

EU COUNTRY ROADMAP FOR ENGAGEMENT WITH CIVIL SOCIETY IN MALAWI

2018 - 2020



Status : Public

Period covered : 2018-2020

Update of a previous RM : Yes

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Date of Approval : 13th June 2018

Part I – BRIEF ANALYSIS OF THE CONTEXT AND PAST EU ENGAGEMENT

Background:

In 2012, the European Commission published “The roots of democracy and sustainable development: Europe's engagement with Civil Society in external relations”, which indicated that the EU and its Member States would develop country roadmaps for engagement with CSOs to improve the impact, predictability and visibility of our actions, ensuring synergies and consistency throughout the different sectors covered by the EU's external relations. This document is an update for the period 2018-2020 of the first Road Map for engagement with Civil Society in Malawi which was covering the period 2014-2017. The roadmap was developed with the Member States in consultation with local civil society and development partners.

1. The state of Civil Society in Malawi

1. Enabling environment

Civil society in Malawi is relatively rich and diverse. As of 11th September 2017, there were a total of 1,142 CSOs registered with the Council for Non-Governmental Organisations in Malawi (CONGOMA), of which 895 were local and 247 were international. The number of civil society organisations has continued to grow since 1994 and includes professional bodies, trade unions, gender-based groups, umbrella organisations human rights and advocacy groups, service-oriented CSOs, faith-based organisations, international NGOs and the media.

Generally, there is an enabling legal framework for the operation of civil society organisations in Malawi. The 1995 Constitution guarantees the protection of Human Rights and the creation and protection of space for other development actors outside the State to take an active role in development and engaging the government on development related initiatives.

However, during the past twenty years, there have been cyclical attempts to restrain this enabling environment. Space for civil society actors is dependent on the prevailing political climate. In 1994, with the opening up of the political system from one party regime to multiparty democracy, civil society in Malawi enjoyed a highly conducive environment. Yet, the relations soured when the then President Muluzi initiated in 2002 his controversial bid for a third unconstitutional term. Similarly, while Bingu wa Mutharika's administration encouraged civil society demonstrations in his first term (2005-2009), in his second term (2009-2012) space for civil society has become more restricted. During the nationwide protests that were held on 20 and 21 July 2011, 20 people were killed. Under Joyce Banda's political leadership (2012-2014), CSOs were recognised as partners in development. Despite the opening there were some clashes between the CSOs and the government which did not always seem to be open to criticism. Moreover, it has been reported that in some instances, Government has been co-opting civil society leaders, often the most vocal. It is reported that in some cases, Government offered financial incentives to CSOs leaders to derail a common civil society agenda or to undermine civil society's positions eventually weakening it. In the recent past, there has been use of solicited co-option. Some CSOs have used national lobbying and advocacy platforms for personal visibility to draw Government's attention for gains

Under the current President, the Government decided in 2015 to prepare a NGO Policy and to revise the NGO Act¹ in order to review the 2001 law. The civil society first welcomed this development considering the concerns with the current Act which was adopted in 2001. Indeed, the 2001 Act establishes the NGO Board whose role is to register and regulate the operations of all NGOs (local and international) which is perceived to be a body created to control NGOs. Moreover, the act foresees the necessity to register with an

¹ In his State of the Nation (SONU) address delivered on 17th June 2014, the President noted that the aim was to "review the NGO law to facilitate, and not stifle, their contribution in the development of the country". See Malawi News Agency Online (MANA), 2014 State of the National Address by President Mutharika, Full Text, Government of Malawi, <http://www.manaonline.gov.mw/index.php/entertainment/item/380-state-of-the-nation-address-president-mutharika> (accessed on 02.01.2018)

annual fee with CONGOMA (Council for non-governmental organisations in Malawi) which is seen as a violation of freedom of association.

However, there have been concerns that this new policy may have some undesirable effects on civil society's space. It was felt by CSOs that the draft NGO policy was prepared by the authorities with insufficient consultation. Subsequent drafts have not removed the concern that this policy could increase the regulation, control and supervision of independent NGOs by government to such an extent that it could be potentially in violation of the right to freedom of association enshrined in the Constitution (section 32). Specific features that could potentially restrain CSOs' space include: possibility of deregistration of CSOs by the NGO Board, need for project approval by District commissioners, automatic transfer of assets to the local authorities.

Furthermore, the registration process for NGOs in Malawi is not clearly defined and can be challenging for certain type of CSOs. Multiple offices are responsible for registration, depending on the type of organisation. Most NGOs are registered under the Trustees Incorporation Act (1966), others are registered under the Companies Act. There have been some instances where the CSOs working on human rights and governance issues have faced difficulties registering. Registration for service delivery organisations is simple, as they are generally viewed as partners to the government.

The current review of the financial framework regarding annual fees to be paid by CSOs is also another major issue of concern.² In December 2017, the government decided to increase annual fees for NGOs without any consultation increasing significantly the costs. It was also done as a percentage of the amount of funds received by the CSOs which would make some donors consider it as a tax. This fee increase could prevent small NGOs to operate as it would be considered an ineligible expense by donors, who are tax exempt. Another area that is unpredictable for CSO is resources related to taxation. CSOs are not liable for corporate tax but have a duty to remit all other taxes levied on their taxable activities or payments, unless they are using tax-exempt funding from foreign donors.

The adoption by Parliament of the Access to Information Bill in November 2017 is a very positive development to improve the work of CSOs but it now needs to be implemented. The act has not yet come into force; there is a need for the Minister of Communication to set a date and for the Malawi Human Rights Commission to take several actions before actual implementation (sensitization of the public, mapping of information holders, training of information holders). CSOs will then have a crucial role to play in sensitizing the public.

2. Roles and Participation of CSOs

Malawian CSOs play a paramount governance function, overseeing and monitoring state authorities, demanding government accountability, contesting abuse of power, and bargaining on behalf of specific groups of citizens. CSOs have been crucial participants in the democratisation processes in the country. They create connection between the national and international communities; contribute to democratic consolidation as watchdogs in the political system, articulate demands from the grassroots to the authorities and political elites and have a critical role in civic and voters' education. By mobilising on issues and

² CSO are also required to pay fixed registration fees of 250,000 MWK (around 276 EUR) and processing fees

concerns among the population, CSOs are also pursuing change and reform in the political system.

Service-providing CSOs continue to have effective communication and collaboration with the government at policy level. District and national-level organisations collaborate and interact with both central and local government structures, although issues of information and coordination may remain. Parliamentary committees are fairly easily accessible and are utilized by the organisations focused on health, education, mining and energy, security, finance, and economic policy. To note also, the new role played by the CSOs in nurturing the dialogue and in operationalising the so called humanitarian-development nexus and in breaking the cycle of the humanitarian assistance. In some cases, however, CSO participation is only cosmetic and the government does not reflect the issues raised by civil society in its final policy documents.

CSOs deliver also a wide range of services in agriculture and food security, capacity building, construction and infrastructure development, counselling, disability, resilience, disaster risk management, drug and substance abuse, education, energy, environment, land and natural resources management, gender and development, health, HIV/AIDS, media development, microcredit and finance, orphan care and children's affairs, social rehabilitation, water and sanitation, and youth empowerment. Some CSOs do charge for services, such as health or education, in order to cover administrative costs. However, CSOs rarely charge their clients the actual costs of delivering their services, as they are subsidised by the government and development partners. The government generally appreciates CSOs' role in basic service delivery and cooperates with them. In general, CSOs engaged in human rights and political governance advocacy do not get government funding for their work.

3. Capacity

While civil society in Malawi is quite diverse, it is still relatively weak. In terms of numbers, faith-based institutions and local traditional structures tend to predominate. Malawi civil society has a number of internally and externally driven capacity constraints that impede its ability to effectively perform its role as a channel to advocate for citizens' rights and community interests.

The main constraints of the CSOs include:

Legitimacy: Many civil society organisations have failed to establish their legitimacy to engage with Government, largely because they have failed to effectively develop strong constituencies of citizens; and weak internal governance undermines their credibility; Many local CSOs suffer from "founder syndrome," in which the founders make all organisational decisions without effective supervision from their boards, and their boards are comprised of the founder's friends and associates. Such CSOs might face problems with upward accountability especially on how well they use monetary resources.

Distrust: Political leaders may still perceive civil society organisations as a threat to the sustenance of power to govern. In addition, probably out of fears resulting from experiences of the one party regime, people are not inclined to get involved in controversial political and economic debates. This frustrates the efforts of CSOs in advocating for changes in policies; Government also claims that CSOs, especially INGOs are competing with Government for DPs' resources.

Weak Capacity: A large number of civil society organisations are characterised by weak institutional capacity, weak linkage to reliable and credible sources of information to

inform programming, poorly qualified staff and weak financial management systems. Furthermore, some civil society organisations lack expertise in project management. Civil society needs to increase its effectiveness, in particular, capacity for evidence-based advocacy and ability to work with traditional and local authorities, if it is to contribute to improvements in service delivery and fulfil its watchdog mandate and fostering accountability from the demand side. In addition to weak capacity, there are deeper governance issues that CSOs need to address in Malawi. The “Founder Syndrome” already raised above under legitimacy brings about the ownership problem. Nearly all CSOs in Malawi, apart from some FBOs, are perceived to be owned by specific individuals, especially those that founded them. The founder tends to wield tremendous power. In a number of instances, they are sole deciders on matters of recruitment, terms and conditions of service, budget allocation and expenditure, including use of material resources and audit and finance

Furthermore, the choice of Boards is dependent on the Executive Directors. In many instances these boards are ceremonial for purposes of resource mobilisation, undifferentiated from stakeholders/trustees, provide no meaningful oversight especially on finances and have no disaggregation of duties and responsibilities e.g. Finance and audit, Appointments and remuneration. Thus the ownership syndrome and lack of proper-functioning governance mechanisms weaken prospects for funding.

Procurement: There are instances where CSOs procure goods and services. However, there is either lack of or adherence to internal procurement procedures. This leaves enough room for manipulation for personal gains through use of predetermined providers.

Dependence on Foreign Funding: Almost all local civil society organisations have a weak financial base, as they are not able to generate resources locally and rely more on donor funding or membership fees. CSOs do not receive tax favours and government has not put in place any mechanisms to deliberately support and sustain their operations. This means organisations have to seek donor money to survive and raises question regarding ownership. An emerging challenge is for local organisations competing for the same resources with international organisations. This has to a certain extent strained the relationship between local and international organisations as the former feel that most donors are biased towards international organisations at their expense.

2. CURRENT EU ENGAGEMENT

The EU is locally represented in Malawi by the EU Delegation, Germany, Ireland and the United Kingdom.

Policy Dialogue

During Heads of Missions/Heads of Cooperation meetings where coordination takes place, the question of CSO's space and of the draft NGO policy have been often discussed during the past 3 years. At a technical working level, the Development Partners (including the EU and Member States) have been meeting regularly at the Committee on Governance (CoG) where the issues of civil society were also discussed. CSOs representatives were also invited at different occasions.

Although no formal structure is in place for dialogue between CSOs and the EU, the EU engages with them very frequently mostly on general and specific issues. The EU takes part in the High Level Forum and in the Development Cooperation Group organised by

Government annually in which CSOs are represented. CSOs are also involved in the context of identification and formulation of new EU interventions. The EU also supports variety of policy dialogues and knowledge dissemination events organised by CSOs including through the TCF. They are also consulted in preparation of the Calls for Proposals.

In its dialogue with the authorities, the EU is a strong advocate for the enabling environment for civil society. The EUD attended all meetings regarding the revision of the NGO policy and held several meetings to advocate on this issue.

Funding

The EU Delegation mainstreams work with CSOs in all the sectors by including: special provisions on work with CSOs in European Development Funds projects implemented jointly with Government. The EU also funds CSOs through direct calls for proposals under its different scope of activities (human rights, governance, food security, social protection)

In the past years there have been some efforts to facilitate joint action. The Tilitonse civil society governance fund 2011-2017 facilitated a more coordinated and effective approach to supporting CSOs working on governance issues through joint funding and information sharing. EU played a role to turn the project into a Foundation to support local ownership and reinforce capacity of local CSOs in a more structured manner. Discussions are currently ongoing on potential EU support to the Foundation.

Germany regularly supports a variety of German and international NGOs and their Malawian counterpart organizations to implement programmes, especially in the social sectors.

Part II – EU STRATEGY AND ACTION PLAN TO ENGAGE WITH CSOs

3 PRIORITIES

Key Challenges	Priorities	Actions	Means	INDICATOR
1. While the space for CSO participation is quite open, it needs to be closely monitored, in particular in relation to the NGO policy being prepared, the NGO Act being revised and the Access to Information Act not yet implemented, and requirement for NGO Board recommendation letter for TEP	<p>Support CSOs effort to advocate for the reform of the draft revised NGO policy and NGO Act to make it more enabling for CSO, also supporting the implementation of the Access to Information Act;</p> <p>Measures for the protection of vulnerable stakeholders including children and programme beneficiaries.</p> <p>Support the implementation of the Access to Information Act</p>	<p><u>Political dialogue</u> 1.1 EUD and MS will include (i) the issue of CSOs vulnerability towards their regulator into the political and policy dialogue with the Government and ii) the implementation of the Access to Information Act</p> <p><u>Operational Support</u> 1.2 Support CSOs initiatives to monitor the ongoing NGO policy and NGO amendment Act;</p> <p>1.3 Support CSOs to lobby for the inclusion of protection measures for the vulnerable, especially children, in the ongoing policy and NGO amendment Act;</p> <p>1.4 Support CSOs initiatives to inform on the Access Information Act</p> <p>1.5 SUPPORT TO MAPPING of CSO organisations (support the re-establishment of the NGO module in the Aid Management Platform (AMP)).</p>	<p>Political dialogue</p> <p>TCF / Brussels Facility</p>	<p>Number of political and policy dialogue meetings where NGO space is discussed – Regular EU outreach to civil society</p> <p>CSOs have access to the draft budget and are consulted in the process</p> <p>Number of initiatives supported by the EUD and MS with a view to reviewing and enforcing the legal and institutional framework regulating CSOs</p>

2. While several CSOs have been directly participating in various public decision making processes, the quality of the participation is still in need of improvement	<p>The participation of civil society in budget preparation and tracking is strengthened</p> <p>CSOs supported to provide greater citizen voice and participation in governance with improved management of public resources</p>	Support CSO's initiatives/projects aiming at deepening the participation of CSOs in both invited and claimed spaces at local sector and national level (CSOs participate in the High Level Forum and in Development Cooperation Group)	<p>Structured dialogue organised twice a year between CSOs and the EUD</p> <p>CSO call for proposals and EDF programmes including CSOs funding within sectoral and /or PFM, agriculture, education, social protection</p> <p>Tilitonse, NICE, EIDHR, CSO/LA funding</p>	<p>Number of structured dialogue meetings being carried out between the EU and CSOs</p> <p>Number of EU-funded projects where initiatives related to deepening participation of CSOs in invited and claimed spaces are supported</p>
3. While CSOs have made substantial progress in their technical and managerial capacities and in ensuring their financial sustainability, a vast number of Malawian CSOs are confronted with numerous capacity	<p>Support CSOs' effort to develop their technical skills (particularly in areas related to policy dialogue and advocacy) and strengthen their governance and managerial systems.</p> <p>Support CSOs to:</p> <ul style="list-style-type: none"> Put in place mechanisms to ensure a transparent and independent 	<p>Support CSOs initiatives which include components related to:</p> <ul style="list-style-type: none"> Strengthening CSOs technical skills in order to monitor public policies and hold government accountable Enhancing internal governance of CSOs (recruitment procedures for Board members, disaggregation of duties and responsibilities within boards, etc.) Institutional development of 	<p>CSO support measures</p> <p>CSO call for proposals</p> <p>Tilitonse</p> <p>EUD training on financial procedures</p>	<p>Number of projects funded by the EU including elements related to the reinforcement of technical and governance related areas</p> <p>Percentage of CSOs funded by the EU (EUD and MS) Tilitonse and other relevant funds having annual reports (narrative</p>

challenges including those related to their internal governance	<p>process of appointment to the board, e.g. MHRC;</p> <ul style="list-style-type: none"> • Establish/strengthen internal procurement systems and procedures; • Strengthen internal audit and financial reporting mechanisms. 	<p>CSOs (governance and management systems)</p> <ul style="list-style-type: none"> - Establishing/strengthening internal audit and procurement procedures. 		<p>and financial) and publishing them</p> <p>-Reduced cases of financial abuses among CSOs.</p> <p>-Open and transparent procurement procedures in CSOs.</p>
4. Despite a number of successful coordination and networking efforts, Civil Society in Malawi remains fragmented and its collective voice is weak	Support CSOs efforts to enhance their collective voice through improved networking, alliance building and coordination	Support CSOs joint initiatives (campaigns, networking efforts, emerging platforms, etc.)	<p>CSO support measures</p> <p>CSO call for proposals (inclusion in the guidelines of specific recommendation for CSOs to submit projects through consortia)</p> <p>Tilitonse</p>	<p>Number of joint initiatives and networks launched as a result of actions supported by the EU (EUD and MS), Tilitonse and other relevant donors/funds.</p> <p>Number of collective action initiatives /alliance campaigns/ common stands /etc. launched by the Malawi CS through existing networks/platforms/etc.</p>

5. Growth and Jobs	Support entrepreneurship in Malawi for young entrepreneurs --- with particular attention to women and girls --- including those with a technical education	Upscale of national business incubators, building platforms and linkages, expanding the offering of services and linking up to existing or to-be-created financing facilities for MSMEs	CSO envelope (NIP)	<p>Number of young entrepreneurs supported</p> <p>Number of MSMEs launched emanating from this support, and accessing funds</p> <p>Number of MSMEs formally registered and paying taxes regularly</p>
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