

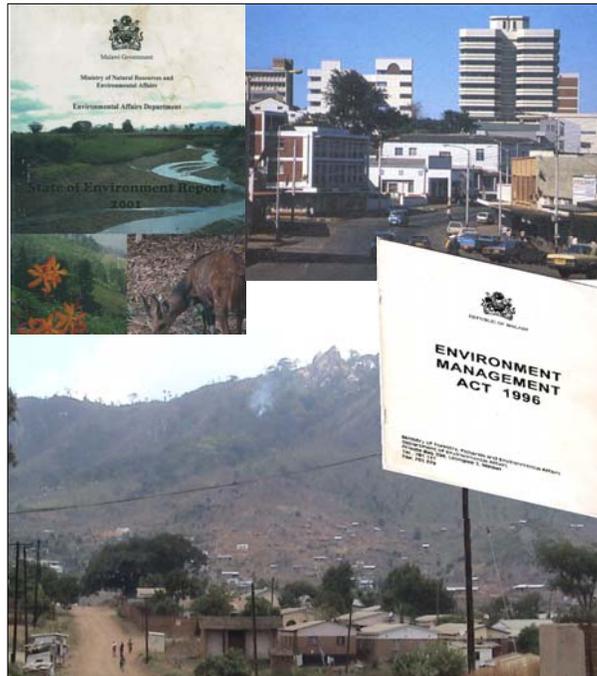
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Training Support
Programme for
Community Based
Natural Resources
Management in
Malawi



MEASURING SUSTAINABLE DEVELOPMENT IN MALAWI: ASSESSING THE STATUS OF LAWS, EFFORTS AND PRACTICES IN PROVIDING PUBLIC ACCESS TO ENVIRONMENTAL INFORMATION, JUSTICE AND PARTICIPATION IN DECISION-MAKING AFFECTING THE ENVIRONMENT



Draft Report

Centre for Environmental Policy and Advocacy (CEPA), Coordination Unit for the Rehabilitation of the Environment (CURE) and Training Support for Partners (TSP)

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This assessment was jointly undertaken by Centre for Environmental Policy and Advocacy (CEPA), Coordination Unit for the Rehabilitation of the Environment (CURE) and Training Support for Partners (TSP). The study was conducted using the assessment method developed by The Access Initiative, a global network of civil society organizations. Unless otherwise noted, the opinions, interpretations and findings presented in this document are the responsibility of the assessment team and not of The Access Initiative. For additional information about The Access Initiative, including its members and leadership, please see www.accessinitiative.org

LIST OF ACRONYMS

BVC	Beach Village Committee
CB	Capacity Building
CBO	Community Based Organisation
CEPA	Centre for Environmental Policy and Advocacy
CIDA	Canadian International Development Agency
CONGOMA	Council for Non Governmental Organizations
CSO	Civil Society Organization
CURE	Coordination Unit for the Rehabilitation of the Environment
DDC	District Development Committee
DEAP	District Environmental Action Plan
DSOER	District State of the Environment Report
EAD	Environmental Affairs Department
EDETA	Enterprise Development and Training Agency
EIA	Environmental Impact Assessment
EMA	Environmental Management Act
FOSANET	Food Security and Agriculture Network
GEF	Global Environment Facility
GDP	Gross Domestic Product
HIV/AIDS	Human Immuno Virus / Acquired Immune Deficiency Syndrome
MBC	Malawi Broadcasting Corporation
MEET	Malawi Environmental Endowment Trust
MEJN	Malawi Economic Justice Network
MK	Malawi Kwacha
NEAP	National Environmental Action Plan
NGO	Non Governmental Organization
NSSD	National Strategy for Sustainable Development
PoI	Plan of Implementation
PP10	Partnership for Principle 10
SADC	Southern Africa Development Community
SOE	State of the Environment
SOER	State of the Environment Report
TAI	The Access Initiative
TSP	Training Support for Partners
TVM	Television Malawi
VNRMC	Village Natural Resources Management Committee
UNCED	United Nations Commission on Environment and Development
UNDP	United Nations Development Programme
US\$	United States Dollar
WLSA	Women and Law in Southern Africa
WRI	World Resources Institute
WSSD	World Summit on Sustainable Development

EXECUTIVE SUMMARY

In very general terms, this report is an analysis of the legislative framework and actual practice in Malawi in relation to the three pillars of principle 10 of the Rio Declaration, namely access to information, participation in decision-making and access to justice. It also includes an assessment of capacity building in key government institutions and non-governmental organizations responsible for implementation and or facilitating implementation of the three access principles. Capacity Building has been deliberately included based on the perception that it is key for the actual implementation of the three access rights. Case studies were selected from various environment and natural resources sectors. The assessment used the Access Initiative (TAI) indicators to measure and monitor government performance in order to identify gaps and recommend priority actions for enhanced performance. The assessment was done using law, effort and effectiveness indicators as per the TAI version 2.0 database. In most instances only core indicators were used.

The findings highlight the key issues, which emerged from the assessment with some elaboration of how and why these issues are important in facilitating access to information, public participation and access to justice. The Constitution of the Republic of Malawi has provisions granting right to access information, participation in decision-making and access to justice. Considering the political and legal history of the country, the constitution making process itself was the first time that the public in Malawi effectively participated in policy and law making. .

Section 37 of the Constitution gives every person the right of access to information held by the State or any of its organs in so far as that information is necessary for the exercise of his rights. There are some provisions in the Constitution itself, which may curtail the right of access to information. The protection of privacy provisions under section 21, which include the right not to be subjected to seizures of private possessions or interference with private communication, is one such example. Section 7 of the Constitution expressly enjoins the executive to initiate and implement policies and legislation, which reflect the express wishes of the people of Malawi and which promote the principles of the Constitution. This provision entails that relevant government institutions must facilitate public participation in policy and decision-making.

Following the National Environmental Policy and the Environmental Management Act, which are framework environmental policy and legislative instruments, other sectoral agencies such as the forestry and fisheries have enacted their own policy and legislative instruments, which provide for community participation in the management of these natural resources. These have been analyzed; the main observation is that there is inadequate support in various local level institutions to enable them effectively participate in managing natural resources and ensure that they receive benefits arising from natural resources management.

The Constitution expressly provides for the right of access to justice under section 41. Every person has the right to be recognized as such before the law. The Constitution provides for access to justice, through recognition before law, enabling access to courts and providing the

right to effective remedy. However the complaints procedures particularly those under the Environment Management Act have some weakness that are likely to adversely affect access to environmental justice. In this respect the fact that an Environmental Appeals Tribunal established under the Environment Management Act has not been operationalized is a further constraint on access to environmental justice

It is interesting to note that although there is a constitutional provision guaranteeing the right of access to information, access to general environmental information is not provided for in the Environment Management Act (1996). The provision in EMA could be interpreted to be limited to specific type of information. The assessment also found out that there are a number of processes in place, which if effectively implemented and utilized could significantly contribute to increasing public access to environmental information. For instance EMA 1996 mandates the Minister responsible for the environment to make a statement in parliament regarding the State of the Environment every year. However, adherence to both activities has been problematic over the years. The research indicates that public officials are mostly reactive in nature when it comes to providing information on emergencies. In the past occurrences of emergencies like the cholera outbreaks took the responsible authorities by surprise as such it was very difficult to obtain relevant information on such cases.

The court system in Malawi consists of the Supreme Court of Appeal, the High Court and subordinate courts. Parliament can also establish specialized courts with limited jurisdiction. The Supreme Court of Appeal is the highest court of record. Most of the issues relating to the environment and natural resources are handled in the subordinate courts. It is usually a problem to get latest laws related to the environment and natural resources in the lower courts. In many cases, the judgments may not be punitive enough relative to the environmental damage caused.

Public participation in implementation of strategies, plans, programmes and projects from sector to sector. Most of the donor-funded programmes and projects which are being implemented by either NGOs or government agencies have very strong elements of public participation, while solely public sector driven initiatives for a number of reasons still demonstrate limited public participation.

Malawi has recently been in a transition in resource management policy moving from command and control to collaborative management and community-based management. This represents a dramatic shift. Over the years government has made an effort to get the participation of a wide range of stakeholders in the preparation of policies, laws, strategies and implementation of projects. However the assessment found out that there are still specific elements within the Act, which demonstrate, continued government control.

The role of capacity building in environmental management is highly recognized by government, civil society, media as well as international organizations. The assessment measured investments in capacity building by the government in selected natural resource management government departments and one NGO. It was revealed that since the Earth Summit, Government set up a number of institutions and reviewed a number of policies aimed at improving the management of the environment and natural resources. However, despite putting in the place the systems and procedures, policies and legislative frameworks

that are very conducive, the implementation arrangements and enforcement mechanisms are very weak. The capacity building efforts more especially of the communities have been uncoordinated and very limited. The weak capacity building support to the various stakeholders more especially the community has led to policy implementation failure.

In most of the Government Departments, it was noted there are a lot of pieces of quality environmental and natural resource related information, which are not readily available to staff members within the departments and other government departments. Most of the information is in English despite the majority of Malawians not able to read and understand English.

There are over 50 NGOs involved in environment and natural resource management activities in Malawi. Surprisingly, the growth in number of environmental organizations has not directly translated to the increase in number of professional environmental and natural resource management experts. Most of the organizations have serious capacity problems and their activities are localized. Despite this shortfall, the NGOs have provided considerable capacity building support to stakeholders at community level. Most of the NGOs in Malawi are heavily donor dependent. Despite many organizations willing to support NGO development work, few donors are supporting environmental and natural resource management work.

Finally, the paper endeavors to show how the results of the assessment can be used to achieve effective access to information, public participation in decision-making and access to justice. The following are the key recommendations:

- Lobbying for expanding the scope of section 37 of the Constitution so that it should not limit its application to information held by the state or any of its organs;
- There is need to speed up the enactment of the draft Access to Information Bill to provide for specific provision on access to information, the procedures for accessing information and how to deal with claw back clauses relating to privacy, proprietary information, confidential information, official secrets among others.
- Speeding up the establishment of the Environmental Appeals Tribunal;
- Removing barriers to effective public participation in environment and natural resources management such as within the forestry sector;
- Both the public sector and NGOs should be coordinating their capacity building efforts so that the gains from such efforts should be effectively applied.
- Ensuring that local level ENRM institutions such as VNRMCs have the requisite capacity to discharge the functions given to them under various policies and legislation.

- Investing in training both judiciary staff and law students in environmental law so that they are able to effectively handle cases related to environment and natural resources.

CHAPTER 1: INTRODUCTION

1.1 Malawi Social, Environmental and Political Context

1.1.1 Social Context

Malawi is a land-locked country situated in Central Africa. It borders Mozambique in the southeast, Tanzania in the northeast and Zambia in the west. It has a total area of 118,480 square kilometers. 20 % of which is covered by Lake Malawi. The population estimates for 2006 are at 13,013,926 with a growth rate of 2.4%¹.

The main ethnic groups are Chewa, Nyanja, Tumbuka, Yao, Lomwe, Sena, Tonga, Ngoni, Ngonde with slight populations of Asians and Europeans. According to the 1998 Census report Chichewa is the main language spoken by 57.2% of the population, while the other languages and the subsequent percentage of the population who speak it are as follows: Chinyanja 12.8%, Chiyao 10.1%, Chitumbuka 9.5%, Chisena 2.7%, Chilomwe 2.4%, Chitonga 1.7%, other 3.6%.

Malawi has a predominantly agricultural economy, with most of its over 13 million population depending on subsistence farming. Agriculture contributes 38 % to GDP (1999), services 43 % and industry 19 % (with manufacturing contributing 14 %). Gross Domestic Product (GDP) per capita is around US\$140.00, which makes Malawi among the poorest countries in the world. Annual GDP growth rates averaged only 2.1 % in the 1980s and 3.8 % in the 1990s. Over 65 % of Malawi's population live below the poverty line (NEC, 1998); consuming less than US\$1.00 per day. With annual population growth rates falling from 3.3 % in recent years to 2.6 %, the average annual per capita growth over the past 20 years has been below 0.5 %. Life expectancy has dropped from 48 years in 1990 to 37 years in 2000, a situation that is further aggravated by the high incidence of HIV/AIDS, malaria and other killer diseases.

HIV/AIDS prevalence is continuing to increase, not only in Malawi, but also in Sub-Saharan Africa as a whole. Infection rates indicate that close to 40 % of the sexually active population may be HIV-positive. Figures published by the National AIDS Commission indicate that some 500, 000 have died already and that another 1, 000, 000 are likely to die by 2012.

Malawi's illiteracy rate of 42 % is very high, with 60 % of illiterates being women. With the introduction of free primary education, enrolment rates have risen substantially in recent years², although questions on the quality of teaching remain. Adult literacy rates are very low, 43 % overall and 32 % for adult women, which continue to severely restrict access to appropriate resources, services and information.

Since 1994, the growth of the NGO sector in Malawi has been dramatic. Spurred on by the transition to multi party, NGOs have assumed a prominent role in the development of Malawi. There are now over 50 NGOs dealing with the environment and natural resources

¹ Visit <http://www.infoplease.com/ipa/A0107747.html>

² 1998 net primary enrolment rate of over 70 %, 1992 level of 48 %;

management. These organizations vary in size and type. Most of these NGOs focus on forestry activities. There are just a few NGOs engaged in fisheries, wildlife and policy advocacy.

1.1.2 Environmental Context

Like many of its SADC neighbors Malawi has exhibited increasing concern over environmental problems facing the country. Environmental awareness grew steadily throughout the 70s and 80s, and the Government was an “active” supporter and contracting party to many of the international conventions, protocols and treaties.

Environmental values have been enshrined within the Constitution of the Republic of Malawi. Chapter III, Section 13 (d) of Malawi’s Constitution adopted in May 1995, stipulates the following principles and objectives: “to manage the environment responsibly in order to: (i) prevent the degradation of the environment, (ii) provide a healthy living and working environment for the people of Malawi, (iii) accord full recognition of the rights of future generations by means of environmental protection; and (iv) to conserve and enhance the biological diversity of Malawi.

Since 1994, Malawi has undertaken a massive, wholesale review of all pertinent policies, legislation, and institutions impacting upon the environment and the management of natural resources. Between 1995 and 2005 the Government reviewed, finalized and adopted among others, the National Environmental Policy, National Forestry Policy, the Water Resource Management Policy and Strategy, an Agricultural and Livestock Development Strategy and Action Plan, Malawi National Land Policy, and National Wildlife Policy. Malawi has also reviewed and revised legislation such as the Environmental Management Act (EMA) has been introduced.

In order to “mainstream the environment” within Government policies the National Environment Action Plan (NEAP) was adopted in 1994. The NEAP represented Malawi’s first attempt to provide an overall, macro-framework for the integration of environmental issues and concerns into the nation’s socio-economic development plans and to consider the various impacts at the micro level. The NEAP identified nine priority areas of environmental concerns. These were: soil erosion, deforestation, water resource depletion and degradation, threats to fish resources, threats to biodiversity, human habitat degradation, high population growth, air pollution and climate change (GoM/NEAP 1994: 35).

Decentralization has also been a preoccupation amongst most Malawi’s policy makers and donor allies. While decentralization has undoubtedly had impacts at the district level, much of the discourse on district level environmental management remains a secondary priority. Although offices of Environmental District Officers have been set up in all the districts, these developments still largely remain a sideshow to the main concerns over how decentralization is structured, financed and codified.

Beside this constitutional provision Malawi has committed itself to numerous international obligations relating to the management of the environment and natural resources. The most

prominent of such obligations relate to the Rio Declaration and the World Summit on Sustainable Development (WSSD).

In 1992 Malawi was among the 152 member states of the United Nations that participated in the United Nations Commission on Environment and Development (UNCED), which is also referred to as the Earth Summit in Rio de Janeiro, Brazil. During this summit Malawi was amongst the various countries in the world that subscribed to the need for a clean and safe environment by signing a number of instruments relating to sustainable development, environment and natural resources management. The Rio declaration laid out key principles for ensuring sustainable development. Principle 10 specifically deals with public access to environmental information, access to justice and public participation. This principle states ‘that environmental issues are best handled with participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.’

In 2002, ten years after the Earth Summit, Malawi participated in the World Summit on Sustainable Development (WSSD) where world governments reaffirmed the commitments made at the Rio summit by further committing themselves to developing measurable strategies to achieve sustainable development. Article 128 of the Johannesburg Plan of Implementation (PoI) states that ‘States shall ensure access, at the national level, to environmental information and judicial and administrative proceedings in environmental matters, as well as public participation in decision-making, so as to further principle 10 of the Rio Declaration on Environment and Development.’

After returning from Johannesburg, to demonstrate commitment Malawi quickly mobilized resources to formulate the National Strategy for Sustainable Development (NSSD). The NSSD has become the basis for Malawi’s Sustainable Development Framework for Action to implement the WSSD recommendations. The NSSD shall guide donor and government partnerships and become the basis for monitoring and evaluation of Malawi’s progress in implementing the Summit commitments and other national instruments. The NSSD goal is to manage the environment responsibly, prevent degradation, provide a healthy life for all, protect the rights of future generations and conserve and enhance biological diversity.

The 1998 European Convention on Access to Information, Public Participation in Decision Making and Access to Justice in Environmental Matters (the Aarhus Convention) provides a more elaborate explanation of the content and meaning of the three procedural rights including the procedures that may give meaning and utility to the rights. Hence although it is not part of the law of Malawi, the Aarhus Convention is evidence of international practice and will therefore be used in this paper for this purpose. A number of other conventions provide useful guidance to interpretation of these procedures.

1.1.3 Political Context

Malawi has three branches. These are executive, led by the State President; legislature, led by the Speaker of the National Assembly and the Judiciary, which is led by the Chief Justice.

Since 1994, the Malawi has supported concepts of democracy, popular participation in decision making, representative and responsive government, transparency and accountability. The Government has introduced a democratic constitution and is strengthening local government to promote a decentralized system of governance. Malawi is a multi party democracy with over 20 registered political parties out of which only six are represented in Parliament.

1.2 Background Information to Global Networking on Access Rights

1.2.1 The Access Initiative

The Access Initiative (TAI) is a global coalition of civil society groups that seek to promote transparent, participatory, and accountable governance in achieving sustainable development. The TAI activities are based on the “Access Principles” of information, participation, and justice as an empowerment mechanism for individuals to have a meaningful voice in decisions that affect their health, environment and well being. The TAI global network works to hold national governments accountable for their Principle 10 commitments by conducting independent assessments of the law and practice supporting access to information, public participation, and access to justice.

Six organizations jointly lead TAI and the initial assessment in the TAI network took place in their countries. These organizations are Corporación Participa in Chile, Thailand Environment Institute in Thailand, World Resources Institute in United States, Environmental Management and Law Association in Hungary, Advocates Coalition for Development and Environment in Uganda and Iniciativa de Acceso-México in México. Other countries with the region involved in the TAI work include South Africa, Kenya, Cameroon, Mozambique, Zimbabwe and Tanzania.

1.2.2 Partnership for Principle 10

The Partnership for Principle 10 (PP10) is a cooperation of government agencies, civil society groups, and international organizations working together to implement practical solutions that provide the public with access to information, participation, and justice for environmentally sustainable decisions. The partners are committed to promoting accelerated implementation of Principle 10. It builds on and supports the independent assessment activities undertaken by The Access Initiative.

PP10 is committed to translating these principles into action by promoting transparent, inclusive, and accountable decision-making at the national level. The Partnership provides a venue for governments, international organizations, and civil society groups to work together to implement practical solutions that provide the public with access to information, participation, and justice for environmentally sustainable decisions.

1.3 Purpose of the Report

This report is an analysis of the legislative framework and actual practice in Malawi in relation the three pillars of principle 10 of the Rio Declaration, namely access to information, participation in decision-making and access to justice. The report is a result of work done by civil society institutions and other independent researchers in Malawi that included the Centre for Environmental Policy and Advocacy (CEPA), Coordinating Unit for the Rehabilitation of the Environment (CURE), Training Support for Partners (TSP) and other independent researchers which included, a judge of the High Court in Malawi and a natural resources manager.

This report is an analysis international and national instruments that pertain to the three procedural rights as aforesaid. In particular, this report analyses the constitutional framework within which these rights may be articulated, the specific policy and legislation granting these rights including some laws that may adversely affect their enjoyment or protection. It further provides practical insights of some key institutions involved in the implementation or enforcement of the three procedural rights and specific case studies. Particular focus has been made to consider capacity building relating to these rights of practical examples of operation of access rights and efforts by various stakeholders in implementing them.

1.4 Report Outline

This chapter has provided the background information to international commitments guiding the TAI activities and the Partnership for principle 10. Chapter two provides the assessment methodology in terms of how case studies were identified in the research, the information sources utilized, and the research data was entered and analyzed. Chapter 3 presents the findings from the assessment starting with legislative provisions relating to the access rights, public access to information, access to justice, public participation and capacity building. Chapter four provides recommendations for each of the assessment categories. Chapter five summarizes the outreach strategies for post assessment related activities being planned.

CHAPTER 2: TAI METHODOLOGY

The methodology for the Malawi assessment was based on the three pillars of Principle 10. Capacity Building has also been included based on the perception that it is key for the actual implementation of the three access rights. The chosen indicators evaluated the legal framework and practice in terms of the effort and effectiveness of the measures undertaken by government and other stakeholders. Aspects measured include the regularity of information, the presence and quality of the law under each category.

2.1 TAI Malawi Research Team and Advisory Panel

In order to implement the TAI, CEPA involved selected civil society organisations to participate in the research component of the initiative. Case studies were selected from various environment and natural resources sectors and using the TAI indicators measure and monitor government performance in order to identify gaps and recommend priority actions for enhanced performance.

This core team was selected based on expertise in areas of law and policy, environment and natural resources management, capacity building and public outreach. The team has been responsible for research design, execution of research and report writing. The team comprised researchers from CEPA, the Coordination Unit for the Rehabilitation of the Environment (CURE) and the Training Support for Partners (TSP). Terms of reference were developed for the TAI Malawi research and each researcher.

In addition to the research team a Review Panel was setup, which reviewed the research results and this report. The panel followed the research process and made observations and recommendations on the findings. This panel consist of representatives from key government institutions such as Environmental Affairs Department, Ministry of Justice, Parliamentary Committee on Agriculture and Natural Resources and University of Malawi Centre for Social Research; Council for Non Governmental Organizations in Malawi, Malawi Economic Justice Network, the Food Security and Agriculture Network, Landnet Malawi and donor agencies such as the Canadian International Development Agency (CIDA).

2.2 Case Identification

The process of identifying case studies involved the research team members, the members of the Advisory panel and other key stakeholder from government and civil society institutions. During the project launch stakeholders reviewed the suggested cases for the assessment.

The cases identified by the study were very recent as such the data was relatively easier to find and mostly accurate as it reflected the current situation in the country.

2.3 Information Sources

Information for the research was collected based on the guidelines provided in the TAI global network. The indicator worksheets were developed for the research across the categories. Both structured and semi-structured interviews were conducted. Using the terms

of reference each research team member developed a checklist and questionnaire for use during the consultations with stakeholders. CEPA provided a generic official introductory letter for all the teams. The scope of work stipulated that the consultations should be in-depth, of a qualitative nature, using key informants from various sectors and with some form of analysis and interpretation.

2.4 Data Collection, Entry and Analysis

The assessment was done using law, effort and effectiveness indicators as per the TAI version 2.0 database. In this context law indicators evaluated the general legislative framework for guaranteeing access, while the effort and effectiveness indicators were applied to selected case studies. The use of the three indicators allowed the identification of gaps between the policy framework and practice on the ground in terms of implementation of the Access Principles. The researchers used the downloaded worksheets to fill in the research results and after these were uploaded centrally at CEPA to ease internet problems and also for easier coordination to TAI research page <http://research.accessinitiative.org>. Analyses were run from the database and these were circulated to researchers. In most instances only core indicators were used.

CHAPTER 3: FINDINGS

3.1 The Constitutional and Legal Context of Access Rights in Malawi

3.1.1 Brief Introduction to the Malawi Constitution

The Constitution of the Republic of Malawi provisionally came into force on 18 May 1994 to coincide with a new democratically elected government. The Constitution was designed to be in force for a period of twelve months, during which it would undergo extensive analysis, review and comment from various sections of Malawian society in accordance with section 212 of the Constitution. Considering the political and legal history of the country, this constitution making process can be safely described as the first time that the public in Malawi effectively participated in policy and law making. Indeed despite justified concerns regarding failure to reach out and get the views of some sections of society, and to incorporate certain suggestions made by stakeholders, the constitution making process was very participatory and produced a document that by and large embodied well known concerns mainly arising from the country's political and legal experiences. Obviously effective participation of different sectors of society depended very much on the level of their enlightenment as well as access to resources to enable them to participate in the process. This was also the time that Malawi for the first time witnessed the birth of a civil society determined to voice its concerns and enter the political market.

3.1.2 The Access Rights in the Context of the Malawi Constitution

The results of the participation of civil society in the constitution making are clearly reflected in the final constitution, which came into force on 18 May 1995. The Constitution is deeply suspicious of governmental, presidential or personal authority. Thus the Constitution was made the supreme law of the country and any law or act of government that is inconsistent with it is invalid to the extent of that inconsistency (section 5). Section 6 as read with section 12 clearly defines the source of governmental authority, namely, the people of Malawi through elections. Section 12, paragraphs i and ii put the point poignantly:

All legal and political authority of the state derives from the people of Malawi and shall be exercised in accordance with this Constitution solely to serve and protect their interests.

The authority to exercise power of State is conditional upon the sustained trust of the people of Malawi and that trust can only be maintained through open, accountable and transparent Government and informed democratic choice.

These provisions are stipulated under chapter III of the Constitution as constitutional principles and section 12 states that they are some of the underlying principles upon which the Constitution is founded. This provision provides authority for participation of the public in the governance of their affairs. The election of state officials to govern their affairs is based on trust that the officials will promote the interests of the electorate and therefore conditional upon the continuance of that trust. Thus *prima facie* public participation in governance is firmly entrenched in the Constitution.

The question that must be confronted however is the implication of these provisions. Does a violation of these fundamental principles nullify the offending act or decision? Chapter III of the Constitution has three sections. Section 12 stipulates fundamental principles. On the other hand section 13 outlines principles of national policy, which include state commitment to prevention of environmental degradation and provision of a health living and working environment. Section 14 provides guidelines for the interpretation of principles of national policy 'contained in this chapter'. The words 'contained in this chapter' seem to suggest that the guidelines in section 14 apply to interpretation of section 12, yet this section does not have principles of national policy. Section 14 provides that the principles of national policy are merely directory in nature but courts shall be entitled to have regard to them in interpreting this Constitution. The effect of section 13 principles of national policy is therefore that they are not binding. The reason for this non-binding status seems to be because the principles in this section contain what are called third generation rights of a social and economic nature. Their enforcement would drain state resources to unsustainable levels.

The interpretation of section 12 is therefore not provided for but it is clear. The principles laid down in section 12 are foundation of the Constitution, the basis of the exercise of any political or legal authority of the state. The effect of the violation of these principles should therefore be to make the act or decision unconstitutional in accordance with section 5. These are political rights and cannot cause any economic concerns, which the state may fail to meet.

The Constitution has several specific provisions granting right to access information, participation in decision-making and access to justice. The following are the critical ones:

- ✓ Fundamental Human rights and freedoms
- ✓ Access to Environmental Information
- ✓ Access to justice
- ✓ Capacity building
- ✓ Public Participation in Decision making

3.1.3 Access to Information

Section 37 gives every person the right of access to information held by the State or any of its organs in so far as that information is necessary for the exercise of his rights. It follows therefore that individuals may demand information from departments of government or any of its agents relating to environment and natural resources management. According to this section, the information must be sought for purposes of exercising one's rights. This suggests that the person seeking information will be required to demonstrate his interest in the information. Those who fail to prove their interest may be denied access.

It is clear that the information in question need not be confined to issues that directly relate to environmental rights. Hence the information may be used to enable the claimant participate in peaceful political activities intended to influence the composition and policies of government in terms of section 40 (1) (c). It may also be used to further the right to freely engage in economic activity (section 29) or the right to development (section 30) or the right to fair and safe labour practices under section 31. While these rights may be specific to the individual, there is ample scope for information to be used to promote the rights of others. This may be the case where, for example, such promotion involves exercise of the claimant's political right (section 40), freedom of press (section 36) and academic freedom (section 33). In terms of section 44 all the aforesaid rights are derogable and hence subject to restrictions or limitations. The only right that is not derogable is academic freedom under section 33 aforesaid.

It follows therefore that policy or legislation may be promulgated that limits access certain information or for certain purposes. Such restrictions must however be reasonable, recognizable by international human rights standards and necessary in an open and democratic society. Thus claims that the information is protected under the Official Secrets Act, that is seditious in terms of the Penal Code, that it is privileged or that it is a trade or commercial secret must pass the above test. The person claiming that the information is protected must show that it is reasonable, recognized by international human rights standards and is necessary in an open and democratic society.

An issue that may cause concern with respect to the right of access to information under section 37 is whether information under the custody or control of persons, organizations or companies outside government is covered. Section 37 makes it clear that the State or any of its organs must hold the information in question. Hence information in private hands is not covered by this provision. Further, a reading of section 15 (1) suggests that certain rights are not enforceable against natural or legal persons. The right of access to information seems to be one such right. There is no justification for this restriction and it is therefore necessary that lawmakers should provide for this right to be enforceable against private individuals and organizations that hold information which may be essential for the exercise of one's right to live in an environment that is clean and healthy.

In addition, certain provisions in the Constitution itself may further curtail the right of access to information. The protection of privacy provisions under section 21, which include the right not to be subjected to seizures of private possessions or interference with private communication, is one such example. Of course these restrictions are subject to limitations themselves in the sense that a competent court may make an order of inspection or seizure of private possessions or communication in accordance with the rules of court procedure or under specific legislation. Order 24 of the Supreme Court Rules provide for pre-emptory orders where there is risk that a custodian of information may destroy or hide information if given notice of request for information. In relation to environment and natural resources management, the Environment Management Act, 1996, the Fisheries Conservation and Management Act, 1997 and the Forestry Act, 1997 have specific provisions empowering designated officials to search and impound private possessions and communications. It is noteworthy however, that such inspections or seizures will usually be ordered where there is litigation or potential litigation or other enforcement measures. A private citizen may require information for purposes other than litigation or any process that may require the intervention of a judicial or quasi-judicial institution such as the Office of the Ombudsman or the Human Rights Commission. It is in this respect that a separate mechanism is required to provide access to information without having to anticipate or be engaged in litigation.

3.1.4 The Right to Public Participation

Section 7 of the Constitution expressly enjoins the executive to initiate and implement policies and legislation, which reflect the express wishes of the people of Malawi and which promote the principles of the Constitution. It follows therefore that a policy or legislative process that does not seek to engage the public violates this constitutional principle and may therefore be challenged to that extent. The constitution does not have specific procedural rights for promoting public participation in decision-making.

There are a few instances in which the constitution establishes mechanisms for ensuring public participation in policy and decision-making. Of particular interest is part XIV of the Constitution, which spells out the powers and functions of local government authorities. Section 146 (2) outlines the responsibilities of local authorities, which include the consolidation, and promotion of local democratic institutions and democratic participation. Section 146 (4) further provides that parliament may provide that issues of local policy and administration be decided on at local level under the supervision of local government officials. Malawi has adopted and is implementing a decentralization plan which seeks to devolve a number of hitherto central government functions to local authorities and thereby promote grassroots participation in development planning and implementation.

Further, the Local Government Act 1998 gives local authorities several powers and functions including responsibilities for environment and natural resources management. While it is clear that the functions and responsibilities given to these authorities are not far reaching, there is clear recognition that public participation can only be enhanced by devolving responsibilities to lower levels of governance and local authorities have been

recognized as holding key functions for deepening local democratic institutions and governance.

According to the guiding principles contained in the Malawi National Environmental Policy, adopted by the Government in 1996 and revised in 2004, Malawi shall mobilize Community Based Organizations (CBOs), the private sector and NGOs to achieve sustainable environment management. In particular, the involvement of local communities to protect, conserve and sustainably utilize the nation's natural resources is considered key. Some guiding principles are laid down and these are: Community participation, empowerment and sharing of benefits are key to effective environmental management; and Government departments shall perform supervisory and regulatory functions providing enabling policy and legislative framework for resource management activities. In tandem with these principles and objectives the Environment Management Act was enacted in 1996 and provides every person with:

- ✓ *The right to a clean and health environment*
- ✓ *The duty to protect and conserve the environment*

It is clear that in conferring the right to a clean and healthy environment, the legislature was seeking to strengthen the somewhat nebulous principles enunciated in the Constitution, which do not seem to be justiceable. With this right every citizen has the right to seek a remedy where environmental harm has been perpetrated and hence will be able to participate in influencing decisions affecting the environment and natural resources. This of course assumes that the citizen has the capacity to bring a suit or utilise such other tribunal to enforce the right. The reality is that there are constraints, which may hinder the realization of this right, and these have been enumerated elsewhere. In addition, the duty to protect and conserve the environment imposed on every Malawian provides an even stronger call for the public in Malawi to participate in environment and natural resources management.

Following the Malawi National Environmental Policy and the Environmental Management Act, which are framework environmental policy and legislative instruments, other sectoral agencies such as the forestry, and fisheries departments have revised and enacted their own policy and legislative instruments, which provide for community participation in the management of these natural resources. The Fisheries Conservation and Management Act 1997 provides for the participation of local communities in the conservation and management of fish resources. This was upon realization that the command and control methods of conservation that the department had pursued for a long time had yielded fewer tangible results and fish resources were dwindling. There are regulations formulated under the Act, which provide for the formation of beach village committees (BVCs), which are the lower level local institution responsible for mobilization of local fishermen in fisheries conservation including assisting the fisheries department in enforcing fisheries regulations. It may be noted that so far a number of BVCs have been formed around the southern part of Lake Malawi, Lake Malombe and Lake Chilwa, which carry out the functions under the Act, and the regulations made there under. The BVCs are given power to make their own rules and the Minister responsible for fisheries promulgates the rules.

The Forestry Act 1997 also to a limited extent provides for local community participation in forestry conservation and management (section 5). In particular section 31 provides for the formation of Village Natural Resources Management Committees (VNRMCs), which can enter into forest management agreements with the forestry department. The jurisdiction of the VNRMCs is however limited to village forestry areas, which are forests on customary land are. The VNRMCs are therefore not entitled to participate in the management of protected forest areas, which are reserved forests on public land. There is however provision (section 25) for the Director of Forestry to enter into co-management agreements with local communities for the implementation of management plans that are mutually acceptable to both parties. This provision however does not provide the machinery for entering into such agreements. It would appear that the community would have to be properly organized as a legal entity in order to enter into such an agreement. It is not clear why this responsibility could not have been given to a VNRMC under section 31.

It is noteworthy that the lack of proper organization of institutions into legal entities that can take action in their own name does hinder effective participation of these committees in environment and natural resources management. In addition, in all these policy and legislative frameworks, the enabling legislation does not go far enough to capture the spirit and intent of the policy framework. Hence while it would seem logical that for citizens to effectively participate in natural resources management powers should be granted to them to participate in policing and resource monitoring, the enabling legislation falls far short of this intent. If therefore members of the BVCs arrest offenders who violate the Fisheries Conservation and Management Act, the arrest may easily be challenged for lack of powers of arrest on the part of members of BVCs. Finally, there is little capacity building to ensure that in addition to local knowledge of the various committees there is sufficient knowledge of the policy and legislative frameworks. These issues need to be attended to ensure that public participation is effective.

There are other policy and legislative instruments, which promote the participation of the public in environment and natural resources management. The few discussed are merely examples. In addition public participation is also enhanced through the environmental impact assessment provisions under the Environment Management Act 1996 and the rules made there under. Under these EIA provisions briefs and reports from EIA studies may be required to undergo public hearings, a tool which can be very beneficial if properly handled and resourced. A few public hearings have been conducted following EIA studies. These included sand mining in Salima and uranium mining in Karonga.

3.1.5 Right of Access to Justice

The Constitution expressly provides for the right of access to justice under section 41. Every person has the right to be recognized as such before the law. This provision is important in that it establishes every person as a subject of rights in law and therefore having standing to redress any wrong committed against him or her. The provision however does not necessarily remove the need for a complainant to establish that he or she has sufficient interest, nor does it make it possible for groups to sue without having to register as an association or company or without having to take a representative action. The section goes

further to provide for access to courts of law or such tribunal with jurisdiction for final settlement of legal issues. Most importantly, the section provides the right to an effective remedy for acts violating the Constitution or any other law.

There is provision for judicial review to the High Court under the Constitution. Section 43 provides for a right to lawful and procedurally fair administrative action, which are justifiable in relation to reasons given where a person's rights, freedoms, legitimate expectations or interests are affected or threatened. Hence the Constitution clearly requires that actions or decisions of public authorities and, it seems, private persons that threaten freedoms, interests or legitimate expectations of any citizen may be challenged if they violate principles of natural justice. The authority or person carrying out such activity or making such decision is also under an obligation to give reasons for the action or decision taken. It follows in this respect that if information has been denied the seeker of information may apply to the High Court for judicial review of such action. In one case, *Chitedze vs Blantyre Netting Company*, the High Court ruled that section 43 applies to private organizations, in this case a commercial entity, which had dismissed its employees without furnishing them with any reason for the dismissal. This was a clear case of a horizontal application of the Constitution and therefore makes private persons subject to constitutional duties in appropriate cases.

As already noted, the Environment Management Act provides for the right to a clean and healthy environment and a duty to conserve and protect the environment. The Act further provides mechanisms for realizing the right to a clean and healthy environment.

The first is a suit that can be brought to enforce the right in the High Court. Secondly there is a complaint procedure under which a person claiming violation of the right can file complaint with the Minister responsible for environment. The Minister is required to investigate the issue and provide a written response, which may include giving instructions to the Attorney General to take legal action on behalf of the government. This seems to be a procedure that can easily be utilized by those persons whose right to a clean and healthy environment has been violated but are unable for one reason or another to take legal action.

This complaints procedure would however be less effective where the act or omission complained of is perpetrated by a government agency. Theoretically, the Minister can still recommend action to the Attorney who is responsible for taking action against public wrongs at common law. However since the Attorney General is the principal legal advisor to all government departments this procedure would not be effective. On the other hand it seems possible that the Minister can in an appropriate case advise the offending department to desist from the act complained of or restore the right alleged to have been violated.

The third mechanism is the Environmental Appeals Tribunal established under part XII of the Environment Management Act. The Appeals tribunal is established, among other reasons to hear:

Appeals against refusal by the Minister to grant licenses;
Appeals against any decision of the Minister under the complaints procedure described above;
Appeals against revocation of licenses; and

Appeals against the decision of the Director under the Act or any other relating to the protection and management of the environment, which the Minister or the Director may refer to it.

In addition to these mandates that are specific to the tribunal, there is a clear difference between it and the ordinary courts in that unlike ordinary courts, the tribunal is not bound “by rules of evidence and shall admit any matter which in its opinion shall assist it to arrive at a just and equitable decision for the advancement of the purposes of the Act”. Further the tribunal has power to make its own rules (section 70 (3) (4)).

Considering the level of environmental consciousness in Malawi, it may be necessary for the court to be given authority to act in certain instances on its own motion or through the epistolary jurisdiction as developed by the Indian Supreme Court. This would enable complainants to write to the court for consideration of what they consider a violation of the Act or any other environment related law.

The Environmental Appeals Tribunal has not been established yet but could have the potential of facilitating change in environmental management. Indeed if given a wide mandate to investigate matters and allow members of the public to access it without recourse to the rigmarole associated with the ordinary courts, it could improve access to environmental justice in accordance with principle 10 of Agenda 21.

3.1.6 Conclusion

With the change to multiparty politics Malawi adopted a new constitution in 1994. This constitution has several specific provisions granting right to access information, participation in decision-making and access to justice. However, although these positive provisions exist, there are still certain provisions in the constitution itself that may curtail the right of access to information. For example the phrase within section 37 that suggests that the person seeking information will be required to demonstrate his interest in the information implying that those who fail to prove their interest may be denied access.

One the other hand constitutional rights may not be exercised if other specific laws are not enacted. Hence the fulfillment of the provision right to access to information provided in the section 37 of the Constitution is subject to an Act of Parliament, which has not been enacted up to now. Section 37 is also limited to information held the State or Government yet there are private individuals or organizations who hold information which may be essential for the exercise of one’s right to live in an environment that is clean and healthy.

In terms of public participation the Malawi constitution does not have specific procedural rights for promoting public participation in decision-making. However other provisions reflect issues public participation in decision-making particularly those relating to local governance, which among others outlines the responsibilities of local authorities, which include the consolidation, and promotion of local democratic institutions and democratic participation. Through the Local Government Act 1998, there is clear recognition that devolving responsibilities to lower levels of governance can only enhance public participation. While these are being promoted in most sectors including environment and

natural resources there is need for increased commitment in terms of resources. Beside the context of local governance public participation is also promoted within the EIA process as a legal requirement.

The Constitution provides for access to justice, through recognition before law, enabling access to courts and providing the right to effective remedy. But the complaint procedures particularly those relating to the Environment Management Act has some weakness that are likely to nullify the effectiveness of procedures in access justice.

3.2 Public Access to Information in Malawi

3.2.1 Access to General Information in Malawi

As discussed in the previous section the constitution clearly guarantees the right to freedom of expression to every person. Forums through which one can freely communicate thoughts and ideas targeting a larger audience in Malawi are mainly via radio and print media, however the majority cannot easily meet the cost attached to this. The provisions for access to general information access as contained in Section 37 of the Republic of Malawi Constitution are general to all forms of access to information. Section 37 states *“Subject to any Act of Parliament, every person shall have the right of access to all information held by the State or any of its organs at any level of Government in so far as such information is required for the exercise of his rights”*.

Considering the provisions of section 37, it suggests that there need is for a generic legislation that would make provisions regarding public access to information. The legislation is supposed to establish the public's right to obtain information from government agencies. This legislation would also enable individuals to file requests for various forms of information held by different institutions and individuals including Malawian citizens, foreign nationals, organizations, and associations among others. It is very discouraging to note that up to now Malawi has not enacted any such legislation to provide for public access to information. A Freedom of Information Bill is under development coordinated by the Ministry of Information, Communication and Tourism.

3.2.2 Access to Environmental Information in Malawi

The Environment Management Act gives the Minister responsible for environment the responsibility to *‘promote public awareness and participation in the formulation and implementation of environmental and conservation policies of the government’* and to co-ordinate ‘the promotion of public awareness on the protection and management of the environment’ (section 3). It follows that the Minister responsible for environment has the responsibility to disseminate information relating to environmental conservation and management to the public. Specifically the Minister is under obligation to produce state of the environment reports and submit the same to parliament. This is another way in which the public can have direct access to environmental information. In addition the EIA provisions under the Act requires the developer to provide information relating to the proposed project so that members of the public can make an informed opinion regarding the nature of the activities to be undertaken and the likely effects of those activities on the environment and natural resources. The Act however empowers the director to exclude information from the general public if the publication of such information would prejudice the developer in his or her business. This is a reasonable provision and as long as the case for excluding such information is made out the Director will allow the application. A member of the public may however challenge the exclusion of the information through an appropriate forum.

Apart from the foregoing provisions however the Act does not provide any procedure for accessing information such as the authority to whom the information may be obtained, the

time limit within which the request need to be responded to or what should happen when there is a refusal. The available procedures would be to proceed by way of application for judicial review to the High Court in terms of constitutional provisions or by filing a complaint to the Minister under the Environment Management Act. The first procedure may be inaccessible to most parties in the country due to expense and cumbersome procedure requiring the intervention of a lawyer. The second may also be expensive for those outside the main cities. It is therefore necessary to have specific provisions dealing with the procedure to access information that take into account the different needs of potential users of information.

Although there is a constitutional provision guaranteeing the right of access to information, access to general environmental information is not provided for in the Environmental Management Act (1996). The provision in EMA³ could be interpreted to be limited to specific type of information as it states that ***“subject to subsection (3), every person shall have access to any information submitted to the Director 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.”*** However in recognizing the importance of the right to access environmental information and also to be in conformity with the Republic of Malawi Constitution, this is likely to be reflected in the 2006 Amended Environmental Management Act as the final draft Section 5 (a) provides for ***“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.”***

It is useful to note that there are a number of processes in place, which if effectively implemented and utilized could significantly contribute to increasing public access to environmental information. These include the production of the National Environmental Action Plan (NEAP). The Government of the Republic of Malawi in December 1994 launched the NEAP⁴. According to the 1996 EMA⁵, every five years the Minister is required to lay before the National Assembly a revised copy of the NEAP for approval. At district level, under the supervision of the Environmental District Officer, every five years the District Development Committee (DDC)⁶ is suppose to produce a District Environmental Action Plan (DEAP). The EMA requires DDCs to disseminate information relating to the environment through public awareness programmes and to prepare reports on the state of the environment in the district every two years at least two months before the end of each second calendar year (Section 19.c). One very common issue is that almost no DDC has had the opportunity to prepare state of environment report every two years. Yet another complication, which leads to denying access to environmental information, is that while the EMA expects DDCs to prepare District State of the Environment Reports (DSOER) every two years, the Local Government Act (1998) does not reflect this role.

³ See Section 52 (1);

⁴ The NEAP outlines environmental strategies, measures and programmes necessary for promoting the protection and management of the environment and the conservation and sustainable utilization of natural resources;

⁵ See Section 21;

⁶ Now refereed to as District assembly;

EMA 1996 mandates the Minister responsible for the environment to make a statement in parliament regarding the State of the Environment every year⁷. However, adherence to both activities has been problematic over the years. In addition, access to both documents is a constraint, particularly to members of the public. The disparity between the legal provisions for production of these two important documents and limited practice on the ground minimizes the opportunity for the public to get access to environmental information. The last time the Minister made this statement in Parliament was in 2004. On the hand the NEAP was produced in 2002.

3.2.3 Access to Environmental Information Case Studies

3.2.3.1 Information in an Emergency: Cholera Outbreak in Blantyre

The research indicates that public officials are mostly reactive in nature when it comes to providing information on emergencies. In the 2000 there was a Cholera outbreak in townships of Mbayani, Chemusa and Bangwe. It claimed more than 1000 lives. The incidence is attributable to lack of potable water and poor sanitation in the areas affected. The City of Blantyre in collaboration with the Ministry of Health mounted a massive cholera awareness campaign; one of the products has been the formulation of the cholera preparedness plan for the city.

As a public health authority Blantyre City Assembly (BCA) has mandate to disseminate information about cholera outbreaks in the city. It derives its mandate from the Public Health Act, Local Government Act and various sanitary by-laws in place. BCA works closely with the Ministry of Health personnel including release of messages on cholera. BCA faces serious financial problems; it is estimated that only about 20% of residents pays fees to the Assembly while 80% abscond payments to the Assembly.

In the past occurrences of emergencies like the cholera outbreaks took the authorities like BCA by surprise as such it was very difficult to obtain relevant information on such cases. The public has not had the chance to access any information regarding the case. BCA in consultation with the Ministry of Health and development partners recently developed an Emergency Preparedness Plan. The plan includes outreach methods, which are a means to inform the public regarding the case.

Like most public institutions, the City does not operate a website on which information about cholera can be accessed. The city, however, has made efforts to engage the media and its health personnel in disseminating information on cholera; press releases in print media have proved too expensive. The current options are awareness campaigns, door-to-door campaigns, pamphlets and posting information on public notice boards.

⁷ Section 8 (2) (e) of EMA (1996) states that “*the Minister shall prepare and lay before the National Assembly at least once in every year a report on the state of the environment.*”

3.2.3.2 Information from Regular Monitoring: Water Quality Monitoring in Blantyre City

The quality of water supplied to the general public is of paramount importance especially to the health of the people. The water supplied to residents of Blantyre City by the Blantyre Water Board (BWB) had raised some concerns to residents of Blantyre especially the color. When such complains were raised, BWB assured the public regarding safety of the water based on the information on water quality treatment from their laboratories. But often such information on water quality is not accessible to the general public; in addition, the general public has no capacity to interpret the information.

BWB supplies potable water to about 1 million people in the City of Blantyre, Lunzu, Chileka, Bvumbwe, Mpemba and Chiradzulu. The Water Works Act (1995) imposes an obligation to provide information in its public notice boards so that the public is aware of the quality of water they are drinking. The Board is also supposed to assume responsibilities over waterborne sanitation and its mandate involves provision of information on water quality.

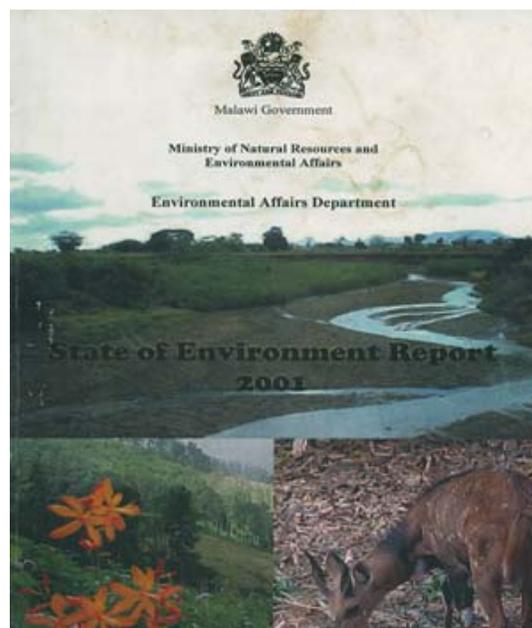
According to BWB monitoring of water quality is based on the fitness of water for human consumption. The Parameters monitored are physical, chemical and bacteriological. Other parameters such as helminthes, protozoa are not monitored. Monitoring is done daily from a minimum of 12 samples. The board is supposed to facilitate public access to water quality information it generates. The Board posts water-monitoring data on its public notice board at its premises daily. The other information is provided on need basis for interested stakeholders. Sensitive information requires the consent of the General Manager before dissemination and as such is not accessible to the public. The Board has not been pro-active in checking the reticulation system like one in the Ndirande township (one of the townships usually affected by the cholera outbreak) hence compromising public health.

3.2.3.2 State of the Environment Reports in Malawi

State of Environment Reports (SOER) in Malawi are produced at three levels; at national, district and at local area level. The national report is produced at an interval of three years. The first SOER in Malawi was produced in 1998, the next was produced in 2001 (this was later updated in 2002 to incorporate urban environment state especially along the lakeshore areas), and the third was produced 2004. Currently there are plans to produce the next SOER in 2007. Section 8 (e) of EMA 1996 requires that the Minister must prepare and present once in every year a report on the state of the environment; as indicated above this provision has not been complied with⁸. Government sources from the Ministry of Energy, Mines and Natural Resources which were consulted indicated that production of SOER is costly hence its not practical to produce them yearly. Another explanation that within a year there are often no significant changes in the environment that can be determined. The current draft revision to EMA proposes SOERs to be produced in 5-year intervals.

⁸ According to the consultation with the Environmental Affairs Department this provision does not necessarily imply the production of SOERs but any report on the state of the environment;

The SOERs are currently produced in print copies form for circulation to the general public, compact discs are produced only for backup purposes and plans are there for e-books to be produced. The 1998 and 2002 reports were made available to the public through the internet. The price for the 1998 SOER was MK150.00 while the one for 2001 was sold at MK500.00. Several copies are provided to Government Departments’ resource centers and University of Malawi Libraries for free to enable public access. A minimum of 2000 copies of SOERs is produced.



The SOERs are produced in English although the literacy levels in the country are still very low. There were efforts to translate the 1998 SOER into other local languages like Chichewa, Tumbuka and Yao but these have not been carried forward. With regard to presentation by the Minister on the state of the environment in Parliament these have been done in each of the years from 1998 to 2004 except for 2005 and 2006. According to a source in the Environmental Affairs Department the report was not presented in 2005 and 2006 because Parliament was very occupied with issues of politics as such there was no time for consideration of the statement from the minister on state of the environment.

Case Title: State of the Environment Reporting in Malawi

Case Type: State of Environment reports

Case Type Detail: [Link to Scale](#)

Category: Access to Information

Case Cluster: ENRM Information

Researcher: Clement Kalonga

Indicator	Result	Grade
To what extent does the law support public access to comprehensive information about the environmental area (water, air, forest, etc) concerned in the selected case	Law provides access to most information	
To what extent does the law require a government agency to generate or report	Adequate generation / reporting required	Good

regular and diverse information of the selected type?		
To what extent does the law require a government agency to publicly disseminate all generated or reported information of the selected information type?	Adequate information dissemination required	Good
How clear and narrow are the limits on claims of confidentiality of the selected information type?	Limits are narrow and clear	Best
To what extent does the law require the agency responsible for the selected information type to build the capacity of its staff on access to information?	Law silent on building capacity	Worst
To what extent does the law require the agency responsible for the selected information type to build the capacity of its staff with regard to the environment?	Law silent on building capacity	Worst
To what extent does the law require the agency responsible for the selected information type to maintain the infrastructure needed to provide the public access to the information	Law silent on maintenance of infrastructure	Worst
To what extent does the law require the government to offer the public technical assistance, guidance or training on how to access and use the selected information type?	Law silent on offering technical assistance etc	Worst

Comment

Although the law in Malawi provides for public access to information most essential aspects that can practically enable access are not provide for in laws. Critical in this regard is capacity building for staff in the responsible Government Departments and agencies, issues relating to the maintenance of infrastructure to enable access to information and provision of technical assistance for responsible agencies.. Making legal provisions regarding on these issues would boost Government commitment in initiating projects and programmes to facilitate public access to SOERs and indeed all other public information.

3.3.4 Conclusions

To a large extent the constitution of the Republic of Malawi provides for access to information. In moving to the next step, sectoral legislation related to the environment has given the Minister responsible for the environment the responsibility to disseminate environmental information to the public. The sector legislation does not provide any procedure for accessing information. It is imperative to have provisions related to procedures to access information, although it appears this may now be dealt with in the proposed amendment to EMA. Although a number of processes for disseminating environmental information have been provided for in sectoral legislation related to the

environment, a number of these have not been adhered to over the past few years. The non-compliance has led to a denial in public access to environmental information. (For further results refer to Annex 2)

3.3 Access to Justice in Malawi

3.3.1 Access to Justice in General

The court system in Malawi consists of the Supreme Court of Appeal, the High Court and subordinate courts. Parliament can also establish specialized courts with limited jurisdiction. The Supreme Court of Appeal is the highest court of record; it currently has seven justices of appeal, who usually sit in three-person panels. It is the highest appellate court and has jurisdiction to hear appeals against decisions of the High Court and of any other courts and tribunals that may be prescribed by an Act of Parliament. The Supreme Court of Appeal is located in Blantyre. The High Court is the second highest court and currently consists of twenty judges, two of whom are based in Mzuzu, four in Lilongwe, one in Zomba and ten in Blantyre. Occasionally, the judges of the High Court also travel to outlying districts of the country to try homicide cases⁹.

Section 12 (v) and (vi) of the Constitution provides the basis for public access to justice in Malawi; it guarantees equality of all persons before the law, with the only justifiable limitations to lawful rights being those necessary to ensure peaceful human interaction in an open and democratic society and calls for all institutions and persons to observe and uphold the Constitution and the rule of law and that no institution or person is above the law. Section 41 of the Constitution guarantees every person the right to recognition before the law, access to any court of law or any other tribunal with jurisdiction for final settlement of legal issues and the right to an effective remedy by a court of law or tribunal for acts violating the rights and freedoms.

3.3.3 Access to Justice Case Studies

3.3.3.1 Njuli Quarry Mining: A Case of Environmental Harm and Access to Information

Quarry stone mining is impacting the health and agricultural productivity of people of Chakachadza village in Chiradzulu district in the southern region of Malawi. The mining impacts particularly dust from rock blasting and quarry loading and transportation have been affecting the community from 1997 up to now. Most of the community members in villages surrounding the quarry have suffered from serious respiratory infections. Beside health problems agricultural productivity has been badly affected with the area due to dust settling on plant. Majorities of the people living around the quarry are poor and they largely depend on subsistence agriculture and they have since been affected food security wise.

Due to the alarming cases of respiratory sicknesses from the area the communities around the quarry lodged a complaint through the chief to the district authorities. Section 69 of the Environment Management Act provides for an Environmental Appeals tribunal (EAT), which is a forum that handles issues relating the protection and management of the environment and sustainable utilization of natural resources, and this is an appropriate forum, which would have handled the case in question. Due to absence of the tribunal the

⁹ See Open Society Initiative for Southern Africa (2006). Malawi Justice Sector and the Rule of Law, A Review by AfriMap and Open Society Initiative for Southern Africa, Braamfontein. South Africa

Njuli case complaint was presented to a forum that informally stood in for the EAT and comprised of the Environmental Health Officers from Chiradzulu hospital, the Environmental Officer from Terrastone company and some community leaders.

According to the community members who were consulted the forum did not bother to make proper investigations relating to the complaint, which the community provided but just went ahead to assure the communities that they were safe and that there is no link between their health problems to the quarry operations. It was clear to the affected local communities that the forum decision was biased and that they were undermined because they had no capacity to provide appropriate arguments compared to the Terrastone Company. Section 70 (5) of the EMA (1996) makes provision for an aggrieved person to appeal against decision EAT; the appeal is to the High Court of Malawi. This was not done because the community did not know where to complain, they were even afraid to complain and some had knowledge that lawyers would assist but they knew there would be a cost involved which they could not meet.

The law allows public access to all information relating to the environmental management except for proprietary information; the communities around Njuli quarry were however not provided with the appropriate information that would assist their argument. They were in turn badly assured that the quarry dust was harmless by public officials and in the long run even the hospital personnel who previously linked the respiratory sicknesses to the quarry operations changed their story to suit the decision arrived at by the forum that handled the case; they said the people were suffering from a general cough.

Section 70 of EMA envisages that the EAT will comprise very suitably qualified person and implies the need for capacity building. The Njuli case forum was biased towards personnel in the health sector who are not competent enough in issues of environment in general and more specifically environmental justice. This led to the decision made favoring the company not the community. The case involved an informal forum that came about because of the ignorance of the community involved because it was not the appropriate forum. Table below presents a summary of results on the Njuli case Indicators.

Case Title:	Njuli Quarry Mining
Case Type:	Environmental harm
Case Type Detail:	Administrative forum
Category:	Access to Justice
Case Cluster:	n/a
Researcher:	Frank Kapanda

Indicator	Result	Grade
To what extent does the law require a forum to hear the selected claim type and issue a decision?	The law provides some requirements	Intermediate
To what extent does the law enable a party to seek review or appeal of selected claim type to an independent body with the power to reverse a decision?	Appeals and reviews are mostly adequately enabled	Intermediate
How clear and narrow are the limits on claims of confidentiality regarding information relevant to selected claim type?	Limits neither narrow nor clear	Worst
To what extent does the law require the selected forum to build the capacity of members with regard to access to justice?	Law requires adequate capacity building	Good
To what extent does the law require the selected forum to maintain the infrastructure needed for access to redress and remedy?	Law silent on maintenance of infrastructure	Worst
To what extent does the law require the government to offer the public technical assistance, guidance or training on how to use the selected forum?	Law silent on offering of technical assistance	Worst
To what extent does the law require the government to offer the public technical assistance, guidance or training on how to use the selected forum?	Law silent on offering of technical assistance etc.	Worst
To what extent does the law require the government to build the capacity of sub-national government officials to understand and facilitate citizens' rights within the justice system?	Law silent on building capacity	Worst
How clearly does the law establish a reasonable timeframe for forum decisions?	The law is silent on timeframe	Worst
To what extent is there a forum with adequate capacity to deal with the selected claim type	Adequate forums with adequate capacity	Good
How strong are the forum's standards, regulations or formal policy to ensure independence and impartiality of the forum?	Weak standards, regulations or formal policy in place	Intermediate
To what extent is information regarding rules of procedure and types of claims to be heard by the forum made publicly available?	Almost no information is available	Poor
To what extent is a publicly funded independent entity available to provide redress in the selected claim type?	No independent entity available	Worst
To what extent were both parties able to gain access to information and conduct fact finding in the selected case?	Limited fact finding or access to information	Intermediate
To what extent was the process transparent to the public in the selected case?	Almost no public transparency of	Poor

	process	
To what extent did the forum consider all appropriate law and facts, including scientific and technical data, relevant to the selected case?	Appropriate law and facts were not considered at all	Worst
How comprehensive and planned were the forum's efforts to enable a wide range of stakeholders to access the forum in the selected case?	No effort made to reach a wide range of stakeholders	Worst
How well did the forum take steps to make the forum accessible to to a minority or disadvantaged group (identified in the explanation to this indicator) in the selected case?	No effort is made to reach the target audience	Worst
To what extent did intimidation prevent stakeholders from effectively bringing a claim in the selected case?	Intimidation played no role in preventing stakeholders from bringing claim	Best
To what extent did the allocation of the burden of proof support access and/or environmental protection?	No support for access or environment through allocation of the burden of proof	Worst

Comments

In general it would appear that most of the indicators are ranging from intermediate to worse. This once more highlights the high level of inaccessibility to environmental justice by the majority of the population in Malawi. It has been noted that there is almost no information on critical issues such as rules of procedure and types of claims, lack of transparency and that no effort is made to increase access to minority or disadvantaged groups.

3.3.4 Conclusion

The EMA provides for the right to a clean and healthy environment and a duty to conserve and protect the environment. Although EMA provides for the establishment of the Environmental Appeals Tribunal, ten years down the line, this institution has not been set up. Furthermore, the assessment has also noted that although the Malawi Constitution guarantees the right to an effective remedy by a court of law or tribunal for acts violating the rights and freedom, for a number of reasons majority of local people are denied this right. (For further results refer to Annex 2)

3.4 Public Participation in Malawi

3.4.1 Public Participation Systems in Malawi

Public participation must focus on the meaningful engagement of the general public in critically analysing policy and legislative issues, which either directly or indirectly affect their livelihoods. Hence it must be looked at in the context of how policy processes, strategy development, project implementation and resource management regimes have accounted for local communities' problems, challenges, needs, opportunities, resources and potential solutions.

This assessment reviews the participation of Malawian citizens in a number of areas which demonstrate how they have been allowed to express opinions, challenge decisions, and shape policies, plans and projects that affect their communities and environment. In this case the process towards the formulation and implementation of the Malawi National Land Policy, the Malawi Land Reform Implementation Strategy, the Customary Land Resettlement Project and Community Participation in Forest Management have been assessed. The assessment considers the main issues on how well the Malawi Government has supported public participation in decisions that affect their livelihoods and the environment. Therefore, the premise of analysis is on a rights based approach to determining public participation in decision-making.

Access to information is a human right recognized in the Constitution of the Republic of Malawi¹⁰. It is also entirely accurate to contend that deprivation of relevant information before policy processes begin would have implications on the level of participation of the public in the decision making process and implementation. A historic perspective is essential to understand what some of the issues mean when it comes to public participation systems in Malawi. This has to do with Malawi's recent political history under almost thirty years of authoritarian domination by Dr Hastings Kamuzu Banda. This era was characterized with the public's reluctance to confront government authority. Similarly, public participation in decision-making in policy and legislative development processes, plans and projects was not wide spread. As such public participation systems are just emerging with the changes in policies and laws. However, like with all transitions or emerging resource regimes, there are apparent constraints making promotion of public participation a challenging task and giving the impression that the current policy and legislation framework is ineffective.

Public participation in Malawi varies across sectors when looking at policy formulation, legislation, strategy, plans, implementation of programmes and projects. Again there are variations depending on who is implementing the specific initiative. Most of the donor-funded programmes and projects which are being implemented by either NGOs or government agencies have very strong elements of public participation, while solely public sector driven initiatives for a number of reasons still demonstrate limited public participation.

¹⁰ See Sec 37;

3.4.2 Public Participation in Environmental Decision Making and Implementation in Malawi

According to the guiding principles contained in the Malawi National Environmental Policy, adopted in 1996 and revised in 2004 Malawi shall mobilize CBOs, the private sector and NGOs to achieve sustainable environment management. In particular, the involvement of local communities to protect, conserve and sustainably utilise the nation's natural resources is considered key. Some guiding principles are laid down and these are:

- *Community participation, empowerment and sharing of benefits are key to effective environmental management; and*
- *Government departments shall perform supervisory and regulatory functions providing enabling policy and legislative framework for resource management activities.*

In tandem with these principles and objectives the Environment Management Act 1996 provides every person with:

- *The right to a clean and health environment*
- *The duty to protect and conserve the environment*

3.4.3 Access To Participation in Decision Making, Policies, Plans and Projects

Malawi has recently been in a transition in resource management policy moving from command and control to collaborative management and community-based management. This represents a dramatic shift. Over the years government has made an effort to get the participation of a wide range of stakeholders in the preparation of policies, laws, strategies and implementation of projects. The results and analysis of this assessment are based on the five representative sample cases.

Public participation in policy formulation processes has been initiated at later stages of the process. Rarely does the public receive notification on intended policy or strategy formulation processes. The assessment under the National Land Policy¹¹ revealed that the public was widely involved in the initial work, which was done by the Presidential Commission on Land Policy Reform¹². But as soon as the Commission concluded its work in 1999, when the responsible ministry took up the responsibility of formulating the policy there was little consultation with the public apart from the final meeting, which reviewed the final draft where selected traditional authorities and other stakeholders were invited. The justification put forward by the ministry regarding the limited consultation with the public during the policy formulation is that the public was already consulted during the Presidential Commission's work. In doing most of its community outreach activities between 2003 and 2004, Landnet¹³, found out that most of the communities, traditional leaders, political leaders and government extension personnel had never heard of or seen the new National Land

¹¹ The Malawi National land Policy was approved by Cabinet in January 2002;

¹² The Presidential Commission was established in 1996 to examine: the history of land policy, land problems, prevailing land tenure, prevailing land inheritance systems and government land administration;

¹³ Landnet is an advocacy network of civil society organizations who are interested in land and natural resources policy formulation processes;

Policy. This demonstrates the constraints, which exist in the access by the public to such type of important policy information, which may affect their decision-making. The emphasis on this limited awareness is that these staff may not know some of their mandates, duties and responsibilities thereby limiting public participation in environmental decision-making and implementation.

Under public participation, the assessment also applied the indicators framework to the Community Participation in Forest Management. The government institution responsible for forest management in Malawi is the Forestry Department¹⁴ located within the Ministry of Natural Resources and Environmental Affairs. In the face of the resource management regime transition, the Forestry Act (Act No. 11 of 1997) constitutes an endorsement of many important principles of public participation. The Director of Forestry is responsible for administering the Act. Section 5 provides that the Director shall be responsible for:

- (a) *Promote participatory forestry;*
- (b) *Facilitate the formation of village natural resources committees and the establishment of rules of village forest areas; and*
- (c) *Promote the empowerment of local communities in augmentation, control and management of customary land trees, and forests in accordance with the provisions of this Act.*

This provision enables a shift from total government control to community partnership to be initiated. There are several provisions in the Act, which enable sincere implementation efforts on the ground. The provisions involve the public in all aspects of forest management – planning – harvesting – revenue sharing – regulating and enforcing. There are a number of practical cases on the ground where this is taking place. One typical example is the Sustainable Management of Indigenous Forest Project, which is being undertaken in Neno district by Wildlife and Environmental Society of Malawi. There are also other donor-funded projects with strong public participation elements, which the Department of Forestry has implemented such as the Social Forestry and Extension Project, Blantyre City Fuel wood Project and the Lilongwe Forestry Project. Again the assessment noted that in instances where there has been demonstrated level of public participation in forest management is under a donor funded programme. This once more highlights the fact that donors have played a key role in influencing government practices on public participation. In the assessment it was found out that only in cases where there is significant donor support then there has been systematic public participation in place.

However there are still some specific elements within the Act, which demonstrate continued government control. In accordance Section 5 and 30 of the Act *the Director is declared responsible for the establishment of rules in village forest areas as opposed to an approach where the village management authority would be responsible with advice provided by the Director.* This may render the department prone to making prescriptions on what the level of public participation may be within the forestry sector. Perhaps as a result of some of these elements, to date there are only a few examples, which clearly demonstrate public participation in decision making within the forestry sector. Again it was also noted that there are other dynamics in place, which are limiting public participation. These include limited financial and human resources

¹⁴ The principal functions of the department include forest reserve management, forest policy development and planning, plantation management, training, research and extension;

to effectively operationalize plans, which support public participation. Most of government departments have only shifted in their policies but the same staff who were championing the command and control regime have had very little opportunities to get oriented in participatory methodologies. In addition, most of the government agencies have inadequate operational funds. Promotion of public participation, particularly consultations are an expensive venture, requiring large sums of money if wider areas are to be covered.

Case Study: Customary Land Resettlement Project

Case Title: Customary Land Resettlement Project
Case Type: Project-level decisions
Case Type Detail: Other
Category: Public Participation
Case Cluster: Land
Researcher: William Chadza

Indicator	Result	Grade
To what extent does the law require a government agency to provide relevant information to the public about the intention to start the selected decision-making process?	The law requires provision of extensive information	Worst
To what extent does the law require the government to provide opportunities for public involvement in the selected decision-making process	The law requires adequate provision of opportunities	Good
To what extent does the law require the agency responsible for the selected decision-making process to build the capacity of its staff with regard to public participation	Law silent on building capacity	Worst
To what extent does the law require the government to offer the public technical assistance, guidance or training on participation in the selected decision-making process	Law requires government to offer adequate technical assistance	Good
To what extent does the law require the government to build the capacity of sub-national governments with regard to participation in the selected decision-making process	Law silent on building capacity	Worst
How clearly does the law establish a reasonable timeframe for participation in the selected decision-making process?	The law requires the timeframe to be established with public input.	Worst

Comment

It must be noted from the table above that although generally grades have been between best and worst, the responsible government agency has not been able to comply to what the law provides for issues such as providing relevant information to the public about the intention to start decision making processes.

However, although the law is silent (note the indicator grade is “worst” on capacity building of staff the responsible agency has made efforts by building the capacity of its staff in public participation given that the concept is relatively new within this government sector.

3.4.4 Conclusions

It must be kept in mind that participation is one of the key terms of current development ideology within the environment and natural resources management sector. In the assessment it was noted that there is wide variation amongst various agencies in terms of *what meaningful public participation entails*. In terms of gains from a policy shift from command and control to community participation, current situation is mixed.

There are some particular constraints, which might hinder successful public participation in decision-making processes. These include complicated policies and legislation, persistent existence of government control in legislation, inadequate financial and human resources to effectively operationalize policies and plans. Again limited dissemination of these policies amongst relevant sector line ministry extension staff may also hinder the facilitation of public participation.

One surprising – and disturbing – result of the assessment is that, public participation regimes are only advanced where there is a donor-funded project. Yet another weakness is that these projects have a life span. One very common issue, which arose, was that most of the front line staff is not aware of policies and legislation related to public participation in decision making. Some NGOs seem to have taken the initiative to disseminated both policies and legislation related to land and natural resources. (For further results refer to Annex 2)

3.4 Capacity Building for Popular Participation in Environmental Management in Malawi

3.4.1 Capacity Building Defined

Capacity building has been used in many documents with little reflection of its meaning. In order to carry out an assessment, the research team consulted several literatures to understand the meaning of the word before doing the assessment. The team adopted the definition of the Global Environmental Facility (GEF) as summarised in the box 1 below.

Box 3: Capacity Building Defined

‘Capacity building means actions needed to enhance the ability of individuals, institutions and systems to make and implement decisions and perform functions in an effective, efficient and sustainable manner’.

At **individual level**, capacity building refers to the process of changing attitudes and behaviours, most frequently through imparting knowledge and developing skills through training.

At **institutional level**, capacity building focuses on the overall organisation performance and functioning capabilities, as well as the ability of an organisation to adapt to change. It aims to develop the institution as a total system, including its constituent individuals and groups, as its relationship to the outside environment.

Capacity building at **systemic level** is concerned with the creation of *enabling environments*, i.e. the overall policy, economic, regulatory and accountability frameworks within which institutions and individuals operate.

The role of capacity building in environmental management is highly recognised by government, civil society, media as well as international organisation. Over the past 10 years, there has been effort by various actors to strengthen the capacity of the public to effectively participate in decisions that affect their livelihood. For example the Environmental Affairs Department initiated various environmental education programmes through its Environmental Education and Communication Unit in an effort to strengthen the capacity of the people on the environment. ‘The Agenda 21 in Chapter 37 emphasises on capacity building in developing countries where it says ...the ability of a country to follow sustainable development paths is determined to a large extent by the capacity of its people and its institutions....’ Through the Agenda 21, the UNDP provided financial support for the Capacity 21 Project, which was implemented by a few government departments including the Forestry Department. Principle 9 of the Rio Declaration emphasises on the need to build the endogenous capacity. Several SADC protocols on environment and natural resources management also emphasise on the need for building the capacity of local people to effectively participate in decision-making concerning their national and local development.

The assessment measured investments in capacity building by the government in two government departments namely Departments of Forestry and Environmental Affairs, the

High and Magistrate Courts and one NGO Coordinating organisation-CURE (Coordination Unit for Rehabilitation of the Environment). The team also analysed coverage of environmental information by one media houses such as Malawi Broadcasting (MBC), Television Malawi (TVM) and the Daily papers such as the Nation and Daily Times over the past year.

Table 4: Summary of indicators used for assessing quality and accessibility for capacity building

Section	Indicators
Investment by the Forestry Department and Environmental Affairs in capacity building	<ul style="list-style-type: none"> • Efforts to build its own capacity and selected institutions to support access to information and participation by the public • Availability and comprehensiveness of environmental information • Investment in environmental education
Conditions for registration of NGOs and investment by NGOs in capacity building	<ul style="list-style-type: none"> • Efforts to build capacity of its staff and selected institutions to support access to information and participation by the public • Availability and comprehensiveness of information from NGOs • Requirements for registration • Conditions for financing NGOs activities
The judiciary	<ul style="list-style-type: none"> • Legal conditions for access to information • Availability of information on environmental justice
Media	<ul style="list-style-type: none"> • Level of coverage of environmental issues in both print and electronic media • Quality of coverage of environmental issues in both print and electronic media

3.4.2 Government Staff Capacity Building

Since the Earth Summit, the government has set up a number of institutions and reviewed a number of policies aimed at improving the management of the environment and natural resources. It was noted during the assessment that the two departments that were assessed (Forestry and Environmental Affairs) have over the past years made some commendable strides in strengthening the capacity of its own members of staff to effectively implement the policies and enforce the laws as well as provide information to the public. Several members of staff have attended short and long term courses both in the country, regional and outside the region. In the headquarters of the two departments, it was noted that almost all the technical members of staff have at least attended a course in the past three years related to the implementation of their sectoral policies. Even though most staff members have attended training courses in various field, a limited number have attended particular courses related to popular participation and provision of information to the general public.

3.4.3 Capacity Building at Institutional and Systemic Levels

The government has made commendable effort to set up various departments such as Environmental Affairs Department, Department of Energy and others. Within the EAD, an Environmental Education Unit was established to spearhead environmental education and communication in the country. The EAD developed an environmental communication and education strategy while the Forestry Department developed a National Forestry Program in line with the national agenda of poverty reduction. Within the two departments, there are clear systems and procedures allowing staff to perform their tasks. In an effort to enable more stakeholders participate in the decision-making process relating to development, the government developed the decentralisation policy in place to allow government ministries to devolve their functions to the local government assemblies.

Despite putting in the place the systems and procedures, policies and legislative frameworks that are very conducive, the implementation arrangements and enforcement mechanisms are very weak. The sectoral policies are not harmonised and there is limited information sharing within and between the department and ministries. Many capacity building efforts are uncoordinated and staff members are frustrated and some end up leaving the civil society for 'greener pastures'. Table 2 below summarises some of the identified problems at systemic and institutional level that are affecting efforts by the two departments to build its own capacity and that of other institutions.

Table 5: Summary of problems at institutional and systemic levels

Institutional level	Systemic level
<ul style="list-style-type: none"> • Inadequate financial resources for capacity building • Weak monitoring and evaluation mechanisms in both departments • Non functional staff performance appraisal systems • Inadequate or limited access of communication services such as internet and email • Inadequate pieces of equipment such as computers • Limited computer skills amongst staff 	<ul style="list-style-type: none"> • Sectoral policies and legislation are not harmonised • Inadequate professionally trained staff dealing with capacity building and provision of information • Inadequate financial resources • Poor information exchange within the institutions and amongst the institutions • Limited information available to other stakeholders

3.4.4 Government Efforts to Build Capacity of other Stakeholders

Just as mentioned above, the capacity building efforts more especially of the communities have been uncoordinated and very limited. For example, the beach village committees, village natural resource management committees require more capacity building support in terms of material, financial, morale, legal and any other support necessary for their

functioning. The policies and Acts identify these community level institutions as key to the effective implementation and enforcement of the policies and legislations. However, very few of these institutions have received that much needed support from the government and their (village level institutions) efforts continue to be undermined by the government's own members of staff. The weak capacity building support to the various stakeholders more especially the community has led to policy implementation failure. Many of those village level institutions have been reduced to clubs where only committee members are active.

3.4.5 Availability and Comprehensiveness of Information from the Government

In both departments, it was noted there are a lot of pieces of quality environmental and natural resource related information, which are not readily available to staff members within the departments and other government departments. Most of the information is in English despite the majority of Malawians not able to read and understand English. Accessing those pieces of information is difficult at times because they are centralised and one has to travel to the libraries at the headquarters to find some pieces of information. For example, few of field level staff in the Forestry Department had the National Forestry Programme document. None of the field workers contacted indicated that they have the Environmental Education and Communication Strategy that was developed by the Environmental Affairs Department during the late 1990s. There have been limited efforts to simplify the environmental and forestry policy and the simplified version are not readily available.

During the assessment, the officers contacted readily gave the pieces of environmental information sought by the assessment team but not on the capacity building process of the various stakeholders.

3.4.6 Government Investment in Environmental Education

Kafakoma et.al 2000 revealed that in primary and secondary curricula, environmental information has been covered in various subjects for example, agriculture, health, geography and other science related subjects. However, he also found out that very little has been done to reorient the teachers teaching those subjects. The EAD is mandated to coordinate environmental education in the country but very little has been done. Staff from the Environmental Education and Communication Unit of the EAD indicated that less work has been done on environmental education. The unit has limited personnel and is poorly funded to carryout its functions as stipulated in the Environmental Management Act. Staff members from the two departments, indicated that some NGOs such as Wildlife and Environmental Society of Malawi have made some commendable investments in environmental education but does not receive the necessary support from the government departments on the same.

3.4.7 Investment by NGOs in Capacity Building

Since the Rio Summit, the country has witnessed the emergency of numerous NGOs and CBOs involved in environmental and natural resource management. The policy and legal framework have provided an enabling environment for NGO operation in the country. Both the government and donor community recognize the important role NGOs play in environmental and natural resource management.

3.4.7.1 NGO Efforts to Build Capacity for Environmental Management

According to CURE, an environmental coordinating organisation, there are over 50 NGOs involved in environment and natural resource management activities in the country. The growth in number of environmental organisations has not translated to the increase in number of professional environmental and natural resource management experts. Most of the organisations have serious capacity problems and their activities are localized. Apart from having less qualified human resources, a few of the NGOs and CBOs do not have well-established systems and procedures and few have staff development plans, which are implemented.

Despite this shortfall, the NGOs have provided considerable capacity building support to stakeholders at community level. Apart from training the communities the NGOs have provided financial and technical support to the communities in order to strengthen their environmental and natural resource management efforts.

According to CURE, the growth in number of NGOs and CBOs involved in environmental and natural resource management poses some challenges in terms of coordination, communication and information flow. Information flow between and amongst organisations is weak. Due to poor information flow and coordination, there are duplication of efforts and conflict between NGOs. The approaches to capacity building more especially of the communities vary between one NGO and another more especially in terms of the logistical arrangements. Some NGO are paying allowances while others are not paying allowances to participants at community level. This brings in conflicts between the NGOs and weakens the good will of NGOs to build the capacity of the communities for environmental and natural resource management. In some cases, there is little appreciation of what the NGOs are doing by government. For example, in most government reports, few activities of NGOs are covered even though the report concerns an area where a particular NGO or NGOs are working together with the government.

3.4.7.2 Conditions for Financing NGO Activities

Most of the NGOs in the country are heavily donor dependent. Despite many organisations willing to support NGO development work in the country, few donors are supporting environmental and natural resource management work. The few that are supporting environmental work have tough conditions to be fulfilled by the NGO before the money is released. More often than not the financial support is for a year and yet environmental and natural resource management work requires more than a year to bear results. Because of heavy reliance on donors and the little financial resources that they get from donors, there is

always a limitation in terms of the influence they exert on capacity building of their own staff and target communities. Some donors are not willing to give more money to particular NGOs because they doubt their capacity to manage the financial resources. According to CURE, the conditions for financing environmental and natural resource management work are tough and there are less donors who are willing to support environmental and natural resource management work in the country.

3.4.7.3 Conditions for Registration of NGOs

Generally the government has put in favourable conditions for NGO registration. Despite a good registration, most of the NGOs are not exempted from tax as one would have expected since NGO are doing charitable work.

The registration process has allowed a rapid growth of the civil society sector in the country. However, the NGO community as such lack a framework that will make them accountable either to the communities they claim to serve or government they complement. There are no mechanisms that require any registered NGO to abide by the set standards. Even though there is a new NGO Act and NGO Board, no clear mechanisms have been put in place to monitor NGO work. Because of this the government sometimes becomes suspicious of NGO work.

3.4.7.4 Availability and Comprehensiveness of Information from NGOs

As mentioned above, the NGOs are weak in sharing information between and amongst themselves. For example NGOs in the country have produced a lot of reports relating to evaluations, baselines, surveys and others. Usually these reports are not circulated to other organisations. Because of not sharing information, there is duplication of efforts.

Quite a number of NGO have awareness programmes and the quality of information packs that they produce is high. However there are still a few NGOs who lag behind in terms of producing, packaging and disseminating quality information.

3.4.8 The Judiciary

The assessment team visited the High Court and subordinate courts and talked to a High Court Judge and a magistrate during the exercise. At the High Court it was indicated that the lower courts handle most of the issues relating to the environment. Most of the cases related to issues like pollution, deforestation, and the lower courts handle all illegal logging or trafficking of forest products. However, the process of handling cases related to the environment and natural resources depends on the level of understanding of the issues and whether the person handling the cases has the latest laws on environment. It is usually a problem to get latest laws related to the environment and natural resources in the lower courts let alone in the high courts. In many cases, the judgements may not be punitive enough relative to the environmental damage caused.

3.4.8.1 Capacity Building of Judiciary Staff

It was also revealed that all the lawyers in the country undergo a general training in law, only recently has the law school started teaching an elective environmental law course and yet the lawyers are expected to handle many other issues including those related to the environment and natural resources. Usually, lay magistrate who are not professionals in the field of law and have limited knowledge on law in general and environmental law issues in particular handle the cases related to the environment.

The judiciary may have made some investment in training its members of staff in relation to their profession but very little has been done to strengthen the capacity of its personnel on environmental issues. Despite the law allowing people to demand for capacity building, the judicial system has not deliberately trained its personnel to provide information on existing laws and regulations relating to the environment. It can easily be concluded that some members of the Judiciary have limited knowledge of the environmental and natural resource management issues and this has some implications on the way they handle cases related to environmental justice.

3.4.8.2 Provision of Information on Environmental Justice

Access to environmental justice information is very limited. As mentioned above, some of the lower courts do not have recent published laws. On the other side, the general public is not aware that they can hold accountable the government or any organisation that is charged with the responsibility to provide necessary services to them. The mode in which the government or judiciary avail various legal information favours very few people and more especially the elite groups of the society such as those in town and working class. The government relies on the gazette to publish its new laws. In many cases these gazettes are in English and very few people access them. The local people in the villages cannot easily access the gazettes. Even if they can access them, they cannot understand them because of the language used.

3.4.9 The Role of the Media

The assessment team talked to reporters from the *Nation* and *Daily Times* newspapers as well as other journalists who have retired from the print and electronic media. Generally, there has been an increase in the number of media houses over the past ten years in the country. However, the major preoccupation of most journalists is politics, sports, and HIV/AIDS stories.

3.4.9.1 Investment of the Media in Building the Capacity of its Staff

Whereas, the electronic media such as Malawi Broadcasting Corporation and Television Malawi have environmental desks, the majority of the print media houses do not have environmental desks. Some journalists argue that if you do not have a desk on environment it is very difficult to direct capacity building efforts of staff towards improving environmental reporting. As a result very little has been done to strengthen the capacity of staff more especially in the print media on environmental reporting.

Over the years, environmental reporting has not improved. Most of the newspaper articles appearing in papers are reports of particular environmental events. Most of the reports are not critical enough and stimulate limited environmental debates. Some stories end up twisting the facts because the reporters could not link certain issues. This is an indication that most of the reporters have limited understanding on environmental issues and lack capacity to write critical stories.

3.4.9.2 Coverage of Environmental Information

As mentioned above, there is limited critical coverage of environmental information in country. Usually the reporters indicate that their editors dictate what should appear in any paper and they are interested in selling their papers. Currently in Malawi, political stories attract a lot of attention and they make the paper sell. Priority for environmental coverage is very limited in most of the papers. The situation is not the same with the electronic media where they have environmental desks and funded environmental programs. MBC for example has a number of environmental programs funded by various organisations such as Malawi Environmental Endowment Fund (MEET), Department of Environmental Affairs (EAD) and others.

Many journalists conclude that the media has done very little to build their own capacity as well as inform the general public on environmental issues more especially issues relating to strengthening the capacity towards sustainable environmental management.

Case Study: General Capacity Building

Case Title: General Capacity Building

Case Type: n/a

Case Type Detail: n/a

Category: General Capacity Building

Case Cluster: n/a

Researcher: Robert Kafakoma

Indicator	Result	Grade
How well do laws and rules for registration and operation of civil society organizations promote an enabling environment for CSOs?	Strong provisions to promote an enabling environment for CSOs	Best
To what extent does the law create diverse legal and regulatory incentives supporting financial independence of civil society organizations?	Inadequate incentives created	Worse
How well do laws and rules for registration and operation of media organizations support press freedom?	Mostly adequate provisions to support press freedom	Good
How well do laws and regulations enable media organizations to have diverse sources of	Adequate diversity of funding enabled by the	Good

funding?	law	
To what extent does the law require the public school system to provide civic education?	Adequate civic education in public schools required by law	Good
To what extent does the law require the public school system to provide environmental education?	Adequate environmental education required in public schools.	Good
To what extent does the law require the government to provide free legal aid?	Legal aid provided by the law	Good
How equitably does the government implement rules and regulations for registration and operation of CSOs?	Government creates a strong enabling environment for the full spectrum of CSOs	Best

Comment

Results of the indicators provided in the table above indicate some consistency in that they are ranging from best to good. Overall it would appear that there are adequate instruments to ensure that there is capacity building amongst the various players. There are strong provisions to promote an enabling environment for CSOs and more importantly the law require the public school system to provide civic education. Perhaps the only contentious issue is compliance to these provisions.

3.4.10 Conclusions

Generally, the political and institutional frameworks are very conducive for the implementation of the Rio Declarations. The government has all the necessary policies and legislations in place and has made some efforts to strengthen its capacity and that of other stakeholders in order to achieve sustainable environmental management in the country. However, policy implementation and law enforcement processes have been very weak. For the past three year the government has invested less both in strengthening its own capacity and that of other stakeholders.

There has been proliferation of NGOs and CBOs focusing on environmental management in the country. Even though indicators showed that they have contributed to environmental management and capacity building of their target communities, their efforts are localised and in some cases marginal to make a strong impact on the environmental and natural resource management problems. The NGO sector is characterised by weak capacity and limited financial resources to invest in environmental management.

More often than not environmental justice information is not readily available despite having a well-established judicial system in the country. There are legal provisions for capacity building but very few people are aware of such provisions.

The media houses have a long way to provide quality environmental information to the general public. Due to limited capacity amongst journalists and preference by the media houses to focus on politics in their news coverage, environmental information in the country is treated by many as not interesting and therefore not relevant to the livelihood of the people.

Using a scale of 1-5, (1 lowest and 5 the highest), the implementation of the Rio Declarations during the past three years can be rated at 2. The rate of environmental degradation is higher now compared to 1992 when the Rio Declarations were made and agreed. This is a pathetic situation that needs heavy investment, commitment and change of attitude amongst all the key stakeholders in the sector more especially the government.

CHAPTER 4: FINAL CONCLUSIONS AND RECOMMENDATIONS

4.1 CONCLUSIONS

The body of this paper has attempted to illustrate a number of important issues and processes pertaining to access to information, public participation, access to justice and capacity building.

Malawi adopted a new constitution in 1994. This constitution has several specific provisions granting right to access information, participation in decision-making and access to justice. However, although these positive provisions exist, there are still certain provisions in the constitution as well as gaps and inconsistencies in certain pieces of legislation that may curtail the right of access to information. The constitutional rights may not be exercised if other specific laws are not enacted.

Although the Environment Management Act has given the Minister responsible for the environment the responsibility to disseminate environmental information to the public the Act does not provide any procedure for accessing information. A draft revised Environment Management has however addressed this.

There is wide variation amongst various agencies in terms of *what meaningful public participation entails*. There are some particular constraints, which might hinder effective public participation in decision-making processes. These include complex policies and legislation, government not willing to relax control in environment and natural resources, inadequate financial and human resources to effectively operationalize policies and plans. Limited dissemination of these policies amongst relevant sector line ministry extension staff is also hindering the facilitation of public participation.

Over the past decade Malawi has seen a growth in the number of NGOs and CBOs dealing with environmental management. Even though indicators showed that they have contributed to environmental management and capacity building of their target communities, their efforts and impact are limited.

To a large extent environmental justice information is not readily available despite having a well-established judicial system in the country. Provision of environmental information to the general public by media houses is still in its infancy. Due to capacity constraints amongst journalists and preference by the media houses to focus on politics in their news coverage, environmental information is treated by many as neither interesting nor relevant to the livelihood of the people.

4.2 RECOMMENDATIONS

Some general recommendations, which have been made from the assessment, are as follows:

4.2.1 Access to Information

- Lobby for expansion of the scope of section 37 of the Constitution so that it should not limit its application to information held by the state or any of its organs. The law should provide for the right to access information to be enforceable against private individuals and organizations.
- As the processes towards the finalization of the amendment to the EMA (1996) are advancing, it is imperative that civil society advocates for the provision of right of access to general environmental information. At this stage this is already reflected in the final draft of the amended EMA, however it is possible that this provision could be lost on the way.

4.2.2 Access to Justice

- Speed up the establishment of the Environmental Appeals Tribunal. This institution is provided for under EMA (1996)¹⁵. The Tribunal should be given wide mandate to investigate matters to improve access to environmental justice. At the moment there are two procedures; a suit through the High Court and filing a complaint with the Minister responsible for the environment. Both these have limitations especially for local people who may not have easy access to these institutions.

4.2.3 Public Participation

- Barriers to effective public participation in environment and natural resources management such as within the forestry sector need to be rectified. This includes providing support to communities so that they are organized and be able to participate in forestry management in protected areas.
- Lawmakers need to review specific provisions of the Constitution, which may limit the right of access to information. There is a need to strike a balance between the rights to privacy, confidentiality, proprietary information and facilitating public access to information to promote transparency, accountability in decision making.

4.2.4 Capacity Building

- Both the public sector and NGOs should coordinate their capacity building efforts so that the gains from such efforts should be effectively applied.
- Ensure that the important roles which local level institutions such as VNRMCs have been given in their sectoral legislation are in line with the level of capacity building

¹⁵ See Part XII;

they are provided. Most of these institutions in order to effectively participate require capacity building in terms of material, financial, moral and legal support. Often these institutions are just set up without any further support as such they are weak and are unable to engage in the roles they are expected to undertake.

- Invest in training both judiciary staff and law students in environmental law so that they are able to effectively handle cases related to environment and natural resources. At the moment it seems there is limited environmental and natural resources management knowledge within the legal profession and the judiciary at various levels.

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ANNEXES

Annex 1: Case Study: Access to Justice in Malawi

Mchenga Coal Mine: A Case of Environmental Harm

Mchenga Coal Mine is located in Rumphi district in the northern region of Malawi. The mining activities at Mchenga are affecting people living around the area in so many ways with health problems of the workers and water pollution being the main problems. In addition, the impact of environmental degradation caused by mining of coal and its harms. The community within the mine is able to link environmental degradation occurring in the area to activities of the mine and have made efforts to send their complaints to the company but most have not been taken seriously.

Interviews with personnel from the mine revealed that there are three main environmental harms being brought by the mine namely:

1. Carbon Monoxide – produced when drilling/mining the coal.
2. Coal dust – produced when crushing coal.
3. Deforestation – caused when they are drilling coal from underground. Most of the time there is a need to cut down trees around that area.

Due to the increased number of complaints especially those relating to employees, the administration of Mchenga Coal Mine set up a committee on environmental related issues. The committee comprises of: - Human Resources Officer, Environmental Officer/Mining Surveyor and the Mine supervisor.

The procedure followed involves the one affected by environmental harm, bringing the claim to the attention of the environmental officer who takes the matter to management. Only people working at the coalmine are the ones who are eligible to complain. Management scrutinizes the claim and requires that there must be evidence that accident/disease was not caused due to negligence of employer otherwise they will be responsible for it.

If management is satisfied that the claim is genuine then the complainant fills administration forms. When the forms are completed they are processed in good time but they are delayed in other offices as Government machinery involves other departments. Claims are not resolved in good time due to other delays approximately it takes two (2) years. Delays continue worse still because when insurance pays a cheque it first goes to Workers Compensation Commission which takes its time as well, the final value of the money ends being too little for the made claim. The complainant is referred to hospital where he/she is supposed to demonstrate how it happened and is tested for them to come up with the degree of the claim, as compensation will depend on wages and degree of injury. Through

the same labour process both parties are free to appeal or ask for review if they are not satisfied.

There had not been an appealed case at Mchenga Coal Mine because most complainants cannot manage the process or are intimidated by management.

So far there has not been any compensation made in line with environmental harm made to the community. Management claimed that none of the community complaints have valued the harm caused as such it's difficult to do compensation. Efforts to reduce environmental harm have been made and they include provision of masks which employees are forced to put on all the time when they are at the coal premises; cyclones that trap dust from the process plants and an afforestation program to replace the trees cut during the opening of coal mines.

Most casual workers at the mine complained that most of their friends have since died due to health hazards affecting them during their time at the mine. Although management bought masks and work suits that they are supposed to wear when they are working these were bought sometime back when workers were few and some are lost along the way, now that the workers are many they are not enough for everyone hence they are forced to go to work without proper protection as a result they suffer. Most of laborers indicated that they are forced to stay and work in these conditions because jobs are scarce and that their job is the only means of getting finances for assisting their families.

Most of the community members around the mine indicated that their main concern was the dust that is produced when they are crushing the coal and loading coal in trucks. The machine that does this is allocated about 200 meters from the main road. They are not protected they just inhale the dust, this also affects their families since the dust is all over the place surrounding Mchenga Coal Mine. They have not complained formally to authorities of Mchenga Coal Mine because they did not know where to start. The local community members, who took the issue to village headman who tabled it during District Development Committee meeting soon, have since once made an effort.

Annex 2: Other TAI Assessment Results by Case

Annex 2.1 Cholera Outbreak in Blantyre City

Case Title: Cholera Outbreak in Blantyre City
Case Type: Information in an emergency
Case Type Detail: Other
Category: Access to Information
Case Cluster: Water and Environmental Sanitation
Researcher: Christopher Mwambene

Indicator	Result	Grade
To what extent does the law support public access to comprehensive information about the environmental area (water, air, forest, etc) concerned in the selected case?	Law provides access to most information	Good
To what extent does the law require a government agency to generate or report regular and diverse information of the selected type	Extensive generating reporting required by law	Best
To what extent does the law require a government agency to publicly disseminate all generated or reported information of the selected information type?	Adequate information dissemination required	Good
How clear and narrow are the limits on claims of confidentiality of the selected information type?	Limits neither clear nor narrow	Worst
To what extent does the law require the agency responsible for the selected information type to build the capacity of its staff on access to information? CORE	Law adequate on capacity building	Good
To what extent does the law require the agency responsible for the selected information type to build the capacity of its staff with regard to the environment	Law requires extensive capacity building	Best
To what extent does the law require the agency responsible for the selected information type to maintain the infrastructure needed to provide the public access to the information?	Law requires extensive maintenance of infrastructure	Best
To what extent does the law require the government to offer the public technical assistance, guidance or training on how to access and use the selected information type? CORE	Law strong on offering technical assistance etc	Best
To what extent does the law require the	Law adequate on	Good

government to build the capacity of sub-national governments to provide access to the selected information type? CORE	capacity building	
How good is the system for data collection and integrated management of the selected information type? CORE	Integrated information management system of adequate scope and quality	Good
#21 To what extent does an agency or system generate and/or collect information about the environmental area (water, air, forest, etc.) concerned in the selected case?	Information generated or collected in 2 of 3 of the 4 areas (specify)	Good
22 To what extent is there a monitoring system and/or penalties for non-compliance to ensure the agency meets its obligations to disclose information	Limited monitoring system or penalties for non-compliance	Intermediate
#24 How complete, relevant, and accurate was the information disseminated to the public in the selected case?	Information disseminated satisfied two of the criteria (please specify)	Good
To what extent did the public have access to information in the selected case at little or no cost? CORE	Information available for free	Best
#26 How comprehensive and planned was efforts to reach a wide range of stakeholders with information in the selected case?	Comprehensive and planned effort to reach a wide range of stakeholders	Good
27 How well did the responsible agency make a planned and systematic effort to disseminate information to a minority or disadvantaged group (identified in the explanation to this indicator) in the selected case? CORE	Effort to reach the target audience mostly adequate, but with room for improvement	Intermediate
#28 To what extent does the government generate/collect the selected information type at regular time intervals and in a timely fashion?	Some information regularly generated or collected in a timely fashion	Intermediate
29 With what level of timeliness does the government disseminate the selected information type? CORE	Dissemination on time or regular	Best
#30 How prompt was the response to a request for information in the selected case?	Prompt response to request	Good
#31 To what extent was all relevant information in the selected case found in many different outlets in different locations? CORE	Most relevant information found in EITHER different outlets OR different locations (not both)	Intermediate
32 To what extent does the agency that manages the selected information type have	Agency has some staff explicitly responsible	Intermediate

staff explicitly responsible for disseminating information and responding to requests?		
#34 To what extent were guidelines or training on the environment offered regularly over the last 3 years to staff in the agency managing the selected information type? CORE	Limited and irregular guidelines or training in the last 3 years	Intermediate
#35 How adequate is the government budget allocation for facilitating the collection and dissemination of the selected information type? CORE	Budget inadequate	Poor
#36 How regularly did relevant sub-national government officials receive guidelines or training on access to the selected information type over the last 3 years?	Limited and irregular guidelines or training in the last 3 years	Intermediate
#37 How clear and easily accessible are the public guidelines on how to obtain the selected information type? CORE	Guidelines are clear and easily accessible	Good
#38 How regularly have activities to build the capacity of the public in the selected information type been conducted over the last three years?	Somewhat regular activities conducted in the last 3 years	Good
#39 To what extent did the relevant information in the selected case reach the relevant public in time? CORE	Most relevant information reached the relevant public in time	Good
#40 To what extent did individual choices and behavior change because of information	Some change in choices or behavior	Good
#41 To what extent did information lead to deliberate actions to prevent or reduce negative impacts on the environment or human health? CORE	Some deliberate actions taken	Good
#42 How well did staff/officials execute their information provision and management responsibilities in the selected case? CORE	Most stakeholders were satisfied with staff/officials' performance most of the time	Good
#43 In the selected case, to what extent did stakeholders have the skills and knowledge to obtain the information they needed?	Limited stakeholder skills and knowledge	Intermediate
#44 How well did sub-national government agencies facilitate access to information in the selected case?	Sub-national government officials played a strong role in enhancing access to information	Best
#45 To what extent did media involvement facilitate access to information in the selected case?	The media played a strong role in enhancing access to	Best

	information	
#46 To what extent did civil society organization involvement facilitate access to information in the selected case? CORE	CSOs had limited effectiveness in enhancing access to information	Intermediate

Annex 2.2 Water Quality Monitoring in Blantyre

Case Title: Water Quality Monitoring in Blantyre

Case Type: Facility-level information

Case Type Detail: Reports on environmental compliance

Category: Access to Information

Case Cluster: Water and Environmental Sanitation

Researcher: Christopher Mwambene

Indicator	Result	Grade
To what extent does the law support public access to comprehensive information about the environmental area (water, air, forest, etc) concerned in the selected case?	Law provides access to most information	Good
To what extent does the law require a government agency to generate or report regular and diverse information of the selected type?	Adequate generation / reporting required	Good
To what extent does the law require a government agency to publicly disseminate all generated or reported information of the selected information type?	Extensive information dissemination required	Best
How clear and narrow are the limits on claims of confidentiality of the selected information type?	Limits neither clear nor narrow	Worst
To what extent does the law require the agency responsible for the selected information type to build the capacity of its staff on access to information?	Law adequate on capacity building	Good
To what extent does the law require the agency responsible for the selected information type to build the capacity of its staff with regard to the environment?	Law requires limited capacity building	Intermediate
To what extent does the law require the agency responsible for the selected information type to maintain the infrastructure needed to provide the public access to the information?	Law requires adequate maintenance of infrastructure	Good
To what extent does the law require the government to offer the public technical assistance, guidance or training on how to access	Law silent on offering technical assistance etc	Worst

and use the selected information type?		
To what extent does the law require the government to build the capacity of sub-national governments to provide access to the selected information type?	Law adequate on capacity building	Good
Does the law establish a reasonable timeframe within which the responsible agency must make information of the selected type available to the public?	The law establishes a reasonable timeframe	Good
How good is the system for data collection and integrated management of the selected information type?	Integrated information management system limited in scope and quality	Intermediate
To what extent does an agency or system generate and/or collect information about the environmental area (water, air, forest, etc.) concerned in the selected case?	Information generated or collected in all 4 of the 4 areas	Best
To what extent is there a monitoring system and/or penalties for non-compliance to ensure the agency meets its obligations to disclose information?	Information disseminated satisfied two of the criteria (please specify)	Intermediate
How complete, relevant, and accurate were responses to requests for information in the selected case?	Response satisfied only ONE criterion (complete, relevant OR accurate) (specify)	Intermediate
How complete, relevant, and accurate was the information disseminated to the public in the selected case?	Information disseminated satisfied only one of the criteria (please specify)	Intermediate
To what extent did the public have access to information in the selected case at little or no cost?	Information available for free	Best
How comprehensive and planned were efforts to reach a wide range of stakeholders with information in the selected case?	Effort mostly adequate, but with room for improvement	Intermediate
How well did the responsible agency make a planned and systematic effort to disseminate information to a minority or disadvantaged group (identified in the explanation to this indicator) in the selected case?	Effort to reach the target audience mostly adequate, but with room for improvement	Intermediate
To what extent does the government generate/collect the selected information type at regular time intervals and in a timely fashion?	Some information regularly generated or collected in a timely fashion	Intermediate
With what level of timeliness does the government disseminate the selected	Dissemination not performed	Worst

information type?		
How prompt was the response to a request for information in the selected case?	Prompt response to request	Good
To what extent was all relevant information in the selected case found in many different outlets in different locations?	Most relevant information found in EITHER different outlets OR different locations (not both)	Intermediate
To what extent does the agency that manages the selected information type have staff explicitly responsible for disseminating information and responding to requests?	Agency has some staff explicitly responsible	Intermediate
To what extent were guidelines or training on access to information offered regularly over the last 3 years to staff in the agency managing the selected information type?	Limited and irregular training in the past three years	Intermediate
To what extent were guidelines or training on the environment offered regularly over the last 3 years to staff in the agency managing the selected information type?	Limited and irregular guidelines or training in the last 3 years	Intermediate
How adequate is the government budget allocation for facilitating the collection and dissemination of the selected information type?	Budget inadequate	Poor
How regularly did relevant sub-national government officials receive guidelines or training on access to the selected information type over the last 3 years?	No guidelines or training in the last 3 years	Worst
How clear and easily accessible are the public guidelines on how to obtain the selected information type?	Guidelines are clear and easily accessible	Good
How regularly have activities to build the capacity of the public in the selected information type been conducted over the last three years?	Somewhat regular activities conducted in the last 3 years	Good
To what extent did the relevant information in the selected case reach the relevant public in time?	Most relevant information reached the relevant public in time	Good
To what extent did individual choices and behavior change because of information?	Some change in choices or behavior	Good
To what extent did information lead to deliberate actions to prevent or reduce negative impacts on the environment or human health?	Extensive deliberate actions taken	Best
How well did staff/officials execute their information provision and management responsibilities in the selected case?	Most stakeholders were satisfied with staff/officials' performance most of the time	Good

In the selected case, to what extent did stakeholders have the skills and knowledge to obtain the information they needed?	Limited stakeholder skills and knowledge	Intermediate
How well did sub-national government agencies facilitate access to information in the selected case?	Sub-national government officials played a strong role in enhancing access to information	Best
To what extent did media involvement facilitate access to information in the selected case?	The media played a strong role in enhancing access to information	Best
To what extent did civil society organization involvement facilitate access to information in the selected case?	CSOs had limited effectiveness in enhancing access to information	Intermediate

Annex 2.3: Mchenga Coal Mine

Case Title: Mchenga Coal Mine
Case Type: Access to information
Case Type Detail: Administrative forum
Category: Access to Justice
Case Cluster: Effect of mining on community
Researcher: Frank Kapanda

Indicator	Result	Grade
To what extent does the law require a forum to hear the selected claim type and issue a decision?	The law provides some requirements	Intermediate
To what extent does the law enable a party to seek review or appeal of selected claim type to an independent body with the power to reverse a decision?	Appeals and reviews are mostly adequately enabled	Intermediate
To what extent does the law require the selected forum to build the capacity of members with regard to access to justice?	Law requires adequate capacity building	Good
To what extent does the law require the selected forum to maintain the infrastructure needed for access to redress and remedy?	Law requires extensive maintenance of infrastructure	Best
To what extent does the law require the government to offer the public technical assistance, guidance or training on how to	Law silent on offering of technical assistance	Worst

use the selected forum?		
To what extent does the forum have staff explicitly responsible for responding to inquire from citizens wishing to bring claims and of providing relevant information to the public?	Agency has almost no staff explicitly responsible	Poor

Annex 2.4.: Community Participation in Forest Management

Case Title: Community Participation in Forest Management
Case Type: Regulatory decisions
Case Type Detail: Other
Category: Public Participation
Case Cluster: Forest management
Researcher: William Chadza

Indicator	Result	Grade
To what extent does the law require a government agency to provide relevant information to the public about the intention to start the selected decision-making process?	The law requires provision of extensive information	Best
To what extent does the law require the government to provide opportunities for public involvement in the selected decision-making process?	The law requires extensive provision of opportunities	Best
How clear and narrow are the limits on claims of confidentiality of relevant information about the selected decision-making process?	Limits are mostly narrow and clear	Good
To what extent does the law require the agency responsible for the selected decision-making process to maintain infrastructure to support public participation?	Law requires adequate maintenance of infrastructure	Good
To what extent does the law require the government to offer the public technical assistance, guidance or training on participation in the selected decision-making process?	Law requires government to offer extensive technical assistance etc	Best
To what extent does the law require the government to build the capacity of sub-national governments with regard to	Law silent on building capacity	Worst

participation in the selected decision-making process?		
To what extent does the responsible agency make available to the public a clear description of its decision-making processes, including opportunities for participation?	Limited or unclear public description available	Intermediate
To what extent is there a monitoring system and/or penalties for non-compliance to ensure the agency meets its obligations to facilitate public participation	No monitoring system or penalties for non-compliance	Worst
To what extent did the responsible agency hold public participation sessions at all stages of the decision-making process in the selected case?	Public participation sessions held at only a few stages	Intermediate
To what extent did the agency organize consultations so as to actively solicit and capture public input in the selected case?	Limited efforts to actively solicit and capture public input	Intermediate
How well did the responsible agency make a planned and systematic effort to involve a minority or disadvantaged group (identified in the explanation to this indicator) in decision-making in the selected case?	No effort is made to reach the target audience	Worst
How well does the responsible agency maintain a publicly accessible registry of past and pending decisions?	Registry access and registry information both limited	Poor
To what extent was relevant supporting documentation available through public registries for the selected decision-making process?	Access to and extent of supporting documentation available in registry limited	Poor
To what extent were guidelines or training on public participation offered regularly over the last 3 years to officials in the agency that leads the selected decision-making process?	Limited and irregular training in the last 3 years	Intermediate
To what extent were guidelines or training on the environment offered regularly over the last 3 years to officials in the agency that leads the selected decision-making process?	Somewhat regular guidelines or training in the last 3 years	Good
How adequate is the government budget allocation for effectively facilitating public participation in the selected decision-making process?	Budget inadequate	Poor
How clear and easily accessible are the public guidelines on how to participate in the selected decision-making process?	Guidelines are either clear or easily accessible, but not both	Intermediate
How regularly have activities to build the capacity of the public to participate in the selected decision-making process been	Somewhat regular activities conducted in the last 3 years	Good

conducted over the last three years?		
To what extent was a public record kept in a reasonably accessible format detailing comments made, comments incorporated in the selected decision, and reasons for any rejection of comments?	No record kept	Worst
How promptly did the public receive information about the dispensation of comments in the selected case?	No information regarding public comments promptly dispersed to the public	Worst
How extensive was the public input provided in the selected case?	Some public input provided	Intermediate
How well did staff/officials execute their participation responsibilities in the selected case?	Stakeholder impression of staff/officials' performance was mixed	Intermediate
To what extent did civil society organization involvement facilitate public participation in the selected case?	CSOs played a strong role in enhancing public participation	Best

Annex 2.5: The Malawi Land Reform Implementation Strategy

Case Title:	The Malawi Land Reform Implementation Strategy
Case Type:	Regulatory decisions
Case Type Detail:	Plans
Category:	Public Participation
Case Cluster:	Land
Researcher:	William Chadza

Indicator	Result	Grade
To what extent does the law require a government agency to provide relevant information to the public about the intention to start the selected decision-making process?	The law requires provision of adequate information	Good
To what extent does the law require the government to provide opportunities for public involvement in the selected decision-making process	The law is silent on provision of opportunities	Worst
To what extent does the law require the government to build the capacity of sub-national governments with regard to participation in the selected decision-making process?	Law requires adequate on capacity building	Good
To what extent does the responsible agency make available to the public a clear description of its decision-making processes,	No public description available	Worst

including opportunities for participation?		
To what extent did the responsible agency provide relevant information to the public about decision options and their environmental and health impacts in the selected case	No information provided	Worst
To what extent did the responsible agency hold public participation sessions at all stages of the decision-making process in the selected case?	No public participation sessions held at any stage	Worst
To what extent were guidelines or training on the environment offered regularly over the last 3 years to officials in the agency that leads the selected decision-making process?	Limited and irregular guidelines or training in the last 3 years	Intermediate
How adequate is the government budget allocation for effectively facilitating public participation in the selected decision-making process?	Budget inadequate	Poor
How promptly did the public receive information about the dispensation of comments in the selected case?	No information regarding public comments promptly dispersed to the public	Worst