

ENHANSING THE PROTECTION OF THE RIGHT TO FOOD
IN MALAWI

DRAFT FOOD AND NUTRITION SECURITY BILL

Facilitated by the National Right to Food Network in collaboration with the Ministry of Agriculture & Food Security, Malawi Human Right Commission, Malawi Law Commission through funding from the Presbterian World Service & Development, Human Rights &Democracy and Actionaid-Malawi.

3rd December, 2007.

FOOD AND NUTRITION SECURITY BILL

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An Act to provide for the protection of the right to food; to establish the National Food and Security Council and to provide for matters connected therewith and incidental thereto

ENACTED by the Parliament of Malawi as follows-

PART I-PRELIMINARY PROVISIONS	
Short title and commencement	1. This Act may be cited as the Food and Nutrition Security Act, 20... and shall come into operation on such date as the Minister shall appoint by notice published in the Gazette.
Interpretation	2. In this act, unless the context otherwise requires- “Adequate food” means the availability of food in a quantity and quality sufficient to satisfy the dietary needs of individuals, free from adverse substances, and acceptable within a given culture “Council” means the National Food and Nutrition Security Council established under section 17; “Emergency” means a situation of widespread natural or human made disaster covering the whole country or part thereof, and includes situations of civil strife, armed conflict or civil war. “Food and Nutrition Security” means the realization of the right of everyone to regular and permanent access to qualitatively and quantitatively sufficient food without compromising access to other basic necessities, taking as a basis food practices that promote health, respect for cultural diversity and which are environmentally, economically and socially sustainable. includes the notion of long-term availability and accessibility implying food being accessible for both present and future generations “Food” means everything originating from biological sources and water whether processed or not, which is designated as eatables and beverages for human consumption including food additive material, food raw material and other materials used in the process of preparation, processing and or making of eatables or beverage.

“Fund” means the Food and Nutrition Security Fund established under section 44;

“HIV” means Human Immuno-deficiency Virus

“AIDS” means Acquired Immune Deficiency Syndrome.

“Lead agency” under this Act means any Government Ministry, Department or body that is designated under any law or policy, a primary responsibility in respect of any specific duty or function relating to food.

“Local Authority” bears the meaning under Chapter XIV of the Constitution and Section 2 of the Local Government Act, and includes any traditional leader or authority.

“Malnutrition” means a situation where a person suffers from lack of adequate food within the meaning of this Act.

“Pyramid selling” means a scheme, within the context of access to food, with both the following characteristics:

(a) to take part in the scheme, some or all new participants must make a payment (a *participation payment*) to another participant or participants in the scheme;

(b) the participation payments are entirely or substantially induced by the prospect held out to new participants that they will be entitled to access to food or other form of payment (a *recruitment payment*) in relation to the introduction to the scheme of further new participants.

“Right to food” includes the right to adequate food and the right to be free from hunger.

“Under-nutrition” means a level of food content and nutrition that falls below the minimum essential package of calories, proteins and other specific nutrients necessary for good health and human development.

“Unfair Trade Practice” has the same meaning as defined in the Competition and Fair Trading Act

“Vulnerability or risk of food insecurity” means a conjecture of factors that determine a tendency to suffer from an inadequate nutrition or to an interrupted food supply due to a problem in the provision of food.

“Vulnerable and Disadvantaged Groups” shall bear but not be limited to the description under Section 13 of the Human Rights Commission Act.

PART II – GENERAL PRINCIPLES

Food security and the right to adequate food

General principles for the achievement of the right to adequate food

3. Food and nutrition security is the foundation for the full realization of the right to adequate food
4. (1) Every person charged with the stocking, administration, management, supply of food or sources, and any other responsibility related thereto, shall carry out their responsibilities in accordance with the Constitution, Government Policies on Food and Nutrition Security, legislation, customary law and any other law relating to food as may be applicable from time to time.
 - (2) Without prejudice to the generality of subsection (1), every person, lead agency public authority, local authority, non-governmental organisation or the private sector required under any written law to exercise power or perform functions relating to food shall take steps and measures as are necessary for:
 - (a) promoting public awareness and participation by all people such as farmers, labourers, landless, consumers and the private sector in the conduct of public affairs, including the adoption and implementation of state policies on food and nutrition security.
 - (b) ensuring accountability and transparency for any measure taken on the basis of a

law, regulation or policy when giving effect to the right to food and achieving food and nutrition security.

- (c) ensuring that access to food is non-discriminatory and based on the recognition and protection of the inherent worth and dignity of all human by affording the same level of protection to all without regard to race, colour, sex, language, ethnic or regional origin, age, region, political or other opinion, national or social origin, property, birth or other status;

Provided that measures and legislation may be introduced to address inequalities in the society to protect vulnerable or disadvantaged groups and prohibiting discriminatory practices and the propagation of such practices

- (d) promoting and empowering peoples' capacities, capabilities and access needed to enjoy the right to be free from hunger through, among other things, the provision of farm inputs and the introduction of credit schemes including the right to seek from the state remedial actions for violations of their right to food.
- (e) promoting good plant and animal husbandry by facilitating access to information relating to acquisition of land, land use, famine early warning systems and taking appropriate measures to make such information accessible in terms of proximity to users, availability in vernacular languages and timeliness in accessing it
- (f) ensuring that precautionary measures are taken to prevent or mitigate possible food disasters at all levels.
- (g) promoting scientific research, technological development and training relating to food and nutrition security.
- (h) promoting cultural and social practices

applied by any community in Malawi in achieving food security and storage of farm produce.

- (i) promoting cooperation with foreign governments and international or regional organisations on matters of food and nutrition security

PART III-PROTECTION OF THE RIGHT TO FOOD AND GOVERNMENT'S OBLIGATIONS

The right to food	5. (1) Every person has the right to food which shall include the right to freedom from hunger and the right to adequate food.
Content of the right to adequate food and government's general obligation	(2) The content of the right to adequate food shall imply: <ul style="list-style-type: none">(a) the availability of food in a quantity and quality sufficient to satisfy the dietary needs of individuals, free from adverse substances and culturally acceptable; and(b) the accessibility of such food in ways that are sustainable and that do not interfere with the enjoyment of other rights.
Minimum core content obligations for Government on the right to adequate food	(2) The State shall take steps to ensure the satisfaction of, at the very least, the minimum essential level of the right to food for every person under its jurisdiction which shall imply access to minimum essential food that is sufficient, nutritionally adequate and safe.
General obligations of Government	(3) Government has the obligation to respect, protect, promote and fulfill the right to food.
Government's core obligation and measures to ensure freedom from hunger	6. (1) The State shall have a core obligation to take immediate and concrete steps to prevent hunger. (2) "Freedom from hunger" means a situation where adequate food is available and accessible to everyone at all times, including physically vulnerable individuals, such as infants and young children, elderly people, the physically disabled, the terminally ill and persons with persistent medical problems,

including the mentally ill, as well as victims of natural disasters, people living in disaster-prone areas and other specially disadvantaged groups who may need special attention and sometimes priority consideration with respect to the accessibility of food.

(3) In order to protect the fundamental right of everyone to be free from hunger, the government shall, individually and through international co-operation, take measures, including specific programmes, which are needed to improve methods of production, conservation and distribution of food by:

- (a) making full use of technical and scientific knowledge;
- (b) disseminating knowledge of the principles of nutrition, and;
- (c) developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources;

(4) Government shall take targeted and concrete steps, legislative, economic, technical or otherwise to the maximum of its available resources with a view to achieving progressively the full realization of the right to adequate food.

Availability of resources

(3) The phrase "to the maximum of its available resources" under this Act shall refer to both the resources existing within Malawi and those available from the international community through international cooperation and assistance.

Responsibilities of non-state actors

7. (1) Without derogating from the fact that Government has the primary responsibility to ensure the full realization of the right to food, all members of society, including individuals, families, local communities, non-governmental organizations, civil society organizations, as well as the private sector have responsibilities in the realization of the right to food.

(2) The private sector, national and transnational,

shall pursue their activities within the framework of regulations, made by the Minister under this Act, conducive to respect and protection of the right to food.

(3) All people in Malawi shall be entitled to the protection of their economic interests and to fair and non-discriminatory treatment by manufacturers, suppliers or traders of food, food products and inputs for food production.

(4) Government shall regulate activities that adversely affect local competition concerning, and the prices of, food, food products or inputs for food production.

Policies to
accelerate realization

8. (1) Government shall adopt measures such as budgetary allocations, safety net programmes, credit programmes and schemes, policies and legislation on wages and land tenure to ensure the accelerated full realization of the right to food and nutrition security.

(2) Government shall ensure that food and nutrition support safety net programmes, especially food aid and school feeding programmes as well as food banks, are fostering greater dietary diversity by, among other things, broadening the food basket with more indigenous crops.

(3) Government shall take specific measures and targeted steps to bring in change in mindset to prevent the perennial loss of vanishing food crops and dying wisdom, to change the public image of underutilized food crops by steps such as re-designating such food, where appropriate, as nutritious food, and classifying a wide range of leafy vegetables, tubers, grain legumes and tropical fruits as “health foods”.

(4) Government shall recognize and reward the invaluable contributions of rural and indigenous people, particularly women, in the conservation and enhancement of agricultural biodiversity in the area of food production, and confer social prestige and economic benefit to its primary conservers.

(5) Government shall promote local markets and facilitate access to international markets for the

products of agricultural biodiversity, especially traditional and staple foods, ensuring equity and fairness amongst all participants.

(6) Government shall advocate and strengthen national nutrition literacy through participatory knowledge management involving all societal segments, particularly women and young people, and train agricultural extension workers and health and nutrition professionals in the importance of dietary diversity and evidence-based beneficial effects of traditional foods to re-establish the relevance of national agricultural biodiversity in fighting hunger and poverty.

(7) The Minister shall make regulations and policies prescribing the targets and goals to be achieved in relation to the full realization of the right to food, and the time frame to be set for the achievement of those targets; the means by which they would be achieved in broad terms, and in particular measures for collaboration with civil society, the private sector and international organizations; institutional responsibility for specific steps, and mechanisms for monitoring.

(8) Government shall put in place mechanisms such as legislation and other practices that promote and ensure expanded access to advanced technology in food production as well as relevant agricultural inputs of improved varieties, seeds, fertilizers, pesticides and other chemicals that are environmentally friendly.

(9) Government shall give special consideration to vulnerable people through safety net programmes by improving the targeting mechanisms and input subsidies to ensure expanded access to means of food production for such groups.

(10) Government shall in partnership with local communities, civil society and other partners take measures to promote dietary diversity and healthy eating habits and food preparation as well as feeding patterns including breast feeding while ensuring that changes in availability and access to food supply do not negatively affect dietary composition and intake.

Partnerships to
achieve dietary
dietary diversity

Enforcement and protection of the right to food.	<p>9. (1) Any person or group of persons whose right to food has been violated shall have access to effective judicial or other appropriate remedies, including any such remedy as provided for under Section 46 of the Constitution.</p> <p>(2) Without prejudice to the generality of the remedies under Subsection (1) hereof, all victims of such violations shall be entitled to adequate reparation, which may take the form of restitution, compensation, satisfaction or guarantees of non-repetition.</p> <p>(3) The right to food enshrined in this Act shall be respected and upheld by the executive, legislature and judiciary, and shall bind all organs of the government, natural and juristic persons, and to that extent, it is applicable, taking into account the nature of the duty imposed by the right.</p>
<p>PART IV – PROHIBITED ACTS AND OMISSIONS</p>	
Non-discrimination	<p>10. There shall be no discrimination in access to food or other entitlements for its procurement on grounds of race, colour, sex, language, ethnic or regional origin, age, region, political or other opinion, national or social origin, property, birth or other status.</p>
Obstructing access to food	<p>11. (1) No person shall either by himself or herself or in association with others directly or indirectly carry out any activity or omit to carry out any activity, do or omit to do an act which obstructs, prevents or otherwise makes it difficult or impossible for any person to have access to food and nutrition in the same way as others.</p>
Misleading and unfair trade practice	<p>12. Any person who practices trade which:</p> <ul style="list-style-type: none"> (a) falsely represents any food or food product as of a particular standard, quality, nutrition, or composition; or (b) takes advantage of vulnerable person by exerting undue pressure or undue influence on such person to enter into a transaction related to food production, marketing, storage, supply, processing or consumption;

		<p>Shall be guilty of an offence and shall be liable to imprisonment for five years and such fine as the court might determine considering the circumstances of the offence.</p>
Political coercion	13.	<p>(1) Any person, entity or political party who uses food or inputs for food production in a discriminatory manner or at the expense of the state for political purposes, shall be guilty of an offence and liable to imprisonment for five years and such fine as the court might determine considering the circumstances of the offence.</p> <p>(2) No person, entity or political party shall use food aid for political purposes, nor shall food aid be used to induce change of political affiliation.</p>
Pyramid selling and betting	14.	<p>Any person, who engages, causes or coerces another person to engage in pyramid selling or betting of food or food products or inputs to food production shall be guilty of an offence and liable to imprisonment for three years and such fine as the court might determine considering the circumstances of the offence.</p>
		<p>PART V- FOOD EMERGENCIES AND AID</p>
Early warning system	15.	<p>(1) Government shall put in place and make full reliance of an early warning system through sufficient investment in scientific research and development.</p> <p>(2) Government shall establish a desk for compiling data and disseminating information gathered through early warning systems.</p> <p>(3) The Minister shall make regulations with regard to early warning systems.</p>
Government's intervention to mitigate food disasters	16.	<p>(1) Government shall put in place mechanisms, policies and programmes to ensure that the impact of disasters is minimized and that the right to food and nutrition security is not negatively affected by such disasters.</p> <p>(2) Government shall ensure that it responds to food disasters with speed and efficiency to minimize the impact of the disaster.</p>

Strategic food reserves and storage facilities	<p>17. (1) Government shall maintain adequate levels of strategic food reserves and promote the modernization of food storage facilities and the diversification of stored food to ensure a credible and functional food balance sheet.</p> <p>(2) The Minister shall promulgate regulations to regulate, among other things, the following matters:</p> <ul style="list-style-type: none"> a. proper and transparent licencing for the importation of maize and other food products to ensure accountability. b. Food aid importation, distribution, timing of the inflows, and quantities thereof. c. Transparent procedures in sourcing, distribution and coordination of food aid whether local or international. d. Establishment of community food and seed banks to be managed by Cooperative Societies, Water Users Associations, farmers groups, Local Authorities, NGOs and/or faith based organisations. e. The management of strategic food reserves and prescribing minimum strategic food reserve levels. f. Uniform and objective identification of rules and procedures for easy transparent fair and consistent targeting of beneficiaries of all disaster operations and safety net programmes. g. Safe management of disasters and social protection.
Bribes, sexual favours for food aid	<p>18. Any person who demands a bribe, or other favour (sexual, financial or otherwise) from a beneficiary of food aid shall be guilty of an offence.</p>
Dignity of food aid beneficiaries to be upheld	<p>19. In the registration for food aid or distribution or evaluation of food aid, the dignity and rights of the beneficiaries shall be maintained and respected.</p>
Penalty	<p>20. Any person who in contravention any of the provisions in this part shall be guilty of a felony and liable to such fine as the court might determine considering the circumstances of the offence and imprisonment for 10 years.</p>

PART VI-ESTABLISHMENT OF THE FOOD AND
NUTRITION SECURITY COUNCIL

Establishment of the
National Food and
Security Council

21. There is hereby established a Council to be known as the National Council on Food and Nutrition Security (in this Act otherwise referred to as the “Council”) which shall exercise its powers and functions independent of the direction or interference of any body or authority save as accords with the express provisions of this Act .

Composition of the
Council

22. –(1) The Council shall consist of –
- (a) the Chairperson who shall be appointed by the President and approved by the Public Appointments Committee of the National Assembly;
 - (b) eight persons, who shall be appointed by the President, at least –
 - (i) six of whom shall be appointed from the food and nutrition industry, academic, research and development institutions;
 - (ii) one of whom shall be appointed from the civil society and
 - (iii) one of whom shall be a gender expert; and
 - (c) the following *ex officio* members -
 - (i) the Secretary for Agriculture and Irrigation or his representative;
 - (ii) the Secretary for Land or his representative;
 - (iii) the Secretary for Health and Population or his representative;
 - (iv) the Secretary for Natural Resources and Environmental Affairs or his representative;
 - (v) Solicitor General and Secretary for Justice;
 - (vi) Chairperson of the Human Rights Commission.
 - (vii) Chairperson of the Council for Non-

Governmental Organizations
(CONGOMA).

- (2) A representative of an *ex officio* member referred to in subsection (1) shall be designated by, or on behalf of, the ex officio member by a notice in writing to the Council to attend the meetings of the Council, and upon such designation such representative shall not designate another person to represent him or her without the written approval of the substantive ex-officio member.
- (3) There shall be a Vice-Chairperson of the Council who shall be elected by the Council from among its members:

Provided that no ex-officio member shall be elected as Vice-Chairperson.
- (4) The names of all members as first constituted and every change of membership shall be published in the Gazette.
- (5) The persons to be appointed under subsection (1) (b) shall be chosen for their ability and experience in scientific disciplines, technology-related activities or their professional qualifications or other essential attributes relating to the food sector qualifying them as fit and proper persons for such appointment.
- (6) A member shall not be or deemed to be an employee of the Council, nor serve on a full time basis.
- (7) The Director of Food and Nutrition Security shall be the secretary to the Council and shall attend all meetings of the Council and any of its committees; and he or she may, for good reason, designate any Senior Officer of the Secretariat to represent him or her, but the Director or his or her designate shall not be entitled to vote on any matter:

Tenure of office and vacancies	<p>Provided that the person presiding at any such meeting may, for good cause, require the Director of Food and Nutrition Security or such other officer to withdraw from such meeting.</p>
Allowances and expenses of members	<p>23. (1) A member, other than an <i>ex officio</i> member, shall hold office for a period of three years and shall be eligible for re-appointment for another term of three years.</p> <p>(2) The office of any member of the Council shall become vacant:</p> <ul style="list-style-type: none"> (a) if he resigns by giving one month notice in writing to the Council; (b) upon his death; (c) if he is absent without valid excuse from three consecutive meetings of the Council of which he has had notice; (d) if he becomes an undischarged bankrupt; (e) If he or she is convicted of an offence involving dishonesty or moral turpitude; (f) if he becomes of unsound mind; and (g) if s/he participates, directly or indirectly, in an activity which is in contravention of this Act. <p>(2) On vacation of office by a member, the vacancy shall be filled by a person appointed in accordance with the relevant provisions of section 19(1)(b) under which the former member was appointed:</p> <p>Provided that if the remaining period is less than six months, the President may decide not to have the vacancy filled until the expiry of the period.</p> <p>24. (1) Members or members of a committee of the Council shall be paid such honoraria and other allowances as the Minister shall determine from time to time and approved by the Public Appointments Committee of the National Assembly.</p> <p>(2) The Council may make provision for reimbursement of any reasonable expenses incurred by a member or a member of a committee of the Council in connection with the business of the</p>
Policy directions	

Proceedings of the Council

Council or the committee.

25. The Council may, where necessary, seek the general directions of the Minister on the manner in which it is to carry out its duties under this Act.

26. (1) Subject to the other provisions of this Act, the Council shall regulate its own procedure.

(2) The Council shall meet for the transaction of business at least once every three months at such places and at such times as the Chairperson may determine.

(3) An extraordinary meeting of the Council may be called by the Chairperson upon written notice of not less than seven days received from any member and shall be called if at least four members so request in writing;

Provided that if the urgency of any particular matter does not permit the giving of such notice, an extraordinary meeting may be called upon giving a shorter notice.

(4) Half of the members shall form the quorum of any meeting of the Council.

(5) There shall preside at any meeting of the Council
(a) the Chairperson
(b) in the absence of the Chairperson, the Vice Chairperson; and
(c) in the absence of the Chairperson and the Vice-Chairperson, such member as the members present and forming a quorum may elect from among their number for the purpose of the meeting

(6) The decision of the Council on any matter before any meeting shall be that of the majority of the members present and voting at the meeting and, in the event of an equality of votes, the person presiding shall have a casting vote.

(7) No member shall attend to the business of his office by representation and where a member is unable to

Committees of the Council	attend any meeting of the Council, he may request that his apologies for failure to attend be recorded.
Minutes of meetings	<p>27. (1) In addition to the Awards Committee, the Council may, for the purpose of performing its functions under this Act, establish other committees and delegate to any such committee such of its functions as it considers necessary.</p> <p>(2) The Council may appoint as members of a committee established under subsection (1) persons who are or are not members of the Council and such persons shall hold office for such period as the Council may determine.</p> <p>(3) Subject to any specific or general directions of the Council, a committee may regulate its own procedure.</p>
Disclosure of interest	<p>28. The Council shall cause minutes to be kept of the proceedings of every meeting of the Council and of every meeting of a committee of the Council.</p> <p>29. (1) If any member is present at a meeting of the Council or of any committee at which any matter which is the subject of consideration is a matter in which that person or his immediate family member or his professional or business partner is directly or indirectly in a private or professional capacity, he shall, as soon as is practicable after the commencement of the meeting, disclose such interest and, unless the Council or the Committee otherwise directs, that person shall not take part in any consideration or discussion of, or vote on, any question touching on such matter.</p> <p>(2) A disclosure of interest shall be recorded in the minutes of the meeting at which it is made.</p>
Non-disclosure of interest	<p>30. Any member of the Council fails to disclose his/her interest in a matter shall be guilty of an offence and liable to a fine of up to K1, 000.000.00 and to imprisonment for three years.</p>
Protection of members	<p>31. No action, suit or other proceedings shall be brought or instituted personally against any member or a</p>

Invited persons	<p>member of a committee in respect of any act done in good faith in the course of carrying out the provisions of this Act.</p>
Oath of secrecy	<p>32. (1) The Council may in its discretion at any time and for any period invite any person, and the Minister may in like manner nominate an officer in the public service, to attend any meeting of the Council or of any of its committees and take part in the deliberations of the meeting, but such person or officer shall not be entitled to vote at the meeting.</p> <p>(2) Sections 26 and 27 shall apply, with necessary modifications, to a person or an officer attending a meeting of the Council or committee pursuant to subsection (1).</p> <p>33. Every –</p> <ul style="list-style-type: none"> a. member; b. member of a committee c. employee of the Council; or d. consultant in the service of the Council, <p>shall upon assumption of his office, take such oath of secrecy as may be approved by the Council or as may otherwise be prescribed under this Act.</p>
Functions of the Council	<p style="text-align: center;">PART VII – FUNCTIONS AND POWERS OF THE COUNCIL</p> <p>34. (1) The functions of the Council shall be to advise the Government and other stakeholders on all Food and Nutrition Security matters in order to achieve the full realization of every person’s right to adequate food.</p> <p>(2) Without prejudice to the generality of subsection (1), the Council shall –</p> <ul style="list-style-type: none"> (a) Create food and nutrition security awareness at the political and other levels of society and thereby obtain their commitment towards the value of food and nutrition security as integral parts of national development strategies; (b) appraise, review, monitor and evaluate priority research and development

- programmes, plans and projects of research and development institutions and undertake independently or in collaboration with any appropriate person, body or institution surveys and research investigations considered necessary;
- (c) chart out national direction and establish national priorities on matters of food and nutrition security in relation to socio-economic development needs;
 - (d) promote and advocate for the development of human resource on food and nutrition by building capacity in food and nutrition education and training programmes and providing assistance in the development of appropriate right to food civic education and curricula at the various levels of the society and education systems;
 - (e) to educate the public on, and promoting awareness on food production, food security, safety, nutrition, safety nets and respect for, the right to food and nutrition security ;
 - (f) to monitor, consider, research and/or deliberate upon any issues, on its own volition or as may be referred to it by the Government, stake holders or vulnerable and disadvantaged groups, or any person or group of persons with sufficient interest on any matter regarding food and nutrition security; and to prepare reports on such matters and submit the reports, with such recommendations or observations as the Authority considers appropriate, to the authorities concerned or to any other appropriate authorities.
 - (g) establish mechanisms to solicit support from the executive and legislative branches of Government, policy-makers and the private sector in order to promote the formulation and revision of policies, strategies, laws and regulations on food and nutrition security and the monitoring of the implementation of food and nutrition security activities;
 - (h) source funding from within and outside

- Malawi to finance the national research and development effort and allocate the funds to research institutions engaged in matters of food and nutrition;
- (i) collaborate with international partners and civil society organisations on food and nutrition security in order to progressively realise the right to adequate food through , among other things, the construction, provision of infrastructures and facilities for storing food, promoting good husbandry e.t.c;
 - (j) encourage the use of local expertise in food and nutrition security matters through use of a set of professional standards and guidelines and support food and nutrition security associations and partnerships;
 - (k) encourage the establishment and promote the coordination of research institutions that undertake research and development activities which promote national food and nutritional security activities in a manner that enhances corporation and collaboration among national and international personnel and institutions;
 - (l) conduct an inquiry into any matter being investigated by the Council;
 - (m) prepare, every two years, a state of Food and Nutrition Security Report for presentation to the National Assembly in accordance with section 52 of this Act; and
 - (n) perform any other function or activity related to food and nutrition security.

(3) The Council shall have the following responsibilities-

- (a) to submit to the President, Parliament or any other competent authority, on an advisory basis, either at the request of the President, Parliament or such other authority or on its own volition, its opinions, recommendations, proposals or reports on any matters concerning the protection and promotion of the right to food and nutrition security;

- (b) to comment publicly or as it sees fit on any general or specific situation of violation of the right to food and nutrition security or non compliance with the provisions of this Act and to recommend initiatives or measures to put an end to such situation;
- (c) to promote and advocate the ratification by Malawi of any international instruments regarding the right to food and nutrition security;
- (d) to promote the harmonization of national legislation, policies and practices with international instruments relating to the right to food and nutrition security to which Malawi is party and to promote and monitor their effective implementation;
- (e) to scrutinise and comment on the reports which Malawi submits or is required to submit pursuant to treaty obligations and, where necessary, express its opinions on the subject matter to relevant treaty bodies.
- (f) to co-operate with agencies of the United Nations, in particular the Food and Agriculture Organization (FAO) and the World Food Programme (WFP); and other multilateral or regional institutions and national institutions of other countries which are involved in the advancement of the right to food and nutrition security;

(4) In exercising its powers and functions under this Act, the Authority shall:-

- (a) in conjunction with other relevant agencies, monitor the levels and structures of competition within the food and nutrition security industry in order that competition in and accessibility to food and nutrition in Malawi is promoted, enhanced and sustained;
- (b) promote the integrity and sustainability of the food and nutrition security industry and related industries and seek to ensure that stake holders in the production, storage and distribution and marketing of food whilst providing efficient service, are able to sustain themselves and are not exploited.

General powers of the Council	<p>(c) in conjunction with other relevant agencies, formulate measures to minimize the environmental impact of the exploitation, production, transportation, storage, supply and end use of food.</p> <p>(d) take all such measures as are necessary to fulfill the above purposes through regulations to be made under this Act.</p>
Secretariat of the Council	PART VIII – ADMINISTRATION
Appointment of staff	<p>35. The Council shall have the power to do all such things as are incidental or conducive to the carrying out of its functions under this Act.</p> <p>36. There shall be a Secretariat to the National Council on Food and Nutrition Security comprising the Director of Food and Nutrition Security and other officers subordinate to him/her who shall be officers in the public service and shall be responsible for the administration of this Act, subject to any general and specific directions of the National Council on Food and Nutrition Security.</p> <p>37. The Director of Food and Nutrition Security and officers subordinate to him or her shall be appointed by the National Council on Food and Security;</p>
Delegation	<p>Provided that the National Council on Food and Security may authorize the Director to appoint such junior subordinate officers as it may deem fit from time to time.</p>
Duties and functions of the Secretariat	<p>38. In exercising his or her powers, functions and duties under this Act, the Director of Food and Nutrition Security may act through officers subordinate to him or her or through local government authorities as he or she may from time to time authorize.</p> <p>39. The Secretariat of the Council shall be responsible for-</p> <p>(a) Planning, promoting and assisting in activities relating to the right to food, food and nutrition security;</p> <p>(b) Coordinating activities among foreign</p>

Powers, duties and responsibilities of local authorities

- and local institutions and organisations responsible and interested in matters of food, nutrition security and the right to food;
- (c) Developing and maintaining information system on food and nutrition which shall be made available to the general public subject to such guidelines as the Minister shall by regulations prescribe;
- (d) Monitoring the implementation of the right and facilitating the implementation of food and nutritional security policies, strategies and action plans;
- (e) Facilitating the review and revision of food and nutrition related policies and legislation at least every five years.
- (f) Conducting and maintaining inventories of food sources and preparing national food and nutrition security plans and strategies;
- (g) Providing technical support to all local authorities in the administration of this Act;
- (h) Undertaking training programmes for subordinate technical and professional staff in the ministries responsible for agriculture, nutrition and Justice;
- (i) Facilitating access to food and farm inputs to ensure food and nutrition security at household, local and national levels;
- (j) Any other responsibilities as may be assigned by the Council.

40. (1) Local authorities shall be responsible ensuring food and nutrition security within their areas of jurisdiction,

Provided that, without prejudice to the generality of the foregoing, local authorities shall, in this regard, be subject to the general and specific directions of the Director of Food and Nutrition Security

(2) Local authorities may, in consultation with the Director of Food and Nutrition Security:

- (a) make inventories on food sources and the

Immunity	<p>status of food and nutrition security at district and local level;</p> <ul style="list-style-type: none"> (b) conduct research on threats to food and security and develop responses; (c) promote public awareness and participation on matters relating to the right to food, food and nutrition security; (d) facilitate the transmission of early warning messages on cases of impending famines and other disasters affecting food and nutrition security; and (e) conduct food impact assessments and issue reports;
Powers and duties of the Minister	<p>41. No action, suit or other proceedings shall be brought or instituted personally against any officer appointed under this Act in respect of any act done in good faith in the course of carrying out the provisions of this Act.</p> <p>42. The Minister shall-</p> <ul style="list-style-type: none"> (a) seek international assistance in cases of food emergencies; (b) procure resources and facilitate investment in food preservation infrastructure; and (c) coordinate all lead agencies and stakeholders to facilitate the review of policy and legislation on food and nutrition security
Disclosure by officers, etc	<p>43. (1) Any officer of the Secretariat or a consultant to the Council who, or whose immediate family member is directly or indirectly interested in a private or professional or official capacity in any matter being considered by the Council, shall disclose such interest.</p> <p>(2) A disclosure of interest made under this section shall be made to the Director of Food and Nutrition Security who shall take such decision as he considers appropriate in each case and submit a report to the Council.</p> <p>(3) Where the matter concerns the Director of Food</p>

and Nutrition Security, he or she shall make the to the Chairperson of the Council or his or her designate.

(3) Any person who contravenes section 40(1) shall be guilty of an offence and be liable to punishment as prescribed by section 27 or to an amount equivalent to the financial gain generated by the failure to disclose, if such amount be greater and imprisonment for five years.

Responsibilities of the Director

44. (1) The Director of Food and Nutrition Security shall be responsible for implementing the programmes of the Council.

(2) Without prejudice to the generality of subsection (1), the Director shall-

(a) provide technical and administrative backup services to the meetings and other functions of the Council;

(b) prepare and present to the Council food and nutrition programmes for approval;

(c) manage and coordinate food and nutrition security funds in accordance with general and specific directions of the Council;

(d) maintain liaison with national and international agencies that provide financial and technical support for the implementation of the food security and nutrition policies;

(e) coordinate all food and nutrition security related issues in the country;

(f) prepare annual progress reports for consideration by the Council; and

(g) perform such other functions as may be assigned to it by the Council.

PART IX ESTABLISHMENT OF THE FOOD AND NUTRITION SECURITY FUND

Establishment of the fund

45. (1) There is hereby established a fund to be known as the Food and Nutrition Security fund.

		(2) The Fund shall consist of- <ul style="list-style-type: none"> (a) such sums as shall be appropriated by Parliament for the purposes of the Fund; (b) the levy imposed under section 50; (c) advances made to the Fund under section 44; (d) such sums or other assets as may be received for the purposes of the Fund by way of voluntary contributions or donations; and (e) such sums as are paid as a result of consultancy services provided by the Council.
The Fund to vest in the Minister	46.	The fund shall be vested in the Minister and, subject to this Act, and the Finance and Audit Act, shall be administered in accordance with his directions
Advances to the fund	47.	If in any financial year the income of the fund together with any surplus income brought forward from a previous year is insufficient to meet the actual or estimated liabilities of the Fund, the Minister responsible for finance may make advances to the Fund in order to meet the deficiency or any part thereof and such advances shall be made on such terms and conditions, whether as to repayment or otherwise, as the minister responsible for finance may determine.
Objects of the Fund	48.	The objects for which the Fund is established shall be the advancement of Food and Nutrition Security in Malawi.
Application of the fund	49.	Without derogation from the generality of section 45, the fund may be applied for the purposes of- <ul style="list-style-type: none"> (a) financing, by way of loan or grants, any research or study carried on, by or for the benefit of persons or organizations engaged in research matters relating to the development of Food and Nutrition Security; (b) financing, by way of loans or grants, the training of citizens of Malawi for the benefit of organizations engaged in

		<p>research in the development of Food and Nutrition Security;</p> <ul style="list-style-type: none"> (c) making awards to any person qualified for the grant to him of an award under this Act; (d) providing support for scientific research and technology development and the application of the results in compliance with the national priorities determined by the Government upon advice by the Council; (e) Commissioning the carrying out of a project by any person for any specific research which is of special importance to the nation; (f) Meeting any expenses arising from the establishment and maintenance of the Fund; and (g) Any purpose which the Minister considers to be in the interest of the objects of the Fund.
<p>Books and other records of account, audit and reports of the Fund</p>	<p>50.</p>	<ul style="list-style-type: none"> (1) The Council shall cause to be kept proper books and other records of account in respect of receipts and expenditure of the Fund. (2) The accounts of the Fund shall be audited by the Auditor General, who shall have all the powers conferred upon him by the Finance and Audit Act. (3) The Minister shall cause to be prepared, as soon as practicable, but not later than six months after the end of the financial year, an annual report on all the financial transactions of the Fund. (4) The report under subsection (3) shall include a balance sheet, an income and expenditure account and the annual report of the Auditor General and shall be laid by the Minister before the National Assembly.
<p>Holdings of the fund</p>	<p>51.</p>	<ul style="list-style-type: none"> (1) All sums received for the purposes of the Fund shall be paid into a bank account held by the Council and no amount shall be withdrawn therefrom except by means of cheques signed by such persons as are authorized in that behalf by the Minister. (2) Any part of the fund not immediately required for the purposes of the Fund may, on the recommendation of the Council be invested in such

		manner as the minister may determine, after consulting with the Minister responsible for finance.
Financial year	52.	The financial year of the fund shall be the period of twelve months ending on 30 th June, in each year or on such other date as the Minister may specify by order published in the Gazette: Provided that the financial year of the fund may be a period shorter or longer than twelve months as the Minister shall determine, but in any case not longer than eighteen months
Levy	53.	The Minister may, from time to time, upon the recommendation of the Council, and approval of the National Assembly, by order published in the Gazette, impose a nation food levy on such consumer products, and at such rates, as the Minister may from time to time determine.
PART X – MONITORING		
Oversight of government activities	54.	The Parliamentary Committee responsible for Agriculture and Nutrition shall provide oversight over the administration of this Act and any activities relating to the right to food, food and nutrition security done under this Act
National Food and Nutrition Security status report	55.	(1) The Parliamentary Committee responsible for Agriculture and Nutrition shall, without prejudice to the independence of the Council, at least four months prior to the presentation of the National Food and Nutrition Security Status Report in the National Assembly by the Minister, evaluate the contents of the Report and, where necessary, refer back the Report to the Council in order to address specific issues relating to the right to food, nutrition and food security that the Parliamentary Committee deems fit. (2) The report shall be laid before the National Assembly by the Minister within fourteen (14) days of the next parliamentary meeting.
PART XI-COMPLAINT MECHANISM AND REMEDIES		
Mandate of the Human Rights	56.	The mandate of the Human Rights Commission in respect of human rights shall apply with regard to the

Commission		respect, protection and fulfillment of the right food
Complaint procedure and remedies	57.	The provisions of the Human Rights Commission Act on the institution of a complaint over a human right violation shall apply with necessary modifications with regard to any violations of the right to food under this Act.
		PART XII – MISCELLANEOUS PROVISIONS
Secrecy to be observed	58.	<p>(1) A member of the Council or a member of a committee and every person employed under this Act shall not disclose to any person, except in the performance of his duties under this Act or when required to do so by any written law, any information which he may have acquired in the course of his duties in relation to the financial or business affairs of any person, undertaking or business.</p> <p>(2) Any person who contravenes subsection (1) shall be guilty of an offence and forfeit the financial gain generated by the offence and be liable to imprisonment for five years.</p>
Offences	59.	<p>Any person who-</p> <p>(a) contravenes or fails to comply with any provision of this Act or any regulations made hereunder, or any directive or order lawfully given, or any requirement lawfully imposed under this Act or any regulations made hereunder;</p> <p>(b) omits or refuses –</p> <p>(i) to furnish any information when required by the Council to do so; or</p> <p>(ii) to produce any document when required to do so by a notice sent by the Chairperson; or</p> <p>(c) knowingly furnishes any false information to the Council.</p> <p>shall be guilty of an offence.</p>
Penalty for Offences	60.	A person found guilty of an offence under this Act for

which no specific penalty is provided shall be liable to a fine of K300, 000.00 or to an amount equivalent to the financial gain generated by the offence, if such amount be greater, and to imprisonment for three years.

Regulations

61. (1) The Minister may, on the advice of the Council, make regulations for the better carrying into effect the purposes of this Act.

(2) Without prejudice to the generality of subsection (1), the regulations may provide for –

- (a) anything required to be prescribed under, or for the purposes of, this Act;
- (b) the furnishing of reports to the Minister on food, nutrition, the right to food, research and development;
- (c) the contents of the National Food and Nutrition Security Status Report; and
- (d) the specification of other prohibited acts and omissions and their penalties aimed at ensuring the full realization of peoples right to food and nutrition security subject to the approval of the National Assembly.

(3) Any regulation made under this Act may, notwithstanding the provision of section 21 (e) of the General Interpretation Act, prescribe a fine of up to K100,000 and imprisonment for up to one year for an offence committed against any provision of such regulation

Annual Report on Food and Nutrition Security.

(4) The Minister shall lay before the National Assembly an Annual Report of the state of the right to food, food and nutrition security in Malawi prepared by the Council in accordance with the provisions of this Act.

Passed in Parliament this fourth day of, two thousand and

