

Reality of Aid Africa Network

Report for Enabling Environment in Africa - MALAWI

Submitted By

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1.1 ENABLING ENVIRONMENT DEFINITION

An enabling environment is understood as a set of interrelated conditions – such as legal, organizational, fiscal, informational, political, and cultural; that impact on the capacity of development actors in different ways. For the civil society organizations (CSOs) to engage in the development processes in a sustained and effective manner, the best initiative is likely to fail in the absence of an appropriate and enabling environment.

Such an “enabling environment” can therefore be also defined as the complex sum of conditions that allow (or limit) the existence and capacity of CSOs and other key stakeholders. It all depends on the actions and policies of all development actors, including Governments, development partners and CSOs in the collective spirit of partnership towards a common development goal as a nation.

1.2 WHAT CHARACTERIZES AN ENABLING ENVIRONMENT?

Evidence shows that an “enabling environment” is linked to both internal and external factors that mutually reinforce each other. According to the EU’s Civil Society Help Desk¹ the following are some of the characteristics of an enabling environment for CSOs, mirrored across the different sections of society at different levels:

- a) Good governance - a functioning regulatory, legal and judicial system is essential for CSOs to exist and operate;
- b) Effective political, administrative and fiscal decentralization policies - including the recognition of local autonomy;
- c) Sound economic policies - solid democratic institutions responsive to the needs of the people and adequate infrastructure;
- d) Freedom, peace and Security - domestic stability, respect for Human rights (including Gender equality);
- e) The CSO community’s own collective mechanisms for self-monitoring, Accountability and collaboration;
- f) The recognition of and openness towards CSOs - the openness of Government and Development Partners to engage with CSOs; the transparency and accountability with which information is shared;

¹ Web-based Civil Society Help Desk.
https://webgate.ec.europa.eu/fpfis/mwikis/aidco/index.php/WG1:_T5:_Creating_an_enabling_environment_for_CSOs_and_LAs

- g) The existence of mechanisms to ensure the promotion and protection of human rights, including the rights of expression, peaceful assembly and association and access to information;
- h) The existence of administrative factors affecting (positively or negatively) the way in which a given Government deals with CSOs;
- i) The existence of processes, structures and mechanisms creating access, space, and capacity for CSOs to formulate, articulate and convey their voice in consultations and decision-making processes nationally and internationally;
- j) The existence of funding (and other) mechanisms for Capacity building;
- k) Regulations and norms to promote CSOs transparency and accountability to their constituencies.

CHAPTER 2.0

- SCOPE OF THE MONITORING

Reality of Aid Africa (RoA-A) focuses on civil society organizations, recognizing that the constituencies and roles for such organizations in society are very diverse, and operate at many levels. Its contributions to the measurement of progress for Indicator 2 are therefore focusing on progress in enabling conditions affecting civil society organizations at different levels.

2.1 PRIORITY AREAS OF CSO ENABLING ENVIRONMENT

Focus is made on two key areas of an enabling environment for CSOs 1) the implementation of an enabling regulatory and legal framework for CSOs (consistent with human rights norms for the right to organize, freedom of assembly and freedom of speech), and 2) the existence of inclusive policy processes and facilitative institutions (democratic ownership). These are both consistent with the current monitoring framework for Indicator 2, proposed by the OECD/UNDP Secretariat as introduced in the background.

2.2 SPECIFIC MONITORING TASK OBJECTIVES

Specifically the following task objectives are earmarked for the monitoring:

1. Assess the structural, legal, policy space and institutional framework for the implementation of the Post Busan agenda, indicating who the main players are;
2. Propose ROA Africa specific actions that the multi-stakeholders can take to ensure that they fully utilize the opportunities that Busan outcome presents to promote enabling environment for CSOs;

3. Submit well written reports with key conclusions and recommendations to ROA Africa following the agreed format so as to aid in proper analysis of the findings.

2.3 FRAMEWORK FOR ASSESSING PROGRESS ON CSO ENABLING ENVIRONMENT

A number of questions were considered and structured, underscoring the major three core areas of focus in the study. Specifically, civil society participants were engaged at different levels, reflecting on the question “...whether CSOs operates within an environment that maximise its engagement in and contribution to development.” The following modules and elements befitting the RoA-A’s core focal areas were covered:

- a) Space for multi-stakeholder dialogue on national development policies;
- b) CSO development effectiveness: accountability and transparency;
- c) Official development co-operation with CSO by providers of development co-operation; and
- d) Legal and Regulatory environment.

The study focused on these also modelled alongside the Reality of Aid Africa (RoA-A) three core areas. Within each area a number of dimensions were covered, unpacking experiences and realities on the ground as far as Civil Society operations are concerned. These are ultimately aimed at addressing essential components and elements of the ideal CSO enabling environment:

- a) **AREA ONE: UNIVERSALLY ACCEPTED HUMAN RIGHTS AND FREEDOMS AFFECTING CSOs**
 - i) *Dimension One:* Recognition of rights and freedoms affecting CSOs.
 - ii) *Dimension Two:* The legal and regulatory environment, implementing rights and freedoms affecting CSOs.
 - iii) *Dimension Three:* Rights of specific groups.
- b) **AREA TWO: POLICY INFLUENCING**
 - a) *Dimension One:* Spaces for dialogue and policy influencing.
 - b) *Dimension Two:* Access to information.
- c) **AREA THREE: DONOR (PROVIDERS) AND CSOs RELATIONSHIPS**

CHAPTER 3.0 - MAJOR FINDINGS

3.1 SPACE FOR MULTI-STAKEHOLDER DIALOGUE ON NATIONAL DEVELOPMENT POLICIES.

A number of questions were specifically explored and experiences compiled from the leading civil society representatives. These are highlighted below:

a) Were CSOs consulted by the Government in the design, implementation and monitoring of national development policies? (Yes/No)

YES, it is apparent that CSOs are largely consulted in Malawi. This was particularly contextualised as happening especially in the initial stages of the policy processes such as the design stage. Several inherent limitations are reportedly experienced in the implementation and monitoring stages. A particular example is that of the national budget process which is still not fully institutionalized, while other policy processes include those for overarching policies (i.e. MGDS, Sector wide Approaches and Technical Working Groups that are yet to fully move beyond being only based on the goodwill of Government Ministries, Departments and Agencies.

However, in terms of feedback mechanisms, this remains an area still faced with challenges, in as far as putting in place predictable and clear feedback mechanisms for tracking the different stakeholder input and outcomes. Regarding the issue of participation of the marginalised groups, generally groups are inclusively included in the thematic clusters and networks, foras and platforms of CSOs. There is however still a great need to provide inclusiveness beyond the consultation, design and design of policies... extending to institutional/technical capacity building and empowerment in a bid to further fully and inclusively support Government national policy implementation and monitoring for development results.

There is therefore still a lot of room for improvement. A particular area of interest example is given for the budget process that is yet to be as inclusive and as institutionalised as expected, with consultations largely taking place in the initial formulation stages only; beyond the overarching policy strategy has largely enjoyed a greater level of institutionalisation, albeit with limitations in the feedback mechanisms for the enticement of evidence-based policy making to meaningfully inform the subsequent processes.

b) Do CSOs have the Right to Access Government Information? (Yes/No)

YES. This is reported to largely be the case, as backed by the section 37 of the Republican Constitution. However, the real timely and comprehensive information access is still very

limited, due to the lacking enabling law. In spite of the fact that there has been a far advanced initiative promoting and advocating for the passing of the draft Access to Information Bill, which has remained outstanding for almost a decade, there is currently no any recourse to the legal support of information access being derived. On the right of CSOs to access information, in principle there is still a need for an access to information legislation supporting the enabling policy environment, something that has also been long overdue. With no enabling legal framework, timely and comprehensive access to information is thus still not 'fully' guaranteed, despite the cited constitutional provision.

However, it is reported that initiatives to promote access information have in recent past weeks been there in an advanced state of momentum. The long overdue Access to Information bill (ATI) has been in Parliament and referred back to the Committee stages of Parliament prior to its passing. Nonetheless, there are still reported reservations regarding its current "Government edited" form. The reservations are still rife that if passed it might actually have some more limits to the expected levels of access to relevant, timely and comprehensive information as stakeholders, among others, will reportedly be expected to be paying in order to access the required information.

c) Are there resources and/or training opportunities for addressing capacity building for all stakeholders to engage meaningfully with multi-stakeholders dialogue (Yes or No)

Currently CSOs are still **NOT AS AWARE** of any programmed systematic and institutionalised initiatives providing resources per se. Nonetheless some training opportunities for building the capacity of all stakeholders to engage meaningfully in multi-stakeholder dialogues are reportedly there in the context of the recently developed, but yet to be full operationalised Development Cooperation Strategy (DCS) for Malawi.

However it remains still apparent that probably these alongside other previous efforts have largely been uncoordinated largely with technical (and NOT institutional or financial) resources and training opportunities. These are reported to have largely been perceived as more adhoc than institutionalized at individual CSOs, Providers or Government levels. So far CSOs are thus not as aware of any other systematically programmed and tailor-made capacity building initiatives, than the one cited.

There is therefore still a great need for this to be more holistic and systematic in the true spirit of multi-stakeholder partnership already triggered, for the growing shared understanding of the common goals of effective development cooperation in Malawi.

3.2 CSO DEVELOPMENT EFFECTIVENESS: ACCOUNTABILITY AND TRANSPARENCY.

The following questions were explored and unpacked as follows:

a) In practice, are there CSO-managed processes in place to address transparency and multiple accountabilities in CSO operation? (Yes/ No)

YES. There is a reported process in place. For instance, the established Non-Governmental Organisations (NGO) Board was cited as being fully operational to address such issues. Aside from the NGO Board is the issue of the fully established Council for Non-Governmental Organisations in Malawi (CONGOMA) that has also been in place since the early 1990s.

These two institutions reportedly strive to address all different levels of accountability for CSOs and NGOs, from the National to the Local level or district based CSOs and NGOs, including the Community Based Organisations, just to mention a few. All NGOs and CSOs are ideally required by law to register with these two institutions, apart from being also registered with the Government. This requires that they at all times also comply with the reporting requirements as a statutory obligation.

Nonetheless, there still remain a good number of NGOs and CSOs that are not registered yet, with either the NGO Board or CONGOMA, calling into question the issues of compliance. The NGO Board is reported to be currently in the process of ascertaining and establishing the actual number of registered and unregistered NGOs and CSOs operational in Malawi. However, on the other hand, there have also been some random concerns captured from some quarters of the civil society and NGO fraternity, bemoaning some negative elements of politicization' of the two bodies aimed at stifling its operations towards CSOs.

In terms of accountability, CSOs at all levels are supposed to be reporting to the NGO board and also that this is done to donors and different constituencies through registration to the NGO Board and the CONGOMA, with annual membership renewal as an automatic accountability measure/obligation subject to full compliance among which is the submission of annual narrative and audit reports to the NGO Board

b) Do CSO-Initiated coordination process exist to facilitate consolidated and inclusive CSO representation in policy dialogue (e.g.) Umbrella organisation, CSO network, consultation practices)? (Yes/No)

YES. This is an area that has been reported to have largely grown and matured in Malawi, over the democratic dispensation (since 1993) in Malawi; in as far as civil society

coordination and programming is concerned. There has been a reported growing, organised and well-structured networks, platforms and foras all streamlined with a common objective and goals according to their thematic areas of interest.

Significant success stories and examples have been cited about their pursuance for maximum division of labour and the quest for maximising synergies. Examples include sector-specific civil society networks in operation for over a decade, such as the Malawi Economic Justice Network (MEJN) - with its focus on people-centred and participatory economic governance, Economic Justice, Trade Justice, Tax Justice, etc; the Public Affairs Committee - with its faith-based orientation in programming for social justice; the Malawi Health Equity Network (MHEN) - with its focus on Health Service delivery; the Civil Society Education Coalition (CSEC); the NGO Gender Coordination Network (NGO GCN); the Civil Society Agriculture Network (CISANET); the Human Rights Consultative Committee (HRCC), the Natural Resource Justice Network (NRJN), the National Smallholder Farmers' Association (NASFAM); the Farmers' Union of Malawi (FUM), the Economics Association of Malawi (ECAMA), just to mention but a few.

c) Do mechanisms exist to facilitate coordination of programming among CSOs (collaboration to optimize impact and avoid duplication), and with other development actors/ (Yes /No)

YES. As described and highlighted above, there are some very good and innovative models of collaboration and programming existent in Malawi. These were confirmed to have been aimed at maximising synergies and strengthening the front for constructive collaboration for policy influence and change with other key stakeholders and development actors, at almost all levels.

The major challenge reportedly still remains, as that of ensuring the strengthening of the structured levels of engagement, to at least draw as much shared learning as possible for better development results and impact. This is being bemoaned at different levels, such as at the Joint sector programming level, national technical working group levels, at the District Council level or better still, at the local governance/grassroots or district development planning levels, among others.

Capacity challenges largely underscored by technical and financial resource constraints reportedly still impact negatively almost all the different initiatives of collaboration. This results in making them all become rather more adhoc than institutionalised. However, there has been a much more positive trend reported, towards better organised and structured CSO learning curves recently.

d) Are there other significant initiatives related to CSO development effectiveness principles [Istanbul Principle) and the international Framework for CSO Development Effectiveness*] being implemented at the country level

YES. In essence all the highlighted initiatives and models of collaboration are reported to be very much fitting the development effectiveness principles and the International Framework for CSO Development Effectiveness. However, it is underscored that not all of them have actually been called as such.

Compliance to mechanisms set in order to facilitate coordination programming among CSOs remains a challenge, which needs to be strengthened through better support for coordination and collaborations amongst CSOs in terms of implementation plans. However, broad mechanisms still exists at national and sectoral/thematic levels.

The Malawi Economic Justice Network (MEJN) has, for instance, been cited as being on a progressive learning curve, perfecting its established network structure from the grassroots level of programming. The learning curve is being underscored from the local grassroots' level through to the National High Level Development Cooperation Group (DCG) or National High Level Forum for Development Effectiveness in the context of the Development Cooperation Strategy for Malawi.

One other uniqueness highlighted is the attempt to look at this all as one bigger picture connected and linked all the way to the Global CSO Partnership for Development Effectiveness (CPDE), as well as the Global Partnership for Effective Development Cooperation (GPEDC). All these are thus to be scaled to effectively become mutually reinforcing, in the quest towards strengthening the shared learning virtues and to mirror and operationalise the Istanbul Principles at the national and sub-national (local) level, as much as possible, as part of this learning drive.

e) Do CSOs report annually to Government on the basic finances, sectors of support, and main geographic area of involvement in development? (Yes/No)

YES. This is the spirit championed and advocated for the CSOs and NGOs' obligations in Malawi, for them all to register with CONGOMA, as well as the NGO Board aside from being registered with the Government in the different forms and types of registration. Compliance remains an issue with a number of CSOs particularly to the NGO Board and CONGOMA, although they largely all still report and comply to the different development partners supporting them. At the district level most of the CSOs and NGOs are also

reporting to the District Executive Committees (DECs) at the District Councils or Local authorities, in the context of decentralisation.

Objectively, reporting to district structures, through the district executive committees (DECs) is reportedly deemed to be a bit more credible and good practice, by CSOs stakeholders than is probably the case at the national level structures. This was largely underscored as one of the contentious elements that tend to attract the politicization and selectivity being bemoaned of the NGO Board alongside some elements of Government seeking to control the civil society or NGO fraternity.

3.3 OFFICIAL DEVELOPMENT CO-OPERATION WITH CSO BY PROVIDERS OF DEVELOPMENT CO-OPERATION

a) Do Providers and Government Co-operation consult with CSOs on the development policy/ programming in a systematic way? (Yes /No)

NO. This happens but it is rather adhoc, by some of the development partners and not in as systematic a way as is expected.

There is therefore a great need for a systematic way of doing such consultations, so that it becomes more inclusive and accessible.

b) Are providers promoting a CSO enabling environment in their co-operation with civil society? (Yes/No)

YES. There is generally support for a CSO enabling environment being advocated for by almost all providers either directly expressed or indirectly expressed. Nonetheless, this again remains not as institutionalised and systematic as one would expect, through any clear policy instrument clearly explaining the purpose and modalities of working or supporting civil society administratively or through financing mechanisms.

c) Is the promotion of a CSO enabling environment an agenda item in providers' policy dialogue with partner governments? (Yes/No)

The Promotion of CSO enabling environment has been gaining momentum recently, particularly in the providers' policy dialogue with partner Governments. Several consultative meetings have been held and are an example of this. However, it still remains something that needs to be concrete and systematic as an ideal principle of development cooperation and not necessarily more on adhoc basis.

d) Do providers share information on their CSO support with the Government? (Yes/No)

YES they are reported to share information “to some extent.” This is highlighted to largely be included in the Executive Budget Documents (Financial Statement), as extra-budgetary support or rather off-budgetary support.

However it was underscored that, to a larger extent, a lot of this information is still privileged to the providers and not as accessible to Government through the efforts at instituting and supporting the agreed benchmarks in the context of the Development Cooperation Strategy, International Aid Transparency Initiative (IATI) standards and the Open Government Partnership (OGP) initiatives.

There is of course also another segment of the Providers that has reportedly not been sharing this information towards the Government's annual Aid Atlas, as would be expected. This remains something that still needs to be strengthened and expressly encouraged in the true spirit of Effective Development Cooperation.

3.4 CSOS' LEGAL AND REGULATORY ENVIRONMENT

a) Is there recognition of the respect for CSO freedom (association, assembly and expression in the constitution and more broadly in policy, law and regulation? (Yes /No)

YES there is some recognition reported. Respect for freedom of association, assembly and expression is reportedly actually guaranteed in the Malawi Constitution, under section 31. The presence of the NGO Act (2001) also provides for the requirement for the NGOs to be duly registered as well as comply to different policies and regulations through the Council for NGOs in Malawi and ultimately with the NGO Board of Malawi.

However, it is also the political dynamics and the broader political environment that reportedly tend to pose some challenges at times to this freedom. Examples cited were particularly when politicians attempt to politicise and 'capture' such freedoms of association, assembly by divide and rule strategies, to attempt to silence and frustrate freedom of assembly and expression.

It was also mentioned that in principle, NGOs are supposed to register through relevant legal frameworks however other NGOs operates without proper registration due to absence of NGO Policy and gaps in the NGO Laws

b) Is the legal and regulatory environment enabling for CSO formation, registration and operation? (Yes/No)

YES. There is a Law for registration of CSOs. Some CSOs have reportedly been formed and some in operation without having been fully registered, due to lacking enforcement. This is underscoring that the process still remains challenged and to some extent this is actually bemoaned as cumbersome; in the absence of the comprehensive regulatory policy framework.

Registering of CSOs is however said to be taking place with great momentum under different forms and models either under the Limited Companies Act or the Trustees Incorporation act. This reportedly takes longer as it is also multi-tiered (involving the Registrar of Companies, CONGOMA, and the NGO Board). With regard to the CSO ability to pursue a broad range of self-defined objectives including human rights and the quest for good governance, this is happening with undue interference and hindrance.

As regards to issues around the denial of registration or the need for de-registering some CSOs, the NGO Act (2001) has some of these provisions on stipulated, particularly the grounds for the de-registration. Nonetheless, this has not yet been enforced (ever), due to the still existent lack of the NGO Policy, which is still yet to be finalised. It is this policy that would help serve and safe-guard or help articulate and clarify how to deal with any such instances of political manipulation, interference and threats against some CSOs and if there would be the need to protect some CSOs or even seek mitigation and mediation for some, including the need to go for judicial reviews.

c) Does the Legal and Regulatory Environment facilitate Access to Resources for CSOs? (Yes/No)

YES and NO (NOT REALLY), although the CSOs are generally free to do own resource mobilisation and access resources from anywhere for the specific causes being championed.

Specifically though, efforts are reportedly being made for more transparency and accountability across the NGO and civic actors. This is being underscored in the need for providers and Government along with all development partners to fully embrace, recognise and support those CSOs duly registered and compliant the laws i.e. being registered the Council for NGOs in Malawi (CONGOMA) and the NGO Board, as a critical obligation and benchmark that needs due diligence and strict compliance.

d) Does the Legal and Regulatory Environment marginalise certain groups? (Yes/No)

The Penal Code is highlighted to be prohibiting certain acts (such as the LGBTI); and that there are also other causes that are probably not fully achieved due to lacking legal and regulatory frameworks to help advancing the rights of certain marginalized groups.

Nonetheless, it is reported that others are generally able to achieve their project targets and goals successfully, while others are not.

CHAPTER 4.0 - RECOMMENDATIONS

Government as the primary regulator and leading national development actor has the primary responsibility for setting up and fulfilling most of these conditions towards an ideal enabling environment for multi-stakeholder dialogue, particularly conducive enough for a vibrant civil society. It is apparent that over the years, institutional stakeholders have been called to help creating and facilitating such an enabling environment for local CSOs and to design programs to create and reinforce an enhanced situation in which CSOs can operate more effectively.

As an example, they can effectively be holding Governments Ministries, Departments and Agencies (MDAs) to account. Governments can also support CSOs to act as watchdogs; by respecting CSOs as development actors in their own right; by ensuring, facilitating as well as leveraging responsive and long-term funding and limiting competition for resources; and by engaging with CSOs in dialogue with the Government around poverty reduction and sectoral strategies; etc). Increasingly, the private sector (as a whole) and civil society (in particular), are seen as keys to development.

An effective and functioning state apparatus is therefore quite essential for any developing country. In Malawi's own experience, it is therefore apparent that as complex as they are, development agendas cannot just be left only to the State. A nation's growth and even its very survival, requires private initiative (both for-profit businesses and non-profit civil society organizations) to make full and effective use of the country's human potential, generate material resources, and develop a vibrant and robust socio-economic base.

The promotion of an enabling environment would thus entail an embodiment of laws and policies that allow favor and mainstream a socially responsible private and civil society sector. Such an environment stimulates local initiative, triggering a positive chain of multiplier effects and draws inward investment. Both of these can therefore have rapid and dramatic effects on the development results agenda and outcomes that are likely to usher in far reaching positive impacts.

In conclusion, the promotion of an enabling environment remains a fundamental challenge, which requires not only a strategic joint reflection, but also a shared responsibility among a broad range of actors.