



**SUMMARY OF REVISED  
ENVIRONMENT MANAGEMENT BILL  
OF 2006**



## 1.0 Background

Malawi commenced major reform of environment and natural resources management policies and legislation following the Earth Summit held in 1992. The National Environmental Action Plan adopted in 1994 profiled in detailed the country's environmental challenges and provided the key actions that needed to be taken to arrest these. The NEAP, *inter alia*, further identified the coordination of environmental sector functions and activities as a major constraint in facilitating effective management of the environment and natural resources. The National Environmental Policy (NEP) was adopted in 1996 followed by the enactment of the Environment Management Act (EMA 1996). These, *inter alia*, provided for establishment of a coordinating institution and provided necessary policy and legal framework for cross sector coordination including dealing with existing gaps and conflicts in environment and natural resources management. Reforms were subsequently carried out in the forestry, fisheries, water, national parks and wildlife partly to ensure coordination between these sector agencies and the NEP and EMA.

The World Summit for Sustainable Development 2002 (WSSD) provided impetus for a review of environmental policies and legislation with particular focus on poverty reduction, health, water and other issues. At national level Malawi had adopted the Vision 2020 and the Malawi Poverty Reduction Strategy Paper (later substituted by the Malawi Growth and Development Strategy). These need to be fully incorporated into environment and natural resources management policies and legislation. The National Strategy for Sustainable Development (NSSD) was thus adopted in 2004 to domesticate WSSD commitments; a revised NEP 2004 was also adopted incorporating the key policy changes. The EMA 1996 was also revised following extensive stakeholders consultations. This brief outlines the process of revising the EMA 1996, the key changes

that have been proposed including the rationale for the proposals and the next steps that are envisaged for finalizing and implementing the new legislation once enacted.

## **2.0 Methodology**

In revising the EMA, the Environmental Affairs Department (EAD) pursued a consultative approach that involved a number of measures. These included:

- **Desk review** to initially identify details of state of knowledge and information gaps and list of stakeholders to be consulted;
- **Consultations** with key stakeholders, non governmental organizations, directors from key sectors and other institutions;
- **Consensus building** among key stakeholders by discussing draft report and zero draft of the amended EMA; and
- **Political clearance** through presentations and discussions with the National Council for Environment (NCE), Ministry of Justice and relevant cabinet committee.

## **3.0 Key Issues for Revision of Environmental Management Act**

A number of issues were considered during the revision. The key ones included:

- Environmental principles and their functions within the framework law such as polluter pays, sustainability principle, precautionary principle, participatory principle and the integration principle;
- The duty to sustainably conserve and manage the environment, considering on whom is the duty imposed? Does it facilitate the conservation of the environment? And enforceability;

- The right to a clean and healthy environment: formulation and enforceability, considering the content of the right, who may enforce? And enforcement mechanisms and their effectiveness;
- Dispute resolution mechanisms, considering the complaints procedure, judicial process and the Environmental Appeals Tribunal (EAT);
- Environmental coordination, considering the relationship between the EMA and other environment and natural resources management legislation, the role of the Minister, the NCE, the Technical Committee for Environment (TCE) and the Director of Environmental Affairs, key features of coordination (consultation and institutional participation, reporting mechanisms, compliance monitoring and enforcement and decentralization);
- Conflicts, gaps and or overlaps in environment and natural resources management policies and legislation, considering sector jurisdiction in protected areas (water, forestry, wildlife, fisheries and agriculture), separation of regulatory and user functions and integrated pollution control (licensing authority);
- Environmental Impact Assessment (EIA) and auditing, considering projects requiring EIA, public participation in EIA, EIA and land use planning, EIA and development planning and licensing and environmental mitigation and management plans;
- Community Based Natural Resources Management (CBNRM), considering the proliferation of environment and natural resources management institutions at local level, CBNRM and local livelihoods, CBNRM and local enforcement, CBNRM and non governmental organizations and the private sector and standard rules and institutions for CBNRM; and

- Financial provisions, considering sector funds, environmental fund and participation of non governmental organizations.

## **4.0 Proposals**

### **4.1 Principles**

To achieve the desired objectives of the revision, the following principles were used:

- Clearly stipulate guiding principles at the beginning of the Act;
- Strengthen the rights regime and clearly allocate duty bearing individuals, non governmental organizations, private sector, and sector government departments;
- Establish an environmental management/protection authority with clear reporting and regulatory functions over environment and natural resources management sectors;
- Ensure that extractive/user sectors do not undertake regulatory functions;
- Establish clear rules for sector reporting, compliance monitoring and enforcement responsibilities including the role of Assemblies and other statutory agencies;
- Streamline CBNRM institutions to reduce gaps and overlaps; and
- Ensure that environment and natural resources management funding and capacity for enforcement receive adequate attention commensurate with its carrying capacity and responsibility.

### **4.2 Proposed Revisions**

The following are the proposed revisions:

## **Definitions**

- Inclusion of new institutions, responsibilities, concepts and mechanisms necessitated some new definitions;
- The following definitions have been included: ‘Authority’, ‘Minister’, ‘public authority’, ‘access to environmental information’, ‘local environment and natural resources committee’, and ‘environmental impact assessment licenses’.

## **General Principles**

- EMA 1996 does not provide a comprehensive outline of principles on which the rest of the Act should be based; the section on principles provided for rights and duties of individuals and public authorities; many of the responsibilities only applied to public authorities;
- A new section 3 is devoted to general principles of environmental management many of which Malawi already subscribes to under international instruments to which it is a party; section 4 repeats old EMA section 3 (2) but expands its applicability to entities outside the state.

## **Duties, Rights and Enforcement**

- Standing to enforce the right to a clean and healthy environment narrow, could have been subject to different interpretations; the coordinating agency had no standing to enforce on behalf of the public, relied on the Attorney General’s office which is heavily understaffed;
- A new section 6 expands right to sue to the Authority, lead agencies and non governmental organizations; it also expands the scope and content of the right so that it is not narrowly interpreted in terms of ‘the brown environment’ but to also include ‘the green environment’ as well.

## **Public Participation in Environment and Natural Resources Management**

- Public participation in environment and natural resources management was mentioned only under the duties and responsibilities of the Minister responsible for environment; no mechanisms provided to facilitate this participation;
- A new section 7 provides for some principles to facilitate public participation in environment and natural resources management through promoting access to information, decision making and environmental justice and effective remedies.

## **Institutional Coordination**

- Did not cover for instance when a lead agency could renege its functions on the guise or understanding that the coordinating agency has the necessary mandate. The Act also failed to provide for functions of lead agencies and no mechanisms for coordination and elimination of conflicts or gaps were provided for;
- A new section 9 contains elaborate provisions to deal with these concerns. In particular, there are reporting responsibilities between the coordinating agency and lead agencies. Sections 10 and 11 provide further mechanisms to eliminate gaps, conflicts, inconsistencies or overlapping functions;
- To strengthen coordination, implementation and enforcement of environment and natural resources management there is need for an autonomous institution that can command necessary authority as a professional body whose decisions and actions are considered as such;

- A National Environmental Protection Authority (NEPA) has been proposed in a new Part III. NEPA replaces the Minister and the latter's functions have been taken over by the former. An appropriate Minister will promulgate regulations under the Act but NEPA will have operational independence;
- This is in line with the NEP (1996) and as revised in 2004. There is also need to harmonize this part with the decentralization framework; there are no district development committees anymore, hence sections 19 to 20 were obsolete;
- In the same vein institutions such as NCE, TCE have been replaced. NEPA's Chief Executive Officer will be the Director General.
- There is no provision for an institution to popularise enforcement of environment and natural resources management policy and legislation and to act as a whistle blower where officials, private sector etc fail to take necessary action to protect conserve natural resources and to safeguard rights and interests of the vulnerable;
- The proposed amendments have also provided for several Technical Committees to deal with critical areas of environment and natural resources management e.g. soil and water conservation, EIA, hazardous chemicals and toxic substances, enforcement and standards review, pollution control and public awareness. A new office of environmental ombudsman was proposed.

## **Environment and Natural Resources Management Planning**

- There are no reporting or enforcement mechanisms for ensuring that the NEAP and District Environmental Action Plans (DEAP) are complied with;

- Sections 26 and 27 have replaced sections 21 to 23 and have provisions to cater for reporting and enforcement in respect of NEAP and DEAPs.

### **Environmental Impact Assessment**

- There is need to strengthen the role of the coordinating agency in supervising, reviewing, monitoring and auditing EIA; there is no mechanism for ensuring that EIA is conducted by qualified experts approved by the agency; no legal obligation to require monitoring and mitigation plans; the inspectorate regime not involved in EIA, monitoring or auditing;
- New sections 30 to 40 deal with the overall responsibility of the Authority over EIA including supervision, review, monitoring and auditing of projects; there is also provision for ensuring that each licensing authority provides necessary information to applicants seeking licenses for which an EIA may be required and there is provision for coordination in approving such licensing with the Authority.

### **Environmental Standards**

- No detailed provision on the nature of the standards that may be prescribed; hence leaves too much room that may leave gaps;
- New sections 41 to 47 give detailed provision for the nature of standards that may be prescribed.

### **Environmental Management**

- This part has been rearranged; incentives have gone to financial provisions; environmental protection orders have been put together with environmental easements;

- New sections 50 to 61 deal with biodiversity and have strengthened existing ones under sections 35 and 36 of EMA, 1996;
- This part did not adequately deal with management and regulation of ‘the green environment’ and did not provide sector guidance in management of water, land, hilly and mountainous areas, wetlands, rivers and lakes as well as river banks and lake shores;
- There are also new provisions dealing with climate change, conservation of energy, environmental disaster preparedness and prohibition of discharge of hazardous chemicals, materials or oil into the environment; provisions dealing with protection of the ozone layer, management of wastes and pesticides including classification and importation thereof have been included.

### **Protection Orders and Environmental Easements**

- These sections have not been changed; the EMA, 1996 however has no provisions for dealing with private interests in land to ensure land owners preserve and conserve the environment or natural resources or that they enhance the quality of their land;
- Environmental protection orders have been retained but under a new Part VIII (sections 126 and 127) which also deals with environmental easements (section 128 to 132). Environmental easements provide opportunity for adjoining land owners or the Authority or indeed any other interested parties to demand management of a piece of land in a particular manner so as to ensure the environment in general, or value or quality of the adjoining piece of land is not degraded or diminished.

## **Financial Provisions**

- The provisions are adequate though some strengthening of powers of inspectors is necessary; record keeping also needs to be revised to enhance monitoring and coordination by the Authority;
- These are in new sections 156 to 159; powers of inspectors have been enhanced in section 157 and record keeping has been revised and strengthened in section 159.
- This part only dealt with the Environmental Fund; the Fund did not involve non-state actors; these may provide a new window for financing environment and natural resources management. This part needs to also reflect the independence of the Authority to plan, account and raise funds for its work;
- The new Part XI deals with financial provisions in general: the Environmental Fund is dealt with under sections 145 to 153; a National Environment Trust Fund has been provided for under section 155; there are also provisions to enable the Authority to make estimates for its operational funds.

## **International Conventions**

- The EMA did not deal with international conventions relating to environment and natural resources management; there is no mechanism for ensuring coordination, reporting, compliance monitoring with environment and natural resources management conventions, agreements etc; further there is no provision dealing with coordination of trans-boundary environment and natural resources management.
- A new Part XIII (section 166) deals with coordination of environment and natural resources management negotiation, adoption, signature,

ratification and implementation; coordination of trans-boundary environment and natural resources management activities has been provided for.

## **Legal Proceedings**

- The jurisdiction of the EAT is limited to administrative law; violation of EMA in general is outside the tribunal; no provision for reference jurisdiction;
- A new Part XVI retains most of the provisions under old Part XII; there are however new provisions giving the Tribunal jurisdiction over the administration of EMA as a general jurisdiction to hear matters referred to it by various stakeholders.

## **6.0 Challenges**

A recent stakeholder consultative meeting held on 27<sup>th</sup> November 2008 outlined a number of challenges that have delayed the finalization of the revised EMA Bill. The key ones included:

- Legal processes purported to be slow – is it possible to expedite the process?
- Need for concerted efforts from all concerned stakeholders – what strategies can we use effectively?
- Lobbying/advocacy essential – what strategies can we use effectively and what role can civil society play?
- Departmental shifting between ministries which has tended to affect the effectiveness and timeliness of leadership provision by new parent ministries.

## **7.0 Next Steps**

The meeting proposed the following steps to ensure enactment of the revised EMA Bill:

- Submission to the National Assembly for enactment;
- Gazettement to bring it into force;
- Promulgation process for establishment; and
- Implementation/enforcement for impact.



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