

**A REPORT ON CSO ENGAGEMENT WITH THE DEVELOPMENT
EFFECTIVENESS AGENDA IN MALAWI**

FINAL REPORT

Prepared and Submitted to

Reality of Aid Africa

By

Fanwell Kenala BOKOSI, PhD

Lilongwe, MALAWI.

Email: fbokosi@yahoo.co.uk

Mobile: +265-881-326-374

November, 2013

CHAPTER ONE

1.0 INTRODUCTION

The term Civil Society Organisations (CSOs) refer to organisation that including non-governmental organisations, community groups, faith-based organisations, trade unions, informal groups (those without constitutions and boards). The term also encompasses individual activists, including online activists, artists and writers and human rights defenders, who normally act in the public sphere to advance or defend a viewpoint that others (CIVICUS, 2013).¹

Malawi was under a one-party system before 1993. In 1994, Malawi became a multi-party system which saw the emergence of civil society actors and CSOs. The CSOs that were present before multi-party system were mostly engaged in service delivery. There was little space for CSOs and civil society actors to operate in the field of politics, advocacy and governance issues.

After 1994, Malawi has seen an increase in the number of CSOs. This is a result of the expanding political space brought about by the new democratic dispensation. The space has been expanding slowly to allow civil society and other actors to participate and develop human rights issues further. The increase in the political space can be observed in different areas. In the Constitutional Framework, it is established that all legal and political authority of the State derives from the people of Malawi and shall be exercised in accordance with the Constitution solely to serve and protect the people's interests.

This implies that CSOs are free to operate in Malawi but should adhere to the recommended procedures indicated by the law. With regard to the legal framework for CSOs, an NGO law was introduced in 2000 to address issues of registration and

¹ CIVICUS (2013) STATE OF CIVIL SOCIETY 2013:Creating an enabling environment

requirements for CSOs operating in Malawi. The law serves the purpose of ensuring equitable sectoral and geographical distribution of CSOs activities, accountability and transparency of CSOs in their activities, coordination and consultation with the government in the implementation of CSOs activities and uniformity in the interpretation of policies.

This would assist CSOs to contribute to development through the provision of social services and the creation of employment. In addition, there is a national institution called the Council of NGOs in Malawi (CONGOMA) that serves as an umbrella organisation for CSOs in Malawi and represents their interests. CONGOMA was created in 1987 under the aegis of the Council for Social Welfare of Malawi. CONGOMA's objective is firstly, to enhance and improve operational environments within which CSOs function; secondly, to promote and facilitate co-ordination, collaboration and co-operation within the CSO community and between the CSO community, the government of Malawi, the donor community and the public sector; thirdly, to further the understanding of CSOs as competent, professional and suitable agents of development; and fourthly, to support member CSOs to build and strengthen their institutional capacity. CONGOMA advocates on behalf of CSOs, provides information about the CSO community, organises workshops, seminars and conferences on issues such as poverty alleviation and institutional development and has special activity networks, for example on HIV/AIDS, and offers support, advice and information to CSOs. The registration for a CSO requires membership with CONGOMA

In recent time, due, to the limited finances and issues of poor governance and corruption has resulted in many developing countries including Malawi to perform dismally in leading development for all of their citizens. The government in Malawi has limitations in providing sufficient goods, services or enabling environments that help citizens in securing livelihoods, or where disadvantaged groups are excluded from existing state institutions. CSOs have therefore proliferated as alternative channels of service provision and/or holding governments to account. It is important to note that

early CSOs activities were mainly concentrated in service provision than in advocacy and empowerment. Their difficulties in promoting long-term structural change were mainly based on the prevailing politics soon after independence.

1.1 The Research

Busan partnership outcome document entails, emphasizing that CSOs have been included in the process of development effectiveness globally. This puts responsibility on the CSOs in each individual country to get involved in the process and represent themselves independently. The development effectiveness concept was introduced and elaborated with keen emphasis on the importance of CSO rigorous involvement in the process especially in Africa.

In the last decade, donors have placed greater emphasis on civil society voice in encouraging pro-poor development through their inputs to policy formulation processes and then holding government to account for implementation. CSOs (Civil Society Organisations) have been the prime organisational form for articulating this voice. The tide may be turning for CSO. Malawi provides a very good case study for this. The rise of CSO in Malawi exemplifies well the global phenomenon and the organisational problems they face also illustrate the potential pitfalls.

1.2 Aims of the Research

The research has the following aims:

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 specific actions that the multistakeholders can take to ensure that they fully utilize the opportunities that Busan outcome presents to promote enabling environment for CSOs in Malawi

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

1.3 Methodology

The main elements of the research methodology included:

1. Literature review to provide an overview of CSO mandate in Malawi.
2. Semi-structured questionnaires with stakeholders within the civil society organization community
3. Write up

CHAPTER TWO

2.0 UNIVERSALLY ACCEPTED HUMAN RIGHTS AND FREEDOMS AFFECTING CSOS

2.1 Recognition of Freedoms Affecting CSOs

Since independence in 1964, Malawi has experienced three constitutional regimes (Kaliya, 2003). The first constitution was adopted in 1963 and it provided the basis for independence in 1964 (Kanyongolo, 2007). Among its key features were the Bill of Rights and the lean towards parliamentary democracy. In other words, the constitution enshrined the principle of parliamentary supremacy. Ironically, this constitution was very strong on human rights, the very rights that the colonial regime had vehemently denied the local people. In 1966, Malawi adopted a revised constitution upon which the republican status was attained (Kanyongolo, 2007). Unlike the previous one, the new constitution espoused a presidential model, thus virtually investing all power and authority of governance and administration into the presidency. It is in this regard that this constitution easily paved way to dictatorship and one-party state. In place of the Bill of Rights, the new constitution only noted that:

“Malawi shall continue to recognize the sanctity of human rights as enshrined in the Universal Declaration of Human Rights’ (UDHR).”

Following the 1993 national referendum and subsequent national elections in 1994, the new constitution was adopted in which the Bill of Rights was reintroduced. As it stands, it is one of those constitutional provisions that can only be changed or amended through a national referendum.

The Early Colonial Period 1875-1925: Early Missionaries: There were some early pressure groups advancing non-tribal objectives soon after the British declared

Nyasaland as a protectorate. This was towards the close of the 19th century. The 'new men of Nyasaland' (Glagow, 1997) comprising clerks, teachers, church leaders and small businessmen were making economic, social and political demands through the medium of organizations that were tribal in structure. These included native and tribal associations located across the country, with a particular concentration in the Northern Region of the protectorate.

The Post Colonial Period 1964-1994: The Banda Era: After gaining independence in 1964, these pressure groups continued with their struggle since the environment was not conducive to the setting up and expanding of civil society groups. One-party state became suspicious of the potential influence that CSOs had on society. With the dominance of Malawi Congress Party (MCP) structures, there was very little room for the involvement of CSOs in the newly independent Malawi (Mwalubunju, 2007).

The Post Democratisation Period: c 1994: The political changes that took place in the early 1990s and led to a change of Malawi's system of governance from one party state to multi party system of government in 1994 created a favourable environment for CSOs in Malawi. It is therefore not surprising that post 1994, Malawi was inundated by the proliferation of both international and local CSOs.

The 1994 Constitution is the supreme law of Malawi². In terms of the Preamble, the constitutional order in Malawi is 'based on the need for an open, democratic and accountable government'³. The Constitution guarantees a democratic, multiparty state. The Constitution contains a Bill of Rights, which guarantees certain fundamental rights to all people of Malawi.⁴ Non-derogable rights contained within the Bill of Rights⁵ include the rights to life, dignity, equality and the right to freedom of conscience, belief, thought and religion and to academic freedom. Other rights protected by the

² Constitution of Malawi, section 4

³ Ibid, Preamble

⁴ Ibid, Chapter IV

⁵ For a full list of the non-derogable rights see section 44 (1) of the Constitution of Malawi. Note that in terms of section 45 some rights, including freedom of expression and freedom of information, may be derogated from during a state of emergency in Malawi.

Constitution include freedom of expression, freedom of information, freedom of movement and freedom of assembly. Any limit or restriction imposed on rights and freedoms must be consistent with Malawi's obligations under international human rights law. It is the constitution therefore that affects CSOs by safeguarding rights such as the right to freedom of assembly, freedom of association which enable the organisations to exist in the first place. International human rights law - such as the International Covenant on Civil and Political Rights (ICCPR) - which also protect rights which enable CSOs to exist and perform their duties.

In addition, there are a number of institutions whose sole function is to safeguard the different rights and freedoms provided in the Constitution. These institutions include the Human Rights Commission, the Anti Corruption Bureau, The Ombudsman Office and the Law Commission. The new Constitution has also provided for the separation of the powers among the Executive, Legislature and Judicial arms of Government, for checks and balances. This framework provides excellent opportunities for advocacy work.

The classical understanding of human rights is that human rights are the entitlements that every man, woman and child has by virtue of being human. These entitlements are part of what it takes to define a human person, and as such they are basic moral guarantees in ensuring that human life remains human (Chigona, 2006). The human rights tradition is premised on key concepts and principles. These are about the equality of all people, the universality, inalienability and indivisibility of these rights, as well as their interdependence and interrelatedness. The 1995 Constitution of the Republic of Malawi enshrines the 'Bill of Rights' (Chapter IV). And in 1994 the Supreme Court of Malawi defined human rights as:

"... claims, which every individual has, or should have, upon the society in which he/she lives. To call them human rights suggests they are universal; they are the due of every

human being in every human society. They do not differ with political or economic system or stage of development. They do not depend on gender or race, class or status.

“To call them 'rights' implies that the right' not merely appeals to grace, or, charity or brotherhood or love; they need not be earned or deserved, they are more than aspirations or assertions of 'the good' but claims of entitlement ... “Malawian Human Rights CSO leader, (2003)

This definition has received wide acceptance nationally and internationally. Rights provide not only what the state, organizations and individuals cannot do to people but also what they must do.

Despite the instruments being in place to protect human rights, there is limited awareness of human rights among the population with little capacity to claim them⁶. The other area of weakness has been the area of enforcement of rights. The main instrument to enforce the human rights obligations in Malawi is the court system which is still largely inaccessible to the majority of the citizens, especially those in the rural areas.

Lack of funding and interference with the Human Rights Commission, the body mandated by the Constitution to conduct investigations, ensure protection and make recommendations with respect to human rights violations has constrained its ability to carry out its constitutional mandate

Prior to April 2012, civil society operated in a political context in which the space for policy dialogue was significantly constrained and characterised by acrimony and intimidation.⁷ The space for CSOs was closed in particular between 2009 to April 2012, when CSOs were not given the platform to input into policy debate leading to elite capture in policy formulation.

⁶ The Democratic Accountability Baseline Survey conducted in 2011 shows that only 44.6% of the respondents have knowledge of their human rights with only 8% having the ability to demand for their rights.

⁷ 2010, World Bank Governance Survey

2.2 The Legal and regulatory environment, implementing rights and freedoms affecting CSOs.

Governments have great power over CSOs through the laws they enact or administer. They can either help or hinder them through laws and regulations that they use to establish them, to direct their activities, to tax them, to allow them access to funds (public, private, and foreign), to require them to report, to audit them, and to involve them, or refuse to involve them, in Government projects and policies. By passing laws they repress CSOs or they can encourage them; they can also have great influence in moulding the kinds of CSOs they want.

Since 2001, there is now a Non Governmental Organisations Act 2000, which seeks to regulate the operations of CSOs in the country. The NGO Act sets a completely new legislative framework for the legal efficacy of CSOs in Malawi. The Government has argued that the Act is meant to protect public interest by ensuring that CSOs operate in a transparent and accountable manner. The Act has defined NGOs as compartmented groups involved only in relief welfare services and advocacy for the benefit or interest of the public. According to the Act, CSOs in Malawi shall be deemed to be such organizations as are involved in the *“promotion of civic education, advocacy, human rights, social welfare, development, charity, research or any activity for the benefit of the public”*. Accordingly, CSOs not fitting into the stated compartments of the provision of welfare services or advocacy activities risk not being registered as CSOs.

The government has defined this act as *“An Act for the rights and obligations of Non-Governmental Organisation in Malawi, to promote the development and values of a strong independent civil society, to provide for the establishment, functions and powers of the Non-Governmental Organisations Board of Malawi and the right of the public to access information*

with respect to registered organizations and to provide for matters incidental thereto or connected therewith”

The Act has five objects which are defined as (a) to promote the development of a strong independent civil society in Malawi and to facilitate the formation and effective functioning of NGOs for public benefit (b) to create a conducive environment for NGO development through Government provision of incentives (c) to promote donor and public confidence in the NGO sector, and to encourage the development of an NGO code of conduct incorporating the principles of fiduciary integrity, public accountability, democratic decision-making, developmental synergy, non-discrimination and beneficiary equity (d) to facilitate a relationship between NGOs and the Government involving constructive collaboration and partnership in furtherance of the public interest (e) to affirm the human rights enshrined in the Constitution of the Republic of Malawi.

The Act makes it mandatory for NGOs to register. There are exemptions to this requirement including for informal organisations that do not have a written constitution. In order to register CSOs have to be registered under the Trustees Incorporation Act (Cap.5.03) where the applicants have to state their name of the CSO and their objectives and also have to submit copies of their constitution and a copy of minutes to the minister of justice with details of the trustees. In line with Section 20 of the NGO Act, every organisation that wishes to operate or is operating in Malawi as an NGO must register with the NGO Board of Malawi. The Board is a regulatory Body for NGOs in Malawi and failure to register with it means the NGO will be operating illegally.

The NGO Board consists of ten members: three ex-officio members who are the Secretaries of three Ministries, and seven members (at least three must be women) who are appointed by the Minister in consultation with the designated NGO coordinating body - the Council for Non-Governmental Organisation in Malawi (CONGOMA). The

Board registers and regulates CSO operations. The Board has a specific period of time in which it must decide on the application for registration.

In addition, any NGOs to be registered must show proof that it is registered under the Act, an NGO must have at least two directors or trustees who are citizens of Malawi. An NGO's application for registration must include:

1. Approval from the Ministry responsible for the activities to be undertaken by the NGO
2. Proof of membership in CONGOMA
3. A plan of the activities which the NGO intends to undertake
4. The NGO's source of funding
5. A statement that the NGO shall not engage in partisan politics including electioneering and politicking
6. Personal details, including the nationalities of the trustees, directors and other executive board members.

Failure to comply with the provisions of the Act and engagement in partisan politics are the main grounds for the Board to cancel or suspend registration. NGOs may appeal a Board decision to cancel or suspend registration to the High Court for judicial review. The Act allows registered NGOs to engage in public and other forms of fundraising, as long as they comply with the reporting requirements prescribed in the Act. An NGO which contravenes the provisions of the Act shall be guilty of an offence and liable on conviction to a fine.

This new NGO Act has been criticized by activists in Malawi (particularly human rights NGOs) who feel that government is exerting too much control over them and also oppose the establishment of CONGOMA as the regulator as being too prescriptive. The new act clearly defines the parameters within which NGOs can operate.

On the other hand government has justified the move to have this act on a number of reasons. First, government argued that there was lack of financial accountability and transparency on the part of some NGOs. Second there, there is also a feeling that some NGOs were crossing the boundaries of operation and venturing into politics and the new law will put a stop to this. And lastly, is the need to regulate NGO operations and locate them on the basis of need. As described above the NGO Law means that the registration requirements may be lengthy, onerous or expensive, and therefore particularly difficult for smaller CSOs.

In addition, it is difficult to determine how many CSOs are registered in Malawi because organisations can register under many different organisational forms; a CSO can register as an NGO under the NGO Act, a trust under the Trustees Incorporation Act, or a limited company by guarantee under the Company Act among many other forms of registration. The Act is very limited to NGOs and does not provide for other forms of CSOs.

The Act also poses a challenge to CSOs who have multi-sectoral approach to development and therefore interact with different ministries. This is because the Act requires that approval be sought from all parent ministries. Administratively this is a daunting task. Similarly, from the government side it may not be easy for all government ministries to agree on the working modalities of an NGO, which has taken a multisectoral approach.

The registration process for CSOs in Malawi is not clearly defined because the Law is specific to NGOs and is silent on CSOs. According to the NGO Act, an NGO should register with the Registrar of NGOs through the NGO Board, neither of which exists. Moreover, over the past five years, the government has shifted responsibilities for NGO coordination from the Office of the Vice President to the Office of the President and

Cabinet and then to the Ministry of Gender. Multiple offices are responsible for registration, depending on the type of organization. For example, Community Based Organisations (CBOs) and Faith Based Organisations (FBOs) can register as NGOs at a Ministry of Local Government's district council. Trusts register with the Office of the President and Cabinet, and limited companies by guarantee register through the Registrar of Companies. International charitable and voluntary organizations registered outside Malawi can be recognized through a memorandum of understanding with a relevant ministry or department.

CSOs in Malawi have been instrumental in criticising the executive for abuses of power. CSOs are very vocal on national socio-political and economical issues. In addition, CSOs involved in rule of law, governance and human rights work have also been active. All CSOs and CSOs must be registered members of the Council for Non-governmental Organisations in Malawi (CONGOMA). There are also many faith-based organisations in Malawi. Particularly, the Catholic Church has been active in criticising violations of human rights and abuses of power by the government.

CONGOMA continues to champion the rights of Malawians through various organisations; however in the absence of resources it remains challenging. CONGOMA engages in capacity-building, advocacy and institutional growth. In respect of justice issues, CONGOMA relies on CSOs and NGOs working on issues related to justice, the rule of law and human rights. Malawi's civil society is relatively strong and public trust has generally continued to increase. However, it is not always easy to mobilise people to demonstrate.

2.3 Rights of Specific Groups

Although there is some infringement of the political space for CSOs and Civil Society by the government, it still allows the enjoyment of most freedoms. In some cases, the government may hinder the operations of some CSOs if the mandate is contrary to the government's agenda or popular opinion. For example, issues of sexual orientation are still sensitive in Malawi. Although the Constitution has established a secular state, the state is rooted in Christian values. Technically the constitution outlaws any form of discrimination but homosexuality is an offence under the Penal Code and is punishable by up to 14 years in prison.⁸ On 20 May 2010, Tiwonge Chimbalanga and Steven Monjeza were sentenced to the maximum penalty of 14 years in prison for marrying but were later unconditionally pardoned on 'humanitarian grounds', by then President wa Mutharika, who nevertheless stated that homosexuality was a crime in Malawi.⁹ In 2011, an activist was arrested for breaching the peace after putting up posters in support of gay rights and received a community service sentence.

There is further evidence that despite the guarantee of people's rights in the new Constitution, implementation is often dependent on the will of those in power. It is common practice for governments to clamp down on dissenting views if they feel threatened. Malawi has experienced situations where political stalwarts have called on the Government to clamp down on civil society activities that have been considered to be against the Government. In certain cases this has included the appointment of vocal and prominent CSOs leaders into lucrative and high powered government positions in order to silence them.

The period between 2005 and 2012, the relationship of CSOs and the Government was mixed. Specifically between 2005 and 2009, there was increased demonstration of the

⁸ Article 153 of the Malawi Penal Code criminalises 'unnatural offences':

'Any person who-

(a) has carnal knowledge of any person against the order of nature; or

(b) has carnal knowledge of an animal; or

(c) permits a male person to have carnal knowledge of him or her against the order of nature, shall be guilty of a felony and shall be liable to imprisonment for fourteen years, with or without corporal punishment.'

⁹ US Department of State, Bureau of Democracy, Human Rights, and Labor, 2010 Human Rights Report: Malawi (8 April 2011) 18 available at: www.state.gov/g/drl/rls/hrrpt/2010/af/154356.htm.

government's effort to facilitate an enabling environment for CSOs. This is reflected in the Malawi Growth and Development Strategy (MGDS I and II), which are the overarching development and poverty reduction strategies developed during the period. Poverty reduction and good governance, buttressed by civil society participation, are at the centre stage of the MGDS. For CSOs, the production of a *Civil Society Manifesto* (MEJN, 2004), which was recognized by the government and was in the public domain, is a highlight of the government's effort to engage non-state actors. The effort by the government in furthering an enabling environment and in enhancing government-CSO relations and the consultative processes between the two has also been reflected in the budget speeches (GoM, 2008). For example, the 2007/2008 and 2008/2009 budget speeches highlighted this discourse: 'The consultation we carry out each year before the budget are important elements in the budget process, and also in the wider engagement between government and key groups such as the business community and civil society' (GoM, 2008).

The ascendancy of Joyce Banda to the Malawi presidency on 5 April 2012, and resulted in the subsequent emergence of a close relationship between civil society organisations. The current government has taken a number of actions to ensure better respect for the rule of law in the country. The launch of a Commission of Inquiry into student Robert Chasowa's death, Malawi's refusal to welcome Sudanese President Omar Al-Bashir on its territory as he is under a warrant of arrest from the ICC, and the repeal of section 46 of the Penal Code, were all positive steps.

While the CSO-government relationship can be described as cordial, CSOs in Malawi continue to be critical of the current government. CSOs continue to engage in a variety of initiatives aimed at strengthening the voice of civil society in the public domain. In 2011, one of the notable initiatives that CSOs and CSOs engaged in was the drafting of a 20-point agenda of issues that needed addressing by the government. The agenda highlighted, among other issues: the need for the government to address the lack of foreign currency in the country; the shortage of fuel; bad governance; concern over the

University of Malawi (Chancellor College); the fact that the First Lady received a salary; and censorship of the media. The culmination of this process was the 20 and 21 July 2011 protests following the failure by government to address any of these issues.

Cases of government intolerance of CSOs have been serious in cases where there has been no separation between Governments and political party affairs, such as with the Third Term Bill. Often, political party members have viewed civil society activities as political in nature, especially when they are against Government policy and/or practice. These views by political party members have been manifested itself in situations where Government has been openly averse to civil society's involvement in the empowerment of grassroots communities. This was clearly evident in the latter years of the previous Government's term, which made no secret of its intolerance for its critics, especially CSOs involved in governance issues, and unsuccessfully attempted several times to silence them through restrictive laws which it pushed through Parliament.

CSOs do not do partisan politics but they cannot be divorced from politics. After the 20th July demonstrations, CSOs became the de facto opposition in Malawi. Their leaders became the de facto opposition leaders. The formal opposition and opposition leaders hardly featured in the political processes of the country. The United Nations offered to broker the dialogue process between the government (ruling party) and the CSOs on the petitions that the CSOs had presented, thereby recognising the CSOs as the opposition in a way.

The key dilemma here is - is it the role of CSOs to replace the official opposition? Or is it the role of CSOs to help the opposition take its rightful role and place, for example, would they do better by handing over the dialogue process to official opposition? Being funded mostly by western donors, governments tend to see the NGOs as opposition that is advancing a western agenda.

CHAPTER THREE

3.0 POLICY INFLUENCING

3.1 Dialogue and Policy Influencing

Policy influencing by CSOs has increased since 1994 as many CSOs shifted their activities from direct service provision to include advocacy as part and parcel of their strategies to improve access and quality of services. However, the number of CSOs with an explicitly stated policy influencing and advocacy mandate is still very small. CSOs have increasingly come to realise the need for them to be actively involved in the policy development process as one of the key development partners in Malawi.

Service delivery organisations communicate and collaborate closely with the government at all levels. Many local CSOs participate in district-level decision-making processes and forums, including the District Executive Committees. The government at various levels also consults with CSOs and CSO coalitions on sector-related policy issues, in part because donors require this.

At the national level, CSOs have several opportunities to engage in policy making by participating in different government-initiated mechanisms, including Thematic Working Groups (TWGs), Sector Working Groups (SWGs), Malawi Growth and Development Strategy II (2011-2016) reviews, and Sectoral Parliamentary Committees, including the Agriculture and Natural Resources and the Budget and Finance Committees. For example, the Civil Society Agriculture Network (CISANET) is a member of the Malawi Vulnerability Assessment Committee, a multi-agency committee chaired by the Ministry of Economic Planning and Development.

CSOs also participate in the Food and Nutrition Security Joint Task Force/Technical Secretariat (FNJTF/TS) within the Ministry of Agriculture, which has different committees addressing issues such as food security and nutrition. For the past five

years, the Ministry of Finance has been inviting input on the budget from various stakeholders, including CSOs.

Since 2011, there were CSO advocacy campaigns against the criminalisation of homosexuality and sex workers, while also increasing public awareness about these issues. While homosexuality has not been legalised, the government took a stand in November 2012 suspended legislation against homosexuality. The government issued a “moratorium on all such laws, meaning that police will not arrest or prosecute anyone based on these laws. These laws will not be enforced until parliament makes a decision”¹⁰. The advocacy efforts in this area have also moved the Malawi High Court to review the constitutionality of the country’s “sodomy” laws. The High Court made this decision by placing an advert in the local papers calling for submissions in “exercising its own jurisdiction under the constitution and the Courts Act”¹¹.

In 2013, Malawian women CSOs successfully lobbied the President of Malawi not to assent to the Land bill which was passed in parliament. The Land bill passed was seen to be disempowering to women and the landless. The CSOs argued that the bill is not in tandem with the constitutional provisions of guaranteeing equality. The CSOs further argued that the bill concentrated on facilitating land transactions and not the basic principles of land.

While it is in the interest of CSOs to influence government policies, the government also recognises that CSOs make up a considerable percentage of the major development players in the country. They are involved in education, health, agriculture and trade activities, providing over 65 per cent of the education and about 37 per cent of the health services. CSOs are therefore a very important stakeholder in development work,

¹⁰ [Daily Times, 12 November 2012](#)

¹¹ [Nyasatimes, 5 November 2013](#)

providing an opportunity that civil society can capitalise on, to demand involvement in the formulation and implementation of development policies.

There has been an evident improvement in tone and level of dialogue and communication between CSOs and Government, resulting in a better sharing of information. Government invitations for civil society to participate in policy discussions are a norm in Malawi. It is also not uncommon for government officials are increasingly being invited to most civil society activities and important meetings and their participation has always been good.

Recognition should also be made that the willingness and acceptance by government of greater civil society involvement in policy formulation has been partly as a result of donor conditionality.

In some of the policy processes describes above like the development of the Malawi Growth and Development Strategy II (MGDS II), formulation of the annual government budget, monitoring implementation of the budget, and IMF country mission visits, donors have insisted on CSOs participation.

However, in Malawi, advocacy and policy-oriented CSOs face a particular challenge of how to take sufficient interest in and engage robustly with the political sphere without being seen to be partisan or playing into the hands of political critics. In the new multi-party dispensation Malawian CSOs have been accused by several governments in power as “advancing western agendas”, supporting “opposition parties” and sometimes even accused of seeking to change an incumbent government.

The fruits of the success of MEJN have led to a situation where advocacy in Malawi is mainly done through networks of CSOs who find strength in numbers and make their voice louder. The proliferation of similar networks in different sectors is testimony to that. Malawi is now awash with networks, coalitions, alliances, and taskforces. It is now common to have a network in almost any sector of development. The famous networks

in Malawi have now been formalised and these include the Malawi Economic Justice Network (MEJN), Malawi Health Equity Network (MHEN), the Malawi Electoral Support Network (MESN), Human Rights Consultative Committee (HRCC), Civil Society Agriculture Network (CISANET), Civil Society Coalition on Quality Basic Education (CSCQBE), LandNet and the CSO Gender Support Network to mention but a few.

In addition to networking groups, CSOs in Malawi has also employed other strategies advocate policy change like demonstration, trying out of new ideas and innovations in their programmes, research and strategy papers and presentations at various fora.

However, the participation of CSOs in policy influencing in Malawi is still problematic 19 years after the multiparty democracy. The major constraint is that of capacity, most CSOs lack greater understanding of policy and the policy making process as well as the capacity to form and manage networks and capacity for policy analysis. The country is also culturally challenged in that there is still very considerable respect for, and even submissiveness to, authority and power. Even though the country's political system changed from that of one party to multi-party democracy and that the new constitution guarantees a wide range of freedoms, there is still fear of speaking out or taking responsibility.

Policy making is a technical process and influencing it requires an understanding of the technical aspects of the advocacy process (issue identification; development of goal and objectives; identification of target audience; building support; developing messages; identification of channels of communication; resource mobilisation; data collection; and monitoring and evaluation). The majority of CSOs workers in Malawi are still driven by ideology and passion and sometimes do not appreciate the technical nature of policy making and these undermines their efforts to engage and challenge certain policies.

It is therefore important for civil society to gain a better understanding of policy analysis and improve analytical skills. This is evidenced by the fact that most of the advocacy work has been re-active, rather than pro-actively identifying issues. In most CSOs there are few if any staff with experience in policy analysis and/or analytical skills. Educational levels and possession of skills and analytical skills among CSO staff are limited. Most CSOs have relied on outsourcing policy analysis work to academicians and other private consultants. This runs the risk of delaying civil society action and undermining the credibility of the “civil society” voice.

Policy influencing and advocacy requires the ability to analyse, understand, and interpret the policies and positions of the Government and development partners as well as understand the policy formulation process¹². For example, most civil society organisations are not aware of the procedures followed to pass legislation in the National Assembly. This is the very process that needs to be understood in order to develop an effective advocacy strategy targeting the National Assembly.

Civil society organisations have limited capacity to participate effectively in policy making because most of them exist at subsistence level trying to ensure their survival as an organisation. They have little spare time and money to invest in such policy advocacy, particularly when only a few have managed to mainstream advocacy work into their programme budgets.

3.2 Spaces and Structures for Dialogue and Policy Influencing

The role of civil society in policy development and implementation cannot be over emphasized. CSOs are designated as agents of change and provide the watch dog function to promote government’s accountability in public service delivery. CSOs provide the link between the grassroots and policy makers to promote provision of

¹² Policy formulation process here is used to mean all Government processes aimed at formulation of legislation, policies, positions etc

quality public services in an efficient manner and provide a voice to the marginalised groups.

In Malawi CSOs have often not been effectively engaged even though policy makers accept that CSOs play an important role in policy processes. Policy engagement is mostly a power game between the various stakeholders in Malawi and the power and level of influence for CSOs in Malawi is still low and it also depends on making use of the available spaces (opportunities) for engagement and influencing policy. The structure of policy influencing in Malawi can be best described by the types of policy spaces available. The three main categories of structures for CSO participation include closed spaces, invited spaces and created spaces as defined by Gaventa (2002).

Closed spaces are where decisions are made “behind the scenes”, sometimes with the aim of “providing” for the people but with no participation of the people. In Malawi policy and advocacy issues by nature are highly politicised making it difficult for CSOs to effectively engage in the policy process. The resistance by government to take on board input from CSOs or any independent assessment defeats the whole purpose of the oversight role played by other stakeholders in the sector. Most of the policy decisions in the sector are made with limited or no consultations with the public.

Consultations are reduced to mere briefing sessions for stakeholders on government plans and seeking input on the already made decisions. This is also complicated by the limited access to information on many government processes and policies thereby increasing the level of difficulty for CSOs to influence any change.

However, since most of the CSOs in Malawi are largely dependent on donors for financial resources, the CSOs do use the major donors for example the various Donor Committees which provide a window to the closed spaces. Instead of waiting to be

invited, CSOs have been pro-active to lobby and advocate for policy influence through the various donor groups.

Invited spaces are where efforts are made to open up spaces by inviting people (as users, citizens, beneficiaries) into the space for consultation or in a more institutionalised form. There are several opportunities that exist in Malawi for policy engagement. Civil society needs to make use of the existing dialogue mechanisms that are in place including the Thematic Working Groups (TWGs), Sector Working Groups (SWGs), Malawi Growth and Development Strategy (MGDS) reviews, Sectoral parliamentary Committees like the Budget and Finance Committees.

In the past few years, the Ministry of Finance has been inviting submissions from stakeholders including CSOs on the national budget, a space which CSOs have used effectively. CSOs are also invited as participants to the annual meeting of the group of development partners that provide budget support to the government of Malawi and the officials of the government. CSOs through the leadership of the Malawi Economic Justice Network make submission prior to the meeting even though they do not participate in the deliberation.

Malawian CSOs have also engage with the international community through participation in global or regional level debates on food security and nutrition and enhancing partnerships with regional bodies like Southern African Development Community (SADC), African Union (AU) and NEPAD to influence policy at that high level. Both the AU and SADC hold scheduled annual or bi annual ordinary summits, along which CSOs conduct parallel pre-summit meetings to submit positions on policies or advocate for issues to be considered at that level. Indeed Malawian CSOs have been invited and have participated in these foras on an annual basis. In 2012, the Malawian CSO successfully held a meeting on the side lines of the SADC Heads of State meeting that took place in Lilongwe. The CSOs also held a SADC peoples forum and

were also invited to the official meeting to submit their petition on several issues affecting the people of the SADC region.

Both SADC and the AU have technical committees, which are mostly comprised of relevant ministers of member states and meet regularly to inform the decision making processes. These events and meetings have provided Malawian CSOs with opportunities to engage in the pre-summit meetings and influence policies.

Claimed or created spaces are those where the less powerful create their own autonomous spaces. They include spaces created by social movements and community associations, or just spaces where people “gather to debate, discuss and resist, outside of the institutionalised policy arenas”. CSOs in Malawi effectively used this space in 2011 when they created an initiative to strengthen their voice. The most notable initiatives of a claimed space that CSOs effectively created was the drafting of a 20-point agenda of issues that needed addressing by the government. The agenda highlighted, among other issues: the need for the government to address the lack of foreign currency in the country; the shortage of fuel; bad governance; concerns over the University of Malawi (Chancellor College); the fact that the First Lady received a salary; and censorship of the media.

After the formulation of this 20 point agenda, the government was forced to react by a committee to dialogue with CSOs. The government put together a committee to meet the CSOs following the protests that followed what CSOs termed as government failure to address their demands. Apart from using lobbying as a tool for advocacy, CSO in Malawi mobilised the political voice of the masses, to speak out on issues affecting their livelihoods.

In 2012, the Public Affairs Committee (PAC), an influential inter-faith civil society organisation, publicly condemned government repression – as it had done in 1992. On

March 21st, a fortnight before the president's death, the PAC called on him to seek a fresh mandate within 90 days or face civil disobedience. In its 26 point communiqué, the PAC expressed disquiet that Malawi's predicament was the result of "having a constitution without constitutionalism". This communiqué forced government to respond to the demands through the press as well as through setting up of the Government CSO committee to dialogue on these issues under the auspices of the United Nations.

3.3 Access To Information

Of all the important dimensions of the enabling environment for CSOs in Malawi, the access to public information remains a big challenge. The Malawi constitution in principle provides for citizen's access to information, however, there are still statutes that limit that access. Section 37 of the Constitution states that: "Subject to any Act of Parliament, every person shall have the right of access to all information held by the State or any of its organs at any level of Government in so far as such information is required for the exercise of his rights." The qualification "subject to any Act of Parliament" is the major limitation of this provision. In total there are over 20 Acts of Parliament that limit the provision. According to Kanyongolo (2012), some of these Acts that limit CSO enabling environment include;

Official Secrets Act (1913): This means that any government official can refuse to provide information to the public that is needed to endure transparency and accountability as long as the official deems that information to be sensitive to the national security of the country.

It is also difficult for an organization to register if "Malawi" is part of its name, as "Malawi" is protected under the Protect Names and Emblems Act. A CSO wishing to use the word "Malawi" in its name must obtain the consent of the Minister of Justice,

which can be time-consuming. The Minister can also delay or deny a CSO that permission just to frustrate the registration process.

Preservation of Public Security Act (1960): a law which pre-dated independence – was amended in 1965 to allow for arrest without a warrant and detention for up to 28 days without charge. It was used to detain perceived opponents of the regime. This law has been used to deny space for peaceful demonstration in Malawi. In October 2011, five human rights activists were arrested for protesting during the Common Market for Eastern and Southern Africa (COMESA) Heads of State meeting. The activists carried banners denouncing the dictatorial tendencies of the President and Malawi’s hosting of Sudanese President Omar al Bashir of North Sudan, currently wanted by the International Criminal Court for genocide in Darfur.

The Police Act stipulates that organisers of any demonstration or public rally must receive permission from the Police or City Councils; failure to obtain permission can result in arrest. Nationwide demonstrations organised on July 20, 2011 to protest the government’s inaction in addressing the worsening economic and socio-political environment in the country were marred by confusion over whether the proper permissions were received in advance. The protests culminated in violence and looting; twenty people were killed by the police during the demonstrations. The report into the events leading to the demonstrations and subsequent loss of lives concluded that there were deliberate delays on the part of the District Commissioner in Lilongwe in authorising the planned 20th July demonstrations.¹³

Public servants and other private sector actors have low opinion of civil society in Malawi. Most public servants argued that civil society leaders do not act on principles

¹³ Malawi Human Rights Commission (2011), MHRC report on 20 July demonstrations

and good faith and that their incentives aren't public good but interested in personal aggrandisement and pleasing their funders. Civil society is perceived to be more interested in victimising public servants as opposed to encouraging transparency. It is argued that if civil society were interested in transparency then they were expected to live by similar example themselves. Most public servants accused civil society as being led by people that lack capacity to *"comprehend and analysing how government works."* In addition, even members of parliament have argued that civil society *"is not objective and constructive. They blow up issues out of proportion as such it is very detrimental to entrust them with sensitive public information. They don't know about what kind of information can be released and how should it be released."* Some have argued that civil society leaders have political interests as well, such that their quest for public information is to assist them gain political mileage. This was substantiated by the fact that some CSO leaders work directly with political parties and some have ended up contesting for political offices.

Delays in the enacting and implementation of the access to information legislation are also rooted in the perceived fear that the media would use the laws to force government disclose classified information. This perception has not been helped by the fact that most of the private media houses are owned by people who are politically aligned to different political groups. Third, information is power such that government is always afraid that once the media has full access to public information, the government may lose its clout and political muscle. In other words, it is argued that media in Malawi has shown to be not quite responsible in the way it handles sensitive information. Some of them are alleged to be agents of opposition politicians. With this perception, it be wise to use the media as a vehicle in public awareness programming about access to information as opposed to having them taking front seat. Maintaining them as champions of the legislation campaign will result in unnecessary delays and foot-dragging on the part of government. Historically, in Malawi deference to authority and officialdom is widespread among people and has deep roots in social norms. In addition, people fear government officials and government institutions. This is

premised in historical reasons. During the colonial and one party era, public offices were institutions of higher authority and influence whereby not every person would just walk in and ask for information.

CHAPTER FOUR

4.0 DONOR - CSO RELATIONSHIPS

4.1 Foreign Aid and CSOs in Malawi

Foreign aid is still significant in Malawi for it accounts for almost 40% of the national budget. Despite the fact that there are tensions and contradictions surrounding the effectiveness of aid in Africa (Moyo, 2009; Calderisi, 2006) its importance in Malawi is undisputable. Most international and local CSOs rely on donor funding for the programmes.

There is general consensus that the majority of these CSOs would hardly survive in the absence of donor support because the culture of fundraising is still nascent, given the magnitude of poverty in the country. Moreover, sustainable approaches to development are a new discourse within the development lexicon in Malawi. Coupled with the lack of understanding of the politics and dynamics of aid and with the lack of visionary leadership, many CSOs are established with only a narrow visionary direction. Very often some of them are formed simply to respond to a specific social, political and economic issue.

Donors have significantly influenced the development of civil society in Malawi through the provision of funding to CSO programmes and have even assisted in the development of CSOs themselves. This type of funding has been normally bilateral. However, in Malawi there has been an attempt to create multi-donor pooled grant making facilities. A good example is the Tilitonse Fund (loosely translated as “we are together”). This is a multi-donor pooled fund (DFID, Irish Aid and the Royal Norwegian Embassy) supporting CSOs working on more accountable, responsive and inclusive governance in Malawi.

4.2 Why and how do Donors Support CSOs in Malawi

There are several strategies that donors use to engage with CSOs in Malawi. The main donors in Malawi like United Kingdom's Department for International Development (DFID), the US Agency for International Development (USAID), the Danish International Development Agency (DANIDA), the Swedish International Cooperation Agency (SIDA) and Irish Aid have developed explicit country strategies for their engagement with development partners.

An analysis of the country strategies of these major donors reveal that there are two main reasons donors give for engaging with civil society. First, CSOs can make a positive contribution to processes of democratisation. In particular, they can promote the accountability and transparency of governments, international institutions and markets; advance the voices and concerns of marginalised groups; and promote human rights. Second, CSOs can contribute to poverty reduction by providing welfare services, the empowerment of beneficiaries and being policy advocates for poor and marginalised groups.

The donors in Malawi use an instrumental approach towards civil society. They seek to support civil society in order to achieve their own organisational objectives such as democratisation, poverty reduction and security rather than supporting civil society as an end in itself. For example, USAID provides the largest amount of funding to civil society and not through budget support, apart from the Millennium Challenge Account funding towards the energy sector in Malawi, all other USAID funding through projects.

USAID, DANIDA, NORAD, DFID and SIDA have been in forefront of assisting the development of civil society and funding of many CSOs in Malawi. Most if not all CSOs are dependent on donor funding and this has influenced the nature of relationship existing between donors and CSOs.

The nature of relationship and collaboration between donors and CSOs is again determined by the nature of programme being implemented i.e. whether it is a donor or CSOs designed programmes. Where government is perceived to lack the capacity donors have relied on CSOs expertise and experience to implement aspects of their programme support. Some of the donor programmes implemented by CSOs have fully sanctioned by the government. However, in most cases the donor determines the parameters under which the CSOs should operate to achieve its policy goals. In such cases the CSOs has little say in the modalities of implementation. These are therefore donor driven projects where CSOs are relegated to mere implementers.

Financial constraints and limited sources of funding have forced CSOs to depend on bilateral and multilateral donors to fund their programmes. This has tended to compromise CSOs interests and priorities as CSOs designed programmes have tended to lean towards donor interests and priorities to ensure funding. CSOs have their own mission statements that guide them in identifying areas of need and determine their own priorities. If these are too divergent from donor interests then funding may not be forthcoming. In Malawi sectarian CSOs have received less funding from bilateral and multilateral donors, because they are seen to serve their own interests. Thus though sectarian CSOs have played a significant role development in Malawi, donors have rarely provided funding to them directly. It is therefore easy for CSOs to get donor funding if their programmes fall in line with donor priorities (Makuwira, 2011).

4.3 Challenges of Donor-CSOs Engagement in Malawi

The challenges faced are many and varied. Some donors have been reluctant to implement programmes through CSOs because the financial and human resource constraints which tend to affect project implementation. Other donors, however, only cover programme activities and not project overheads such as salaries and yet most CSOs expect donors to fund the overheads of the projects they are implementing. Furthermore the financial constraints faced by most CSOs have limited the human

resource capacity of CSOs as such lack personnel to adequately implement and monitor projects. This has made CSOs less attractive to donors as partners in programme implementation.

Almost all Malawian CSOs rely almost exclusively on external sources of funding and usually seek funding from donors. CSOs have mission statements, which guide them in identifying areas of need. Donor priorities have affected CSOs priorities and programmes.

Most CSO programmes have ended up as projects. Most CSOs have failed to scale up their programmes beyond pilot areas or pilot phases. CSOs programmes have also failed to influence government policy and have not been adopted by government. It is also clear that issues of sustenance and scaling up of projects should be carefully thought of in the designs of CSOs programmes. The impact of a project becomes diffused when sustenance and scaling up are not incorporated in projects. Capacity building seems to be at the core of this issue. Part of the problem has arisen because CSOs have often designed their programmes without consultation with government.

The other concerns in Malawi are about the legitimacy of advocacy and campaigning groups, and the sustainability and succession of CSOs. Practical concerns include the duplication of activities (numerous CSOs providing similar services), multiple funding (several donors funding a CSO for the same activity) and the transaction costs for donors of dealing with a myriad of small organisations.

In addition, the shift in aid modalities and principles around development effectiveness principles has led donors to review their aid strategies. Until 2011, Malawi was one few countries in the region enjoying a substantial amount of donors providing budget support through the Common Approach to Budget Support Group (CABS) which comprised of DFID, the European Commission, Norway and the African Development

Bank. The World Bank, International Monetary Fund, United Nations Development Program and Germany are observer members – donors committed to providing budget support but who are not yet doing so. During this period, support to CSOs also changed. This led to a perception among some NGOs that donors had reduced funding to civil society and/or that their funding had been reduced because the government concerned did not favour their organisation.

The truth in Malawi though remained that donors continued to see value in engaging with civil society. Nevertheless, they are looking for neater, more efficient and less time-consuming ways of doing so and to this end are reassessing the purposes, extent and mechanisms of support for civil society. Donors are also seeking to frame their approaches to civil society within the broader framework of development effectiveness principles.

CHAPTER FIVE

5.0 CONCLUSION

5.1 Key issues

The ascendancy of the CSO sector, and especially of the role of the non-governmental development organisations, has brought with it high expectations. Not only are they expected to be champions of development and of the delivery of social services, but they are also expected to enforce human rights and bring democracy to countries under autocratic regimes – expectations have been particularly high on their ability (and willingness) to give voice to the poor. While these are good intentions, but very often CSOs hardly live by these fundamentals, given the challenging environments within which they operate. However, in Malawi’s case, one fundamental question needs to be asked: has civil society contributed to the nurturing of a young democracy and is it enhancing its relationship with the government? Overall, the answer is “*yes*”.

Given the challenges cited above, it can be argued that CSOs in Malawi have acted responsibly, albeit there is room for improvement. Civil society has created checks and balances in the era of the multiparty political system with the support of the donor and international community. On the one hand, there is a civil society that demands accountability and transparency from the government. Yet on the other hand, the government equally demands the same from CSOs. What is seen is an interface of two entities whose ideological positions are diametrically opposed. This is not just an issue about power but is also one about culture. Being in opposition to authority is largely translated to insubordination. This is why some political leaders find it hard to accommodate CSOs, as doing so would mean unduly surrendering their authority. By inference, this is also an indication that Malawi's political platform is still learning the new 'modus operandi' and is not yet ready to be inclusive and accommodative of differing views through free debate on controversial issues.

The culture of secrecy, mistrust and the fear of the unknown have negatively affected the CSOs' image as a sector. Quite often CSOs have preached the gospel of transparency and accountability, yet in reality they have not lived by these tenets. This obviously brings the quality of CSO leadership into question.

There are fundamental steps that can be taken to enhance CSO-government relations in a young democracy such as Malawi's. It has to be acknowledged that while civil society may not save or change the world, CSOs are here to stay, and after all the civil society movement is not a new phenomenon. The Malawi government, as discussed earlier in the article, has contributed by enabling CSOs to function in a relatively stable environment. However, the government can enhance the CSOs' contribution by, for example, mandating, facilitating, resourcing, partnering and endorsing them in service provision and policy advocacy and monitoring. Some of these strategies are already being implemented but two areas require the government's attention.

The government needs to intensify its effort in entering into joint development ventures with CSOs and publicize the value of public service philanthropy and publicly to acknowledge the role played by the non-governmental sector. Joint development ventures between CSOs and the government means a joint monitoring and evaluation of these development programs. It also means that the government has to develop laws and regulations that allow both CSOs and the government not only free access but also the sharing of information, a shared policy dialogue and the facilitation of media reporting, and, more importantly, the facilitation of reporting on each other's policy research findings. Unless some of these principles are institutionalized, the CSOs' contribution will remain piecemeal and haphazard.

5.2 Recommendations

In light of the findings in this report and the opportunity provided by the changes that have taken place since President Banda's accession to power, the following recommendations are being proposed:

5.2.1 The legal and regulatory environment, implementing rights and freedoms affecting CSOs

CSOs should ensure that Malawi must comply with its international legal obligations, including its human rights and reporting obligations. Strict adherence to the Constitution must be fostered, particularly the separation of powers and independence of the judiciary.

Attention must be paid to strengthening institutions supporting the rule of law and good governance, particularly the Malawi Human Rights Commission, the Malawi Law Commission, the Malawi Electoral Commission and the Office of the Ombudsman.

These institutions should be provided with adequate funding and human resources to fulfil their mandate.

CSOs in Malawi must enhance their work on public awareness to ensure that the public is better informed about the respective roles of institutions such as the MHRC, the MLC and the Office of the Ombudsman, which are necessary to advance the rule of law and human rights.

CSOs should continue its work promoting the rule of law and human rights principles, as it serves to counterbalance potential abuses of power by the executive. Malawian civil society should utilise African human rights institutions such as the African Commission on Human and Peoples' Rights and the African Court on Human and Peoples' Rights to protect and promote human rights, where necessary.

CSOs need to broaden and democratise their consultative process to include input from the grassroots, from social partners, academics and trade unions.

CSOs should develop a self regulatory mechanism such as codes of conduct to help streamline and protect the integrity of their work. At the same time they must work with government to facilitate laws to secure and anchor their work within their national constitutions.

5.2.2 Rights of Specific Groups

The situation of lesbian, gay, bisexual and transgender (LGBT) persons in Malawi is still perilous and demands more concerted action from civil society and activists. There is a need to intensify efforts to combat homophobia.

CSOs in Malawi need to approach government tactfully and with more understanding. The best approach is to convince people to accept these issues through dialogue with respect for their opinions. Understanding, respect and dialogue are required.

Experience has shown that in Malawi most administrations do not respond well to public criticism. A closed-door approach would perhaps be necessary to draw government's attention to the fact that political rhetoric is contradicting policy or expert opinion on homosexuality, and that this will have serious implications in the consolidation of human rights in the country.

CSOs advocating for LGBT rights need to start up a conversation with fellow members of civil society. Civil society is an important ally in this fight for LGBT rights. Speaking with one voice on this issue makes it easier to convince the public to see the issue our way.

For faith-based CSOs, LGBT issues are particularly tricky. Still, it is necessary to talk and convince them that LGBT rights are human rights, urging them to join hands with us in ensuring that all people are treated the same, regardless of sexual orientation.

5.2.3 Dialogue and Policy Influencing

There is need for Improved Participation in Country Based, Government Organised Sector Working Groups: CSOs need to streamline their engagement within the policy formulation process to maximise CSO contributions, e.g. through consistent representation in sector working groups.

The issue of strengthening quality and accountability should be at the forefront of any influencing work in Malawi. CSOs should aim at strong standards of quality and accountability in their work and functions to fulfil their monitoring role in local and national development policies and to facilitate recognition by people and governments.

To amplify their advocacy capacity and to ensure that their political space is not threatened CSO must strengthen their institutional and networking capacities to engage

with the official policy dialogue and its major actors based on collective minimum standard rules of engagement.

CSOs must be in a position to access formal channels to mobilise resources and develop partnerships for service delivery and advocacy. This must include citizen movements that governments are reluctant to register.

5.2.4 Spaces and Structures for Dialogue and Policy Influencing

Another way to get into the closed spaces is to mobilise and empower the rural masses, who are the primary stakeholders of the policies and are the electorate and therefore holds the power to change the political set up, would also provide or claim part of the closed space.

Understanding the stages of the cycle or knowing the calendar of events, for instance, when the technical reviews are scheduled is vital for timing of evidence based submissions from CSOs.

CSOs should strengthen collaboration with research institutions to provide them with research-based evidence that can form the basis for the policy advocacy which will be a good entry point for the invited spaces.

5.2.5 Access to information

There is need for strong coalitions at different levels to extensively and intensively lobby for the enactment of access to information bill into law. Even with the law in place, there might still be some resistance on the part of public officers.

On the other hand, the public may not be fully aware about their rights to access public information. This calls for massive public awareness programmes, focusing on both the supply and demand sides of the access to information equation, which can be championed through sectoral coalitions.

CSOs should also advocate for the government to revamp their information systems. Pressure for the government to open up should be increased. Opening up government will streamline many governance processes, improve bureaucratic efficiency, reduce corruption, support economic growth and foreign investment and result in better-targeted development initiatives.

5.2.6 Donor-CSO Relations

The research has revealed that it is hard to imagine the sustainability of CSOs in the present Malawi without the support of donors. This is at the core of the issue of sustainability and legitimacy.

CSO dependence on donor funding has compromised the scope of programmes they are implementing in supporting good governance and protecting and promoting human rights. Therefore it will be of good benefit should CSOs and other watchdog institutions in Malawi diversify their resource base so that there are much more independent in order to avoid being seen as implementing and championing donor agendas.

Since watchdog function is political in nature and where many of them are being - accused of benefiting and advancing foreign agendas, having internal means of sourcing funds would silence their accusers and the grassroots will begin to appreciate their role · they play as being having their agendas advanced.

REFERENCES

- Bamusi, M. (2006), 'Establishing Linkages with Civil Society: The Case of Malawi Parliament and the Malawi Economic Justice Network.' Pretoria: SARPN.
- Barr, A., M. Fafchamps, and T. Owens, (2005), 'The governance of non-governmental organisations in Uganda', *World Development* 33(4): 657-679.
- Calderisi R (2006), 'The Trouble with Africa: Why Foreign Aid Isn't Working.' New Haven, CT and London: Yale University Press.
- Chigona, G. (2006), 'Church and Politics in Malawi: A Critique concerning the living of the Catholic Social Teachings (1964-2004). PhD, dissertation, University of Malawi
- Chirwa, W.C. (2000), 'Civil Society in Malawi's Democratic Transition' in M. Ott, et al (eds) *Malawi's Second Democratic Elections: Process, Problems, and Prospects*, pp. 87-119. Montfort Media, Balaka, Malawi.
- Gaventa, J (2006), 'Finding the spaces for change: a power analysis.' *IDS Bulletin*, volume 37, number 6.
- Gill, L., (1997), 'Power lines: the political context of non-governmental organisation (CSO) activity in El Alto, Bolivia', *Journal of Latin American Anthropology* 2(2): 144-169.
- Glagow, M, (1997) 'Non Governmental Organisations-A Theoretical Frame', in: Glagow, M, Lohmann, H & et al. *Non Governmental Organizations in Malawi: their Contribution to Development and Democratization*, Transaction Publishers, New Jersey, USA.
- Government of Malawi (GoM) (2008) 2008/09 Budget Highlights Delivered by Hon. Goodall Gondwe, MP Minister of Finance at New State House, Lilongwe on 23 May.
- Kaliya, E (2003), 'Human Rights and Women's Rights', Paper presented at a Church based Organisation Workshop Coordinated by the Norwegian Church Aid, Kalikuti Hotel, Lilongwe, Malawi. (27th January)
- Kanyongolo, F. E. (2007), 'The Constitution' in Patel, N & Svasand, L. *Government and Politics in Malawi*, Kachere Series, Zomba, Malawi
- Kanyongolo, E., (2012) 'Obstacles to access to information in Malawi', MISA Research Report Lindblom, C.E (1977) *Politics and Markets: The World's Political-Economic Systems* (New York: Basic Books).

Lewis, D., (2005), 'Actors, ideas and networks: trajectories of the non-governmental in development studies', in U. Kothari (ed.), *A Radical History of Development Studies*, London: Zed Books.

Makuwira, J., (2011) 'Civil Society Organizations (CSOs) and the Changing Nature of African Politics: The Case of the CSO-Government Relationship in Malawi' *Journal of Asian and African Studies*, 46(6) 615-628

Mkandawire, T (2003), 'Freedom and Empowerment' in Imrriink, B, Lemban S, Ott, M & PetersBerries, C, *From Freedom to Empowerment: Ten Years of Democratization in Malawi, Forum for Dialogue and Peace*, Lilongwe, Malawi

Moyo D (2009), 'Why Aid is Not Working and How there is a Better Way for Africa.' New York: Farrar, Straus & Giroux.

Murray, W. E., and J. D. Overton, (2011), 'Neoliberalism' is dead, long live neoliberalism? Neoliberalism and the international aid regime of the 2000s', *Progress in Development Studies*, 11(4): 307-319.

Mwalubunju, O. (2007), 'Civil Society' in Patel, N & Svasand, L. *Government and Politics in Malawi*, Kachere Series, Zomba, Malawi

Ott, M (2000), 'The Role of Christian Churches in Democratic Malawi (1994-1999)' in Ott, M, Phiri, K.M and Patel, N, *Malawi Second Democratic Elections, Process, Problems, and Prospects*, The Kachere Series, Zomba, Malawi

The International Centre for Not-for-Profit Law (1997), 'Handbook on Good Practices for Laws Relating to NGOs:' The World Bank Publication.

Pachai, B., (1973), 'Malawi: The History of the Nation,' London: Longman Group Limited