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MALAWI GOVERNMENT

(Published 5th December, 2003)

Act

No. 16 of 2003

I assent

BAKILI MULUZI
PRESIDENT

7th November, 2003

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An Act to provide for the advancement of science and technology; to establish the National Commission for science and Technology and to provide for matters connected therewith and incidental thereto

ENACTED by the Parliament of Malawi as follows –

Short title and commencement	1. This Act may be cited as the science and Technology Act, 2003 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 - “appeals committee” means an appeals committee appointed under section 44; “Awards committee” means the Scientific Awards Committee established under section 34; “Chairman” means Chairman of the commission; “Commission” means the national commission for Science and Technology established under section 5;

“committee” means a committee of the Commission established under section 11 and includes the Scientific Awards Committee;

“Fund” means the Science and Technology Fund established under section 24;

“Member” means a member of the Commission;

“organism” means any biological entity, whether microscopic or not, capable of replication;

“Vice-Chairman” means the person elected as the Vice Chairman of the Commission under Section 6 (3)

PART 11 – ADVANCEMENT OF SCIENCE AND TECHNOLOGY IN MALAWI

Policy and Statement to rank paramount

3. Every public officer and any authority in Malawi exercising or performing powers, duties or functions in connection with or concerning the commitment of the Government in advancing science and technology in Malawi as declared in the National Science and Technology Policy (in this Act otherwise referred to as the “Policy”) and in the statement of National Priorities in Science and Technology (in this Act otherwise referred to as the “Statement”) shall, in the exercise of his powers or the performance of his duties or functions, consider and treat the Policy and the Statement as ranking paramount in the business of the Government and shall further consider it to be his paramount duty to act with all due diligence and dispatch in taking such action as is required or necessary to give effect to the Policy and Statement.

Publication and revision of the Policy and the Statement

4. –(1) The Policy and the Statement shall be published respectively by the Minister and the Commission for general distribution and, in the case of the Statement, copies of its publication shall be made freely available and without charge in and outside Malawi to bodies connected with science and technology

(2) Following any change in the Policy or the Statement, or following any legislative or statutory action or other action having similar effect taken by the Government in pursuance or implementation of the Policy or the Statement, the Minister shall publish in the Gazette the changes.

PART III – ESTABLISHMENT OF THE NATIONAL COMMISSION FOR SCIENCE AND TECHNOLOGY

Establishment of the National Commission for Science and Technology

5. There is hereby established a commission to be known as the National Commission for Science and Technology (in this Act otherwise referred to as the “Commission”).

Composition of the Commission

6. –(1) The Commission shall consist of –

- (a) the Chairman who shall be appointed by the Minister;
- (b) nine persons, who shall be appointed by the Minister, at least –
 - (i) six of whom shall be appointed from the 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 Education, Science and Technology 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) the Secretary for the National Economic Council or his representative.

(2)-(1) 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 Commission to attend the meetings of the Commission, and upon such designation such representative shall not attend to the business of the Commission by representation.

(3) The Vice-Chairman shall be elected by the Commission from among its members:

Provided that no member appointed under paragraph © of subsection (1) shall be elected as Vice-Chairman.

(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 their suitability otherwise for appointment

(6) A member shall not be in the employ of the Commission nor serve on a full time basis.

(7) The Director General shall be the secretary of the Commission.

Tenure of office
and vacancies

7. -(1) A member, other than an *ex officio* member, shall hold office for a period of three years and shall be eligible for re-appointment for another three year term but the office of that member shall become vacant.

- (a) if he resigns by giving one month notice in writing to the Commission;
- (b) upon his death;
- (c) if he is absent without valid excuse from three consecutive meetings of the Commission of which he has had notice;
- (d) if he becomes an undischarged bankrupt;
- (e) if he becomes of unsound mind; and
- (f) if he participates, directly or indirectly, in an activity which is in contravention of this Act.

(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 6 (1) (b) under which the former member was appointed:

Provided that if the remaining period is less than six months, the Minister may decide not to have the vacancy filled until the expiry of the period.

Allowances and expenses of members	<p>8.-(1) Members or members of a committee of the Commission shall be paid such an allowance as the Minister shall determine.</p> <p>(2) The Commission may make provision for reimbursement of any reasonable expense incurred by a member or a member of a committee of the Commission in connection with the business of the Commission or the committee.</p>
Policy directions	<p>9. The Commission 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.</p>
Proceedings of the commission	<p>10. (1) Subject to the other provisions of this Act, the Commission may regulate its own procedure.</p> <p>(2) The Commission shall meet for the transaction of business at least once every three months at such places and at such times as the Chairman may determine.</p> <p>(3) An extraordinary meeting of the Commission may be called by the Chairman 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;</p> <p>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.</p> <p>(4) Half of the members shall form the quorum of any meeting of the Commission.</p> <p>(5) There shall preside at any meeting of the Commission</p> <p>(a) the Chairman</p> <p>(b) in the absence of the Chairman, the Vice-Chairman; and</p> <p>(c) in the absence of the Chairman and the Vice-Chairman, such member as the members present and forming a quorum may elect from among their number for the purpose of the meeting</p> <p>(6) The decision of the commission 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.</p> <p>(7) No member shall attend to the business of his office by representation and where a member is unable to attend any meeting of the commission, he may request that his apologies for failure to attend be recorded.</p>
Committees of the Commission	<p>11. (1) In addition to the Awards Committee, the Commission 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 commission may appoint as members of a committee established under subsection (1) persons who are or are not members of the Commission and such persons shall hold office for such period as the Commission may determine.</p>

(3) Subject to any specific or general directions of the Commission, a committee may regulate its own procedure.

Minutes of meetings 12. The Commission shall cause minutes to be kept of the proceedings of every meeting of the Commission and of every meeting of a committee of the Commission.

Disclosure of interest by members 13. (1) If any member is present at a meeting of the Commission 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 Commission 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.

(2) A disclosure of interest shall be recorded in the minutes of the meeting at which it is made.

Protection of members 14. No action, suit or other proceedings shall be brought or instituted personally against any member or a member of a committee in respect of any act done in good faith in the course of carrying out the provisions of this Act.

Invited persons 15. (1) The Commission 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 Commission 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.

(2) Section 14 shall apply, *mutatis mutandis*, to a person or an officer attending a meeting of the Commission or committee pursuant to subsection (1).

Oath of secrecy 16. Every –
(a) member;
(b) member of a committee
(c) employee of the Commission; or
(d) consultant in the service of the Commission,
shall upon assumption of his office, take such oath of secrecy as may be approved by the Commission or as may otherwise be prescribed under this Act.

Prohibition of disclosure of information by unauthorized persons 17. (1) No person shall, without the consent in writing given by or on behalf of the Commission, publish or disclose to any person, otherwise than in the course of his duties, contents of any document, communication or information which relates to, and which has come to his knowledge in the course of, duties under this Act.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and liable to a fine of K1000,000 and to imprisonment for three years.

PART IV – FUNCTIONS AND POWERS OF THE COMMISSION

Functions of the Commission 18. (1) The functions of the Commission shall be to advise the Government and other stakeholders on all science and technology matters in order to achieve a science and technology-led development

(2) Without prejudice to the generality of subsection (1), the Commission shall –

- (a) Create science and technology awareness at the political and other levels of society and thereby obtain their commitment towards the value of science and technology as integral parts of national development strategies;
- (b) 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 for science and technology and the monitoring of the implementation of science and technology development activities;
- (c) source funding from within and outside Malawi to finance the national research and development effort and allocate the funds to research institutions based on set priorities;
- (d) chart out national direction and establish national priorities in science and technology development in relation to socio-economic development needs;
- (e) 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;
- (f) promote and advocate for the development of science and technology human resources by building capacity in science and technology education and training programmes and providing assistance in the development of appropriate science and technology curricula of the various levels of the education systems;
- (g) create a conducive working environment for science and technology personnel in order to retain them and attract those outside Malawi to return through, *inter alia*, providing appropriate science and technology infrastructures and facilities;
- (h) encourage the use of local expertise in science and technology matters through use of a set of professional standards, ethics and guidelines and support professional science and technology associations;
- (i) encourage the establishment and promote the coordination of research institutions that undertake research and development activities which promote national socio-economic development and other specialized research and development activities in a manner that enhances corporation and collaboration among national and international science and technology personnel and institutions;
- (j) organise national science and technology fairs and open days so as to promote national science and technology awareness and culture, documentation, consolidation and dissemination of relevant science and technology information and generally promote the role of information technology;

(k) promote the transfer of technology through conventional methods including information exchange and training, purchase and licence agreements and joint venture agreements with foreign partners in which research and development is given prominent consideration and, in support of this, establish and maintain national capacity for negotiating, monitoring and regulating technology for negotiating, monitoring and regulating technology transfer agreements;

(l) promote and encourage the patenting and commercialisation of research results to farmers, industrialists and entrepreneurs as end-users in a manner that enhances economic diversification, competitiveness and employment generation;

(m) promote sustainable socio-economic development through the general and application of environmental friendly technologies so as to protect and conserve natural resources;

(n) develop and synthesize science and technology indicators covering such aspects as research and development statistics, bibliometrics, technology balance of payments statistics, patent data, human resources and innovation data using internationally accepted procedures and standards;

(o) conduct an inquiry into any matter being investigated by the Commission;

(p) sponsor such national and international scientific conferences as it may consider appropriate;

(q) promote and maintain cooperation in science and technology with similar bodies in other countries and with international bodies connected with science and technology;

(r) prepare, every two years, a state of Science and Technology Report for presentation to the National Assembly; and

(s) perform any other function or activity related to science and technology.

Powers of the Commission

19. Subject to the directions of the Minister, whether general or special, the Commission shall have the power to do all such things as are incidental or conducive to the carrying out of its functions under this Act.

PART V – THE SECRETARIAT OF THE COMMISSION

Secretariat of the Commission

20. The Secretariat of the Commission shall consist of the Director General and such other suitably qualified officers as may be required for the proper administration of this Act.

Director General of the Commission

21. (1) The Minister, on the recommendation of the Commission, shall appoint, on such terms and conditions as he may determine, a Director General of the Commission who shall be the chief executive of the commission, and shall in addition perform such duties as the Commission shall assign to his office and ensure the effective administration and implementation of this Act.

(2) The Director General shall be appointed from within or without the civil service.

(3) Without derogation from the generality of the responsibilities and duties of the Director General conferred under subsection (1), the Director General shall be responsible for the day to day administration of the Commission

(4) The Director General, or such other officer of the Commission as the Director General may designate, shall attend meetings of the Commission and of any committee of the Commission and may address such meetings, but shall not vote on any matter:

Provided that the person presiding at any meeting may, for good cause, require the Director General or such other officer to withdraw from such meeting.

(5) Section 13 shall apply, *mutates mutandis*, to the Director General and such other officer referred to in this section.

Disclosure of interest by employee etc

22. (1) An employee of the Commission or a consultant to the Commission 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 Commission, shall disclose such interest.

(2) A disclosure of interest made under this section shall be made to the Director General who shall take such decision as he considers appropriate in each case and submit a report to the Commission.

Functions of the Secretariat of the Commission

23. (1) The Secretariat of the Commission shall be responsible for implementing the programmes of the Commission.

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

- (a) provide technical and administrative backup services to the meetings and other functions of the Commission;
- (b) prepare and present to the Commission science and technology programmes for approval;
- (c) manage and coordinate science and technology funds in accordance with general and specific directions of the Commission;
- (d) maintain liaison with national and international agencies that provide financial and technical support for the implementation of the science and technology policy;
- (e) coordinate all science and technology related issues in the country;
- (f) prepare annual progress reports for consideration by the Commission; and
- (g) perform such other functions as may be assigned to it by the Commission.

PART VI – SCIENCE AND TECHNOLOGY FUND

Establishment of the fund

24. (1) There is hereby established a fund to be known as the Science and Technology fund (in this Act otherwise referred to as the “Fund”).

(2) The Fund shall consist of-

- (a) such sums as shall be appropriated by Parliament for the purposes of the Fund;
- (b) the levy imposed under section 32;
- (c) advances made to the Fund under section 26;

(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 services provided by the Commission.

The fund to vest in the Minister
Cap.37:01

25. 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

26. 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

27. The objects of which the Fund is established shall be the advancement of science and technology in Malawi.

Application of the Fund

28. Without derogation from the generality of section 27, the fund may be applied for the purposes of-

(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 science and technology;

(b) financing, by way of loans or grants, the training of citizens of Malawi for the benefit of organizations engaged in research in the development of science and technology;

(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 Commission;

(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.

Books and other records of accounts audit and reports of the Fund

29. (1) The Minister 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.

Holdings of the Fund 30. (1) All sums received for the purposes of the Fund shall be paid into a bank account and no amount shall be withdrawn there from 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 commission be invested in such manner as the minister may determine, after consulting with the Minister responsible for finance.

Financial year 31. The financial year of the fund shall be the period of twelve months ending on 30th 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 32. The commission may, from time to time, by order published in the Gazette, impose in levy.

PART VII – GRANTING OF AWARDS

Institutions of awards 33. The Commission shall, from time to time, institute awards for the purpose of promoting innovations in science and technology.

Awards Committee 34. (1) There is hereby established a Scientific and Awards Committee (in the Act otherwise referred to as the “Awards Committee”) which shall consist of-

(a) a chairman, who shall be appointed by the Minister from among the members of the Commission;

(b) the director General who shall also be the Secretary of the Awards Committee; and

(c) six other members who shall be appointed by the Minister on the recommendation of the Commission.

(2) In appointing persons to the Awards Committee, the Minister shall give consideration to persons who have knowledge and experience of the application of science and technology.

(3) A member of the awards Committee shall, unless he sooner ceases to be a member, hold office for a period of three years from the date of his appointment, and shall be eligible for re-appointment.

(4) The Awards Committee may co-opt any person whose knowledge and experience in the application of science and technology may be of assistance to it in considering any application or proposal for the conferment of an award under this Act.

(5) The Awards Committee shall consider all applications or proposals for the conferment of awards under this Act and make appropriate recommendations to the board regarding the grant of an application or proposal.

(6) In deciding whether or not any application for the conferment of an award under this Act may be granted, the Awards Committee shall consider the importance of the invention or discovery in its application to the search for the solution of various social and economic problems obtaining in Malawi.

Malawi Award for Science and Technological Achievement

35. (1) There is hereby instituted an award to be known as Malawi Award for Science and Technological Achievement.

(2) The Malawi Award for Science and Technological Achievement may be conferred upon any person who within Malawi makes an invention or discovery which, in the opinion of the Awards Committee, is likely to promote and accelerate the social and economic progress of Malawi.

PART VIII – LICENCES AND PERMITS

Licensing authority

36. The Commission shall be the licensing authority responsible for the granting, renewal, variation, suspension and revocation of licence under this Act

Biotechnology consent

37. Subject to the provisions of this Act, no person shall engage in any matter related to biotechnology without prior consent of the Commission.

Classes of licences

38. The Commission may by order published in the Gazette prescribe activities, relating to science and technology, which shall not be carried out except under the authority of a licence issued by the Commission.

Exemptions

39. The provisions of section 38 shall not apply in such circumstances as may be specified by the Minister in a notice published in the Gazette.

Application for a licence

40. (1) Any application for a licence under this Act shall be made to the Commission in the prescribed form.

(2) Any application referred to in subsection (1) shall contain a description of activities or products to which the licence will relate.

Issues of licences

41. (1) If the Commission is satisfied that the applicant is a fit and proper person to engage in activities required to be done under a licence, the Commission may issue to the applicant the licence appropriate to such activity subject to such general or special conditions as the Commission may consider appropriate to impose.

(2) A licence issued under subsection (1) shall be in such form, and shall be for such duration, as may be prescribed.

(3) Where the Commission considers that the applicant is not a fit and proper person to whom a licence should be issued, it shall refuse to issue a licence.

Suspension and revocation of a licence

42. (1) Subject to this Part, the Commission may –

- (a) suspend a licence for such period as it may determine;
- (b) revoke a licence; or
- (c) vary the provisions of a licence

(2) The suspension or revocation of a licence under this section may be limited to organisms or products thereof of one or more descriptions, or to any particular premises to a particular part of any premises.

Variation of a licence

43. Subject to section 40 the Commission may, on the application of the holder of a licence under this Act, vary the provisions of the licence, in accordance with any proposal contained in the application, if the Commission is satisfied that the variation will not adversely affect the safety, quality or efficacy of activities in respect of which the licence was granted.

PART IX – APPEALS

Appeals

44. 1 Any person who is aggrieved by-

(a) any refusal, suspension, revocation, or variation of a licence, permit or certificate issued under this act or

(b) any decision directly applicable to him taken by the Commission or any person exercising powers under this Act.

May within thirty days appeal in writing to the minister who shall appoint an appeal committee for purpose of hearing the appeal in question.

Appeals committee

45. (1) An appeals committee shall consist of five persons who, in the opinion of the Minister, have expert knowledge and who are otherwise suitable to determine the issues raised in the appeal.

(2) The minister shall designate one of the members of the appeals committee as chairperson of the committee.

(3) A member of the appeals committee shall excuse himself as a member of the appeals committee if he has any direct or indirect interest in the subject matter of the appeal or if for any reason there is likely to be conflict of interest as a result of his participation in the proceedings of the committee.

(4) There shall be paid to members of an appeals committee such remuneration or allowances as the Minister may determine.

Powers of appeals committee

46. (1) An appeals committee shall have, in relation to the hearing of any appeal, the power to –

(a) confirm, set aside, vary, alter, reverse or amend the decision which is the subject of the appeal;

(b) refer the relevant matter back to the Director General for the reconsideration by the commission;

(c) order persons to attend and give evidence or to produce or give discovery and inspection of documents in like manner as in proceedings in the High Court;

Provided that the appeals committee may in its absolute discretion admit evidence which would not be admissible in a court of law and may use evidence contained in any official record and may call evidence of its own motion;

(d) award costs of any proceedings before it and to direct that such costs shall be taxed upon such scale and in such manner as may be prescribed;

(e) make such order as it may deem fit; and

(f) do all things which it is required or empowered to do by or under this Act.

(2) The decision of the appeal committee on any appeal shall be-

(a) made in writing;

(b) sent to all the parties to the appeal and, where he was not a party, to the Minister; and

(c) made available for public inspection, within thirty days thereof, apply to the High Court for judicial review of the decision of the appeals committee.

PART X – MISCELLANEOUS PROVISIONS

- Secrecy to be observed
47. (1) A member 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.
- (2) Any person who contravenes subsection (1) shall be guilty of an offence and liable to a fine of K1,000,000 or to an amount equivalent to the financial gain generated by the offence, if such amount be greater and imprisonment for five years.
- Offences
48. Any person who-
- (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;
- (b) omits or refuses -
- (i) to furnish any information when required by the commission to do so; or
- (ii) to produce any document when required to do so by a notice sent by the commissioner; or
- (c) knowingly furnishes any false information to the Commission.
- Penalty for offences
49. A person guilty of an offence under this Act for which no specific penalty is provided shall be liable to a fine of K100,000 or to an amount equivalent to the financial gain generated by the offence, if such amount be greater, an to imprisonment for three years.
- Regulations
50. (1) The Minister may, on the advice of the Commission, 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) any forms required for the purposes of this Act;
- (c) fees payable in respect of any service provided by the commission;
- (d) the furnishing of reports to the Minister on science, technology, research and development; and
- (e) the form of awards and certificates to be awarded by the commission.
- Cap.1:01
- (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 K20,000 and imprisonment for up to one year for an offence committed against any provision of such regulation

Passed in Parliament this fourth day of August, two thousand and three.

R.L. GONDWE
Clerk of Parliamen

