



**Policy Framework for Community-based
Natural Resources Management in Malawi:
A Review of Laws, Policies and Practices**

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Community
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Policy Framework for Community-based Natural Resources Management in Malawi: A Review of Laws, Policies and Practices

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LIST OF ACRONYMS

BVC	Beach Village Committee
CBNRM	Community-based Natural Resources Management
COMPASS	Community Partnerships for Sustainable Resource Management
CURE	Coordination Unit for Rehabilitation of the Environment
DANIDA	Danish International Development Agency
DNPW	Department of National Parks and Wildlife
EAD	Environmental Affairs Department
EDO	Environmental Development Officer
EMA	Environmental Management Act
FCMA	The Fisheries Conservation and Management Act of 1997
LFMA	Local Fisheries Management Authority
MEET	Malawi Environmental Endowment Trust
NCE	National Council for the Environment
TA	Traditional Authority
TCE	Technical Committee on the Environment
USAID	United States Agency for International Development
VFMA	Village Forest Management Agreement
VNRMC	Village Natural Resources Management Committee
WMA	Wildlife Management Authority

EXECUTIVE SUMMARY

The United States Agency for International Development (USAID) has initiated the Community Partnerships for Sustainable Resource Management (COMPASS) Activity to strengthen community-based natural resources management (CBNRM) in Malawi. USAID specifically seeks to support the policy reform process and to build mechanisms for grass roots involvement. A starting point for this is the review of existing laws and policies in forestry, fisheries, parks and wildlife, and environmental protection to determine their effectiveness in fostering community management. To accomplish this review, laws and policies were analysed, and stakeholders were consulted.

Malawi has been remarkably prolific in considering and promulgating new environmental protection and natural resources management policies and legislation. Moreover, Malawi is now carefully considering broad land tenure reform. The Presidential Commission of Inquiry on Land Policy Reform has completed its work and has made recommendations for fundamental change. Malawi has also passed a significant piece of decentralisation legislation, the Local Government Act, which devolves power from the national government to local authorities (cities, municipalities, townships and districts).

This report evaluates the effectiveness of these new sectoral and crosscutting policies in nurturing community-based management. The report summarizes strengths and weaknesses in each individual sectoral policy. It also reviews ongoing efforts to harmonise CBNRM policies across sectors to eliminate gaps and inconsistencies. The report briefly examines the effects that land reform and decentralisation may hold for CBNRM. Additionally, the report makes recommendations for mechanisms to ensure meaningful integration of community interests in subsequent policy development and implementation.

Findings include:

- Natural resources management policy reform in Malawi is dynamic. Major laws and policies have been adopted in forestry and environmental management. Important, progressive policy drafts are pending for fisheries and wildlife management, and amendments to the National Parks and Wildlife Act have been prepared. Prompt action on these initiatives will bolster the CBNRM framework and provide better certainty in rights and responsibilities.
- Community-based management is an important part of resource management strategy in every resource sector. All policies studied recognized the need to rely on communities to protect and sustain resources. Approaches adopted in laws and policies include participatory management, co-management, and community-based management. Reliance on community-based enforcement is extensive in Malawi.
- Integration of stakeholders in community management is incomplete. Roles for Traditional authorities and NGOs are notably absent or incomplete in most resource policies.
- Proliferation of CBNRM committees, mechanisms and procedures demands streamlining, consolidation, and harmonisation so that implementation is accelerated. Important coordination activities will occur within the Ministry of Natural Resources and Environmental Affairs.

- Recommendations for land reforms are very supportive of community-based natural resources management. Proposed reforms would expand customary lands and strengthen Traditional Authority tenure. If adopted, the reforms will dramatically change the character and nature of land ownership patterns and expand the opportunities and size of potential returns from CBNRM.
- Decentralisation under the auspices of the Local Government Act will also have profound, if more uncertain, consequences for CBNRM. Regulatory and representational relationships between Local Assemblies and communities will need to develop. The Act incorporates principles of democracy, transparency and accountability in local governance. These mesh nicely with the goals of CBNRM.

In the course of this policy analysis, certain guiding principles have emerged that may help to strengthen CBNRM in Malawi. These principles are offered as ideals that might be useful to consider in the continued dialogue between government, communities and NGO's that will inform the CBNRM policy reform process:

1. Incentives are maximised if schemes for individual ownership interests can be incorporated in community tenure/management.
2. Entrepreneurial outcomes provide excellent motivation for CBNRM activities. Community-private sector partnerships are consistent with CBNRM objectives.
3. Insist on cost recovery and self-help so that activities are sustainable.
4. Careful attention must be paid to the scale of projects and activities so that benefits justify community efforts. Look to link village activities in associations so that resources, power and coordination may occur.
5. Work closely with Traditional Authorities. They bring indigenous knowledge and have the trust of the people. Monitor TA involvement to ensure equity.
6. Building the capacity of all institutions and actors involved will lead to a more equal and constructive dialogue. NGO's have a critical role to play in organising, strengthening, and providing services.

INTRODUCTION

The United States Agency for International Development (USAID) has initiated the Community Partnerships for Sustainable Resource Management (COMPASS) Activity to strengthen community-based natural resources management (CBNRM) in Malawi. Among COMPASS's several objectives, Targeted Result 4 calls for support to the process of policy and legislative reform in favor of CBNRM. Sub-Result 4A specifically requires the creation of mechanisms for participation in CBNRM policy development and review. A starting point for this support is the review of existing laws and policies in forestry, fisheries, parks and wildlife and environmental protection to determine their effectiveness in fostering community management. Such a review would also enable a more thoughtful dialogue between the Government, communities and Non-Governmental Organisations (NGOs).

The time is right for a comprehensive review of current laws and policies. Malawi has been remarkably prolific in considering and promulgating new environmental policies and legislation. New environmental management, forestry, and fisheries policies have been issued and important new acts in each sector have been passed and signed into law. Policies and laws in parks and wildlife and land conservation have also been drafted and may soon be adopted. Moreover, Malawi is now carefully considering broad land tenure reform. The Presidential Commission of Inquiry on Land Policy Reform has completed its work and has made recommendations for fundamental change. Lastly, Malawi has passed a significant piece of decentralisation legislation, the Local Government Act, which devolves power from the national government to local authorities (cities, municipalities, townships and districts.)

The changes mentioned above were made with recognition of the need to improve the legal underpinnings and policy conditions to foster community-based management in Malawi. Policymakers are acutely aware of the dependence of people on land and natural resources. As predominantly rural people who depend on farming, Malawians draw their economic and social livelihood from the land. Decision-makers understand that Malawians are resourceful and thorough in their exploitation of natural resources, particularly in the face of acute poverty. They have worked to embed CBNRM as an important management strategy to improve economic and environmental conditions in Malawi. This review will evaluate the success of their efforts.

To accomplish this review, pertinent laws, policies, regulations, bylaws and studies in forestry, fisheries, environmental protection, and parks/wildlife management were compiled and analysed. (A bibliography is provided in Annex 1. An information center containing this policy material has been established at the COMPASS project headquarters in Blantyre.)

Meetings were held with a wide range of CBNRM stakeholders to discuss merits of CBNRM policy. Discussions were held with:

- individuals involved in several community NRM projects
- several key government departments
- NGOs
- Donors
- Environmental/development practitioners

A complete list of individuals who generously gave both time and insight is provided in Annex 2. Their perspectives were invaluable in sorting out practice from theory, and in assigning importance to opportunities and challenges.

The resulting report evaluates the effectiveness of new sectoral and crosscutting policies in nurturing community-based management. The report summarizes strengths and weaknesses in each individual sectoral policy in promoting CBNRM. It also reviews ongoing efforts to harmonise CBNRM policies across sectors to eliminate gaps and inconsistencies. The report briefly examines the effects that land reform and decentralisation may hold for CBNRM. Additionally, the report makes recommendations for mechanisms to ensure meaningful integration of community interests in subsequent policy development and implementation.

CHAPTER ONE

REVIEW OF SECTOR POLICIES AFFECTING COMMUNITY-BASED NATURAL RESOURCES MANAGEMENT

Natural resources policy for most of the Twentieth Century has supported the assertion of government dominion over wildlife, fish, minerals, forests and lands. These policies have looked to limit access to resources, to hold resources for the benefit of government, to collect revenues from exploitation (although frequently not at fair market value) and, increasingly, to protect the environment from unreasonable degradation through command and control regulatory programmes. More recently, nations have begun to emphasise sustainable management achieved through collaborative agreements with communities living amidst or surrounding the resources.

This sharing of management responsibility may run a wide gamut based on the extent that communities are entrusted to exercise real control and to own the resources and the land. At one end of the range are initiatives where government retains control but shares information about management options and solicits public comment. At midrange, the national government again retains dominion but views communities as participants in active management and use of the resources. At the most advanced end of this scale, communities are entrusted with control and tenure and with confidence that they will demonstrate stewardship to protect their own, as well as government interests.

Malawi is in the midst of a transition in resource management policy moving from command and control to co-management and community-based management. This represents a dramatic shift from Malawi's recent political history under almost thirty years of authoritarian domination by Kamuzu Banda. Perhaps such intense central control is the logical catalyst for conversion to more community empowerment.

In fact, some aspects of resources protection were quite efficient and effective during the Banda period. For example, many forest reserves were quite pristine given people's reluctance to confront government authority. Similarly, efforts toward public sanitation were more widespread as were activities undertaken to demonstrate national pride and modernity. One explanation of the prevalence of bilharzia (*schistosomiasis*) now, is that people abandoned more sanitary practices advocated by Banda after he was forced out, in repudiation of his authoritarianism. In any event, enthusiasm for community-based solutions for resource management problems may be the logical expression of vestigial distrust in central government, and a desire to have more control over one's life.

The analysis provided below will review, by sector, the legislation and policy statements (when they post date legislation) to examine the role of community-based management in Malawian natural resources management. Regulatory and operational reviews of the effectiveness of implementing agencies are not provided in this report. They are beyond the scope of this analysis. However, case studies are provided as examples of community-based management. Some effort is made in these case studies to consider the important relationships between government institutions and community organizations, particularly as these relate to new government CBNRM. These case studies are not presented as representative of community or government performance under the new policies and laws. Three case studies hardly make for a statistically valid sample. The case studies are nonetheless interesting in characterising some attitudes, opportunities and challenges

associated with the current national and local efforts to embrace community-based natural resources management.

1.1 FOREST MANAGEMENT

In Malawi, roughly fifty per cent of natural forests exist on customary land under the jurisdiction of traditional authorities (TA's). Less than 0.5 per cent is on private plantations and the remainder is under government control in wildlife reserves (24.8%), forest reserves (22%), and government plantations (2.3%) (EAD, 1998). Forest resources in Malawi are greatly threatened by population growth (particularly in rural areas), migration, clearing for agriculture, inadequate alternate fuel supplies, and urbanization. Forest resources are particularly stressed in the Southern and Central Regions where population pressures are the greatest. It is estimated that forest cover had declined by 41 per cent between 1972 and 1990 (EAD, 1998). Reports of the deforestation of forest reserves opened to the public since the transition to a multiparty system suggest this figure may be higher. Deforestation is clearly visible around any population settlement and is visible in the reserves that surround Lilongwe and Blantyre.

The presence of charcoal in large bags along virtually any road is emblematic of the challenge facing Malawians with regard to forest resources. Charcoal is the only fuel that many people can afford for use in cooking, heating, and ironing. It has been banned without a license from the Forestry Department because of its significant contribution to deforestation. Yet it is omnipresent. In fact, charcoal is being sold a few hundred meters from a depot at a checkpoint where charcoal coming in and out of Blantyre is confiscated.

Malawians make extensive use of community forests and forest reserves for an amazing range of forest produce products (Kachigwali and Mauambeta, 1997) including:

- Timber products—timber, firewood, poles, posts, tool handles, carvings, bee hives
- Non-timber products—grass for walls and roofing, fibre for baskets, mats, rope and weavings, edible fruits, mushrooms, edible caterpillars, honey, traditional medicines and herbs, birds, edible flying ants and mice.

Charcoal production interferes with these customary beneficial uses, yet poverty causes people to exploit government and customary resources to fill short-term needs, before someone else beats them to it.

The government institution responsible for forest management in Malawi is the Forestry Department located within the Ministry of Natural Resources and Environmental Affairs. Its principal functions include forest reserve management, forest policy development and planning, plantation management, training, research and extension. There are 3 Regional Forestry Offices and 26 District Forest Offices with corresponding Regional and District Forest Officers. At the community level the best known Department officials are the extension agents and the forest guards who protect forest reserves.

Forestry Act of 1997

In the face of these considerable challenges, the Forestry Act (Act No.11 of 1997) constitutes an endorsement of many important principles of community-based management as a remedy

for deforestation. In its announcement it declares itself in its first phrase as, “An Act to provide for participatory forestry...”. Consider its stated purposes in Part I, Section 3:

- (a) to augment, protect and **manage** trees and forests on customary land in order to **meet** basic fuelwood and forest produce **needs of local communities...**
- (b) to **promote community involvement** in the conservation of trees and forests in forest reserves and protected areas in accordance with the provisions of this act.
- (c) to **empower village natural resources management committees** to source financial and technical assistance from the private sector, Non-Governmental Organisations and other organisations.
- (d) to **promote sustainable utilisation** of timber, fuelwood and other produce.

The Director of Forestry is responsible for administering the act. In Part II, Section 5 the Director shall be responsible for:

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

Under the Act, **police powers** are delegated to any village natural resources committee to “seize and detain any forest produce or article...obtained or removed in contravention of the rules made by such village natural resources management committee” (Part II, Section 9.(3)). Three to five members of the public are to be included on the Forest Management Board, the advisory board to the Minister on all matters relating to tree and forest management in Malawi.

Part IV of the Act empowers the Director to create and manage forest reserves and to make management plans for these lands. This can no longer to be done unilaterally. Land that is not publicly owned must be acquired under the Land and Land Acquisition Acts (Section 23). In a major change, “the Director of Forestry may enter into agreement with local communities for implementation of the management plan that is mutually acceptable to both” (Section 25). This provision enables **co-management of forest reserves**, affording the meaningful involvement of communities in lands that formerly were largely beyond reach except with the payment of fees. Section 26 requires the Minister to **consult with the traditional authority when declaring a new protected forest area**, a needed protection from indiscriminant condemnation of customary lands to create forest reserves.

Part V of the Forestry Act promotes **participatory forestry on customary land**. It specifically calls for the **demarcation and management of village forest areas, ownership** of indigenous trees, establishment of tree nurseries, and regulation of forest produce. Significantly, the village headman may, with the advice of the Director of Forestry, demarcate unallocated customary land a village forest area for the benefit of that village community (Section 30). Section 31 specifies contents for a **village forest management**

agreement (VFMA) entered into between the Director and the village management authority. Components may include:

- forestry practices;
- assistance to be provided by the Department;
- provision for the use and disposition of produce and revenues;
- allocation of land to individuals for afforestation and revocation for noncompliance; and
- formation of village natural resource management committees (VNRMCs).

Part V provides a strong platform from which the Department of Forestry can partner with villages to steward forest resources while promoting their sustainable use. Section 32 invites the Minister to make rules that pertain to these VFAs to protect fragile areas, to facilitate the establishment of village natural resource management committees, for the payment of bonuses and grants for the encouragement of forests, and to prescribe mechanisms for sharing costs and benefits with regard to forest produce confiscated from customary land forests. Section 33 requires that the Minister approve any rule passed by the VNRMCs.

One of the most dramatic changes to be found in the Forestry Act is Section 34 which provides that “**any person who** or community which **protects a tree or forest**, whether planted or naturally growing in any land that person or community is entitled to use **shall acquire and retain ownership of the tree** and forest with the right to sustainable harvest and disposal of the produce.” Conveyance of ownership is a powerful inducement for community-based management.

Forest plantation agreements are authorized in the Act between the Director and communities or NGOs who want to plant trees on any type of land, public, private or customary. These agreements may convey the right to harvest the plantation and to receive assistance from the Department.

Part VIII (Utilization of Forest Produce in Forest Reserves and Customary Land) lays down fundamentally important rules for the **licensing of the sustainable use of forestland and the extraction of forest produce**. As a rule, licenses are required for taking produce from any lands, and cultivating crops, living on, prospecting or performing other acts on forest reserves and protected forest areas (Section 46). These broad restrictions are at least offset by a **waiver for domestic use of produce from customary lands other than village forest areas**. Section 50 provides that use of forest produce in village forest areas be in accord with village forest agreements. Excess wood is to be disposed of for the benefit of the entire VNRMC.

Provisions relating to the formation of the Forest Development and Management Fund are found in Part IX of the Forestry Act. Funds are authorised to support for community awareness and enabling participation in Section 59. Fines and **penalties** resulting from convictions for offences on customary land are to inure **to the benefit of the village management authority**.

The Forestry Act constitutes a significant shift from total government control to community partnership. This transfer is a work in progress, but there is sufficient authority to be found in

several provisions to enable sincere implementation efforts to devolve responsibility for stewardship to communities. The Act calls for co-management on forest reserves and community-based management on customary lands. It relinquishes government ownership of trees and forest produce and correspondingly transfers dominion to communities and individuals that protect and conserve resources. Key provisions involve communities in all aspects of forest management - planning, policing, harvesting, revenue sharing, regulating, and enforcing. Community powers are greater on customary lands, but for the first time, rights to sustainable use of forest reserves are established.

There is ample authority within the Forestry Act to support virtually any community-based forestry initiative. Nevertheless some vestiges of government dominance and control may be found in the Act. Although the Act clearly endorses community involvement, there is a persistent theme that the government will issue the rules, approvals, plans and licenses that will govern all community-based management. Insistence on government oversight and control may dampen initiative, enthusiasm and participation. Examples include:

- Section 3 (b) where in the act's purposes it promotes community involvement, but does not explicitly champion community control and tenure.
- Sections 5 and 30 - the Director is declared responsible for the establishment of rules in village forest areas as opposed to an approach where the village management authority would be responsible with advice provided by the Director.
- Section 16 - Membership on the Forest Management Board does not include community members explicitly (it calls for members of the public).
- Section 33 makes mandatory the approval of any rules developed by village natural resources management committees.
- Section 46 requires licenses for the removal of forest produce from forest reserves, **customary land** (emphasis added), public land and protected areas. A waiver is subsequently provided for forest produce for domestic use for customary lands not covered by village forest agreements. The net effect is at best confusing and likely exceeds enforcement resources. A more effective approach would be to rely on communities to establish their own forest produce rules and to enforce them. This can still be accomplished under the Act through village forest agreements, rules made by VNRMCs, and the police and enforcement authorities granted communities.
- Section 50 (3) provides for the dispensation of excess wood revenues to the benefit of the community. While the sentiment is laudable, this should be a matter solely at the judgement of the TA and the Village NRMC, if real management responsibility is conveyed.

Another comment on the Forestry Act is that it is complicated. As a result, ambiguities exist with regard to key actors, their management rights and responsibilities, and the mechanisms used to impart stewardship. The relationship between traditional authorities, village management authorities, and village natural resources management committees with regard to management of village forest areas, unallocated customary lands, and public lands is, at best, confusing.

The interrelationship between forest management plans, village forest agreements, Department and Village rules, and licensing requirements will certainly require skilled legal

analysis. Fuller devolution of responsibilities for customary lands to communities would greatly simplify this situation. For example, the Act provides that offences for violation of the Act are to be prosecuted by the Public Prosecutor in High Court. Some offences are likely better adjudicated before the traditional authorities using customary law, as chiefs and headmen have a much higher degree of credibility.

As mentioned, the Forestry Act has sufficiently broad provisions that gaps can likely be filled through rules and by laws. One key deficit in this vein is the explicit ability of the Director to designate that parts of licensing fees for use of forest products and produce might go to village management authorities. Section 49 allows the Director to waive fees or parts of fees for a specified period. Section 31 (1) (b) provides for the disposition of revenue from the use of forest management areas. This might be construed to enable fee sharing which is a critical revenue source for communities undertaking to manage and police village forest areas.

Community Forest Management in Practice: Case Studies of in the Mwanza District and the Ndirande Mountain Rehabilitation Association

There are numerous examples of forestry and agroforestry community management projects in Malawi. Typically they grow out of a partnership between a community, an NGO, a donor, and, either implicitly or explicitly, the government. Two are highlighted here to give some sense of evolving relationships and important interdependencies between government and communities.

The Mwanza Sustainable Management of Indigenous Forests project is a large community-based forestry project undertaken by the Wildlife Society of Malawi, the German Agency for Technical Cooperation, and five villages in Mwanza District in the Southern Region of Malawi: Manyenje, Chikwekwe, Kam'mwamba, George and Gobede. The project built community awareness of deforestation problems through meetings, dramas, dances, and songs. Assistance was provided to set up VNRMCs and the committees (authorities codified in the new Forestry Act) have provided support for rulemaking and enforcement activities. With the support of the Wildlife Society, villages have organised themselves to harvest indigenous fruits from the baobab (*Adansonia digitata*) and tamarind (*Tamarindus indica*) trees. They are producing two indigenous fruit juices year round at a facility staffed by rotating villagers in Kam'mwamba. The juice is sold at grocery stores in Blantyre and they are looking to expand operations to other villages.

To ensure the availability of fruits for their product, the VNRMCs have developed bylaws prohibiting the breaking of branches to harvest fruits, a practice that threatened fruit trees. Another rule was adopted to ensure that some fruits were left as seed stock for new trees. The villages police against intrusion from outsiders who seek to steal the fruit now that the juice is popular. The villages have heard about a new national by law that will enable VNRMCs to enforce the charcoal ban at the local level. Given the threat to their forests on customary land, the communities of Mwanza District are keen to start charcoal enforcement. COMPASS is currently exploring extending support to the Mwanza project.

Another intriguing initiative is the Community Forest Management project on Ndirande Mountain. Ndirande Mountain overlooks the city of Blantyre. The community at its base, Ndirande Township is home to approximately 175,000 people living in tenements and frequently in conditions of considerable poverty. The trees in the reserve were subject to considerable deforestation pressure due to major population growth. Moreover, significant

portions of it were covered with mature Blue Gum trees (*Eucalyptus* sp.) of comparatively less use to community members. The Forestry Department is in the process of turning over 1700 hectares of this forest reserve for community-based management. They harvested much of the wood and have given reforestation responsibility to ten village committees and associations involving over 1000 members with support from the Wildlife Society. Tree nurseries are being established, and deforested, bare lands are being planted with a mixed use of crops and trees. Land has been distributed to individual families, and village committees are policing their new trees and making sure that plot-holders plant an appropriate mix of trees and crops. They report that illegal cutting is now a rare occurrence.

As urban slum dwellers, villagers are having to learn silvicultural skills. In addition, it remains for them to articulate longer-term plans for sustainable utilisation of the forests. They have received help from the Wildlife Society and the Forestry Department. As a significant manifestation of the import of the new Act, the Regional Forester is presently working on the agreement that will turn control of this land over to the Ndirande communities.

1.2 FISHERIES MANAGEMENT

Fisheries are a vital resource for Malawi. Fish constitutes between 60 and 70 per cent of animal protein intake for Malawians (EAD, 1998). Malawi's landscape is characterised by its lakes, with over 20 per cent of its surface is covered in water (EAD, 1998). Lake Malawi is the third largest lake in Africa. Lake Chilwa is also a major source of fish landing. The total catch from Malawi's rivers constitutes the next largest contribution to an estimated 60 to 70 thousand metric tonnes of fish annually (EAD, 1998).

Fisheries resources are under considerable stress in Malawi. The commercial fish catch declined by over 20 per cent between 1988 and 1992 in Lake Malawi (Nyambose, 1997). Estimates for Lake Malombe show annual production down from almost 16,000 tonnes in 1988 to less than 4000 tonnes in 1997 (Njaya and Chimatiro, 1999). While fish catches may be highly variable from year to year due to natural causes (as an extreme example Lake Chilwa dries up every 17 to 20 years on average), evidence suggests that population growth, overfishing, use of improper gear, lake shore development, and catchment degradation are putting serious pressures on Malawian fisheries. Health consequences may also attend fishery problems. The dramatic decline in the numbers of snail feeding fishes (96% from 1978 to 1994) is attributed to the increase in schistosomiasis vector snails, leading in turn to the tragic increase in bilharzia among school children. Over 80 % of school children living in Chembe Village showed signs of infection (Stauffer, *et al.*, 1995).

The Fisheries Department within the Ministry of Natural Resources and Environmental Affairs has jurisdiction for fisheries management within the Malawi government. It has exercised regulatory functions for vessel registration, licensing, and enforcement of fishing prohibitions. It has also performs policy development, research and extension functions. The Fisheries Department operates through its Regional and District offices. Beach village committees have represented community fishery interests.

The Fisheries Conservation and Management Act of 1997

The Fisheries Conservation and Management Act of 1997 (FCMA), although passed in the same year as the Forestry Act, embodies a largely different approach to resources

management. As characterized in the subsequently issued National Fisheries and Aquaculture Policy (Department of Fisheries, October 1999) “that orientation was mainly focused on the needs of the fish resources themselves and the Department of Fisheries was seen as the guardian of those resources.

Virtually all powers and responsibilities associated with protecting and using fisheries resources are held under the purview of the Director of Fisheries including:

- Vessel registration
- Fishing licenses
- Aquaculture permits
- Fishery management plans
- Prohibited fishing measures
- Administrative penalties
- Enforcement
- Designation of Fishing Districts
- Regulations
- Seizure and retention of illegal fish

Section 6 designates that fisheries protection officers acting subject to the direction of the Director of the Fisheries Department shall enforce the Act. No members of communities or NGOs are mentioned. The Fisheries Fund is created in Section 22. No explicit mention is made of use of the fund to enhance community fisheries management, training or technical assistance. It may be applied to, “the cost of any scheme which the Minister considers to be in the interest of the management of fisheries” (Section 26 (1) (c)). Even for de minimis administrative penalty imposition, the Fisheries Conservation and Management Act retains control in the Director. Fees collected from licenses in Districts are to be used to benefit people in that District, but no provision is made to give revenues to beach village committees or other community organisations.

Two provisions in the Act counter this command and control bias. First, Part III, Sections 7 through 9, provides for “local community participation in conservation and management of fisheries”. The Director is authorised to enter into fisheries management agreements with fisheries management authorities to provide for a management plan and assistance to be provided by the Department of Fisheries. The Minister is to make rules for this participation to include:

- Conservation
- Establishment of fisheries management authorities
- Extension services
- Mechanisms for sharing costs and benefits for confiscated fisheries
- Procedures for local registrable fishing vessels and licensing of persons

Section 61 (2) (w) enables the Director to establish local fisheries committees to which the Director, in his discretion, may “delegate some powers.” With this stroke of legal draftsmanship a wide range of community-based fisheries activities have been, and will be, undertaken. Note that these activities will be under the guise of the delegation of national power. Nevertheless this provision provides an opening for local licensing, enforcement, penalty recovery, and community organisation.

Fisheries Management and Aquaculture Policy

The tone and substance of this new policy, issued in October of 1999, stands in stark contrast to the FCMA. It announces a general objective “to enhance the quality of life for fishing communities by increasing harvests within safe, sustainable yields” (Section 3, ¶ 3). It seeks to incorporate the socio-cultural and socio-economic conditions prevailing in the sector by using participatory approaches.

In the policy, the Department of Fisheries declares that it will work in close collaboration with other stakeholders in conserving and managing fisheries resources and may enter into agreements with...communities, the private sector, and NGOs (Section 4.1 Institutional Framework). The policy elucidates subsectoral policies in eight areas, extension, research, participatory fisheries management, fish farming, training, enforcement, riverine and floodplains fisheries, and fish marketing. In every one of these subsectors, the policy articulates specific measures to foster community-based management. Highlights of major objectives and strategies are digested below:

- 1. Extension** - to mobilise communities to participate; to facilitate formation of beach village committees (BVCs); to train community groups; to distribute extension messages on fisheries and environmental issues tied to needs assessment; to improve effectiveness of extension; to tie research to address actual fishing community needs.

- 2. Research** - to promote demand driven, service oriented research; to identify research programmes with the stakeholders (local fishing communities); involve fishing communities in data collection and research; conduct surveys to broaden knowledge about fishing communities.

- 3. Participatory Fisheries Management Policy** - identify stakeholders; promote formation of local fisheries management authorities; strengthen capacity; harmonise strategy with other community committees (forest, agriculture); establish distinct boundaries for fishing areas for local fisheries management authorities (LFMA’s); provide legal agreements and procedures for participation; elaborate together with LFMAs appropriate fisheries management plans and conclude agreements; support LFMAs in participating in enforcement, research, and monitoring activities; develop and maintain capacity to monitor enforcement activities and the effects of by-laws.

- 4. Training** - develop and provide demand-driven courses for fisheries, and co-management to support user communities; identify training needs for user communities with built in procedures with extension services with fishing communities.

- 5. Enforcement Policy** - maintain an effective fisheries inspectorate to support local communities in the formulation and enforcement of regulations and by-laws; hold regular meetings with LFMAs; encourage joint patrols; encourage LFMAs to issue licenses

- 6. Riverine and Floodplain Fisheries Policy** - to involve riverine communities in the sustainable management of the riverine environment and adjacent floodplains and wetlands; apply the co-management approach practised in lakes to riparian communities.

This policy constitutes a solid charter for cooperative management between the Department of Fisheries and local fishing communities. The policy provides collaboration not imposition. It calls for elaboration together of fisheries plans, for the encouragement of local licensing and enforcement. In it the Department of Fisheries manifests its intention to maintain a close, demand-driven relationship with its most important customer, the local fishing community.

Fisheries Conservation and Management Regulations (July 1999) give substance to this intention to co-manage fisheries resources. For example, provisions empower BVCs to scrutinise licenses, enforce fishing regulations, close seasons, enforce conditions, seize vessels, formulate and review regulations and undertake environmental conservation. The regulations establish organisational structure for BVCs and such key supporting documents as a model BVC constitution, license, and applications. These regulations support real implementation of community-based fisheries management.

The policy framework for fisheries management is excellent. The Fisheries Conservation and Management Act should be amended to provide a stronger statutory basis for its innovations. Critical activities like demarcation of the jurisdiction of village fishery management areas and legal transfer of ownership need legal sanction to be more effective. One notable gap is the failure to establish explicit roles and responsibilities for traditional authorities in demarcating fishing areas and adjudicating disputes and violations. It would be valuable to establish clear jurisdiction and effective monitoring of TAs to ensure performance and to guard against corruption. Other critical prerequisites for furtherance of this policy include more resources for the Fishery Department, and more capacity building at the community level.

Case Study of Community-based Fishery Management- Lake Chilwa

Malawi has enjoyed a seven-year history of success in developing participatory fisheries management extending across Lake Malombe, Lake Chilwa, Lake Chiuta and the Upper Shire River. Lake Chilwa is a fascinating case both because of its unique physical characteristics, as well as the extent of its beach village regulatory interests.

Lake Chilwa is a closed lake, receiving waters from tributary rivers but with no outlet. It is shallow, averaging approximately 2.5 meters in depth, with depths up to 6 meters. It is a grassy body with extensive wetlands and floating mats of grasses. The water is turbid and the sediments turn anoxic due to the lack of flow through the lake. On a cycle of roughly every 17 to 20 years, Lake Chilwa dries up, leaving only intermittent pools in the lower reaches of the tributary rivers. It is in these pools that small populations of fish survive: it is these that will subsequently restock the lake. This drying has the beneficial effect of restoring oxygen to sediments. However, the fish population is largely wiped out and it takes a few years for the numbers to rebound. In 1995, Lake Chilwa dried up again.

Local fishermen had noted that after the last episode of drying, fishermen had been too vigorous as the fishery was re-established. Hence, they organised, with donor assistance, to form 31 BVCs to regulate fishing in Lake Chilwa. Committee regulation has included access to use beaches, the type of fishing gear used, and the actual closing of the fishery for seine nets from December to March, a prohibition not found on surrounding lakes. The BVCs enforce all these prohibitions and collect fines from violators. Disputes are adjudicated and fines set by the traditional authorities. At one point, the BVCs attempted to ban fishermen living on the floating grass islands who might go out for 2 to 3 days at a time and escape

inspection and supervision. The ban proved ineffective although some of the islands were burned to prevent habitation.

The BVCs at Lake Chilwa remain vigilant and engaged. They are looking to procure a boat with a motor to extend their enforcement reach. The BVCs are organised into a Lake Chilwa Association that coordinates activities of the BVCs. It has recently proposed to collect a fee from each of the BVCs to support its operation. They are aware that the breeding grounds for several key lake species are the pools in the riverine tributaries. They intend to assist in the enforcement of weir restrictions at the mouths of these rivers so that they can further protect lake fish-stocks.

1.3 WILDLIFE MANAGEMENT

Malawi has a rich biodiversity, with numerous birds, fish, and mammals. It is estimated that there are about 4,000 species of wild animals in Malawi (EAD, 1998). Given population densities that are the highest in Southern Africa for rural areas, Malawi must mainly turn to its protected areas for the conservation of this biodiversity. Malawi maintains a system of five national parks and four wildlife reserves totaling over a million hectares of land or over 11 per cent of total land area (Nzima, 1999). While birds and fish are found in customary land and in Malawi's lakes, respectively, mammals are principally found in these protected areas. As such, these areas isolate wildlife and do not allow the movement of animals along ecological corridors and needed habitat. Deforestation, clearing for farmland, consumption of birds and mammals for food, and fear of wild animals have placed many species under threat. For example, a recent survey of birds at Lake Chilwa (the Ramsar site in Malawi), found that 450 local hunters kill almost a million birds annually.

The Department of National Parks and Wildlife (DNPW) operates the national parks and protected areas under the auspices of the National Parks and Wildlife Act, passed under the Banda Regime in May of 1992. The Act is a compilation of protections and prohibitions intended to preserve wildlife. It makes no mention of community-based approaches for wildlife management. Instead, it authorizes the creation of protected areas, and the prohibition of any resource use on these reserves. Section 4 clearly states that "the ownership of every wild animal and wild plant existing in its wild habitat is vested in the President on behalf of, and for the benefit of, the people of Malawi". Any person believing that government or private acts may harm wildlife communities (Section 23) can request wildlife assessments.

The Act provides extensive police powers to deter illegal acts against wildlife. None of these involve the public, nor or any powers delegated to communities. Amongst the purposes for establishing national parks and wildlife reserves are to provide facilities for public use and enjoyment of resources therein, provided that these do not prejudice preservation and protection objectives. (Section 27.) The Chief Parks and Wildlife Officer shall limit access to parks and reserves and no person may take resources or cultivate land within these areas. (Section 35 (b) and (c). Use of these lands is to be regulated by rules issued by the Minister. Protected species are to be listed (Section 42) and licences are required for hunting (Section 46.) Again no community role is contemplated under the Act. Individuals are authorised to kill wild animals in self-defence or to protect property (Sections 74 and 75). The government retains ownership of the carcass (Section 76). Buying and selling of protected species are prohibited (Section 85). None of the enforcement provisions mention delegation to community enforcement agents.

National Parks and Wildlife (Amendment) Bill, 1998

A second draft of a bill to amend the National Parks and Wildlife Act has been introduced. The infamous ownership clause vesting the President with every wild animal is deleted (Section 4). The Minister is empowered to delegate duties under the Act. Interestingly, the bill would delete membership by the Wildlife Society of Malawi on the Wildlife Research and Management Board, one of the few inclusions of NGOs in any of Malawian resource laws.

A new part of the Act is introduced to provide for community participation in conservation and management of wildlife (Section 22A). Among the new provisions are:

- authorisation for the Director to enter into wildlife management agreements with a wildlife management authority (defined as any local community organisation or other private organisation established for promoting local community participation) for management plans;
- assistance to communities from the DNPW;
- determination of the rights and duties of the wildlife management authorities (WMAs);
- authorisation for the Minister to make rules to facilitate establishment of WMAs;
- encouragement of local government provision of wildlife extension; and
- revenue-sharing between the DNPW and WMAs.

Draft Wildlife Policy of Malawi, 1998

A draft Wildlife Policy has also been written that would more deeply endorse collaboration between government and communities in managing wildlife. Its overall goal calls for “proper conservation and management of wildlife...for sustainable utilisation and equitable access to the resources and a sharing of the benefits...”. A stated objective is to “create an enabling environment for wildlife enterprises.” A guiding principle is that “those who legitimately use the land, are the primary custodians of wildlife and utilisation rights should accrue to them”. Another states that there be an equitable distribution of benefits and revenues derived from using resources on parks and reserves amongst the Treasury, local communities and the DNPW.

The Policy asserts that the government should create an enabling environment for local government, the private sector and NGOs and specifically calls for community based management for sustainable use of wildlife resources. It sanctions close collaboration with stakeholders and enables entering into agreements with communities. It envisions community involvement in the enforcement of wildlife protections and in determining acceptable utilisation activities. Communities are tasked with management of wildlife resources on communal land and are encouraged to form Multiple Use Wildlife Areas. Moreover, communities have a role to play in managing parks and reserves in their areas. Participatory approaches are to be established for master planning of parks. Revenue sharing with communities is to be established for every park.

Communities are to be involved in wildlife education and extension. Collaborative management is championed with specific measures to be taken to develop legislative and institutional framework and guidelines. Community capacity is to be strengthened, and the rights and responsibilities of stakeholders declared. Participatory monitoring mechanisms are

specified to evaluate effectiveness of collaborative management. Community game farming is to be encouraged.

Traditional authorities are to be empowered to regulate hunting on their lands and communities, NGOs and the private sector are to be integrated into the wildlife law enforcement system.

If adopted, this policy constitutes a very strong foundation for collaborative management. This resource management reform is driven by recognition that central government has not been able to stem wildlife degradation. It relies on the idea that, with an appropriate stake and level of accountability, communities may be an effective partner in conserving and protecting wildlife.

Key to this success, is approval of the policy, passage of legislative amendments, and sincere and specific conveyance of tenure and use rights, and enforcement authorities. Even then, communities may have a limited effect in rehabilitating wildlife populations. Population growth, the loss of habitat, and low species densities may not be overcome.

1.4 ENVIRONMENTAL MANAGEMENT

Environmental management has a overarching influence on all sectors of natural resources management—air, water, land, fisheries, wetlands, wildlife, and forests. While not strictly comparable, it is vital to this analysis to understand the guiding principles established in Malawian environmental policy with regard to community participation in environmental management. All environmental media in Malawi are stressed, principally as a function of population growth. Air and water pollution are increasing with loss of forest cover, more wood burning, increased mobile source pollution, more domestic and industrial waste disposal, and greater fertiliser and pesticide use.

The Environmental Affairs Department within the Ministry of Natural Resources and Environmental Affairs coordinates environmental programmes, oversees the impact assessment process, and monitors development plans in Malawi. It is overseen by the National Council for the Environment, comprised of the Principal Secretaries for all major ministries and departments in Malawi. There is also a cabinet level committee, the Cabinet Committee on Health and Environment. The EAD operates through Environmental District Offices (EDOs) to be filled in each of the 27 Districts.

The Environmental Management Act of 1996

The principal mandate for environmental management in Malawi is the Environmental Management Act of 1996 (EMA). It incorporates principles from the Environmental Management Policy, also promulgated in 1996. The Act combines both environmental protection and natural resource management objectives...”to protect and manage the environment and to conserve natural resources and to promote sustainable utilisation” {Section 3 (1)}. To accomplish this, every person associated with resource and environmental protection shall promote, “public awareness and participation in the formulation and implementation of environmental and conservation policies of the Government {Section 3 (2) (d)}. Resources shall be protected, conserved and managed for the benefit of all {Section 4 (a)} and every person has the right to a clean and healthy environment. Any person may bring action in the High Court to stop injurious acts or file a complaint with the Minister (Section 5).

Institutional arrangements for environmental protection and resource conservation are quite extensive under the EMA. Section 8 provides that the Minister shall formulate and implement policies; coordinate all activities concerning protection and conservation and... prepare plans and strategies for protection and conservation...and facilitate cooperation between the government, local authorities, private sector and the public. The Minister is to prescribe environmental quality criteria and standards {Section 9 (1)}. A Director of Environmental Affairs is charged with administration of the Act. The National Council on the Environment is established to advise the Minister on all protection and conservation matters and to recommend measures necessary for harmonisation of activities, plans and policies of lead agencies and NGOs {Section 12 (a), (c)}. One NGO representative is included, but no community membership is established. A technical committee is created to conduct scientific studies and investigations, and to recommend standards and guidelines.

Environmental planning requirements are rigorous with the District Development Committees charged, under the supervision of the District Environmental Officer, with preparing a District Environmental Action Plan (Section 19). The Act is silent on explicit community involvement in this planning but the plan must be disseminated to the public. No development activity may occur that is not in accord with the action plan {Section 23(2)}. A National plan is also mandated to integrate protection and management with social and economic development (Section 22).

Principal control measures include environmental impact assessments for types and sizes of projects to be specified. The director may require audits of any projects for enforcement purposes. The Minister may, with advice from the Council set standards (Section 30) and may make use of fiscal incentives to promote protection and sustainable use (Section 31). The Minister may also declare areas to be environmental protection areas given representations by any person, natural beauty, historical or cultural features, scientific features, **or the interests of the local community** (Section 32). The Director is empowered to issue protection orders containing penalties, compensation payment, and removal requirements. The Director has inspection authority (Section 45) and significant enforcement remedies (Sections 61 through 67).

There is a wide range of substantive protections and regulations that the Minister is mandated to establish. These include:

- Biodiversity strategies, plans, and programmes;
- Promotion of compatible land uses;
- Prohibitions against germplasm export;
- Waste management;
- Waste licensing;
- Waste importation and exportation;
- Pesticide management;
- Protection of the ozone layer; and
- Discharge of pollutants.

Public access to information is assured (Section 51).

The Environmental Management Act presents an interesting contrast to the resource management statutes previously reviewed. Individual rights receive far more emphasis than

does community participation. Individuals are guaranteed a clean environment, are invited to comment on plans, to file actions to halt injurious acts in environmental protection and resource conservation and sustainable utilisation.

Community interests in setting aside environmental protection areas are explicitly supported in the Act. Furthermore nothing prevents an individual from acting on behalf of his or her community. There is, however, no explicit delegation of licensing, permitting, inspection or enforcement authorities as occurred in the resource management statutes. Also, no tenure or use rights are extended to communities for the use of the environment. Communities are not an explicit organizing unit for ubiquitous resources like water and air under the EMA since it adopts a broader doctrine of public trust and management of the environmental commons.

Inclusion of community interests in Malawian environmental policy is warranted. Numerous programmes such as right to know laws benefit from community awareness and community activism. Community monitoring programs for water pollution, illegal hazardous waste disposal, and solid waste dumping have proven very effective. Vehicle inspection, sewage treatment, drinking water supply, refuse management are programmes typically run more efficiently at a local level. Community enforcement would extend limited national resources to bring about deterrence for pollution and waste. It would be advisable that EAD look to community management of any Environmental Protection Areas created. Most fundamentally, communities have a major contribution to make in the planning for social and economic development that will be carried out under EMA.

1.5 HARMONISATION OF COMMUNITY-BASED NATURAL RESOURCES MANAGEMENT POLICY

This sectoral review of natural resource management policies has revealed just how dynamic the Malawian policy reform process is. All enabling statutes are recent. Even laws passed as recently as 1992 (the National Parks and Wildlife Act) may be slated for significant amendment. Despite the pace of reform, and the diversity of issues and institutions involved in natural resources management, an overview of the policy framework suggests numerous similarities are to be found across sectors.

Table 1 presents an overview of such key sectoral policy attributes as resource ownership, management approach, and delegation of implementation authorities (e.g. licensing, and enforcement). Management policy is evolving away from direct government control and ownership of resources to one grounded in ownership by and for the people. Management plans are sanctioned for community management of forests, fisheries and wildlife. Government functions are increasingly delegated to communities in recognition that are closer to constituents and the sources of problems. This is an impressive foundation for serious implementation of community-based development. It should only be made stronger if laws and policies under consideration are adopted. As shown, there are a lot of similarities - and a lot of differences.

In some regard Malawian reform has arrived at even more challenging point. The Devil is in the details. Can policymakers, agency heads, communities, and NGOs stay the course to work out the very specific mechanisms that will make implementation real? Or will good intentions lose momentum and policy reforms fail to take root in actual practice? Consensus on key issues, combined with the growing dialogue between government, communities and NGOs give cause for optimism.

The foregoing analysis strongly suggests the immediate need for better coordination of natural resources policies and practices across sectors. Standardisation of nomenclature, consolidation of committees and consistency in the design of implementation mechanisms will reduce costs and augment adoption of community-based approaches. USAID's COMPASS project was specifically designed to assist with the coordination of CBNRM

Table 1-Overview of Key CBNRM Policies across Resource Sectors

<i>Sector</i>	<i>Forestry</i>	<i>Fisheries</i>	<i>Wildlife</i>	<i>Environmental Protection</i>
Status	Act passed in May, 1997	Act passed in Nov. 1997; Policy passed -10/99	Act passed in 1992; Amendments drafted in 1998; Draft policy, 1998	Act passed in Aug. of 1996
Management Type	<ul style="list-style-type: none"> ▪ Participatory on Forest Reserves; ▪ Community Mgmt on Customary Lands 	<ul style="list-style-type: none"> ▪ FCMA—Govt. mgmt. w/ local participation ▪ Policy—co-management 	<ul style="list-style-type: none"> ▪ Government Regulation and Police Powers ▪ Draft Policy-Collaborative Management 	<ul style="list-style-type: none"> ▪ Government Planning and Coordination ▪ Public Comment and Individual Rights
Implementing Agencies: National and Local	<ul style="list-style-type: none"> ▪ Department of Forestry ▪ Village Natural Resource Committees ▪ Village Management Authorities 	<ul style="list-style-type: none"> ▪ Department of Fisheries ▪ Beach Village Committees ▪ Village Fisheries Management Authorities 	<ul style="list-style-type: none"> ▪ Department of National Parks and Wildlife ▪ Wildlife Management Authorities 	<ul style="list-style-type: none"> ▪ Department of Environmental Affairs ▪ No village counterpart specified
Ownership	<ul style="list-style-type: none"> ▪ Forest Reserves— Govt. ▪ Customary - Protectors 	<ul style="list-style-type: none"> ▪ FCMA-implied Govt. ownership ▪ Policy-shared resource 	<ul style="list-style-type: none"> ▪ President owns wildlife for people ▪ Draft Policy-Use rights 	<ul style="list-style-type: none"> ▪ Integral part of natural wealth of the people ▪ For the benefit of the people
Participation in Licensing	No	Yes	No (Currently) Yes (Draft)	No
Community Management Agreements	Forest Management Agreements	Fisheries Management Agreements	Wildlife Management Agreements	No
Explicit Role for Traditional Authorities	Yes, but limited	No Policy-Yes	Yes, hunting regulation	No
Participation in Enforcement	Yes	Yes	Yes	No
Explicit Revenue Sharing	Yes	Yes for confiscated items	No Yes (Draft)	No

policy reform and to ensure grass roots participation in the reform dialogue. This report is one of these support activities.

Proposal to Create a CBNRM Working Group

Malawian institutions and environmental leaders are cognizant of the need to expand more formal coordination activities. The Minister of Natural Resources and Environmental Affairs, the Department of Environmental Affairs and the National Council for the Environment are specifically chartered to develop and coordinate policies for environmental protection and sustainable utilization of natural resources. The legislative mandate for coordination of Malawian CBNRM under the EMA is as follows:

“Nothing in this act shall be construed as divesting any lead agency of the powers, functions, duties...imposed on it by any written law relating to the protection and management and conservation and sustainable utilisation of natural resources” (Section 6).

“The Minister shall: formulate and implement policies for resources.... coordinate and monitor all activities concerning...and prepare plans and strategies for the protection and management of the environment and the conservation and sustainable utilisation of natural resources” {Section 8 (2)}.

“The Director (of Environmental Affairs) shall be responsible to the Minister for...implementation of such policies relating to the protection and management and conservation and sustainable utilisation of natural resources...”{Section 9 (b)}.

A National Council on the Environment is created to advise the Minister. “The Council shall recommend to the Minister measures necessary for the harmonisation of activities, plans, and policies of lead agencies and Non-Governmental Organisations concerned with protection and management and conservation and sustainable utilisation of natural resources” {Section 12(c)}.

In turn, the Council is supported by the Technical Committee on the Environment. “The Technical Committee shall 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 utilisation of natural resources...and carry out investigations and conduct studies into the scientific, social and economic aspects of any activity...” {Section 17 (a) and (b)}. To this end, “ the TCE may invite any person to attend and participate in the meetings of the Committee” {Section 18 (2)}.

Coordination of CBNRM policy is thus a strategic duty for Minister, the NCE, the Director, and the TCE. With this in mind, the Director will soon put forward a formal proposal to the National Council to create a CBNRM Working Group of the TCE. Its charter would be:

1. To assess the impact of CBNRM
2. To develop a strategic plan for CBNRM
3. To develop guidelines for monitoring CBNRM

Membership is proposed to include up to 14 members with representatives of all of the sectoral departments, CURE, the Chamber of Commerce, ARET, one traditional leader, one local government representative, MEET, one representative of women’s groups, and someone

from the Centre for Social Research. The EAD would act as the Secretary to the Working Group. It is planned to meet quarterly.

On an informal basis, coordination is already underway. Environmental focal points were established in all the ministries to facilitate interagency discussion on environmental issues. In addition, the Department of Fisheries has been fostering coordination discussions within the Ministry of Natural Resources and Environmental Affairs, home to four resource management departments. All of these efforts will make Malawian CBNRM policy more cohesive and harmonious.

CHAPTER TWO

A REVIEW OF OTHER INITIATIVES THAT AFFECT COMMUNITY-BASED NATURAL RESOURCES MANAGEMENT-- LAND REFORM AND DECENTRALISATION

Two major reforms are now occurring that may transform Malawian society. Land reform may well provide new definition for land (and, implicitly, natural resources) access and ownership. Colonial legacies are being tested and new paradigms for the ownership and stewardship of land may ensue. Given the dependence of a rural people on their lands, proposed changes could have enormous effects.

Similarly, decentralisation may bring about powerful changes in the relationships citizens have with their government. With Banda gone, reform-minded government is looking to bring government closer to the people through the creation of democratically elected local assemblies. How these bodies relate to villages, communities and traditional authorities may dramatically affect community-based natural resources management. Malawi is in the process of contemplating change of enormous magnitude. It will undoubtedly overshadow community-based reforms. The relationship of these changes to community-based policy framework is briefly discussed here to explore some initial ramifications for CBNRM policy reform. The hypothesis is put forward here, that both land reform and decentralisation will support the basic CBNRM tenets to promote clear tenure for resources and local accountability for sustainable management.

2.1 LAND REFORM

Much of the foregoing discussions about natural resources management made distinctions about management models depending on the type of lands in question, public versus customary lands. (A third land tenure type has not been front and center, freehold land, as it is in private hands and largely outside of the reach of most government natural resource laws.) The work of the Presidential Commission of Inquiry on Land Policy Reform suggests that these tenure principles need to be re-evaluated in light of social and economic development priorities, and notions of equity.

The Presidential Commission was established March 18, 1996 to examine:

- the history of land policy;
- land problems;
- prevailing land tenure;
- prevailing land inheritance systems; and
- government land administration.

Their principal aim was to develop and recommend principles of a new land policy that would foster economic efficiency, environmental sustainability, and social equity by reorganising existing tenure agreements, designing dispute resolution mechanisms, acceptable inheritance schemes and streamlined land administration—quite a formidable charter.

The Presidential Commission has completed its inquiry and has put forth its recommendations in a three-volume report that was issued on March 31, 1999 (The

Presidential Commission, 1999). Their findings and recommendations are lucid and compelling. Highlights and excerpts include:

- **Evolution of Land Policy and Law**—Colonial policy undertook to appropriate all land to the British sovereign through Certificates of Claim creating freehold interests and leaving Africans only with occupation rights under “customary law” so as to provide cheap labor for settlers. While restitution is called for, it is not recommended for reasons of economic and political expediency. Instead the Commission calls for redesign of Malawi’s basic land law to allow for the orderly evolution of customary law.

Of particular relevance to CBNRM is that the Commission notes the emergence of several sectoral policies (forestry, environment, and irrigation) based on current notions of tenure. They lament that Malawi is like other countries that have put sectoral operational mandates ahead of more basic land reform. The Commission recommends that a comprehensive national land use policy is developed and all existing sectoral policies are reviewed to ensure consistency with the ultimate national land instrument

- **Land Problems**—The Commission noted major problems with land scarcity, land management, and land auditing. It noted that pressures on land, competition, and conflicts over land would increase. The Commission calls for population management, restoration of idle leasehold and freehold land to customary status to increase land for the landless and land deficient. The Commission recommends institution of poverty alleviation programmes, environmental awareness training, and community participation in resource management. Given problems with land management and auditing, the Commission calls for aggressive implementation of the Environmental Management Act.
- **Current Tenure Systems**—The Commission rejects the current three tiered tenure regime (public, customary, and private) that vests the President in perpetuity for public and customary lands. It recommends that public land be vested in the people of Malawi and be held as a public trust. Customary land should be vested in Traditional Authorities. All customary land that was converted to leasehold should be restored to Traditional Authorities as these leases expire to increase the stock of customary land. The Commission recommends that freehold tenure over agricultural land should be abolished and no new grants made. Freehold estates already owned should be converted to 99-year leases. With regard to urban freeholds it should only be held in leasehold. Leasehold tenure for other public lands should not exceed 99 years and agricultural leases should be geared to periods ensuring productivity.
- **Land Administration**—The Commission finds existing systems to be cumbersome and arbitrary. It recommends that authority to allocate land among members of communities be restored to Traditional Authorities and protected by statute. This law might also govern TA leasing of community lands. It promotes recording at the village, and local levels.
- **Settlement of Land Disputes**—Disputes over customary land should first go to village tribunals with village headmen. Appeals should be to tribunals at the Traditional Authority level. The next level of appeal would be to the Districts, leaving the High Court as the last resort.

“The Presidential Commission recommends that the new land policy be fully integrated into the country’s overall development policy.... The primary goal should be to attain broad-based social and economic development through optimum and ecologically balanced use of land and land-based resources” (Presidential Commission, Executive Summary).

As advertised, these finding and recommendations have considerable import for CBNRM in Malawi, mostly quite positive. At the same time, it is analogous to installing a new foundation on an existing house. It will be quite a trick to continue occupying this house while construction is underway. The Commission proposed a two year period for review and evaluation of its findings.

The Presidential Commission’s recommendations parallel several trends in community-based natural resources management. CBNRM undertakes to shift control from the national government to villages and communities. With its emphasis on restoring customary lands to traditional authorities, the Commission supports CBNRM objectives. CBNRM also benefits from clear tenure rights for individuals within the community. The Commission’s recommendations would strengthen customary landholding as a real tenure category and build in accountability mechanisms for community members on TA decisions concerning allocation and management of customary lands.

One of the most beneficial results of the Commission’s recommendations is that it would result in a large increase in customary lands, those very lands under community management. CBNRM depends on a return to members for the stewardship they exercise over land. With rural population densities so high in Malawi, many commentators have questioned whether CBNRM can really provide sufficient benefit and incentives. The Commission’s recommendations, if adopted, might greatly improve this calculus.

Professionalisation of land administration as called for by the Commission will also support registration of individual interests within the context of customary, community ownership. Access to local tribunals will aid in speedy and fair adjudication, reflecting community knowledge and interest. Lastly, the Commission in its recommendations is another important voice in support of environmental protection, sustainable use and community-based management. Their endorsement will add to CBNRM momentum.

2.2 DECENTRALISATION UNDER THE LOCAL GOVERNMENT ACT OF 1998

Malawi has operated under Regional and District Administration for quite some time. Note however that this structure was simply a decentralised apparatus for national government. With the passage of the Local Government Act and its signing into law on December 30, Malawi enters into a new model for governance that emphasizes democracy, accountability, participation and transparency. Under each of the resource laws, the principal interface for communities was national government in Lilongwe and through its field staff in the Regions and Districts. Now there will be new actors at the table, empowered by constituent support and political aspirations, expressing goals and needs for community-based natural resources management.

The Act establishes local jurisdictions called local government areas for which there will be local governance. The Act establishes 38 local areas, comprised of 3 cities, 1 municipality, 8 townships and the 27 districts (Likoma Island having been added in late 1999). Each local area is to be governed by a local assembly, consisting of elected officials from wards and

non-voting members such as traditional authorities and sub-traditional authorities, members of Parliament. Local Assemblies are to govern, making by-laws, promoting infrastructure and economic development, keeping the peace, generating resources, etc. Local Assemblies are to be led by an elected Chairman and Vice Chairman (in cities and municipalities, the titles are Mayor and Vice Mayor) who lead, and from the Assembly an appointed Chief Executive Officer who implements Assembly decisions.

Assemblies are to operate through several committees. Two of particular relevance to CBNRM are the Development Committee and the Health and Environment Committees {Section 14 (a) and (e)}. Assemblies are to have all the basic government regulatory powers. These are limited by the ability of Ministers to issue prohibition orders where they find Assembly orders illegal. If an Assembly persists, the Minister may suspend the Assembly. Disputes are to be resolved by the High Court.

Assemblies possess the power to impose surcharges, to hold public meetings to borrow, to lend, to buy and sell property, to pay, to make contracts, to provide information, to keep accounts, to issue instruments, etc. There are three different schedules of powers. Interestingly, Assemblies must report any offer of assistance from NGOs and receive approval from the Minister. The Minister of Finance must approve donor assistance.

Assemblies can value properties and assess rates. They may seize property in default. They may initiate and appear in legal proceedings. They may make by-laws for the government of the whole or part of their local areas. Importantly, these need to be approved by the Minister. Assemblies may assess fines for violations.

A second schedule authorises additional functions for Assemblies of considerable relevance to communities engaged in CBNRM activities including:

- Environmental services (waste disposal);
- Provision of public amenities including parks, forests, woodlands, and nature areas;
- Licensing of trades and businesses; and
- Promotion of tourism.

Assemblies have the duty to prepare plans, “for the social, economic, and environmental development of the area...in conjunction and consultation with other agencies having a public responsibility...for development...” (Section 21). They shall, take charge of all decentralized services and activities, which include among others: animal and fisheries husbandry, district planning, development planning, forests and wetlands {Section 22 (e)}. They are also to assist government to preserve the environment through the protection of forests, wetlands, lakeshores, streams, and prevention of environmental degradation {Section 22(o)}.

Clearly, sector policies did not explicitly anticipate passage of the Local Government Act. The creation of local assemblies and their empowerment in the Local Government Act creates another set of complex and challenging questions for improving CBNRM policy mechanisms. At a minimum the Act will give further cause for CBNRM coordination and policy reform.

What regulatory role will local assemblies play toward village and community activities? Will they support community-based innovations or might they have a chilling influence as an

additional regulator? Ministers may pre-empt local assembly by-laws that are in contravention of sectoral laws. Communities may be subject to both national and local regulations.

What representational role might local assemblies play as more powerful voices for community needs? Commentators have expressed concern that village committees lack the breadth and exposure to affect real change. Associations have proven more effective in Lake Chilwa, for example in representing the collective interests of beach village committees. It is conceivable that local assemblies might strengthen community advocacy and give more balance between national and local interests. They could be the source of financial support, better extension services, dispute resolution services, and improved enforcement support. Clearly, Assemblies will be involved with village committees and associations in development planning.

Another interesting issue is the interplay between the recommendations of the Presidential Commission and the provisions of the Local Government Act. Land reform recommendations would tend to bolster the power and control of Traditional Authorities through the return of customary lands under TA control. Traditional Authorities have a limited role to play in Local Assemblies. They are non-voting members (although presumably a TA could stand for election.) It is likely that local assemblies will assess and tax customary land. Communities may find themselves in the middle between respected TA's and modern, progressive local government.

The Local Government Act brings government closer to the people. It seeks to instill transparency and to infuse democratic principles and accountability at the local level. The Act should strengthen local governance. Effective local governance is, in turn, a critical prerequisite for enhancement of community-based natural resources management.

CHAPTER THREE

SUMMARY OF FINDINGS AND SUGGESTIONS FOR GUIDING PRINCIPLES TO REINFORCE COMMUNITY-BASED NATURAL RESOURCES MANAGEMENT

This report has examined recent policy reform initiatives in natural resources management in Malawi. It has assessed the strengths and weaknesses of legislation and policies in forestry, fisheries, wildlife, and environmental management in fostering meaningful and effective community-based natural resources management and makes some recommendations for improvement.

Given the plethora of reform initiatives, it has examined early government efforts to harmonise new policies across resource sectors. The report has also considered major Malawian policy developments in the areas of land reform and decentralisation that may greatly influence future CBNRM policy reform. A summary of findings is presented below:

- Natural resources management policy reform in Malawi is dynamic. Major laws and policies have been adopted in forestry and environmental management. Important, progressive policy drafts are pending for fisheries and wildlife management, and amendments to the National Parks and Wildlife Act have been prepared. Prompt action on these initiatives will bolster the CBNRM framework and provide better certainty in rights and responsibilities.
- Community-based management is an important part of resource management strategy in every resource sector. All policies studied recognized the need to rely on communities to protect and sustain resources. Characterisation of resource ownership and control has shifted from government ownership and protection to government as trustee for the benefit of the people. Approaches adopted in laws and policies include participatory management, co-management, and community-based management. Reliance on community-based enforcement is extensive in Malawi.
- Integration of stakeholders in community management is incomplete. Roles for Traditional authorities and NGOs are notably absent or incomplete in most resource policies.
- Proliferation of CBNRM committees, mechanisms and procedures demands streamlining, consolidation, and harmonisation so that implementation is accelerated. Important coordination activities will occur within the Ministry of Natural Resources and Environmental Affairs.
- Recommendations for land reforms are very supportive of community-based natural resources management. The proposed reforms would expand customary lands and strengthen Traditional Authority tenure. If adopted, the reforms will dramatically change the character and nature of land ownership patterns and expand the opportunities and size of potential returns from CBNRM.
- Decentralisation under the auspices of the Local Government Act will also have profound, if more uncertain, consequences for CBNRM. Regulatory and representational relationships between Local Assemblies and communities will need to develop. The Act

incorporates principles of democracy, transparency and accountability in local governance. These mesh nicely with the goals of CBNRM.

In the course of this policy analysis, certain guiding principles have emerged that may help to strengthen CBNRM in Malawi. These principles are offered as ideals that might be useful to consider in the continued dialogue between government, communities and NGO's that will inform the CBNRM policy reform process:

1. Incentives are maximised if schemes for individual ownership interests can be incorporated in community tenure/management.
2. Entrepreneurial outcomes provide excellent motivation for CBNRM activities. Community-private sector partnerships are consistent with CBNRM objectives.
3. Insist on cost recovery and self-help so that activities are sustainable.
4. Careful attention must be paid to the scale of projects and activities so that benefits justify community efforts. Look to link village activities in associations so that resources, power and coordination may occur.
5. Work closely with Traditional Authorities. They bring indigenous knowledge and have the trust of the people. Monitor TA involvement to ensure equity.
6. Building the capacity of all institutions and actors involved will lead to a more equal and constructive dialogue. NGO's have a critical role to play in organising, strengthening, and providing services.

APPENDIX 1 - LIST OF PEOPLE INTERVIEWED

Community Groups

Mr. Chigoya (Chairman of Chisi Island Fishers' Association, Lake Chilwa)
Mr. E. Kaisala (Chairman, Ndirande Mountain Rehabilitation Association)
Mr. D.E. Malikebu (independent farmer and fisheries specialist, Zomba)
Mr. L. Zuze (Secretary, Ndirande Mountain Rehabilitation Association)
Members of the Chisi Island Beach Village Committees (Lake Chilwa)
Members of the Ndirande Mountain Rehabilitation Association
Members of the Ndirande Township Briquette Production Project

Non-Governmental Organizations

Mr. F. Kachigwali (Technical Advisor, Wildlife Society of Malawi)
Mr. Robert Kafakoma (Executive Director, CURE)
Mr. Wisdom Malongo (Nkhomano Centre for Development)
Mr. Daulos Mauambeta (Executive Director, Wildlife Society of Malawi)
Mr. R.B. Mwamadi (Forestry Programme Officer, Wildlife Society of Malawi, Kam'mwamba
in Mwanza East)

Government Agencies

Mr. Sloans Chimatiro (Deputy Director of Fisheries, Lilongwe)
Mr. B.A.E. Chipezaani (Regional Forestry Officer - Southern Region, Limbe)
Mr. C. Dissi (Regional Fisheries Officer - Southern Region, Zomba)
Mr. Ralph Kabwaza (Director of Environmental Affairs, Lilongwe)
Mr. Sitaubi (Deputy Director of Forestry, Lilongwe)

Environmental & Development Programmes

Mr. John Balarin (Chief Technical Advisor, DANIDA Environment Programme in Malawi)
Mr. Carl Bruessow (Coordinator, Malawi Environmental Endowment Trust)
Mr. Roger Ganse (Principal, Development Management Associates)
Mr. Mesheck Kapila (COMPASS - Information Management Specialist)
Dr. Gacheke Simons (Consultant)
Dr. Scott Simons (Chief of Party, Rural Economics Policy Centre)
Mr. Anax Umphawi (COMPASS - Deputy Chief of Party)
Dr. Andrew Watson (COMPASS - Chief of Party)
Dr. John Wilson (Consultant)

Donors

Mr. Andreas Jensen (DANIDA - Chief Technical Advisor, Lake Chilwa Wetland and
Catchment Management Project)
Mr. Steve Machira (USAID/Malawi - COMPASS Contracting Officer's Technical
Representative)
Mr. Wayne McDonald (USAID/Malawi - Environmental Officer)
Mr. Kiert Toh (USAID/Malawi - Mission Director)

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