as part of the ENRM legal reform sector policies and legislation for forestry, fisheries, wildlife and land were also revised. It is noteworthy that all these policies were supported by donor funding mainly from United Nations Environment Programme and the United States Agency for

<sup>3</sup> CEPA has carried out reviews showing challenges to implementation of ENRM. See CEPA (2008) *Assessment of Policy Implementation and Legal Compliance in the Environment and Natural Resources Management Sector*

International Development. Often as soon as the policies were developed the funding dried up and no provision made for implementation. Rarely do departmental budgets cover policy implementation and as has been noted elsewhere <sup>4</sup>, ENRM is one of the least funded by the national budget.

The EMA provides for coordination through the National Council for Environment (NCE) which is a high level body comprising the Secretary to the President and Cabinet, principal secretaries of all ministries and heads of relevant parastatal agencies and the private sector and NGOs (section 10). Not only is this body rather large and wieldy but the provisions allowing the high level people to delegate to their representatives weakens its representation. Hence it has been observed that principal secretaries routinely send their delegates who are unable to commit to high level decisions at these meetings. The NCE decisions cannot therefore carry the same force as was envisaged.

On the other hand the NCE is comprised of the very institutions who need to be monitored, not only does this facilitate conflict of interest, they are unlikely to agree to decisions that will implicate their respective institutions. The EMA also provides for a Technical Committee on Environment (TCE) (section 11) which is a group of experts whose functions are to examine scientific issues and undertake investigations into scientific, social and economic aspects of any activity and recommend to the Minister, NCE or any lead agency such action as is necessary to achieve the objectives the Act. The TCE has been in existence for sometime but its main functions has been review of EIA reports rather than carrying out investigations or examining scientific issues to ensure the objectives of the Act are met. It is necessary expand the mandate of the committee and ensure that specific expertise is available when needed.

## **2.2 Environmental Planning**

Section 22 of EMA further requires the Minister to prepare a National Environmental Action Plan (NEAP) and review it every five years subject to approval by the National Assembly. A NEAP was prepared in 1994 and was revised in 2002 but no further revisions have been made since then. The role of the National Assembly in the approval of the NEAP is however not complied with as there has been no compliance with this provision. The main objective of the NEAP is to integrate environmental strategies and measures into development programmes. Section 19 as read with section 23 of EMA provides for the preparation of district environmental action plans (DEAPs) by a District Development Committee (DDC) which is empowered to coordinate the activities of NGOs and lead agencies in environmental issues at district level. Since DDCs were replaced by district assemblies under the National Decentralization Policy Local Government Act 1998, these functions are now carried out by district assemblies. The DEAPs must conform to the

<sup>4</sup> See CEPA (2008) See CEPA (2008) *Assessment of Policy Implementation and Legal Compliance in the Environment and Natural Resources Management Sector*

NEAP and identify environmental problems in the district, be approved by the Minister and disseminated by the district assembly. The key concern here is the absence of specific integration of environmental management provisions into the decentralization framework.

The Act prohibits any development activity or project otherwise than in accordance with the DEAP of the district in question. This planning framework is intended to ensure harmonization of development and environmental management. DEAPs have been developed for various districts across the country; however their implementation remains a challenge not least because of the place of environmental management within the development discourses at various levels of government. The tendency seems to be that development often takes priority and activities are undertaken with little or no regard for these environmental planning tools

### **2.3 Environmental Impact assessment, Monitoring and Auditing**

Part V of the EMA requires that a developer for designated projects undertake an EIA before commencing development. However the current provisions do not include, as a condition for approving a project, a requirement that the developer must prepare an environmental management plan. These are incorporated as a matter of policy but need to be specifically included as well as the key issues to be included in the management plan. In addition the Director for environmental affairs is required to undertake periodic environmental audits of any project for purposes of enforcing the provisions of the EMA; for this purpose the Director is empowered to require a developer to keep such records and submit them to the Director as the Director may deem necessary (section 27). It is noteworthy however that the auditing and record keeping requirements are not integrated into the EIA framework. These should be imperative to ensure effective monitoring of projects requiring EIA.

A few environmental audits have been conducted both in relation to existing projects and those subject to EIA. However there is no specific programme of audits the environmental affairs department follows; this may be as a result of staffing issues within the department. Both the Forestry Act 1997 and the National Parks and Wildlife Act provide for EIA in their respective sectors. However the language used differs markedly. For example section 28 of the Forestry Act requires an EIA only where the Minister decides to degazette a forest; in that case the EIA will investigate ecological consequences of the proposed degazettment. EMA on the other hand, prescribes projects related to forestry which require an EIA. These are<sup>5</sup>:

- a) Establishment of, or expansion of logging operations covering an area of greater than 50 ha;
- b) Establishment of, or expansion to an existing; housing development of a

<sup>5</sup>Environment (Specification of Projects requiring Environmental Impact Assessment) Notice, 1998 that appeared in Government Notice No. 42.

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.

In the absence of clear guidelines on how to harmonize the implementation and enforcement of EIA provisions under EMA, National Parks and Wildlife Act or the Forestry Act, the above activities can be allowed by the Department of Forestry without reference to EIA requirements under EMA<sup>6</sup>.

#### **2.4 Environmental Quality Standards**

Part VI deals with environmental quality standards and empowers the Minister to prescribe these in consultation with the NCE. This part of the Act is however too brief; it should provide some specific guide as to the type standards which may be issued to ensure the public are aware what to expect. This is more so considering the limited access to official documents in the country. Standards have been prescribed by the Malawi Bureau of Standards; it is not clear however to what extent these are implemented.

#### **2.5 Environment Management and Natural resources Management Strategies**

Part VII provides tools for environmental management. The first gives power to the Minister in consultation with the Minister responsible for Finance to determine fiscal incentives and disincentives to promote environmentally friendly activities. To date no fiscal incentives have been promulgated. The second measure is the power given to the Director to declare any area of Malawi which is not a protected area to be an environmental protection area. The Director is required to prepare environmental protection plans and policies for the area and provide for the development of social amenities and facilities necessary for carrying out scientific research in the area. In determining whether to make the declaration the Director will consider the physical features, beauty or special scientific feature of the area, interests of the community and the need to comply with any international obligation. No environmental protection orders have so far been issued despite the potential to use these provisions to protect fragile areas and other areas with special characteristics.

The third measure is the power given to the Director to issue environmental protection orders against any person whose acts or missions are likely to have adverse effects on the environment. The order may require any person to take

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<sup>6</sup>Section 7 of EMA however states that where a written law on environment and natural resources is inconsistent with EMA then EMA will prevail. In this scenario therefore the Department of Forestry will be obliged to order an EIA before allowing forestry projects listed under EMA requiring EIA.

measures for the restoration of any degraded land; it may stop or prevent conduct which causes or contributes to pollution; or payment of compensation. In enforcing the environmental protection order the Director may take any action he may deem necessary for achieving the purpose of the environmental protection order and recover the costs of taking such action from the person against whom the environmental protection order has been made. So far only a few environmental protection orders have been; the one example given to the author is the order issued against littering at Capital Hill in Lilongwe. Again the potential to use this instrument is enormous, considering the blatant violations ENRM legislation across the country. Other provisions of the EMA deal with waste management; hazardous wastes; pesticide and pollution control; and gives power to the Minister to make rules for the control and management of these. Regulations dealing with chemicals, waste management and sanitation have been developed but they have not been gazetted to date.

Part IX of EMA provides for the enforcement machinery and gives power to the Minister to designate from the public service such number of inspectors as he may consider necessary to administer, monitor and enforce measures provided under the Act. No inspectors have been designated up to now. This part also gives power to the Minister to establish or designate such laboratories as he thinks fit to be analytical or reference laboratories. The Act further requires the Director to prescribe activities in respect of which records shall be kept for purposes of the Act. These are to be used for environmental auditing, monitoring, control and inspection. Members of the public are given the right to access information submitted to the Director or any lead agency relating to the implementation of the Act or any other law relating to environment and natural resources management. These mechanisms should facilitate implementation and enforcement of the EMA; however many of these provisions are not put in practice. Hence no inspectors, laboratories or analysts required under Part IX have been designated or established. There is no credible excuse for this lapse since the process is merely technical and administrative.

Finally EMA provides for the establishment of an environmental fund to finance the implementation and enforcement of the Act (Part X); and the environmental appeals tribunal (EAT) to enforce the Act (Part XII). While attempts to establish an environmental fund were made using donor funds, the EAT has not been established since the enactment of the Act in 1996. The fund was created for a specific purpose and is no longer in existence. The rationale for the EAT was to facilitate access to environmental justice through establishing a specialized tribunal while at the same time ensure its procedures are friendly to its users to ensure speedy disposal of matters before it. Attempts to establish the tribunal have not yielded anything to date.

### **3 Revision of the Environment Management Act**

The main constraint to effective management of the environment and natural resources is the weak coordination of the various government agencies responsible for managing the environment and natural resources in Malawi. In particular, it is clear that environment and natural resources sector lacks a strong voice to ensure that its policies and legislation are considered necessary for development in general and economic growth in particular. The many gaps identified in the foregoing section suggest a general neglect that is borne of indifference on the part of policy makers. The overall impression one gets is that the environment is dispensable. However it remains true that the environment is the basis of all wealth as well as the foundations for the most of basic human needs such as water, food and shelter.

#### **3.1 Institutional framework**

A review of the National Environmental Policy in 2004 led to revision of the policy which specifically recognized the constraints posed by the weak institutional framework in the environment and natural resources sector. Section 4.1 of the NEP 2004 recommended an autonomous institution which is professionally credible and whose decisions are beyond political or business interference or manipulation. The following guidelines were laid down for developing the institution:

- The coordinating institution should be responsible for policy formulation and review, overseeing compliance and providing information services to relevant users;
- Ensure separation of powers and responsibilities between the users and regulators of environment and natural resources to promote impartiality, fairness and transparency in the regulatory framework;
- Any sector dealing with cross sector issues which are not its core function must comply with mechanisms for effective management of these through joint planning and management, outsourcing of required services and adequate liaison and consultation with the relevant lead agency;
- The coordination institution should be an autonomous professional body that can compel lead agencies to carry out their respective mandates and must therefore be appointed by the highest political office to ensure political visibility and authority

These guidelines were proposed to deal with the current institutional malaise under which the coordinating institution for ENRM is under a Minister responsible for environment and natural resources departments dealing with forestry, fisheries, and mining and times lands, physical planning. There is clearly a conflict of interest in the regulatory framework as the Minister who issues mining licences is the same that will supervise and approve EIA for the same mining operation. Secondly and despite the identification of environment as a priority within priorities of Government, ENRM remains a secondary priority; its position among money making

departments such as mining, forestry or water cannot inspire much political support unless provided with more visible political authority. It is no wonder that up to now the environmental affairs department remains one of the least staffed departments; it also lacks the mobilizing capacity unless it has project donor funds since it is routinely underfunded; it therefore fails to bring together lead agencies to take stock of their activities and ensure improvement in ENRM governance. There is a long list of statutory obligations that are not complied with or implemented including:

- Revision of the NEAP and approval before the National Assembly;
- Preparation of the annual state of the environment report and laying it before the National Assembly;
- Establishment of the EAT;
- Promulgation and implementation of regulations dealing with chemicals, waste management;
- Designation of inspectors, analytical laboratories and analysts for purposes of monitoring and enforcement of the Act

### **3.2 Gaps, Inconsistencies and Cross Sector Issues**

One of the key strategies for strengthening the institutional framework for implementing the NEP is to develop institutional linkages and ensure that 'appropriate mechanisms are established to deal with cross sector issues over which more than one lead agency has mandate so as to eliminate gaps, conflicts and overlaps in policy implementation arrangement'. This was intended to deal with gaps inconsistencies, conflicts and overlaps in ENRM policies and legislation which pose significant constraints in the effective management of environment and natural resources. Some of these have been identified above and they include:

- Absence of recognition or reference to or in some cases narrow scope of specific environmental management strategies in some sector policies and legislation. A good example is lack of reference or recognition for EIA in fisheries, water or land policies and legislation and the narrow scope of EIA in wildlife and forestry legislation and policies<sup>7</sup>.
- Overlapping functions that allocate responsibilities over the same resources to different state agencies. An example is the mandate over water resources within a forest: the Forestry Act includes water in its definition of forest produce while the Waterworks Act gives power to an operator to restrict use of such water. Another example is management of fragile areas such as steep slopes, wetlands and areas susceptible to flooding which seem to attract the attention of several sectors. The National Land Policy proposes to zone the areas to prevent or minimize the adverse environmental impact of cultivation and other developments (6.4 (d)). The National Water Policy advocates the

<sup>7</sup>See G Z Banda, (2004) *Harmonization of Environment and Natural Resources Management in Malawi* (Environmental Affairs Department, Lilongwe)

creation of buffer zones around dambos and wetlands. The Science and Technology sector seeks to promote irrigated agriculture in wetlands, and the Ministry of Agriculture has a strategy of cultivation in dambos and wetlands without any buffer zone, in order to improve food security<sup>8</sup>.

- Some sectoral policies and legislation provide for strategies that can only be effectively achieved by active participation of other lead agencies. However, there are no mechanisms for co-opting the other sectors into working towards such goals. An example is the agricultural lease covenant under the Land Act Regulations that requires the lessee to establish a woodlot on 10% of the leased land<sup>9</sup>. Another example is clause 9.7 of the National Land Policy, which states “Forestation programs should encourage use of trees that will improve soil fertility and the amount of food available for livestock.” In both examples, it is the Forestry Department that can enforce the covenant or ensure the attainment of the objective. But, due to lack of coordination, implementation is a challenge<sup>10</sup>.
- A number of ENRM issues falling under various departments have arisen over the years either through regional and international instruments on ENRM or identification of gaps in national policy and legislation, that need policy or legislation covering different sector agencies. These include climate change, biodiversity and agrobiodiversity, access to and sharing of benefits arising from utilization of biological resources, farmers rights, among others. The key question has been whether to provide these in a coordinating statute, different statutes but under the coordinating institution or to give mandates to some sectors even though they do not have exclusive mandate. Irrespective of the decision which may be made the key issue is the coordinating institution which must have the authority and mobilizing capacity to lead the preparation and implementation of the policy and legal framework wherever the policy framework is located.
- Enforcement remains a major challenge in ENRM. While the current policy and legislation has made significant progress to promote community participation, policing and prosecution remains the basic enforcement mechanism. The National Fisheries and Aquaculture Policy as well as the Fisheries Conservation and Management Act provide for sharing of enforcement personnel since most resources are shared across sectors. This framework however needs to be reflected in other sector policies and legislation such as forestry, water, land to ensure the other sectors feel obliged to share enforcement responsibilities. This has not happened up to now and need to be seriously considered at policy level.

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<sup>8</sup> Ibid, at page 16

<sup>9</sup> Ibid, page 19.

<sup>10</sup> It should be mentioned that section 2.8.1.5 of the NFP makes provision for enforcement of the forestation clause by the Director of Forestry. However, the Forestry Act does not implement this policy guide hence no legal strategy for enforcement is in place.

#### **4 The Revised Environment Management Act 2006**

Following a thorough review and extensive consultation with stakeholders a complete overhaul of the Environment Management Act 1996 was carried out. A draft Environment Management Bill 2006 was adopted by stakeholders and submitted by the Environmental Affairs Department to the Ministry of Justice. The Bill makes the following proposals to deal with the challenges outlined in the preceding paragraphs:

##### ***2.2 Institutional arrangements***

Part II of the Bill proposes the establishment of a National Environmental Protection Authority (NEPA) as the principal agency for the protection of the environment and sustainable utilization of natural Resources. The NEPA will act as an independent body except for policy directions to be issued by the President. It will be managed by a Board to be appointed by the President. All the powers currently exercised by the Minister responsible for environment will be performed by NEPA. The Minister will only be responsible for parliamentary accountability issues and liaising with NEPA on policy matters.

The main objective of providing for independence of NEPA is to avoid the conflict of interest already alluded to within the ministry responsible for environment and natural resources and to profile the institution so that it has political visibility and authority. In addition NEPA has been given power to direct any sector agency to carry out its mandate and where it fails NEPA has the mandate to carry out the task and charge the costs thereof to the agency responsible. This directly responds to the current institutional overlaps and gaps where some sectors neglect their duties or expect other agencies to perform them.

The Bill specifically states that no lead agency shall be released from its obligations by reason of NEPA exercising these powers and lays down responsibilities of sector agencies in respect of their respective statutory obligation, as follows:

- Ensure sustainable realization of national development by preventing activities that degrade the environment;
- Undertake appropriate precautionary measures and enforcement of standards applicable to their sector;
- Report on their implementation and enforcement activities to the Authority in accordance with the Act.

The Bill further empowers NEPA to develop, in consultation with sector agencies, guidelines and best practices for regulation, management and monitoring of environment and natural resources for which more than one lead agency is responsible. The aim is to ensure mechanisms for coordination instead of the current framework in which consultations and liaison are provided with no specific tools or strategies for ensuring coordination and collaboration. Finally lead agencies are

required to report to NEPA on their activities; in particular the Bill proposes that these agencies shall:

- Within two months after the expiry of each year, report on its operations during that period, including progress on integrating environmental concerns in its plans, projects and programmes;
- 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.

These provisions will deal with the current challenges where there are no reporting frameworks other than general administrative reporting and therefore provide the framework for monitoring agency activities. It will also ensure that NEPA has the necessary information to enable it issue timely state of the environment reports, unlike the current framework where the sector agencies have no duty to provide information to the environmental affairs department which may explain the non compliance with the obligation to issue annual state of the environment reports to the National Assembly as required under EMA 1996.

#### ***4.1 Environmental Planning***

The Bill also seeks to integrate the decentralization policy and legal framework into the environment sector and proposes the establishment of District Environment and Natural resources Committee and natural resources and a Local Environment and Natural Resources Committee which are not provided for under the decentralization Policy or the Local Government Act. These will coordinate environment and natural resources management at local level and report to NEPA as provided for under the Bill. Environmental Planning has also been streamlined in accordance with the decentralization policy framework to ensure that these are harmonized with the national environment planning.

#### ***4.2 Environmental Impact Assessment, Monitoring and Auditing***

The EIA provisions have been strengthened to improve the procedures for EIA first in terms of the need for accreditation of EIA experts to ensure quality; secondly in terms of the procedures for EIA making it mandatory for EIA to go through public hearing; and thirdly in terms of the requirement for the developer to prepare environmental management plans and keep records of his activities so as to facilitate monitoring, auditing and enforcement.

#### ***4.3 Closing the gaps in ENRM legal framework***

There are also a number of provisions which have been included and or strengthened in order to cover policy and legislation gaps identified during the

policy reviews and consultations. These include:

- provisions on environmental quality standards which have been expanded to stipulate the types of standards for different environmental media which were not provided for under EMA 1996;
- the provisions on biological diversity which have been expanded to deal with biodiversity issues not covered elsewhere in environment and natural resources policy and legislation including rights and duties of local communities, powers and responsibilities of local environment and natural resources committees farmers rights and access to biological resources and sharing of benefits from their use;
- the provisions on environmental management which have been expanded to cover the existing gaps on the regulation and management of green environment such as river banks, wetlands, hills and mountainous areas, climate change and disaster management.

Some or all the foregoing provisions could very well be subject of separate legislation; some clear examples are those provisions on farmers' rights and climate change. The rationale however is that since these are not dealt with in any legislation and many of them not an exclusive domain of any one agency, cover regional and international instruments and generally administered by the environmental affairs department, it is economical to incorporate these in an environment management legal framework. The continuing lack of regulatory framework on access and benefit sharing, farmers' rights, climate change and management of the green environment is detrimental to country's economy which entirely depends on agriculture.

## 5 Way forward

- The Environment Management Bill is still with the Ministry of Justice. However due to the passage of time since it was prepared, there is high likelihood that it may have to be reviewed before presenting it before Parliamentary. A good example are the provisions on climate change which only focus on mitigation measures without providing for relevant technologies including REDD issues and carbon trading in general. There is also need to consider adaptation measures for climate change.
- On the other hand although the Bill went through extensive stakeholder review it is not clear whether it still has the support of policy makers within Government; the task therefore should be to ensure that policy makers are sensitized and perhaps to promote the Bill through a workshop presentation to policy makers and members of the National Assembly. The recent report on Poverty and Environment provides some momentum for galvanizing political support . In this regard we may need to engage UNDP who commissioned the report for their support.
- We may also need to engage the Millennium Challenge Corporation who had shown some interest in facilitating the enactment of the Bill. Recent reports however suggest that they have a negative report on the establishment of the NEPA from their US based consultant who came into the country a few months ago. It may be worthwhile to engage them together with the policy makers.
- It is also important to facilitate the establishment of the Environmental Appeals Tribunal. The seed funding from World Resources Institute has enabled us to engage the environmental affairs department and to draft the necessary procedural rules. These need to be taken to stakeholders for adoption. Thereafter CEPA will need to engage the Director and the Minister responsible for environmental affairs to facilitate finalization of the relevant administrative procedures.

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<sup>11</sup> See Note 1 previously cited

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