

MALAWI

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ACT

No. 23 of 1996

I assent

Bakili Muluzi
President
5th August, 1996

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

ENACTED by the Parliament of Malawi as follows -

PART I - PRELIMINARY

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| 1. - This Act may be cited as the Environment Management Act, 1996, and shall come into force on such date as the Minister may, by notice published in the <i>Gazette</i> , appoint and the Minister may appoint different dates for the coming into force of different parts of this Act. | Short title and commence ment |
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| Interpretation | 2. In this Act unless the context otherwise requires -
"ambient air" means the atmosphere surrounding the earth but does not include the atmosphere within a structure or within any underground space;
"analysis" means the examination of any matter, substance or process for the purpose of determining its composition or quality or its effect (where physical, chemical or biological) on any segment of the environment;
"analyst" means an analyst appointed under section 49;
"biological diversity" means the variability among living organisms from all sources including, <i>inter alia</i> , terrestrial, marine and other aquatic ecological systems and the ecological complexes of which they are part, and includes diversity within or between species and of ecosystems;
"conservation" means the preservation of the natural resources and their protection from misuse, fire or waste;
"Council" means the National Council for the Environment established under section 10(1);
"dangerous" means harmful or dangerous to public health, plant or animal life or to the environment and "danger" shall be construed accordingly;
"developer" means any person who has proposed or has undertaken to implement a project;
"Director" means the Director of Environmental Affairs appointed under section 9(1);
"District Development Committee" means the District Development Committee established in every district to initiate, monitor and co-ordinate development policies and activities in that district;
"effluent" means waste water or other fluid originating from a domestic or an agricultural or industrial activity, whether treated or untreated and whether discharged directly or indirectly into the environment;
"environment" means the physical factors of the surroundings of the human being including land, water, atmosphere, climate, sound, odor, taste, and the biological factors of fauna and flora, and includes the cultural, social and economic aspects of human activity, the natural and |
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the built environment;

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

"environmental impact assessment" means a systematic evaluation of a project to determine its impact on

the environment and the conservation of natural resources;

"environmental impact assessment report" means the environmental impact assessment report required under section 25 (1);

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

"environmental planning" means planning that takes into account environmental issues;

"*ex-situ*" means conservation outside the natural habitat of a biological organism;

"genetic resource" means any genetic material of actual or potential value;

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

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

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

"inspector" means an environmental inspector designated under section 45(1);

"lead agency" means any public office or organization including every Ministry or Government department which is conferred by any written law with powers and functions for the protection and management of any segment of the environment and the conservation and sustainable utilization of natural resources of Malawi;

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

"National Environmental Action Plan" means the national environmental action plan launched by the Government in December, 1994 outlining environmental strategies, measures and programmes necessary for promoting the protection and management of the environment and the conservation and sustainable utilization of natural resources;

"natural resources" means the natural resources of Malawi wherever located;

"occupier" means a person in occupation or control of any premises, and, in relation to premises different parts of which are occupied by different persons, means the person in occupatio

are occupied by different persons, means the person in occupation or control of each such different part;

"oil" includes -

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

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

"owner", in relation to any premises, means -

(a) the registered owner of the premises in question;

(b) the lessee or sublessee of the premises in question;

(c) the agent, attorney or the personal representative of the owner of the premises;

(d) the person in actual possession of the premises or entitled to receive the rent of the premises, whether on his own account or as agent or trustee of any other person or as receiver;

(e) in relation to any vessel, includes the charterer, pilot or other person in actual control of the vessel, whether or not the vessel is registered in or outside Malawi;

"ozone layer" means the ozone layer as defined in the *Vienna Convention for the protection of the Ozone Layer, 1985*;

"Pollutant" means any substance whether in a liquid, solid or gaseous form which directly or indirectly -

(a) adversely alters or destroys the quality of the environment; or

(b) is dangerous or potentially dangerous to public health, plant or animal life, and includes objectionable odors, radioactive substances or particles, noise, vibration, or any substance or particle that causes temperature change or physical, chemical or biological change to the environment;

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

"premises" includes any land, whether covered by buildings or not, any place underground and any land covered by water and hereditament of any tenure

and description;

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

"project brief" means the project brief required under section 24(2);

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

"Public Appointments Committee" means the Public Appointments Committee established under Section 56(7) of the Constitution;

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

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

"Technical Committee" means the Technical Committee on the Environment established under section 16;

"Tribunal" means the Environmental Appeals Tribunal established under section 69;

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

"vessel" includes a ship, boat, floating structure or aircraft;

"waste" includes domestic, commercial or industrial waste whether in a liquid, solid, gaseous or radioactive form which is discharged, emitted or deposited into the environment in such volume, composition or manner as to cause pollution; Cap.69.01

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

PART II - GENERAL PRINCIPLES

3. - (1) It shall be the duty of every person to take all necessary and appropriate measures to protect and manage the environment and to conserve natural resources and to promote sustainable utilization of natural resources in accordance with this Act and any other written law lawandementf o mlaang protection relatingthe to

National
environ
mental
policy

relating to the protection and management of the environment or the conservation and sustainable utilization of natural resources.

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

- (a) promoting a clean environment in Malawi;
- (b) ensuring the sustainable utilization of the natural resources of Malawi;
- (c) facilitating the restoration, maintenance and enhancement of the ecological systems and ecological processes essential for the function of the biosphere, and the preservation of biological diversity;
- (d) promoting public awareness and participation in the formulation and implementation of environmental and conservation policies of the Government;
- (e) promoting co-operation with foreign governments and international or regional organizations in the protection of the environment and the conservation and sustainable utilization of natural resources;
- (f) promoting scientific research, technological development and training relating to the protection and management of the environment or the conservation and sustainable utilization of natural resources.

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

Natural and genetic resources	(a) shall be protected, conserved and managed for the benefit of the people of Malawi; and (b) save for domestic purposes, shall not be exploited or utilized without the prior written authority of the Government.
Right to a decent environment	5. - (1) Every person shall have a right to a clean and healthy environment. (2) For purposes of enforcing the right referred to in subsection (1), any person may bring an action in the High Court - (a) to prevent or stop any act or omission which is deleterious or injurious to any segment of the environment or likely to accelerate unsustainable depletion of natural resources.

(b) to procure any public officer to take measures to prevent or stop any act or omission which is deleterious or injurious to any segment of the environment for which the public officer is responsible under any written law;

(c) to require that any on-going project or other activity be subjected to an environmental audit in accordance with this Act.

(3) Any person who has reason to believe that his or her right to a clean or healthy environment has been violated by any person may, instead of proceeding under subsection (2), file a written complaint to the Minister outlining the nature of his or her complaint and particulars, and the minister shall, within thirty days from the date of the complaint, institute an investigation into the activity or matter complained about and shall give a written response to the complainant indicating what action the Minister has taken or shall take to restore the claimant's right to a clean and healthy environment, including instructing the Attorney General to take such legal action on behalf of the Government as the Attorney General may deem appropriate.

(4) Subsection (3) shall not be construed as limiting the right of the complainant to commence an action under subsection (2);

Provided that an action shall not be commenced before the Minister has responded in writing to the complainant or where the Attorney General has commenced an action in court against any person on the basis of a complaint made to the Minister.

(5) Nothing in this Act shall be construed as divesting any lead agency of the powers, functions, duties or responsibilities conferred or imposed on it by any written law relating to the protection and management of the environment and the conservation and sustainable utilization of natural resources or limiting such powers, functions, duties or responsibilities.

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

Role of lead agencies

PART III - ADMINISTRATION

Duties and powers of the Minister

7. - (1) It shall be the duty of the Minister to promote the protection and management of the environment and the conservation and sustainable utilization of natural resources, and the Minister shall, in consultation with lead agencies, take such measures as are necessary for achieving the objects of this Act.

(2) Without prejudice to the generality of the foregoing, the Minister shall -

(a) formulate and implement policies for the protection and management of the environment and the conservation and sustainable utilization of natural resources;

(b) co-ordinate and monitor all activities concerning the protection and management of the environment and the conservation and sustainable utilization of natural resources;

(c) prepare plans and develop strategies for the protection and management of the environment and the conservation and sustainable utilization of natural resources, and facilitate cooperation between the government, local authorities, private sector and the public in the protection and management of the environment and the conservation and sustainable utilization of natural resources;

(d) initiate, facilitate or commission research and studies on any aspect of the protection and management of the environment and the conservation and sustainable utilization of natural resources;

(e) prepare and lay before the National Assembly at least once in every year a report on the state of the environment;

(f) co-ordinate the promotion of public awareness on the protection and management of the environment and the conservation and sustainable utilization of natural resources;

(g) monitor trends in the utilization of natural resources and the impact of such utilization on any segment of the environment;

(h) receive and investigate any complaint by any person relating to the protection and management of the environment and the sustainable utilization of natural resources;

(i) recommend to the Government, on the advice of the council, international or regional treaties, conventions or agreements relating to the protection and

management of the environment and the conservation and sustainable utilization of natural resources to which Malawi should become party;

(j) promote international and regional cooperation in the protection and management of the environment and the conservation and sustainable utilization of natural resources shared between Malawi and other countries;

(k) on the recommendation of the Council, prescribe, by notice published in the *Gazette*, projects or classes or types of projects, for which environmental impact assessment is necessary under this Act;

(l) on the recommendations of the Council, prescribe, by notice published in the *Gazette*, environmental quality criteria and standards necessary for the maintenance of essential ecological processes and a healthy environment;

(m) carry out such other activities and take such other measures as may be necessary or expedient for the administration and achievement of the objects of this Act.

(3) In discharging his duties under this section, the Minister shall, where appropriate, consult the Minister responsible for any segment of the environment.

8. - (1) There shall be appointed in the public service a Director of Environmental Affairs (in this Act otherwise referred to as the "Director") and such other suitably qualified public officers as may be required for the proper administration of this Act.

Appointment of
Director of
Environmental
Affairs

(2) The Director shall -

(a) carry out the duties and functions provided under this Act and such other duties as the Minister may, from time to time, assign to him;

(b) be responsible to the Minister for the proper discharge of his functions under this Act and for the implementation of such policies relating to the protection and management of the environment and the conservation and sustainable utilization of natural resources as the Minister may determine;

(c) furnish the Council with such information or documents as the Council may require and, from time to time, report to the council the status of the environment and natural resources;

9. - (1) There is hereby established a council to be known as the National Council for the Environment (in this Act otherwise referred to as the "Council") which shall consist of -

Establishment
and

composition of
the National
Council for the
Environment

- (a) the Chairman of the council who shall be appointed by the President on the recommendation of the Minister;
- (b) the Secretary to the President and Cabinet, or his representative;
- (c) all Principal Secretaries of Ministries, or their representatives;
- (d) the General Manager of the Malawi Bureau of Standards, or his representative;
- (e) the General Manager of the National Herbarium and Botanical Gardens of Malawi, or his representative;
- (f) one member nominated by the Malawi Chamber of Commerce and Industry representing the industrial sector and appointed by the Minister;
- (g) one member nominated by and representing non-governmental organizations concerned with the protection and management of the environment and the conservation of natural resources and appointed by the Minister;
- (h) one representative of the University of Malawi appointed by the Minister;
- (i) one member nominated by and representing the National Commission for Women in Development and appointed by the Minister.

(2) The vice-Chairman of the Council shall be appointed by the Minister from amongst the members of the council who are not public officers.

(3) The Director shall be the Secretary to the Council.

10. - (1) The Chairman, Vice-Chairman and the members of the Council referred to in section 10(2)(f) to (i) shall hold office for three years and shall be eligible for reappointment.

Tenure of office and
vacancies

(2) The Chairman, Vice-Chairman and any member referred to in section 10(2)(f) to (i) shall cease to be a member of the Council -

- (a) if he or she resigns as a member of the Council
- (b) if he or she ceases to be a member or employee of the organization that nominated him or her for appointment as a member of the Council;
- (c) if, upon conviction of any offence, he or she is sentenced to a term of imprisonment exceeding six months without the option of a fine.
- (d) if he or she is of unsound mind; and
- (e) in circumstances where the member is compromised to such an extent that his or her ability to impartially exercise the duties of his or her office is seriously in question.

Functions of the Council	11. - The Council shall - (a) advise the minister on all matters and issues affecting the protection and management of the environment and the conservation and sustainable utilization of natural resources; (b) recommend to the minister measures necessary for the integration of environmental considerations in all aspects of economic planning and development; (c) recommend to the Minister measures necessary for the harmonization of activities, plans and policies of lead agencies and non-governmental organizations concerned with the protection and management of the environment and the conservation and sustainable utilization of natural resources.
Proceedings of the Council	12. - (1) Save as is provided in this section, the Council shall regulate its own procedure. (2) The Council shall hold at least four ordinary meetings in a year, and such number of extraordinary meetings as may be necessary, at such place or places and at such time or times, as the Chairman may determine. (3) The Chairman shall convene an extraordinary meeting on his own motion or at the request of one third of the members of the Council within such reasonable period as the Chairman shall deem appropriate. (4) Half of the members shall form a quorum at a meeting of the Council. (5) The Chairman, or in his absence the vice-Chairman, shall preside at any meeting of the council and, in the absence of both the Chairman and the vice-Chairman, the members present shall elect amongst their number a chairman to preside at the meeting of the council. (6) A decision of the Council on any question shall be by a majority of the members present and voting at the meeting and, in the event of an equality of votes, the person presiding at the meeting shall have a casting vote in addition to his or her deliberative vote. (7) The Council may invite any person whose presence is in its opinion desirable to attend and participate in the deliberations of the Council but that person shall have not right to vote. (8) The Council shall cause to be kept minutes of the proceedings of every meeting of the Council and of every meeting of any committee constituted by the Council.

Disclosure of interest	13. -	(1) If any person is present at a meeting of the Council or a committee of the Council at which any matter in which that person or his spouse is directly or indirectly interested in a private capacity is the subject of consideration he shall, as soon as practicable after the commencement of the meeting, disclose that interest and shall not, unless the Council or committee otherwise directs, take part in any consideration or discussion of, or vote on , any question touching that matter. (2) A disclosure of interest made under this section shall be recorded in the minutes of the meeting at which it is made.
	14.	A member of the council or committee shall be paid such allowance as the Minister may determine.
Allowances of members of the Council	15. -	(1) There is hereby established a committee to be known as the Technical Committee on the Environment (in this Act otherwise referred to as the "Technical Committee") which shall consist of not less than ten members and not more than twenty members each of whom shall have sufficient knowledge and training in the protection and management of the environment and the conservation and sustainable utilization of natural resources. (2) The members of the Technical Committee shall be appointed by the Minister on the recommendation of the Council and shall serve in a personal capacity for such period, and shall be paid such allowances and remuneration, as the Minister may determine. (3) A member of the Technical Committee may, by written notice to the Minister, at any time resign his position.
Technical Committee on the Environment		
Functions of the Technical Committee	16.	The Technical Committee shall - (a) examine any scientific issue which may be referred to it by the Minister, the Council, the Director or any lead agency relating to the protection and management of the environment and sustainable utilization of natural resources and shall recommend to the Minister, the council or lead agency, as the case may be, such action as is necessary for achieving the purposes of this Act; (b) carry out investigations and conduct studies into the scientific, social and economic aspects of any activity, occurrence, product or substance which may be referred to the Minister, the council, the Director or any lead agency and shall, at the completion of the investigation or study, recommend to the Minister, the Council or lead agency, as the case may be, such action as is necessary for achieving the objectives of this Act;

		(c)	recommend to the Council the criteria, standards and guidelines for environmental control and regulation, including the form and content of environmental impact assessment.
Proceedings of the Technical Committee	18. -	(1)	The Technical Committee shall adopt its own rules of procedure and every meeting of the committee shall be presided over by a Chairman elected by the members from amongst their number, and the Director shall be the Secretary to the Committee.
		(2)	The Technical Committee may, where it deems it necessary, invite any person to attend and participate in the meetings of the Committee provided that such a person shall not have a right to vote at such a meeting.
Functions of District Development Committees	19.		A District Development Committee shall, in addition to its existing role -
		(a)	under the supervision of the District Environmental Officer, prepare every five years, a district environmental action plan;
		(b)	co-ordinate the activities of lead agencies and non-governmental organizations in the protection and management of the environment and conservation and sustainable utilization of natural resources in the district;
		(c)	promote and disseminate information relating to the environment through public awareness programmes and 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.
District Environmental Officer	20. -	(1)	There shall be appointed for each district a District Environmental Officer who shall be a public officer.
		(2)	The District Environmental Officer shall be a member of the District Development Committee and shall -
		(a)	advise the District Development Committee on all matters relating to the environment and in the performance of its functions under section 19;
		(b)	report to the Director on all matters relating to the protection and management of the environment and conservation and sustainable utilization of natural resources;
		(c)	submit such reports to the Director as the Director may require;
		(d)	promote environmental awareness in the district on the protection

and management of the environment and the conservation of natural resources;

- (e) gather and manage information on the environment and the utilization of natural resources in the district; and
- (f) perform such other functions as the Director may, from time to time, assign to him.

PART IV - ENVIRONMENTAL PLANNING

Environ
mental
planning at
national
level

21. The Minister shall lay before the National Assembly a copy of the National Environmental Action Plan for approval at its next meeting after the commencement of this Act and the Minister shall thereafter review it every five years subject to approval by the National Assembly.

Purposes
and contents
of action
plan

22. The purpose of the National Environmental Action Plan shall be to promote and facilitate the integration of strategies and measures for the protection and management of the environment into plans and programmes for the social and economic development of Malawi.

23. - (1) The district environmental action plan prepared under section 19(a) shall -

- (a) be in conformity with the National Environmental Action Plan;
 - (b) identify environmental problems in the district in question;
 - (c) be approved by the minister on the recommendation of the Council and
 - (d) be disseminated to the public by the District Development Committee.
- (2) No person shall implement a development activity or project in any district otherwise than in accordance with the district environment action plan for the district in question.

Planning at
district level

PART V - ENVIRONMENTAL IMPACT ASSESSMENT AUDIT

AND MONITORING

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| Projects for which an environmental impact assessment is required | 24. - | <p>(1) The Minister may, on the recommendation of the Council specify, by notice published in the <i>Gazette</i>, the types and sizes of projects which shall not be implemented unless an environmental impact assessment is carried out.</p> <p>(2) A developer shall, before implementing any project for which an environmental impact assessment is required under subsection (1) , submit to the Director, a project brief stating in a concise manner -</p> <ul style="list-style-type: none">(a) the description of the project;(b) the activities that shall be undertaken in the implementation of the project;(c) the likely impact of those activities on the environment;(d) the number of people to be employed for purposes of implementing the project;(e) the segment or segments of the environment likely to be affected in the implementation of the project;(f) such other matters as the Director may in writing require from the developer or any other person who the Director reasonably believes has information relating to the project. <p>(3) Where, upon examining the project brief, the Director considers that further information is required to be stated in the project brief before an environmental impact assessment is conducted, the Director shall require the developer, in writing, to provide such further information as the Director shall deem necessary.</p> |
| | 25. - | <p>(1) Where the Director considers that sufficient information has been stated in the project brief under section 24, the Director shall require the developer, in writing, to conduct, in accordance with such guidelines as the minister may, by notice published in the <i>Gazette</i> prescribe, an environmental impact assessment and to submit to the Director, in respect of such assessment, an environmental impact assessment report giving -</p> <ul style="list-style-type: none">(a) a detailed description of the project and the activities to be undertaken to implement the project;(b) the description of the segment or segments of the environment likely |

to be affected by the project and the means for identifying, monitoring and assessing the environmental effects of the project;

- (c) the description of the technology, method or process to be used in the implementation of the project and of any available alternative technology, method or process, and the reasons for not employing the alternative technology, method or process;
- (d) the reasons for selecting the proposed site of the project as opposed to any other available alternative site;
- (e) a detailed description of the likely impact the project may have on the environment and the direct, indirect, cumulative, short-term and long-term effects on the environment of the project;
- (f) an identification and description of measures proposed for eliminating, reducing or mitigating any anticipated adverse effects of the project on the environment;
- (g) an indication of whether the environment of any other country or of areas beyond the limits of national jurisdiction is or are likely to be affected by the project and the measures to be taken to minimize any damage to the environment;
- (h) an outline of any gaps, deficiencies and the adverse environmental concerns arising from the environmental impact assessment and from the compilation of the environmental impact assessment report;
- (i) a concise description of the method used by the developer to compile the information required under this section.
- (3) The environmental impact assessment report shall be open for public inspection provided that no person shall be entitled to use any information contained therein for personal benefit except for purposes of civil proceedings brought under this Act or under any written law relating to the protection and management of the environment or the conservation or sustainable utilization of natural resources.

26. - (1) Upon receiving the environmental impact assessment report, the Director shall invite written or oral comments from the public thereon, and where necessary may -

Review of
Environmental
impact
assessment
reports

- (a) conduct public hearings at such place or places as the Director deems necessary for purposes of assessing public opinion thereon;
- (b) require the developer to redesign the project or to do such other thing as the Director considers desirable taking ac

into account all the relevant environmental concerns highlighted in the environmental impact assessment report, any comments made by the public and the need to achieve the objectives of this Act;

- (c) require the developer to conduct a further environmental impact assessment of the whole project or such part or parts of the project as the Director may deem necessary, or to revise the information compiled in the environmental impact assessment report;
- (d) recommend to the Minister to approve the project subject to such conditions as the Director may recommend to the Minister.
- (2) In considering whether or not to recommend to the Minister the approval of any project or of any condition, the Director shall take into account any likely impact of the project on the environment and the actual impact of any existing similar project on the environment.
- (3) A licensing authority shall not issues any licence under any written law with respect to a project for which an environmental impact assessment is required under this Act unless the Director has certified in writing that the project has been approved by the Minister under this Act or that an environmental impact assessment is not required under this Act.

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

Environmental audits

- (2) For purposes of subsection (1), the Director may require a developer to keep such records and submit to the Director such reports as the Director may deem necessary.
- (3) A developer shall take all reasonable measures for mitigating any undesirable effects on the environment arising from the implementation of a project which could not reasonably be foreseen in the process of conducting an environmental impact assessment and shall, within a reasonable time, report to the Director such effects meas
and measures.

Monitoring existing projects

28. - The Director shall take such measures as are necessary for ensuring that the implementation of any project commenced before the coming into force of this Act complies with the provisions of this Act.

Fees

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

PART VI - ENVIRONMENTAL QUALITY STANDARDS

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| Power to
prescribe
environmental
quality
standards | 30.- | (1) | The Minister may, on the advice of the council, prescribe environmental quality standards generally and, in particular, for air, water, soil, noise, vibrations, radiation, effluent and solid waste. |
| | | (2) | The prescription of the environmental quality standards under subsection (1) shall be based on scientific and environmental principles and shall take into account the practicability and availability of appropriate technology for ensuring compliance with such standards. |
| | | (3) | The Minister may prescribe different environmental quality standards to apply in different areas of Malawi with respect to different segments of the environment and the Minister may, from time to time, vary such standards. |

PART VII - ENVIRONMENTAL MANAGEMENT

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| Environmental
incentives | 31. | The Minister, on the recommendation of the council and in consultation with the Minister of Finance, shall determine - | |
| | | (a) | such fiscal incentives as are necessary for promoting the protection and management of the environment and the conservation and sustainable utilization of natural resources; and |
| | | (b) | such measures as are necessary for preventing the unsustainable use of natural resources and controlling the generation of pollutants. |
| Environmental
protection
areas | 32. - | (1) | The Minister may, on the recommendation of the Council, declare any area of Malawi, other than an area declared to be a wild reserve, forest reserve, game reserve, national park or monument under any written law, to be an environmental protection area. |
| | | (2) | In determining whether or not to declare any area an environmental protection area, the Minister shall have regard to - |
| | | (a) | representations made by any person who has sufficient interest in the area; |
| | | (b) | the natural features and beauty of the area; |
| | | (c) | the flora and fauna of the area; |
| | | (d) | the unique or special geological, physiographical, ecological or historical and cultural features of the area; |
| | (e) | any special scientific feature or biological diversity of or existing in the area; | |

- (f) the proneness of the area to any hazards against which the area requires protection;
- (g) the interests of the local communities in or around the area;
- (h) the need for the government to comply with any international obligation under any treaty, convention or an agreement to which Malawi is party;
- (3) The Director shall, in consultation with relevant lead agencies, prepare an environmental protection plan for the protection and management of every environmental protection area, and the environmental protection plan shall -
 - (a) set out policies for the protection and management of the environmental protection area; and
 - (b) provide for the development of social amenities and facilities for carrying out scientific research in the environmental protection area.

Environmental
protection
orders

33. -
- (1) The Director shall have power to issue environmental protection orders against any person whose acts or omissions have or are likely to have adverse effects on the protection and management of the environment and the conservation and sustainable utilization of natural resources, and the environmental protection orders shall be in the prescribed form and, if no such form is prescribed, in such form as the Director may determine.
 - (2) Notwithstanding the provisions of any other law to the contrary, the environmental protection order may require the person against whom it is made to -
 - (a) take such measures as are necessary for the restoration of any land degraded by reason of the activities of the person against whom the environmental protection order is made including the replacement of soil, the replanting of trees and other flora, and the restoration, as far as may be possible, of unique geological, physiographical, ecological or historical features of the land and of waste disposal sites;
 - (b) stop, prevent or modify any action or conduct which causes or contributes or is likely to cause or contribute to pollution;
 - (c) remove, at the expense of the person against whom the environmental protection order is made, any waste or refuse deposited by that person, or with his or her knowledge or authority, in a place specified in the environmental protection order and to dispose of the waste or refuse in such manner and place and within such period as may be specified in the environmental protection order;

- (d) pay such compensation as may be specified in the environmental protection order to any person whose land is degraded by the action or conduct of the person against whom the environmental protection order is made.
- (3) An environmental protection order issued under subsection (1) shall, in addition to the matters referred to in that subsection, specify -
 - (a) the activity considered by the Director to be detrimental to the protection and management of the environment and the conservation and sustainable utilization of natural resources;
 - (b) the particulars of the person or persons against whom it is made;
 - (c) the period within which anything required to be done by the person against whom it is made shall be done;
 - (d) the penalties which may be imposed for non-compliance with the environmental protection order; and
 - (e) such other matters as the Director may consider necessary for the protection and management of the environment and the conservation and sustainable utilization of natural resources.
- (4) The Director shall have power to inspect, at any reasonable time, any activity on any premises for purposes of determining whether the activity is harmful to the environment or the conservation of natural resources or whether to make an environmental protection order under subsection (1).
- (5) For purposes of subsection (4), the Director may enter any premises at any reasonable time to enforce the environmental protection order and the Director shall not be responsible for the consequences of any action reasonably taken by him in good faith under this section.
- (6) Subject to subsection (5), any person aggrieved with the environmental protection order may, within thirty days from the date on which it is made, appeal to the Tribunal, and the appellant shall indicate whether the appeal is against the whole environment protection order or against only a part or parts thereof and, if so, which part or parts.
- (7) The Director may delegate the power referred to in subsections (4) and (5) to an inspector or any person duly authorized by him and anything done by that person shall be deemed to be done by the inspector or by the Director and shall be valid for all purposes.

		(8)	An environmental protection order shall be served on the person against whom it is made or his agent or legal practitioner.
Enforcement of environmental protection	34. -	(1)	Where a person against whom an environmental protection order is served fails, neglects or refuses to take the action specified in the environmental protection order, the Director shall take such action as he deems appropriate for achieving the purposes for which the environmental protection order is made.
		(2)	Where the Director has taken action pursuant to subsection (1), the Director shall be entitled to recover in full from the person against whom the environmental protection order is made the expenses reasonably incurred by the Director for taking such action, and if the expenses remain unpaid for a period of more than thirty days from the date of first demand in writing by the Director, the amount in respect of the expenses shall be recoverable by the Government as a civil debt.
Conservation of biological diversity	35. -	(1)	The Minister may, on the advice of the council -
		(a)	identify the components of the biological diversity of Malawi;
		(b)	determine the component or components of biological diversity which is or are threatened with extinction;
		(c)	prepare and maintain an inventory of the biological diversity of Malawi;
		(d)	determine actual and potential threats to the biological diversity of Malawi and devise such measures as are necessary for preventing, removing or mitigating the effect of those threats;
		(e)	devise measures for the better protection and conservation of rare and endemic species of wild fauna and flora;
		(f)	develop national strategies, plans and programmes for the conservation of the biological diversity of Malawi;
		(g)	require in writing any developer, including the government, to integrate the conservation and sustainable utilization of the biological diversity of Malawi in any project the implementation of which has or is likely to have detrimental effects to the biological diversity of Malawi;
		(h)	on the recommendation of the Technical Committee, prohibit or restrict access by any person to or the exportation of any component of the biological diversity of Malawi.

- (2) The Minister may, on the advice of the Council and in consultation with the Minister responsible for the matter in question, take such action or measure as is necessary for -
 - (a) promoting such land use methods as are compatible with the conservation of the biological diversity of Malawi;
 - (b) the selection and management of environmental protection areas for the conservation of the various terrestrial and aquatic ecological systems in Malawi;
 - (c) the establishment and management of buffer zones near environmental protection areas;
 - (d) the protection of threatened animal and plant species, habitats and ecological systems;
 - (e) controlling the importation of alien and plant species;
 - (f) identifying, promoting and integrating traditional knowledge into the conservation and sustainable utilization of the biological diversity of Malawi; and
 - (g) the establishment and management of germplasm banks, botanical gardens, zoos and animal orphanages and such other similar facilities.
- (3) Where the Minister considers it desirable so to do, he may, on the advice of the Council, recommend to the Minister responsible for wildlife, the release of any animal or animal species conserved *ex-situ* or *in-situ* into its natural habitat or ecological system.

Access to
genetic
resources

- 36. - (1) The Minister, on the recommendations of the Council, may, by regulations published in the *Gazette*, control or restrict access by any person to the genetic resources of Malawi.
- (2) Without prejudice to the generality of subsection (1), the regulations may -
 - (a) prohibit the exportation of germplasm, except in accordance with a licence issued by the Minister and not subject to such conditions as the Minister may impose;
 - (b) provide for the sharing of benefits arising from the technological exploitation of germplasm originating from Malawi between the owner of the technology and the government;
 - (c) provide for fees payable in respect of an export licence issued under subsection (2)(a) and for a charge payable for accessing germplasm.
- 37. - (1) The Minister, on the recommendations of the Council, may, by

		regulations published in the <i>Gazette</i> , control the management, transportation treatment and recycling, and safe disposal of waste and for prohibiting littering of public places.
Waste management	(2)	The Minister may recommend to the Minister responsible for local government the promulgation of such rules or the formulation of such measures as are necessary to regulate the collection, transportation and safe disposal of waste by local authorities.
	(3)	The Minister may, on the recommendation of the Council -
	(a)	formulate criteria and standards for the classification and analysis of waste and shall, subject to the rules or measures referred to in subsection (2), determine the method or methods for safe disposal of waste;
	(b)	control the handling, storage, transportation, classification, importation, exportation and destruction of waste;
	(c)	monitor any waste disposal site and direct the control of any such site if its continued use as a waste disposal site constitutes or is likely to constitute a hazard to the health of the people living in the vicinity of, or to the environment adjacent to, the site.
Licences for Waste	38. - (1)	No person shall handle, store, transport, classify or destroy waste other than domestic waste, or operate a waste disposal site or plant, or generate waste except in accordance with a licence issued under this section.
	(2)	The Minister may, on the advice of the council, grant to any person a licence to handle, store, transport, classify or destroy any waste, including hazardous waste, or to generate waste or to operate a waste disposal site or plant, subject to such conditions as the Minister may determine.
	(3)	An application for a licence under this section shall be in the prescribed form or, if no such form is prescribed, in such form as the Minister may determine, and the form shall contain the applicant's full names, postal and physical address and such other particulars as the Minister may require.
	(4)	Any person who, at the commencement of this Act, is carrying on the business of handling, storing, transporting, classifying, destroying or disposing of waste shall apply for a licence under this section within six months from the date of the commencement of this Act.

- (5) The Minister may, at any time, revoke any licence issued under this section or vary any condition attached to the licence if the activity in respect of which the licence is issued constitutes an imminent, actual or potential hazard to the environment or natural resources or if the licensee violates any condition endorsed on the licence.
- (6) The Minister may delegate the power to issue a licence under this section to the Director and any thing done by the Director in the exercise of that power shall be valid for all purposes as if it had been done by the Minister.

Importation
exportation
and
hazardous
waste
Cap.18:08

- 39. - (1) Notwithstanding the Control of Goods Act, no person shall import or export any hazardous waste or substance, except under a permit issued by the Minister subject to such conditions as the Minister may determine, and in the case of exportation, the exporter shall before a permit is issued produce to the Minister written confirmation from an appropriate authority of the receiving country that the hazardous waste or substance may be exported to that country.
- (2) No person shall transport within Malawi hazardous waste or substances, except under a permit issued by the Minister subject to such conditions as the Minister may impose.

Classifica
tion of
pesticides
and
hazardous
substances

- 40. - (1) The Minister may, in consultation with the Minister responsible for agriculture, make rules for classifying pesticides and hazardous substances, and for determining their toxicity.
- (2) Without prejudice to the generality of subsection (1), the rules may make provision -
 - (a) requiring the registration, labelling and packaging of pesticides and hazardous substances;
 - (b) for measures for controlling the manufacture, importation and exportation of pesticides and hazardous substances;
 - (c) for the distribution, storage, handling and transportation of pesticides and hazardous substances;
 - (d) for monitoring the impact of pesticides and hazardous substances and their residuary effect on public health, the environment and natural resources.
 - (e) for restricting or banning pesticides and hazardous substances.

Protection of the ozone layer	41. -	(1) The Director shall carry out national studies on substances, activities and practices that deplete or are likely to deplete the stratospheric ozone layer and other components of the stratosphere, and on the completion of each study, the Director shall submit the report of the study to the Minister. (2) The Minister may, on the recommendation of the Council, make regulations - (a) restricting or prohibiting the use of any appliance, equipment or any other thing which uses ozone depleting substances; (b) requiring any person to make, in such manner and in such form as the Minister may determine, regular reports to the Minister on the generation, consumption and importation of ozone depleting substances; (c) providing for the progressive reduction and eventual elimination of substances that deplete the ozone layer; (e) providing for the control of activities and practices likely to deplete the ozone layer; and (f) providing for such as matters as are necessary for protecting the stratospheric ozone layer. (3) Notwithstanding the provisions of the Control of Goods Act, no person shall import or export any appliance, equipment or any other thing which uses substances that deplete the stratospheric ozone layer except under a licence issued by the Minister and subject to such conditions as the Minister may determine.
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Cap.18:08

PART VIII - POLLUTION CONTROL

42. - (1) No person shall discharge or emit any pollutant into the

environment, except in accordance with this Act.

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

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| | (3) | Any person who discharges or emits any pollutant into the environment otherwise than in accordance with this Act may be required by the Minister to clean up, remove or dispose of the pollutant in such manner and within such period as the Minister shall direct. |
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| Licence to discharge effluent, etc. | 43. - | (1) | No person shall discharge effluent or emit any gas or other gaseous substances into the environment except under a licence issued by the Minister subject to such conditions as the Minister shall determine. |
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| | | (2) | The Minister may revoke any licence issued under this section if the licensee fails to comply with the conditions of the licence or any provision of this Part: |
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Provided that no licence shall be revoked without the licensee being given a reasonable opportunity to be heard.

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| | | (3) | The Minister may, by notice published in the <i>Gazette</i> , prescribe such fees as he shall deem necessary for the monitoring, cleaning up, removing or disposing of pollutants discharged or emitted into the environment. |
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| | 44. | No person shall pollute or permit or cause any other person to pollute the environment. |
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PART IX - INSPECTION, ANALYSIS AND RECORDS

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| Prohibition of pollution | 45. - | (1) | For purposes of ensuring compliance with the provisions of this Act the Minister may, by notice published in the <i>Gazette</i> , designate such number of public officers as he may consider necessary to be environmental inspectors whose functions shall be to administer, monitor and enforce measures for the protection and management of, |
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Environmental
Inspectors

and for the prevention and abatement of pollution to, the environment.

- (2) Every inspector shall be issued with an identity card, and the identity card shall constitute *prima-facie* evidence that the holder thereof is an inspector duly designated by the Minister under subsection (1).
- (3) An inspector shall, on demand by any person affected by the exercise of the powers of the inspectors under this Act, produce for inspection, the identity card referred to in subsection (2).

Powers of
inspectors

46. -

- (1) An inspector may, for the purpose of performing the functions referred to in section 45 (1), enter, at any reasonable time, any premises to examine any activity which the inspector reasonably considers to be detrimental to the environment or natural resources and to collect therefrom samples of any pollutant or other substance for analysis at any laboratory designated by the Minister under section 48.
- (2) Upon entering the premises, the inspector may require the owner or occupant or the agent of the owner or occupant of the premises to produce for inspection any book, document or record or copies thereof for retention by the inspector concerning any matter relevant to the administration of this Act.
- (3) It shall be the duty of the owner or occupant or the agent of the owner or occupant of the premises to render an inspector reasonable assistance in the performance by the inspector of the functions referred to in section 45(1).
- (4) An inspector may -
 - (a) inspect and examine any vehicle, in or upon which he has reasonable cause to believe that a pollutant or other article or substance which he believes to be a pollutant is being or has been transported;
 - (b) order the production of any document pertaining to the transportation of the pollutant or such other article or substance;
 - (c) collect any sample of the pollutant of any such substance from the vehicle or place where it has been delivered for analysis at a laboratory designated by the Minister under section 48;
 - (d) request information from any person who has or appears to have custody or control of the pollutant or such other article or substance or the vehicle in which it is or has

been transported.

Procedure for taking samples	47. -	(1)	An inspector shall, before collecting from the premises or vehicle a sample of any pollutant or other article or substance which the inspector believes to be a pollutant, inform the owner or occupier of the premises or vehicle or other person in control of the vehicle from which the sample is to be taken of his intention to do so.
		(2)	The inspector shall place the sample in three separately sealed packages and shall deliver one package each to the Director, to the laboratory at which the sample will be tested or analyzed and to the owner or occupier of the premises or vehicle or other person in control of the vehicle.
		(3)	Any dispute arising from the manner in which a sample is collected by an inspector or in connection with the results of any laboratory test or analysis of the sample shall be referred by the aggrieved person or the Director, as the case may be, to the Tribunal.
	48.		The Minister may, by notice published in the <i>Gazette</i> , establish, or where he deems it necessary, designate such laboratories as he thinks fit to be analytical laboratories or reference laboratories at which samples taken under this Act may be tested or analyzed.
Establishment or designation of laboratories	49.		There shall be appointed in the public service such number of analysts as may be required to carry out such functions and exercise such powers as are necessary for achieving the purposes of this Act.
Appointment of analysts	50. -	(1)	There shall be issued by every analyst in respect of any test or analysis, a certificate showing the results of the test or analysis.
		(2)	The certificate shall state the method or methods used in carrying out the test or analysis and shall be signed by the analyst who carried out the test or analysis.
		(3)	A certificate issued under this section shall be <i>prima facie</i> evidence of the results of any test or analysis carried out under this Act.
Certificate of analysis, etc.			
Keeping of records	51. -	(1)	The Director may, by notice published in the <i>Gazette</i> , prescribe the activities in respect of which records shall be kept for the purposes of this Act and may, require any person in possession or control of such records to transmit the records to the Director at such intervals as the Director may determine.
		(2)	The records shall be used by the Director or an inspector for purposes of environmental auditing, monitoring, control and inspection and such other purposes related to the protection and

management of the environment and the conservation and sustainable utilization of natural resources.

Public access to information and prohibition of disclosure	52. -	(1)	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.
		(2)	Notwithstanding subsection (1), no person shall be entitled to have access to proprietary information (to which the Trade Mark Act or the Patents Act applies) submitted to or received by the Director under this Act unless with the prior written consent of the owner of the proprietary information.
Cap.49.01; Cap.49.02		(3)	No person shall, without the consent of the Director, publish or disclose to any person, otherwise than in accordance with the provisions of this Act, the contents of any document, communication or information which relates to and which has come to his knowledge in the course of his duties under this Act.
		(4)	Any person who contravenes subsection (3) shall be guilty of an offence and shall be liable, upon conviction, to a fine of not less than K2,000 and not more than K100,000, and to imprisonment for twelve months.

PART X - ENVIRONMENTAL FUND

Establishment of Environmental Fund	53. -	(1)	There is hereby established a fund to be known as the Environmental Fund (in this Act otherwise referred to as the "Fund").
		(2)	The Fund shall consist of -
		(a)	such sums as shall be appropriated by Parliament for the purposes of the Fund;
		(b)	advances made to the Fund under section 55;
		(c)	such sums or other assets as may be received for the purposes of the Fund by way of voluntary contributions or donations;
		(d)	such sums as are paid by way of fees or other penalties in respect of licences issued under this Act.

	54.	The Fund shall be vested in the Minister and, subject to this Act and the Finance and Audit Act, shall be administered in accordance with his directions.
Vesting of Fund in the Minister Cap.37:01	55.	If in any financial year the income of the Fund together with any surplus income brought forward from a previous year, is insufficient to meet the actual or estimated liabilities of the fund, the Minister responsible for finance may make advances to the Fund in order to meet the deficiency or any part thereof and such advances shall be made on such terms and conditions, whether as to repayment or otherwise, as the Minister responsible for finance may determine.
Advances to the Fund	56.	The objects for which the Fund is established shall be the protection and management of the environment and the conservation and sustainable utilization of natural resources.

Objects of the Fund

Application of the Fund	57.	Without derogation from the generality of section 56, the Fund, may be applied to - (a) research and training which is calculated to promote the protection and management of the environment and the conservation and sustainable utilization of natural resources; (b) the acquisition of land, equipment, materials and other assets and the construction of buildings in order to promote the objects of the Fund; (c) the cost of any scheme which the Minister considers to be in the interest of the protection and management of the environment and the conservation and sustainable utilization of natural resources; (d) meeting any expenses arising from the establishment and maintenance of the Fund; and
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- (e) any purpose which the minister considers to be in the interest of the objects of the Fund.

58. - (1) The Minister shall cause to be kept proper books and other records of account in respect of receipts and expenditures of the fund in accordance with the Finance and Audit Act.
- (2) The accounts of the Fund shall be audited by the Auditor General who shall have all the powers conferred upon him by the Finance and Audit Act.
- (3) The Minister shall cause to be prepared, as soon as practicable, but not later than six months after the end of the financial year, an annual report on all the financial transactions of the Fund.
- (4) The report referred to in subsection (3) shall include a balance sheet, an income and expenditure account and the annual report of the Auditor General and shall be laid by the Minister before the National Assembly.

Books and other records of account, audit and report of the Fund
Cap.37:01
Cap.37.01

- Holdings of the Fund 59. - (1) All sums received for the purposes of the Fund shall be paid into a bank account and no amount shall be withdrawn therefrom except by means of cheques signed by such persons as are authorized in that behalf by the Minister.
- (2) Any part of the Fund not immediately required for the purposes of the Fund may, on the recommendation of the council, be invested in such manner as the Minister, after consulting with the Minister responsible for finance, may determine.

60. The financial year of the fund shall be the period of twelve months commencing on 1st April in one year and ending on the 31st March of the following year;

Financial year

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

PART XI - OFFENCES

61. - (1) Any person who contravenes any provision of this Act for which no to her penalty is specifically provided shall be guilty of an offence and liable, upon conviction, to a fine of not less than K10,000 and not more than K500,000 and to imprisonment for five years.

General

offences (2) Any person who is convicted of an offence under subsection (1) shall, in addition to the fine provided for in that subsection, be liable to a fine of K5,000 for each day the offence continues to be committed.

Hindering,
obstructing,
etc. of
inspector

62. Any person who -

- (a) hinders or obstructs an inspector in the execution of his or her duties under this Act;
- (b) fails to comply with a lawful order or requirement made by an inspector in accordance with this Act;
- (c) prevents the Director or an inspector or any person duly authorized by the Director or inspector from gaining entry upon or into any premises which he or she is empowered under this Act to enter;
- (d) impersonates the Director or an inspector or any person duly authorized by the Director or inspector;
- (e) prevents an inspector from having access to any record or document required by the inspector for purposes of this Act;
- (f) misleads or gives false information to the Director or an inspector or any person duly authorized by the Director or inspector under this Act; or
- (g) fails to comply with measures directed by the Minister, the Director or an inspector for the protection and management of the environment and the conservation and sustainable utilization of natural resources,

shall be guilty of an offence and shall be liable, upon conviction, to a fine of not less than K5,000 and not exceeding K200,000 and to imprisonment for two years.

Offences
relating to
environmental
impact
assessments

63. Any person who contravenes section 24 (3) or fails to prepare an environmental impact assessment report or knowingly gives false information in an environmental impact assessment report contrary to section 25 shall be guilty of an offence and shall be liable, upon conviction, to a fine of not less than K5,000 and not exceeding K200,000 and to imprisonment for two years.

Offences
relating to
records

64. Any person who -

- (a) fails to keep records required under this Act or under any regulations made under this Act;

(b) fraudulently or knowingly alters any such records,

shall be guilty of an offence and be liable, upon conviction, to a fine of not less than K5,000 and not exceeding K200,000 and to imprisonment for two years.

65. Any person who -

Offences
relating to
environmental
standards
and
guidelines

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

this Act,

shall be guilty of an offence and shall be liable upon conviction to a fine of not less than K5,000 and not more than K200,000 and to imprisonment for two years.

Offences
relating to
hazardous
materials,
processes
and wastes

66. Any person who -

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

shall be guilty of an offence and shall upon conviction be liable to a fine of not less than K20,000 and not more than K1,000,000 and to imprisonment for ten years.

Offences
relating to
pollution

67. - (1) Any person who discharges or emits any pollutant into the environment otherwise than in accordance with this Act shall be guilty of an offence and shall be liable, upon conviction, to a fine of not less than K20,000 and not more than K1,000,000 and to imprisonment for ten years.

PART XII - LEGAL PROCEEDINGS

Immunity of
officials

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

69. There is hereby established an Environmental Appeals Tribunal (in this Act otherwise referred to as the "Tribunal") which shall -

- (a) consider appeals against any decision or action of the Minister,

Establishment of Environmental Appeals Tribunals

Director or inspector under this Act;

- (b) consider appeals against the refusal by the Minister or Director to issue a licence under this Act;
- (c) consider appeals against the revocation by the Minister or Director of a licence issued under this Act;
- (d) consider appeals against the closure pursuant to this Act of any premises;
- (e) consider such other issues relating to the protection and management of the environment and the conservation and sustainable utilization of natural resources as the Minister, the Director or any person may refer to it.

Composition of Tribunal 70. -

- (1) The Tribunal shall consist of -
 - (a) a suitably trained and qualified person appointed by the President, on the recommendation of the Minister, who shall be the Chairman; and
 - (b) two other members appointed by the President, on the recommendation of the Minister, both of whom shall be sufficiently qualified in the protection and management of the environment and the conservation and sustainable utilization of natural resources,

and the appointment of each member of the Tribunal shall be subject to confirmation by the Public Appointments Committee.

- (2) The decisions of the Tribunal shall be by a majority.
- (3) The Tribunal shall not be bound by rules of evidence and shall admit as evidence any matter which in its opinion shall assist it to arrive at a just and equitable decision for the advancement of the purposes of this Act.
- (4) The Tribunal shall make its own rules of procedure and shall have power to -
 - (a) summon any person to give evidence in any proceedings before the Tribunal or to produce to the tribunal any document relevant to the proceedings before it;
 - (b) confirm, vary, amend or alter a decision made by the Minister, the Director or inspector or reverse or substitute such decision for any decision which is just and equitable and which is in the interest of the protection and management of the environment or the conservation and

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sustainable utilization of natural resources.

- (7) Any person aggrieved with the decision of the Tribunal may appeal to the High Court within thirty days from the date of the decision of the Tribunal.

Failure to attend	71.	If a party fails to attend or to be represented at the proceedings of the Tribunal without good cause, the Tribunal may proceed in the absence of that party or representative.
Representation of parties	72. -	(1) A party to any proceedings before the Tribunal may - (a) appear personally; or (b) be assisted or represented by a legal practitioner.
Enforcement of Orders	73.	Any decision or order of the Tribunal shall have the same force and effect as any other decision or order of a competent court and shall be enforceable accordingly.
Costs	74. -	(1) Subject to subsection (2), the Tribunal shall not make any order as to costs but nothing in this subsection shall prevent a legal practitioner from agreeing with his or her client the payment of solicitor and own client costs. (2) The Tribunal may make an order as to costs where a party fails to attend, without good cause, any proceedings of the Tribunal or where the matter is vexatious or frivolous.
Liability of bodies corporate, etc.	75. -	(1) Where an offence under this Act is committed by a body corporate or a partnership - (a) in the case of the body corporate, every director, manager or similar officer of the body corporate shall be guilty of the offence; and (b) in the case of a partnership, every partner shall jointly and severally be guilty of the offence. (2) A person shall not be guilty of an offence under subsection (1), if he proves to the satisfaction of the court that the act constituting the offence was done without his knowledge, consent or connivance and that he did his part to prevent the commission of the offence having regard to all the circumstances of the case.
Closure of premises	76	PART XIII - MISCELLANEOUS (1) Where the Director believes, on reasonable grounds, that this Act or any regulations made thereunder, have been contravened, the Director may, subject to subsection (2), order the closure of any

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

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

77. The Minister may make regulations for the better carrying out of the purposes of this Act.

Regulations

Passed in Parliament this twenty-eighth day of June, one thousand, nine hundred and ninety-six.

R.L. GONDWE
Clerk of Parliament