

## 8. MALAWI

### 8.1 Constitutional Requirement for Environmental Protection in Malawi

The Constitution of Malawi (Republic of Malawi 1994; as amended) recognises that responsible environmental management can make an important contribution towards achieving sustainable development, improved standards of living and conservation of natural resources. The Constitution states that the environment of Malawi should be managed in order to:

- Prevent the degradation of the environment;
- Provide a healthy living and working environment for the people;
- Accord full recognition of the rights of future generations by means of environmental protection; and
- Conserve and enhance the biological diversity.

The National Environmental Action Plan (NEAP) was developed in 1994 by the Government of Malawi through broad public participation and provides the framework for integrating environmental protection and management in all national development programmes with the view to achieving sustainable socio-economic development. The NEAP is also used as a reference document to guide planners, developers and donors.<sup>128</sup> Its key objectives include the following:<sup>129</sup>

- To document and analyse all major environmental issues and identify measures to alleviate them;
- To promote sustainable use of natural resources; and
- To develop an environmental protection and management plan.

In addition, Malawi's Vision 2020 presents the long-term development perspective:

*By the year 2020, Malawi, as a God-fearing nation will be secure, democratically mature, environmentally sustainable, self-reliant with equal opportunities for and active participation by all, having social services, vibrant culture and religious values and a technologically driven middle-income economy.*<sup>130</sup>

Embodied in Vision 2020 is the desire to achieve sustainable economic growth and development based on a multi-sectoral approach.

### 8.2 Institutional and Administrative Structure for EIA in Malawi

#### 8.2.1 The Environmental Affairs Department

The Environmental Affairs Department (EAD) in the Ministry of Natural Resources and Environmental Affairs is responsible for the administration, implementation and monitoring of EIA. Figure 8.1 illustrates the decision-making structures, while the environmental impact assessment (EIA) process is described in more detail in section 8.4.

<sup>128</sup> Spong, P-J and Walmsley, B (2003) Country Chapter on Malawi. In 'Environmental Impact Assessment in Southern Africa.' Southern African Institute for Environmental Assessment, Windhoek, Namibia, pp 101-107.

<sup>129</sup> Department of Research and Environmental Affairs (1994) *National Environmental Action Plan*, Vol. 1. Ministry of Research and Environmental Affairs, Lilongwe, Malawi.

<sup>130</sup> National Economic Council (2000) *Vision 2020 – The National Long-term Development Perspective of Malawi: A Summary*. Hansa Reprint, Lilongwe, Malawi.

The EAD provides procedural and technical advice to developers, as required, on how best to comply with EIA requirements. It maintains a directory of local, regional and international consultants capable of carrying out EIA studies. The EAD also maintains a register of all projects currently being appraised under the EIA requirements of the Environment Management Act, No 23 of 1996 (EMA).

While the EAD has statutory responsibility for ensuring compliance with EIA requirements, it relies substantially upon the expertise and advice of the inter-agency Technical Committee on the Environment (TCE) established under Section 16 of the EMA. The TCE has a rotating chairperson and the EAD provides secretarial support to it. Through the TCE, member agencies are informed about projects being appraised under the EIA requirements; participate in reviews of project briefs, EIA terms of reference (ToR) and EIA reports; develop project approval terms and conditions; develop and monitor project auditing programmes; and recommend courses of action to the Director. The Director acts on the advice of the TCE but is not bound by it.

### 8.2.2 Roles and Responsibilities

EIA activities involve the participation of a number of actors with varying responsibilities.<sup>131</sup> These actors include:

The Environmental Affairs Department which is responsible for:

- Facilitating the EIA process;
- Ensuring compliance with EIA provisions in the EMA;
- Managing the production and updating of guidelines on EIA practice and procedures;
- Assisting line agencies in the preparation of sector specific guidelines on EIA practice and procedures;
- Updating the list of prescribed projects;
- Secretariat to the TCE;
- Maintaining a register of projects being appraised under the EIA process;
- Maintaining a central library of EIA reports;
- Maintaining a directory of local, regional and international consultants capable of carrying out EIA studies.

The **Technical Committee on the Environment** is responsible for:

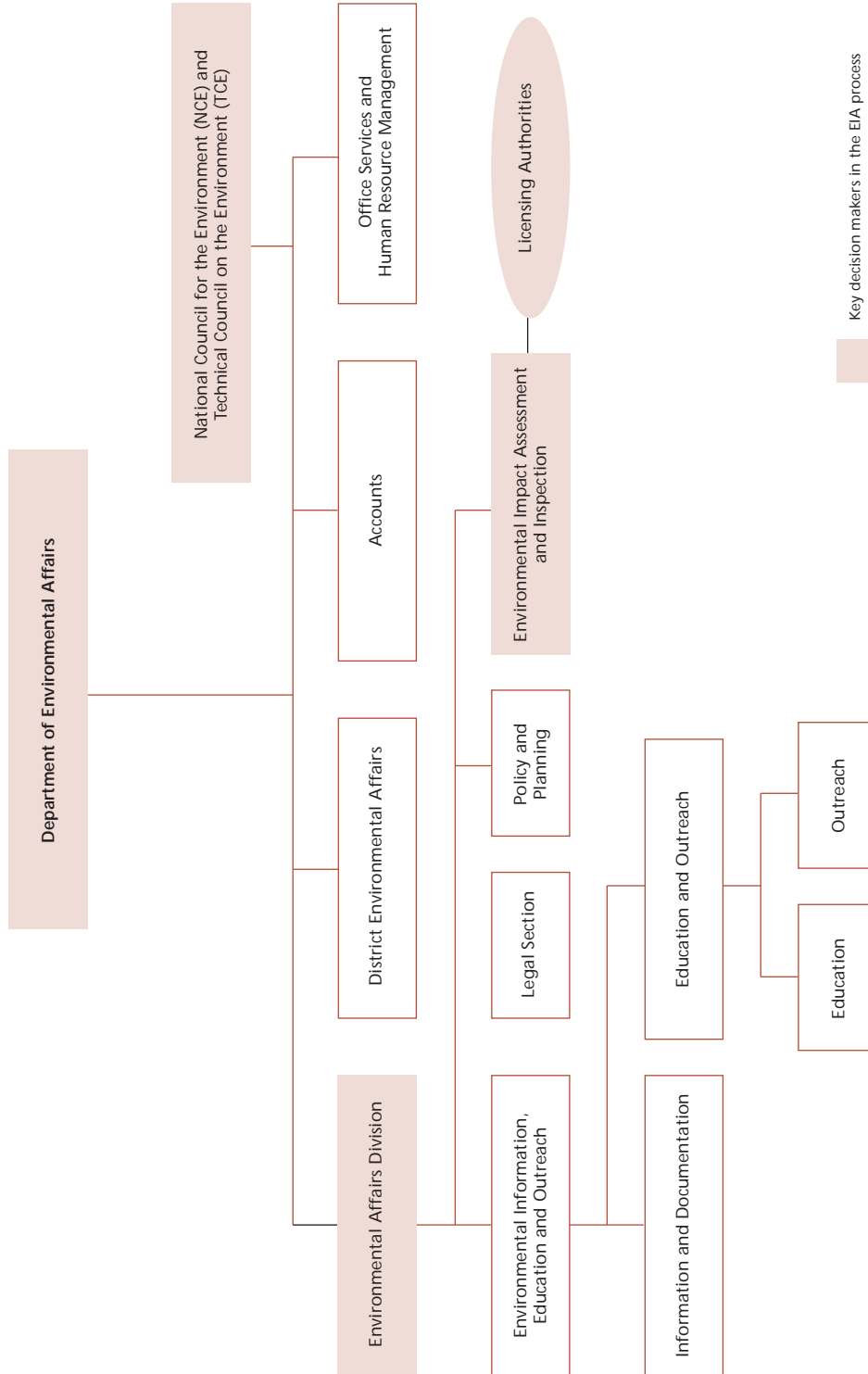
- Evaluating Project Briefs, EIA terms of reference and EIA reports;
- Developing project approval terms and conditions;
- Reviewing and monitoring project auditing programmes;
- Recommending courses of action to the Director; and
- Reporting to the National Council for the Environment (NCE).

The **National Council for the Environment** is responsible for:

- Advising the Minister on all matters and issues affecting the protection and management of the environment and the conservation and sustainable utilisation of natural resources;

<sup>131</sup> Environmental Affairs Department (1997) *Guidelines for Environmental Impact Assessment in Malawi*. Ministry of Forestry, Fisheries and Environmental Affairs, Lilongwe, Malawi.

Figure 8.1: The Environmental Affairs Department Organogram



Key decision makers in the EIA process

- Recommending measures necessary for the integration of environmental considerations in all aspects of economic planning and development;
- Recommending measures necessary for the harmonisation of activities, plans and policies of lead agencies and non-governmental organisations concerned with the protection and management of the environment and the conservation and sustainable utilisation of natural resources.

The **National Economic Council** is responsible for:

- Determining if public sector projects are prescribed under the EMA and referring project submission documents (PSDs) to the Director of Environmental Affairs (DEA);
- Assisting the EAD and TCE in updating the list of prescribed projects (e.g. adding or deleting project types, establishing size thresholds for project referral to the Director);
- Participating on the TCE; and
- Working with the EAD and TCE to develop and streamline their working relationship on EIA activities.

The **Sectoral/Line Ministries** are responsible for:

- Ensuring that their own projects prescribed under the EMA adhere to the EIA requirements;
- Ensuring that private-sector projects over which they have jurisdiction adhere to the EIA requirements;
- Participating on the TCE;
- Providing information and advice to project developers;
- Advising project developers on regulations and monitoring requirements related to licensing their projects;
- Incorporating DEA approved terms and conditions in EIA certificates; and
- Ensuring that the terms and conditions contained in the EIA Certificate are met, including those specified by the Director of Environmental Affairs.

### 8.2.3 Decentralisation of EIA Administration

With the acceptance of the policy of decentralisation in 1998, the government is in the process of decentralising its activities, including the EIA administration process.<sup>132</sup> It is hoped that with decentralisation to district levels, EIA monitoring will improve and the EIA process will be more effective and efficient, provided that each district is adequately staffed and resourced. Section 20 of the EMA provides for the appointment of a District Environmental Officer, as a member of the District Development Committee, whose tasks will include:

- Supervising the preparation of a District Environmental Action Plan every five years;
- Advising the District Development Committee on all matters relating to the environment and in the performance of its environmental functions;
- Reporting to the Director on all matters relating to the protection and management of the environment and conservation and sustainable utilisation of natural resources;

<sup>132</sup> Op.Cit. Footnote 128.

- Submitting reports to the Director as the Director may require;
- Promoting environmental awareness in the district on the protection and management of the environment and the conservation of natural resources;
- Gathering and managing information on the environment and the utilisation of natural resources in the district; and
- Performing such other functions as the Director may, from time to time, assign to him.

#### 8.2.4 Intersectoral Cooperation

The framework for intersectoral collaboration is well established in Malawi (see Table 8.1). Coordination is ensured through the secretarial services provided by the DEA to the NCE which reports through the chair to the Minister.

**Table 8.1: Intersectoral Collaboration**

Institution	Joint Committees	Members	Frequency of meetings
Environmental Affairs Department (EAD)	National Council for the Environment	Principal secretaries, heads of selected parastatals	Quarterly
EAD	Technical Committee on the Environment	Experts from different sectors appointed in their personal capacities e.g. Malawi Bureau of Standards, University of Malawi, Forestry Department, Fisheries Department, National Herbarium and Botanical Gardens	8 times a year
Ministry of Water Development	Water Resources Board	Cross-sectoral	6 times a year
Ministry of Water Development	Pollution Control Committee	Cross-sectoral	6 times a year
Ministry of Water Development	Kamuzu Barrage Control Committee	Cross-sectoral	Quarterly
Ministry of Water Development	Water Abstraction Control Committee	Cross-sectoral	6 times a year
Mines Department	Mining Licensing Committee	Cross-sectoral	Monthly
Local Authorities	Town Planning Committee	Cross-sectoral (appointed and ex officio members), e.g. the EAD, the Electricity Supply Commission of Malawi (ESCOM), the Lilongwe Water Board	Monthly
Physical Planning	Town Planning Board	Cross-sectoral (appointed and ex officio members), e.g. the EAD, ESCOM, the Ministry of Water Development, the Ministry of Health and Population, the Ministry of Transport and Public Works	Biannually

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In addition, all natural resource management policies and/or legislation have clauses that pertain to the protection of the environment, natural resources and promotion of sustainable development (see Table 8.2).

**Table 8.2: Legislation with Clauses to Protect the Environment**

Focus of the clause	Legislation and policies				
	Land	Forestry	Parks and wildlife	Water resources	Fisheries
Promote and protect natural resources	X	X	X	X	X
Sustainable development	X	X	X	X	X
Community management	X	X	X	X	X
Poverty alleviation	X	X	X	X	X
Fragile ecosystems	X	X	X	X	X
Degradation	X	X	X	X	X

### 8.3 Policy and Legal Framework for EIA in Malawi

#### 8.3.1 1996 National Environmental Policy

##### Overall Policy Goal

The overall policy goal is the promotion of sustainable social and economic development through the sound management of the environment in the country.

##### Specific Policy Goals

The policy seeks to meet the following goals:

- Secure for all persons resident in Malawi now and in the future, an environment suitable for their health and well-being.
- Promote efficient utilisation and management of the country's natural resources and encourage, where appropriate, long-term self-sufficiency in food, fuelwood and other energy requirements.
- Facilitate the restoration, maintenance and enhancement of the ecosystems and ecological processes essential for the functioning of the biosphere and prudent use of renewable resources.
- Enhance public awareness of the importance of sound environmental understanding of various environmental issues and participation in addressing them.
- Promote cooperation with other governments and relevant international/regional organisations, local communities, non-governmental organisations (NGOs), and the private sector in the management and protection of the environment.

##### Guiding Principles

Underlying these broad policy goals are certain key principles which will guide policy development and implementation strategies:

- Every person has a right to a clean and healthy environment and a duty to maintain and enhance the environment.

- Children should be sensitised to the environmental issues with a view to involve them in the conservation, protection and management of the environment as future custodians.
- Women should be closely involved in policy, programme and project design and implementation to enhance their role in natural resource use and management activities.
- The use of renewable natural resources should be sustainable for the benefit of the present and future generations.
- Malawi's economy is highly dependent on natural resources. If these are depleted or degraded, long-term food security and sustainable economic growth will be seriously affected.
- The participation of the private sector, NGOs, and community-based organisations (CBOs), is critical to improved protection, conservation, management and sustainable utilisation of Malawi's natural resources.
- Community-based management and revenue sharing from the sustainable utilisation of natural resources on customary and public lands will be encouraged.
- Regulation will be complemented by social and economic incentives to influence behaviour for individuals or organisations to invest in sustainable environmental management.
- Regular and accurate assessment, monitoring, and dissemination of information on environmental conditions will be assured.
- Trade-offs between economic development and environmental degradation will be minimised through use of environmental impact assessments (EIA) and natural resource monitoring.
- Rational and secure tenure over land and resources is a fundamental requirement for sustainable natural resource management.
- Some of Malawi's natural resources such as Lake Malawi, national parks and forest reserves are very much affected by the activities of neighbours and those of the region at large. This calls for concerted efforts in preparation of policies and plans for their utilisation, management and conservation to ensure sustainable regional development.

### 8.3.2 The National Environment Management Act

The EIA legislation is contained in the National Environment Management Act, No 23 of 1996. The Act outlines the EIA process to be followed and it provides the enabling legislation to develop EIA guidelines to assist compliance with the EIA requirements. The Act makes EIA a statutory requirement and listed projects cannot be licensed and implemented until a satisfactory EIA study has been completed and approved.

EIA provisions in the Environment Management Act (EMA) are found in Sections 24, 25, 26, 27, 29 and 63, 69 and 76. These are summarised below.

#### S. 24 Projects for which an Environmental Impact Assessment may be required

- (l) The Minister may, on the recommendation of the Council, specify, by notice published in the Gazette, types and sizes of projects which shall not be implemented unless an environmental impact assessment is carried out (The list of projects is provided in Appendix 8-1).

- (2) A developer shall, before implementing any project for which an environmental impact assessment is required under subsection (1), submit to the Director, a Project Brief stating in a concise manner:
  - a. The description of the project;
  - b. The activities that shall be undertaken in the implementation of the project;
  - c. The likely impact of those activities on the environment;
  - d. The number of people to be employed for purposes of implementing the project;
  - e. The segment or segments of the environment likely to be affected in the implementation of the project; and
  - f. Such other matters as the Director may in writing require from the developer or any other person who the Director reasonably believes has information relating to the project.
- (3) Where, upon examining the Project Brief, the Director considers that further information is required to be stated in the Project Brief before an Environmental Impact Assessment is conducted, the Director shall require the developer, in writing, to provide, such further information as the Director shall deem necessary.

#### **S. 25 Environmental Impact Assessment Reports**

- (1) Where the Director considers that sufficient information has been stated in the project brief under Section 24, the Director shall require the developer, in writing, to conduct, in accordance with such guidelines as the Minister may, by notice published in the Gazette prescribe, an Environmental Impact Assessment and to submit to the Director, in respect of such assessment, an Environmental Impact Assessment Report giving:
  - a. A detailed description of the project and the activities to be undertaken to implement the project;
  - b. The description of the segment or segments of the environment likely to be affected by the project and the means for identifying, monitoring and assessing the environmental effects of the project;
  - c. The description of the technology, method or process to be used in the implementation of the project and any available alternative technology, method or process, and reasons for not employing the alternative technology, method or process;
  - d. The reasons for selecting the proposed site of the project as opposed to any other available alternative site;
  - e. A detailed description of the likely impact the project may have on the environment and the direct, indirect, cumulative, short-term and long-term effects on the environment of the project;
  - f. An identification and description of measures proposed for eliminating, reducing or mitigating any anticipated adverse effects of the project on the environment;

- g. An indication of whether the environment of any other country or of areas beyond the limits of national jurisdiction is or are likely to be affected by the project and the measures to be taken to minimize any damage to the environment;
  - h. An outline of any gaps, deficiencies and the adverse environmental concerns arising from the environmental impact assessment and from the compilation of the environmental impact assessment report; and
  - i. A concise description of the method used by the developer to compile the information required under this section.
- (2) The Environmental Impact Assessment Report shall be open for public inspection provided that no person shall be entitled to use any information contained therein for personal benefit except for purposes of civil proceedings brought under the Act or under any written law relating to the protection and management of the environment or the conservation or sustainable utilisation of natural resources.

#### **S. 26 Review of Environmental Impact Assessment Reports**

- (1) Upon receiving the Environmental Impact Assessment Report, the Director may invite written or oral comments from the public thereon, and where necessary may:
- a. Conduct public hearings at such place or places as the Director deems necessary for purposes of assessing public opinion therein;
  - b. Require the developer to redesign the project or to do such other thing as the Director considers desirable, taking into account all the relevant environmental concerns highlighted in the Environmental Impact Assessment Report, any comments made by the public and the need to achieve the objectives of the Act;
  - c. Require the developer to conduct a further environmental impact assessment of the whole project or such part or parts of the project as the Director may deem necessary, or to revise the information compiled in the environmental impact report; and
  - d. Recommend to the Minister to approve the project subject to such conditions as the Director may recommend to the Minister.
- (2) In considering whether or not to recommend to the Minister the approval of any project or of any condition, the Director shall take into account any likely impact of the project on the environment and the actual impact of any existing similar project on the environment.
- (3) A licensing authority shall not issue any licence under any written law with respect to a project for which an environmental impact assessment is required under the Act unless the Director has certified in writing that the project has been approved by the Minister under this Act or that an Environmental Impact Assessment is not required under this Act.

**S. 27 Environmental Audits**

- (1) The Director shall, in consultation with such lead agency as he may consider appropriate, carry out or cause to be carried out periodic environmental audits of any project for purposes of enforcing the provisions of this Act.
- (2) For purposes of subsection (1), the Director, may require a developer to keep such records and submit to the Director such reports as the Director may deem necessary.
- (3) A developer shall take all reasonable measures for mitigating any undesirable effects on the environment arising from the implementation of a project which could not reasonably be foreseen in the process of conducting an Environmental Impact Assessment and shall, within a reasonable time, report to the Director such effects and measures.

**S. 28 Monitoring Existing Projects**

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

**8.3.3 Regulations**

Section 77 in Part XIII of the Environment Management Act makes provision for the Minister to make regulations pertaining to any aspect of environmental management.

**8.3.4 Permits and Licences**

The developer is required to obtain an *EIA Certificate* before he can commence operations. However, depending on the nature of his activity, he requires a number of other permits and licences as shown in Table 8.3.

Table 8.3: Other Applicable Permits and Licences

Act, Regulation or By-law	Permit or Licence	Requirements	Implementing Agency
Water Resources Act CAP72.03	Water Permit	Permit is required to use and/or abstract water, build dams	Water Resources Board: Water Abstraction Control Subcommittee
Water Resources (Water Pollution Control) Regulations	Effluent Discharge Consent	To control water pollution. Effluent must conform with standards set by the Malawi Bureau of Standards	Pollution Control Subcommittee
Environment Management Act, No 23 of 1996, s.42	Air Pollution Licence	Licence is required to emit any gas or other pollutants into the atmosphere	EAD
Environment Management Act, No 23 of 1996,s.38	Waste Licence	A licence is required to handle, store, transport, classify or destroy waste other than domestic waste, or operate a waste disposal site.	EAD
Environment Management Act, No 23 of 1996, s.39	Hazardous Waste Licence	A permit is required to import or export and transport any hazardous waste in Malawi.	EAD
Fisheries Conservation and Management Act, CAP66.05	Fish Farming Licence	A licence is required to operate a fish farm	Fisheries Dept.

### 8.3.5 Penalties

In terms of Section 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 be liable, upon conviction, to a fine of not less than K5,000 and not exceeding K200,000 and to imprisonment for two years.

#### S. 76 Closure of premises

- (1) Where the Director believes, on reasonable grounds, that the Act or any regulations made thereunder have been contravened, the Director may, subject to subsection (2), order the closure of any premises by means of, or in relation to which the Director reasonably believes the contravention was committed.
- (2) The closure of any premises shall cease after the provisions of this Act or any regulations made thereunder have been instituted in respect of the contravention, in which event the premises shall remain closed until the proceedings are finally concluded.

### 8.3.6 Fees

According to Section 29, the Minister may, by notice published in the Gazette, prescribe such fees as may be necessary for covering reasonable costs for scrutinizing environmental impact assessment reports and for the subsequent monitoring of a project which has been approved for implementation under this Act. The review fees, as at 2006, are 30% of 1% of the total project costs.

### 8.3.7 Guidelines

Malawi has a comprehensive EIA guidelines document, which was developed in 1997 to facilitate compliance with Malawi's EIA requirements by government agencies, project developers, consultants and donors. The reader is referred to these guidelines for detailed guidance on undertaking EIAs in Malawi.

In 2001, the EAD commissioned a series of sector guidelines on EIA, Environmental Management Systems and Auditing for:

- Mining projects;
- Irrigation and drainage projects;
- Sanitation projects; and
- Waste management projects.

These provide comprehensive guidance for anyone wishing to develop a project in any of these sectors.

### 8.3.8 Environmental Standards

Malawi is in the process of developing its own emissions standards. It is suggested that emission guidelines be taken from the World Bank Pollution Prevention and Abatement Handbook, which is a globally recognised standard. Other national, international, and industry specific guidelines that can be referred to are from the World Health Organization, the European Union, and the US Environmental Protection Agency.

It is recommended that the developer consult with the DEA and other appropriate authorities or agencies to ensure that they follow the guidelines applicable to their project.

### 8.3.9 Certification of Consultants

At present, there are no formal structures in place for the certification and/or registration of consultants who wish to undertake EIAs in Malawi. Indeed, there are no requirements in the legislation to disclose the names of the EIA team responsible for preparing the EIA report, or for any prior approval of the consultants by the EAD.

## 8.4 EIA Procedural Framework in Malawi

The EIA process involves several stages or procedures. As depicted in Figure 8.2 it begins with a determination by EAD as to whether a proposed project is prescribed under the EMA. If not, no further action concerning EIA requirements need be undertaken. If it is, then a Project Brief must be submitted to the Director. The stages of the EIA process are described below.

#### 8.4.1 Screening

Screening is a process of determining what projects should be subject to EIA requirements. The projects for which an EIA is mandatory are listed in List A and those for which an EIA may be required are listed in List B (see Appendix 8-1 for these lists).

#### 8.4.2 Scoping

Scoping establishes the principle issues to be addressed in an EIA. This is performed by a project team comprising of the developer and a multi-disciplinary team of experts. The composition of the team and the number of experts will depend on the nature, location and scale of the proposed project. In Malawi, public consultation is not a mandatory part of scoping, but it is generally recognised best practice to embark on the public consultation process during scoping, rather than to leave it to the EIA stage.

The main output of the scoping process is the *Project Brief*. A Project Brief is a document which informs the Director that a project is being considered and it provides a preliminary assessment of the project impacts. The contents of a Project Brief are stipulated in s. 24 of the EMA (see Section 8.3.2 above). Guidance on preparing project briefs is given in Appendix C of the EIA guidelines.

For public sector projects, the Project Brief corresponds to the *Project Submission Document (PSD)* used by the National Economic Council (NEC) for internal pre-appraisal. The PSD would be submitted to the Director at the completion of Stage 2 of the National Economic Council's (NEC) project appraisal process.

When the Director receives a Project Brief, he refers it to the TCE for advice. Based on information in the Project Brief and established project screening criteria (see Appendix 8-2), the TCE assesses the need for an EIA and recommends a course of action to the Director.

The Director then determines whether or not an EIA is required. The following guiding time frames, in maximum number of working days, will be observed starting from the date the Director receives the document.

**Table 8.4: Time Frames for Review of Documents**

Determining the need for an EIA once a Project Brief is received by the Director	15 days
Review of each draft of EIA terms of reference submitted to the Director	10 days
Review of first draft of an EIA Report	50 days
Review of second and subsequent drafts of an EIA Report	25 days

If an EIA is not required, the project is exempted from further compliance with the EIA requirements (see Figure 8.2). In such instances, the Director issues a Certificate of EIA Exemption which advises the developer and relevant licensing authority of the exemption with, if appropriate, recommendations for environmental management of the project. If an EIA is required, the Director informs the developer and/or appropriate government authorities that an EIA must be undertaken and an EIA report prepared.

### 8.4.3 Terms of Reference for EIA

Before EIA terms of reference (ToR) are prepared and approved, the issues to be covered in the study, and specified in the ToR usually will have been identified through scoping discussions between the DEA and the developer. Thus scoping is vital to ensure that all potentially significant impacts are included in the study, that evidently insignificant concerns are excluded and, thus that resources are conserved and used wisely. The Director may, on the advice of the TCE, require that a more formal scoping exercise be undertaken, perhaps involving consultations with the public, before ToRs are approved.

Guidance on preparing ToRs for EIA is given in Appendix E of the EIA Guidelines. A sample ToR for EIA is given in Appendix F of the EIA Guidelines.

### 8.4.4 Environmental Impact Assessment:

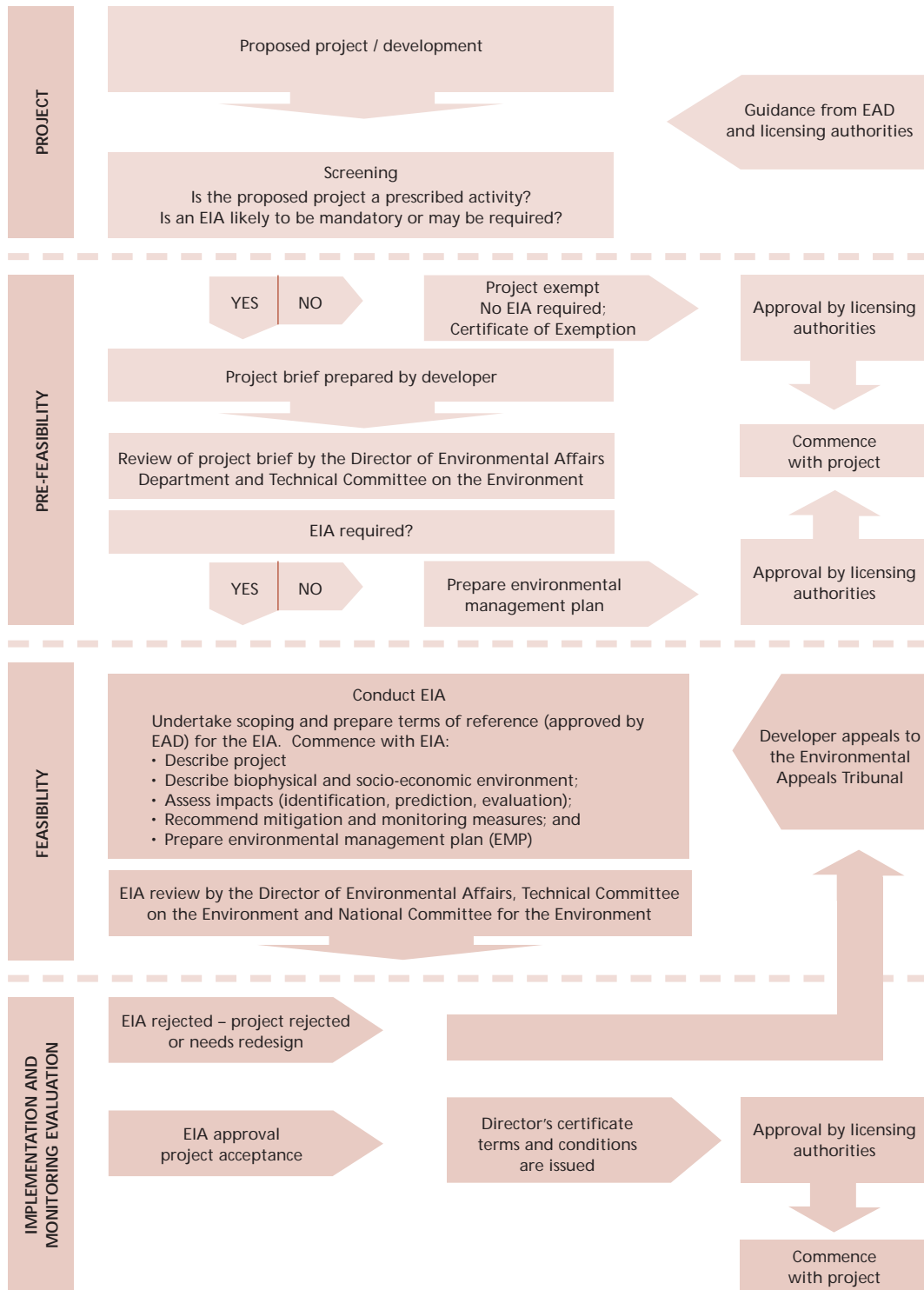
An EIA is a comprehensive assessment of the environmental impacts of a project and is based on ToR prepared by the developer and approved by the Director. The contents of the EIA Report must contain at least the information required under s. 25 of the EMA. Guidance on preparing EIA reports is provided in Appendix C of the EIA Guidelines. The EIA should be undertaken at the same time as the project feasibility studies (see Figure 8.2). For public sector projects, this will be during Stage 3 or 4 of NEC's project appraisal process.

Public consultation is mandatory when undertaking an EIA. At a minimum, the proponent must meet with the principal stakeholders to inform them about the proposed activity and to solicit their views about it. More problematic activities should involve more extensive consultations. The methods and results of these consultations must be documented in the EIA. Detailed guidance on public consultation is given in Appendix G of the EIA Guidelines. The key questions that need to be answered in the public consultation process and in the EIA Report are shown in Table 8.5 below.

**Table 8.5: Key Questions to be Addressed in the EIA Study**

Assessment stage	Key Questions to be Addressed
1. <i>Identification</i>	What will happen as a result of the project?
2. <i>Prediction</i>	What will be the extent of the change brought about by the project?
3. <i>Evaluation and Interpretation</i>	Do the changes matter?
4. <i>Mitigation</i>	What can be done about the changes?
5. <i>Monitoring and Management</i>	What are the monitoring and management plans?
6. <i>Report</i>	How can decision-makers be informed of what needs to be done, given the various alternatives?

Figure 8.2: The EIA Process in Malawi



When a draft EIA is received by the Director, he initiates a review and refers the EIA to the TCE. This review is led by EAD staff with the assistance of members of the TCE who have an interest in the project or expertise needed to complete the review. Depending on the complexity and scope of the project, individual outside experts or an independent review panel may be retained to advise the EAD/TCE. Guidance on evaluating the adequacy of an EIA is given in Appendix H of the EIA Guidelines.

EAD staff and/or TCE members may also meet with non-governmental stakeholders to verify or extend the proponent's public consultation programmes. The EIA is also made available for public comments. If considered necessary by the TCE, the Director may also call for a public hearing(s) on the EIA to solicit direct comments from people who may be affected. Such hearings are provided for under section 26 of the EMA.

When the reviews are complete and consolidated, the Director meets with the developer and /or licensing authority to discuss the draft EIA and, if considered necessary by the TCE, require that corrections and/or additions be made before it is finalised. Subsequent drafts of the EIA are also reviewed by the TCE until a satisfactory report is produced.

The time periods within which reviews of first and subsequent drafts of EIA should be completed are outlined in Table 8.4.

Based on the review and the advice of the TCE, the Director determines:

- That the project must be redesigned to eliminate or reduce adverse impacts, and/or to enhance environmental benefits, and that the EIA report must be redone and resubmitted for the revised project; or
- That there is reasonable cause to believe that, even if it redesigned or more detailed EIA studies are undertaken, the project will cause significant and irreparable impacts on the environment, and that the project is rejected; or
- That the project will not result in significant impacts to the environment and it is approved.

If the project is approved by the TCE, the developer is given an EIA Certificate which may contain various terms and conditions of compliance.

#### 8.4.5 Managing Compliance with EIA Results

To ensure that the project developer complies with the conditions contained in the EIA Certificate, the DEA requests the TCE to develop and implement a government audit programme, as per the requirements of s.27 of the EMA. It must be emphasized that the EAD's primary role in project auditing is to facilitate the development and implementation of audit programmes, and not to take over the responsibilities of the licensing authorities.

The EAD relies upon the normal regulatory functions of licensing authorities with jurisdiction over different aspects of project implementation to carry out the bulk of the auditing work in accordance with their statutory responsibilities.

In developing an audit programme, it is expected that the TCE will employ practices and procedures to:

- Assign lead audit responsibilities to licensing authorities with primary responsibility for the regulation of projects;
- Organise technical and logistical support for audit programmes from among the TCE members;
- Prescribe schedules of reports from developers and lead agencies to the TCE;
- Monitor and report on project audits to the Director; and,
- Where required, make recommendations to the Director for corrective action and/or penalties where developers are not complying with the environmental terms and conditions of project approvals.

The participation of lead agencies in the follow up to the implementation of the EIA is important and for this reason an environmental management and monitoring plan should form part of the EIA Report to facilitate the monitoring and/or following up of the EIA process.

### **8.5 Other Relevant Environmental Legislation in Malawi**

Environmental issues cut across a wide variety of sectors and, under the current situation, there are numerous pieces of legislation in Malawi, which have a bearing on the environment and should be considered in EIA decision-making. The sectors, titles of the legislative instruments, the responsible agency and the purpose of the legislation are summarised in Table 8.6.

Table 8.6: Other Potentially Applicable Sectoral Requirements

Environmental Component	Responsible Agency	Title and Date of Legislation	Purpose
Water Resources (use of)	Ministry of Water Development: Water Resources Board Water Abstraction Control Subcommittee	Water Resources Act CAP 72.03 (1969)	The Act governs water rights (permits), water abstraction, pollution control, building of dams and water resources planning and development.
		Water Works Act, CAP 72.01 (1995)	The Water Resources Board oversees water resources management policies as outlined in the Act and regulations, and monitors water use and quality.
		Water Resources Management Policy and Strategies (1994) (1999 draft in prep)	
Effluent (disposal)	Ministry of Water Development: Pollution Control Sub-committee Malawi Bureau of Standards <sup>133</sup>	Water Resources (Water Pollution Control) Regulations	Control of water pollution, discharge of effluent into public water, analysis of water and effluent. Effluent discharge consents are issued in terms of the regulations.
Air		Part VIII of EMA, s.42 relates to the prevention of pollution Part VIII of EMA, s.42 relates to the prevention of pollution	Licence is required from Minister to discharge effluent (s. 43 of EMA). Licence is required from Minister to emit any gas or other pollutants (s. 43 of EMA).
Noise		No particular statute	
Waste	Ministry of Natural Resources and Environmental Affairs	S.37 of EMA	Gives power to the Minister to promulgate regulations regarding the control, management, transport, treatment, recycling and safe disposal of all waste including hazardous waste.
		s.38 of EMA Multitude of Acts, regulations and local by-laws control waste management	A licence is required to handle, store, transport, classify or destroy waste other than domestic waste, or operate a waste disposal site.
	Local authorities	s.39 of EMA Various by-laws	A permit is required to import or export and transport any hazardous waste in Malawi. Each town is responsible for municipal waste disposal.

Environmental Component	Responsible Agency	Title and Date of Legislation	Purpose
Planning and Zoning	District officers	Part IV of EMA, s.19 and 23	District environmental action plans are to be drawn up every 5 years in conformance with the National Environmental Action Plan (NEAP). Development in each district must be in accordance with the District EAP.
Forestry	Ministry of Natural Resources and Environmental Affairs: Forestry Department	National Forestry Policy (1996) Forestry Act, CAP 63.01 (1997)	Control and regulation of forest products, declaration of forest reserves, protection, control and management of forest products, tree planning and other enterprises.
		Forest Rules	Regulations in forest areas regarding reforestation, felling etc.
Mining and Mineral Resources	Ministry of Natural Resources and Environmental Affairs: Mines Department	Mines and Minerals Act, CAP 61.01) and Regulations	Governs mining and quarrying licences, as well as the protection of the environment and natural resources.
		Explosives Act, CAP 14.09 and regulations	Governs licences for storage, possession and use of explosives and the issuing of blasting licences.
		Petroleum (Applications) Regulations, CAP 61.01	Regulates the search for and production of petroleum; provides for the protection of the environment, exploration and licensing.
Wildlife and Natural Resources	Ministry of Natural Resources and Environmental Affairs: Dept of National Parks and Wildlife	National Parks and Wildlife Act, CAP 66.07 (1992), as amended and Regulations	Establishment of national parks, preservation of animals, vegetation and objects of special interest In national parks.  Regulations related to hunting, sale and trade of hunting trophies, protected areas and species.
		Natural Resources Act	Controls the utilisation of land and water resources, wetlands and fragile environments.
		Game Act, CAP 66.03	Preservation and control of game in controlled areas and game reserves.

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Environmental Component	Responsible Agency	Title and Date of Legislation	Purpose
Plants	Ministry of Agriculture and Irrigation	Plant Protection Act, CAP 64.01	Relates to the eradication of pests and diseases; controls the export and import of plants.
		Noxious Weeds Act, CAP 64.02	Relates to the eradication of noxious weeds.
		Council for National Herbarium and Botanic Gardens of Malawi Act, CAP 41	Development and management of herbaria and botanical gardens.
Agriculture	Ministry of Agriculture and Irrigation	Special Crops Act, CAP 65.01	Controls development and marketing of crops.
		Tobacco Act, CAP 65.02	Relates to the production, manufacture and marketing of tobacco.
		Cotton Act, CAP 65.04	Relates to the production, marketing and processing of cotton.
Land	Ministry of Lands, Physical planning and Surveys: Town Planning Board	Land Act, CAP 57.01 (1965) Customary Land (Development) Act, CAP 59.01 (1967) Registered Land Act, CAP 58.01 (1967) National Lands Policy (2002)	Relates to customary, public and private land and the use of such land.
Fisheries	Ministry of Natural Resources and Environmental Affairs: Fisheries Department	Fisheries Conservation and Management Act, CAP 66.05 (1997) Regulations (2002)  National Fisheries and Aquaculture Policy, 2001	Regulation and control of fishing; prohibits the use of explosives and poison. Fish farming licences are issued in terms of this Act.
Industrial infrastructure and urban development	Various	Industrial Development Act, CAP 51.01	Controls the orderly development of industry.
		Electricity Act, CAP 73.01	Environmental provisions for clearing of land and transmission lines.
		Public Roads Act, CAP 69.02	Provides for matters relating to public roads including maintenance and compensation.
Health		Public Health Act, CAP 34.01	Prevention of infectious diseases, sanitation and housing, sewerage and drainage.
Historic monuments		Monuments Act, CAP 29.01	Provides for the protection of places of distinctive natural beauty and historic sites, buildings etc.