

MALAWI GOVERNMENT

Act No 23 of 5 August 1996 (The Malawi Gazettee Supplement, dated 16th August, 1996, containing (No.7c) (Published 16th August, 1996)

ACT NO.23 OF 1996

I assent

Bakili Muluzi
President
5th August, 1996

ARRANGEMENT OF SECTIONS

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- de localiser visuellement (sur carte) les opérations en cours des différents projets nationaux;
- de localiser visuellement (sur carte) les sites pouvant assurer le maximum de réussite environnementale;
- de juxtaposer les diverses cartes pour localiser la zone optimale pour l'opération PAE et obtenir ainsi la conjugaison des effets attendus de chaque programme;
- de déterminer les effets socio-culturels issus des études d'impact des projets.

Par conséquent, il pourrait être envisagé de changer la programmation

« localisée » d'un projet, pour l'adapter aux autres projets et obtenir ainsi la meilleure synergie des actions.

CONCLUSION

Que doit représenter la Charte?

- Un ensemble cohérent de règles générales, de principes, d'orientations, devant inspirer toute la législation de l'environnement.

- (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 ani-

mal 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.

Waste management

37. - (1) The Minister, on the recommendations of the Council, may, by regulations published in the Gazette, control the management, transportation treatment and recycling, and safe disposal of waste and for prohibiting littering of public places.

(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.

Classification 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.

Cap.18:08

(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.

PART VIII**POLLUTION CONTROL****Discharge of pollutants**

42. - (1) No person shall discharge or emit any pollutant into the environment, except in accordance with this Act.

(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 or disposing of any pollutant discharged or emitted into the environment.

(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.

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.

(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:

Provided that no licence shall be revoked without the licensee being given a reasonable opportunity to be heard.

(3) The Minister may, by notice published in the Gazette, prescribe such fees as he shall deem necessary for the monitoring, cleaning up, removing or disposing of pollutants discharged or emitted into the environment.

Prohibition of pollution

44. No person shall pollute or permit or cause any other person to pollute the environment.

PART IX**INSPECTION, ANALYSIS AND RECORDS****Environmental Inspectors**

45. - (1) For purposes of ensuring compliance with the provisions of this Act the Minister may, by notice published in the Gazette, 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, 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.

Establishment or designation of laboratories

48: The Minister may, by notice published in the Gazette, 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.

Appointment of analysts

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.

Certificate of analysis, etc.

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 prima facie evidence of the results of any test or analysis carried out under this Act.

Keeping of records

51. - (1) The Director may, by notice published in the Gazette, 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.

Cap.49.01; Cap.49.02

(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.

(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 re-

lates 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.

Vesting of Fund in the Minister Cap.37:01

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.

Advances to the Fund

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.

Objects of 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.

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
- (e) any purpose which the minister considers to be in the interest of the objects of the Fund.

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

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.

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.

Financial year

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;

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.

(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.

Offences relating to environmental standards and guidelines

65. Any person who -

(a) violates any environmental standard established under this Act;

(b) violates any measure prescribed under this Act; or

PART XI

OFFENCES

General offences

61. - (1) Any person who contravenes any provision of this Act for which no 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.

(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) uses natural resources 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 K5,000 and not more than K200,000 and to imprisonment for two years.

Offences relating to hazardous materials, processes and wastes

6. 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

7. - (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.

(a) consider appeals against any decision or action of the Minister, 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 sustainable utilization of natural resources.

PART XII

LEGAL PROCEEDINGS

Immunity of officials

8. 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.

Establishment of Environmental Appeals Tribunals

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

(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 exercised all reasonable means in his power to prevent the commission of the offence having regard to all the circumstances of the case.

PART XIII

MISCELLANEOUS

Closure of premises

76 (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 in which the offence was committed, 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.

Regulations

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

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

R.L. GONDWE
Clerk of Parliament