

# PUBLIC PARTICIPATION IN LAW AND POLICY MAKING IN MALAWI

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AND REHABILITATION (CHRR)**

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"The Noble Cause is Evident in the People Themselves"

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## LIST OF ACRONYMS

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<b>ACHPR</b>	African Commission on Human and Peoples' Rights
<b>ATI</b>	Access to Information
<b>CBO</b>	Community Based Organisation
<b>CEDEP</b>	Centre for the Development of People
<b>CHRR</b>	Centre for Human Rights and Rehabilitation
<b>CONGOMA</b>	Council for Nongovernmental Organizations in Malawi
<b>COVID -19</b>	Coronavirus Disease
<b>CRPD</b>	Convention on the Rights of Persons with Disabilities
<b>CSO</b>	Civil Society Organizations
<b>DAS</b>	Development Assistance Strategy
<b>DEC</b>	District Executive Committee
<b>EITI</b>	Extractive Industries Transparency Initiative
<b>FGD</b>	Focus Group Discussion
<b>GEA</b>	Gender Equality Act
<b>HIV/AIDS</b>	Human Immunodeficiency Virus/Acquired Immunodeficiency Syndrome
<b>HRD</b>	Human Rights Defender
<b>HRDC</b>	Human Rights Defenders Coalition
<b>ICCPR</b>	International Covenant on Civil and Political Rights

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<b>ICNL</b>	International Centre for Not- For-Profit Law
<b>MANET Plus</b>	Malawi Network of People Living with HIV/AIDS
<b>MDAs</b>	Ministries, Departments and Agencies
<b>MEJN</b>	Malawi Economic Justice Network
<b>MGDS</b>	Malawi Growth and Development Strategy
<b>MISA</b>	Media Institute for Southern Africa
<b>MLS</b>	Malawi Law Society
<b>NAP</b>	National Action Plan
<b>NGO</b>	Nongovernmental Organization
<b>NPC</b>	National Planning Commission
<b>OHCHR</b>	Office of the High Commissioner for Human Rights
<b>OPC</b>	Office of the President and Cabinet
<b>OGP</b>	Open Government Partnership
<b>PROTECT</b>	Protecting Rights, Openness and Transparency - Enhancing Civic Transformation
<b>PSIA</b>	Poverty and Social Impact Analysis
<b>PWAs</b>	Persons with Albinism
<b>SADC</b>	Southern Africa Development Community
<b>SONA</b>	State of the Nation Address
<b>SWG</b>	Sector Working Group
<b>UDHR</b>	Universal Declaration of Human Rights
<b>UN</b>	United Nations
<b>VDC</b>	Village Development Committee



### Executive Summary

For 30 years, Malawi was a one-party state in which citizen participation in law and policy-making was almost non-existent. The political institutional architecture of the one-party state removed any spaces where ordinary citizens could engage with their government on law and policy matters. Policymaking was the domain of the president and, to a small extent, party officials and this was consolidated and sustained by the four cornerstones of the Government, namely Unity, Discipline, Loyalty and Obedience, which were enshrined in section 2(1)(i) of Malawi's 1966 Constitution<sup>1</sup>. In that kind of framework, any policy opinion that was different from that contemplated and announced by the president was regarded as dissent and a threat to the political stability considered necessary for social and economic development. Essentially, the annual party conventions of the then ruling party, the Malawi Congress Party (MCP), served as the forum for policy formulation.

In 1993, there was a shift to a new era after a referendum was held in Malawi to become a democratic state. This change in the political architecture was accompanied by various legal and institutional reforms to conform to the new system of governance. One of the reforms was the adoption in 1994 of a new democratic constitution, replacing the 1966 Constitution. The Constitution reinstated the Bill of Rights, which had been removed from the 1966 Constitution. One of the rights that had been restored was the right to participation. Section 40(1)(c) of the Constitution states that "every person shall have the right to participate in peaceful political activity intended to influence the composition and policies of the government"<sup>2</sup>. This constitutional provision was followed by the introduction of various mechanisms to enable citizen participation in democratic processes at national, district and local levels.

Despite the existence of these mechanisms, the level of citizen participation in law and policymaking processes in Malawi remains low and opportunities to participate in consultations on policy frameworks are still limited. As a result, the policies and decisions made by the government do not adequately reflect the issues raised by citizens and fail to incorporate the most pressing needs of local communities.

Against this background, the Centre for Human Rights and Rehabilitation (CHRR), with funding from the International Center for Not-for-Profit Law (ICNL) under a collaborative project titled PROTECT (Protecting Rights, Openness and Transparency - Enhancing Civic Transformation),<sup>3</sup> undertook this study on public participation in law

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<sup>1</sup> <https://malawilii.org/mw/legislation/act/1966/23>

<sup>2</sup> [http://www.nice.mw/images/Constitution\\_Malawi.pdf](http://www.nice.mw/images/Constitution_Malawi.pdf)

<sup>3</sup> PROTECT is a UK Foreign, Commonwealth and Development Office (FCDO)-funded consortium partnership for knowledge and learning in Malawi, Kenya and Myanmar aimed at countering shrinking civic space, easing pressure on free media and infomediaries, and enhancing transparency through better civil society access to data and information. Specific interventions under PROTECT in Malawi are geared towards empowering civil society

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and policymaking in Malawi. This study sets out to identify the key gaps and challenges facing civic participation in law and policy-making processes in the country, particularly for vulnerable and marginalized groups, such as women, youth, persons with disabilities and members of the lesbian, gay, bisexual, transgender, intersex, and queer (LGBTIQ) community. The study recommends innovative approaches or interventions that can improve citizen participation and oversight. The study examined:

- the extent to which existing regulatory frameworks provide an enabling environment for public participation in law and policymaking at the national and local government levels.
- gaps and practical obstacles that hamper public participation in law and policy formulation and opportunities to enhance effective civil society engagement in governance and decision-making processes.
- strategies to ensure effective participation and engagement between citizens and decision-makers, in line with international standards on fundamental freedoms, transparency, and governance; and
- strategies for increasing public participation opportunities for marginalized and vulnerable groups in Malawi.

This report relies on primary and secondary data from three main sources, namely literature review, focus group discussions (FGDs) and interviews with a variety of respondents. The literature review analyzed existing legal and institutional frameworks on public participation and assessed whether these provide an enabling environment for civil society in line with international norms and best practices.

The study found that though space for public participation is presently more open compared to the one-party era, actual participation is still sporadic. This is mainly due to government agencies' top-down approaches, inadequate publicity of policy and legislative processes, capacity gaps in civil society and low levels of literacy that inhibit a grasp of the policy procedures and what the policies imply. The study further found that the right to public participation has been recognized in various legal and policy instruments in Malawi and provisions in the various international legal treaties to which Malawi is party. The Constitution, statutory laws, policies, and multilateral initiatives such as the Open Government Partnership (OGP) recognize the right of citizens to participate in legislative and policymaking processes. However, the study

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organizations (CSOs), human rights defenders and infomediaries to hold the government accountable with the aim of expanding and protecting the civic space.

found that some State agencies are inconsistent in respecting these instruments and commitments.

One of the critical enablers of citizen's participation in policy and law-making is access to information. Malawi adopted the Access to Information Act (ATI Act) in December 2016 partially fulfilling the OGP National Action Plan (NAP) commitments on Freedom of Information. The Act was operationalized on 30<sup>th</sup> September 2020<sup>4</sup>. Despite this law, Malawi faces various challenges in ensuring public access to information, as a result of high illiteracy rates, high internet costs<sup>5</sup>, a culture of apathy and unwillingness to release information by public officials and the existence of laws that promote government secrecy and withholding of public information. Such laws include the Official Secrets Act (Cap 14:01) and the Mines and Minerals Act, 2018<sup>6</sup>, which prevents individuals from accessing information on mining companies.

The study also found that although structures such as sector working groups and decentralization frameworks exist to provide forums for negotiation and policy dialogue, the Government has not come up with an agreed-upon overarching framework for policy processes. This has resulted in varying processes amongst government agencies that initiate policies to make their own decisions on modalities for consultations based on the subject matter. This open process leaves out key constituencies from consultative processes, especially marginalized groups that need to be deliberately targeted in order to ensure their effective participation.

Another common feature in the policymaking in Malawi is the political influence that affords fast-tracked approvals of policies that are not always in line with medium and long-term development frameworks. Most stakeholders in government agencies, CSOs and the public, agree that public participation in the design and implementation of policies in government is not sufficient. The most marginalized groups in public participation in law and policymaking include women, people with disabilities, sexual and gender minorities, and the youth. In this study, knowledge gaps, lack of contact with state representatives and information gaps are the most cited factors that prevent ordinary people from adequately participating in the legislative and policy process.

In addition, it was found that lead Government agencies are not able to clearly articulate policy frameworks and processes, making it difficult for CSOs to support such processes effectively by providing citizen perspectives. Moreover, both the Government agencies and the CSOs lack the technical expertise and financial resources needed to provide the necessary leadership to the public on how participation in policy-making processes could be effectively undertaken. This lack of capacity has resulted in a number of policy

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<sup>4</sup> <https://malawilii.org/mw/gazette/29>

<sup>5</sup> <https://malawi.misa.org/2019/02/23/digital-rights-how-expensive-is-the-internet-in-malawi/>

<sup>6</sup> Section 38 (4) prevents the public from accessing information from mining companies until two years after the expiry or termination of the mining licenses. Available at <https://malawilii.org/mw/legislation/act/2019/8-2019>

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processes being driven and determined by donor agencies. However, there are some policy processes where government has consulted various stakeholders, including grassroots communities, such as the annual budgets and medium-term development frameworks like the Malawi Growth and Development Strategy (MGDS).

The study noted that the legislative process in Parliament is more structured and systematic. Bills are read three times during the chamber stage and debated following each reading. If passed in the House, Bills are referred to the president for consent. Engagement between Parliament and the general public is, on the other hand, weak as parliamentarians rarely visit their constituencies for consultations; the outreach office at Parliament is also not adequately resourced to engage the public directly on a regular basis.

On both the demand and supply sides of the policy making process, factors that can contribute towards the improvement of public participation in the making and implementation of public policy and laws in Malawi include:

- i. public awareness of the participation processes,
- ii. publicizing the proposed policies and
- iii. media engagement.

Radio remains the most effective channel for communication on important policies and bills, whilst meetings/conferences are the most popular consultative channels. CSOs have been identified as the most active agents that reach out to communities on policy and legislative issues.

The study also identified existence of legal frameworks, policy and legislative structures as opportunities that can be utilized to enhance participation of the public in law and policymaking.

### Key Recommendations

The study provides the following key recommendations to strengthen participation in policymaking:

**With respect to the legal framework**, Government, Ministries, Departments and Agencies should:

- Ensure effective and robust implementation of the ATI law by all public institutions including empowering the public through awareness creation campaigns on the importance of this law.
- Ensure effective and robust implementation of existing legal frameworks that are key to ensure participation of marginalized groups in public affairs, such as the Gender Equality Act and the Disability Act.

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- Enforce the 60:40 ratio in relation to gender representation as required under section 11(1) of the Gender Equality Act. Specific laws on enforcing these quotas in Parliament and public service should be enacted.
- Harmonize all domestic laws and policies in line with the Convention on the Rights of Persons with Disabilities, the UN Convention on the Rights of the Child, the African Charter on the Rights and Welfare of the Child, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, and the African Youth Charter to enable women, children, persons with disabilities and young people participate in public policy processes more effectively.
- Create an enabling environment for journalists, human rights defenders, and other civil society actors to ensure their active and informed engagement/oversight in public policy and law making. Consultations on impending bills such as the proposed NGO Bill, the National Youth Council of Malawi Bill, 2019, and the National Peace Commission Bill among others, should be inclusive and exhaustive to ensure that all views of affected stakeholders are considered and the laws are consistent with applicable human rights norms, including the African Commission Guidelines on Freedom of Association and Assembly in Africa (2017).
- Ratify the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa.
- Adopt comprehensive legislation that promotes diversity and inclusion for all, and prohibit all forms of discrimination, including on the grounds of sexual orientation and gender identity.

### **To improve public participation in policy and lawmaking, government should:**

- Ensure involvement of more citizens and CSOs in multilateral initiatives such as the OGP in order to provide space for all major stakeholders to make input in government commitments and their domestic implementation. This would also ensure that the public holds those in government accountable for their obligations under such agreements.
- Adequately resource Parliament's outreach office to include modern and innovative information and communication technologies (ICTs) such as mobile phones and social media platforms.
- Strengthen the capacity of the Malawi Law Commission to fulfil its broad mandate on promoting legal reforms with emphasis on ensuring participatory processes with diverse actors, including CSOs. Human and financial resourcing of the institution are some of the key areas that require investment.

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- Provide information on participation processes, across all government institutions, including in Parliament, to the public through easily accessible traditional media outlets like the radio. Such information should be provided in local languages where access to modern ICT tools is limited.
- Build a strong partnership between Government institutions, Parliament and CSOs to improve public awareness on law making processes.
- Clearly articulate and publicize the standard policy-making process in Malawi, which should outline modalities through which public participation will be undertaken. These processes need to be complemented with administrative mechanisms to promote adherence and monitor compliance with these requirements.
- Strengthen the public and private media to enable outreach at the grassroots level through programmes aimed at inclusion of different groups in policymaking and implementation processes.
- Enhance e-governance systems across all government institutions in order to ensure that public policy tools and strategies are in line with and take advantage of technological developments and advancements for greater public participation.
- Establish a system of continuous education of civil servants and employees in local self-government bodies on the role and importance of civil society in a democratic society, as well as necessity and usefulness of CSO-government cooperation in decision making processes.
- Ensure that local government structures are easily understood by all who intend to use them. Roles of chiefs, Area Development Committees and ward councilors should be streamlined so the general public understands the specific role and mandate of these institutions.

### Role of CSOs in public participation

#### **CSOs should:**

- Collaboratively engage in advocacy in order to strengthen the implementation of the Access to Information law. CSOs need to take advantage of the advocacy opportunities available while the new government establishes itself.
- Mobilize strong CSO networks and dialogue with the new government to ensure that the establishment of the NGO Regulatory Authority under the 2019 NGO policy is not used as an instrument to interfere with the work of NGOs, or to undermine their independent role in policymaking.

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- Collaborate with government to come up with the national strategy for civil society development, which should identify priorities for CSO operations and their sustainability as influential actors in policy and law-making processes.
- Promote transparent and efficient civic participation mechanisms in the procedure of designing of laws and other public policy instruments. Such mechanisms should in more detail define minimum standards of participation and consultation (this refers to both executive and legislative authorities and to local self-government bodies).
- Clarify CSO roles in public policy participation so that they do not duplicate government duties. CSOs should focus on value addition to public participation processes in policy and law-making.
- Establish more consistent collaboration and/or partnerships with broader CSO actors including independent media, academic, research and educational institutions to increase demand for public participation in law and policy making.
- Mainstream gender equality representation in the CSO sector and ensure that the needs and voices of marginalised groups are identified and integrated in sector priorities and engagements with government, including on law and policy making issues.
- Raise awareness among CSOs on the necessity of cooperation with the State in public governance.
- Acquire more knowledge on the functioning of the State administration, as well as on procedures and mechanisms around designing and adopting laws and other public policy instruments, in order to communicate such information effectively to the public and better facilitate public participation.
- Acquire education and specialization capacities in order to monitor adopted public policies and to evaluate their impact in practice during implementation (e.g., direct experience with target groups).

### Participation of vulnerable groups

- Ensure effective and robust implementation of existing frameworks promoting the participation of women, youth, and persons with disabilities.
- Create consultative committees with representatives of vulnerable groups to promote their participation in policymaking and decision-making processes.
- Intensify and accelerate public awareness raising and outreach campaigns for the vulnerable groups.

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- Resuscitate the Poverty and Social Impact Assessment Committee at Cabinet level, so that all policies are assessed on their intended or unintended impacts on the poor and other marginalized groups who usually have no platform to voice their concerns.
- Electoral laws such as the Presidential and Parliamentary Elections Act (PPEA), the Local Government Elections Act (LGEA), the Electoral Commission Act (ECA), and all electoral regulations and guidelines, including the constitutions of the political parties, should be reviewed to assess their impact towards attaining equality and non-discrimination at the political level.
- Malawi's political parties need to put in place deliberate policies, programmes, and strategies to target youth, women and persons with disabilities and promote their participation in politics.



## 1.0 INTRODUCTION AND BACKGROUND

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### 1.1 Background

Malawi is a small landlocked country in Sub-Saharan Africa bordered by Tanzania to the north and northeast, Mozambique to the east, south, and southwest, and Zambia to the west. According to the 2018 Census, the country has an estimated population of 17.5 million, up from 13.02 million in 2008 (NSO, 2018). In recent years, Malawi has made significant economic and structural reforms (World Bank, 2019). However, the country remains one of the poorest countries in the world, ranking at 171 out of 187 countries on the United Nations' 2016 Human Development Index (UNDP, 2017).

Malawi was a one-party state from 1966 when it became a republic to 1993 during which time citizen participation in policymaking processes was almost non-existent. The political institutional architecture of the one-party state removed any spaces where ordinary citizens could engage with their government on policy matters. Policymaking was the domain of the president and, to a smaller extent, party officials which was consolidated and sustained by the four cornerstones of unity, discipline, loyalty, and obedience.

In this political setting, any policy opinion that was different from that contemplated and announced by the president was regarded as dissent and a threat to political stability. Essentially, the annual party conventions of the then ruling party, the Malawi Congress Party (MCP), was the forum for policy formulation. It was therefore typical for citizens to defer to their delegates to the national convention as their voice.

In 1993, Malawi witnessed the advent of a new era following a referendum that was conducted to form a democratic state. This change in the political architecture was inevitably accompanied by various institutional reforms to align with the new system of governance. The political reforms that were instituted were basically aimed at reorganizing the distribution and exercise of power.

A key reform in this respect was the adoption of the Constitution of the Republic of Malawi, which mandates the government “to initiate and enact policies and legislation that embody the express wishes of the people” and to “ensure that deliberations on laws reflect the interests of the people.”<sup>7</sup> From 1995, citizen participation became a constitutional guarantee and a policy concern for the government and the people of Malawi.

Another key reform was the decentralization of government, which effectively meant that power and resources devolved from central to local government areas. Consequently, the **Decentralization Policy** was adopted by Cabinet in 1996 and

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<sup>7</sup> Sections 7 and 8

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approved by Parliament in 1998 together with an enabling legislation, the Local Government Act, which was enacted in 1998. However, since the adoption of the Decentralization Policy, a persistent observation has been made by civil society organizations, the media, local politicians, and development partners that the development outcomes from that framework are not necessarily in favour of the poor, particularly their civic empowerment<sup>8</sup>.

The status quo at the time the **Open Government Partnership National Action Plan (2016-18)** was adopted was that, although mechanisms existed for engaging citizens in democratic processes through regular elections, participation in local government development planning and consultations on policy frameworks was low. Limited consultations and lack of mechanisms for providing feedback on the performance of government were barriers to public participation. One of the goals set in the National Action Plan was to improve freedom of information.<sup>9</sup> Although government passed the Access to Information Act during the National Action Plan period, implementation stalled due to continued delays in operationalization of the Act. The Act was eventually operationalized in September 2020<sup>10</sup>.

Despite the outlined setbacks in public participation in policy and lawmaking, participation in elections has been one of the areas the Malawian public embraces. When the 2019 presidential elections results were declared and disputed by opposition parties, the public conducted mass demonstrations for months under the leadership of Human Rights Defenders Coalition (HRDC). The persistence and vigour of these demonstrations showed how far the Malawian public can go in demanding for justice and expressing their opinions on governance affairs. Such potential offers optimism for advocates of public participation in policy and law and needs to be further explored.

Against this background, the Centre for Human Rights and Rehabilitation (CHRR), with funding from the International Center for Not-for-Profit Law (ICNL) under the PROTECT program, undertook this study on public participation in law and policymaking in Malawi. This report highlights several examples of state practices that do and those that do not meet international legal norms and standards with regards to citizen participation in policy and law-making processes. Through expounding on the current state of public participation in law and policy-making in Malawi, as well as highlighting actual practices in law and policy-making processes and barriers thereto, this report seeks to advance strategies to ensure effective participation and engagement between citizens and decision-makers, in line with international standards on fundamental freedoms, transparency, and governance, and with specific emphasis on

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<sup>8</sup> Chingaipe, M and Msukwa, C (2011), '*Whose Voice?: Citizen participation and influencing public policy in Malawi*' retrieved from [https://www.academia.edu/4683131/Citizen\\_participation\\_in\\_Public\\_Policy\\_Processes\\_in\\_Malawi](https://www.academia.edu/4683131/Citizen_participation_in_Public_Policy_Processes_in_Malawi)

<sup>9</sup> <https://www.opengovpartnership.org/documents/malawi-end-of-term-report-2016-2018/>

<sup>10</sup> <https://malawilii.org/mw/legislation/act/2017/13>

increasing public participation opportunities for marginalized and vulnerable groups in Malawi.

### 1.2 Objectives of the study

The overall aim of the study is to identify the key gaps and challenges facing civic participation in law and policymaking processes in Malawi, especially for women and CSOs working on gender issues, and recommend innovative approaches or actions that can improve such citizen participation and oversight. The study focused on the following key elements:

- Examining the extent to which existing regulatory frameworks provide an enabling environment for public participation in law and policymaking at the national and local government levels.
- Identifying the gaps and practical obstacles that hamper public participation in law and policy formulation and opportunities to enhance effective civil society engagement in governance and decision-making processes.
- Advancing strategies to ensure effective participation and engagement between citizens and decision-makers, in line with international standards on fundamental freedoms, transparency, and governance.
- Identifying strategies for increasing public participation opportunities for marginalized and vulnerable groups in Malawi.

### 1.3. Conceptual Understanding of Citizen Participation

The concept of citizen participation has been defined as a process in which individuals, groups, and organizations have the opportunity to take part or to be involved in making decisions that affect them, or in which they have an interest. Through this process, ordinary citizens acquire power that enables them to be involved in political, social, or economic processes<sup>11</sup>. Participation is characterized at different levels by how much power citizens have acquired, as the table below shows:

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<sup>11</sup> Sherry R. Arnstein (1969) A Ladder of Citizen Participation, Journal of the American Institute of Planners, 35:4, 216-224, DOI: [10.1080/01944366908977225](https://doi.org/10.1080/01944366908977225)

Table 1: Integrated Framework for Participation

Type of participation	Labeling participation and non-participation	Substantive description of participation
Instrumental	1. Manipulation	People placed on rubberstamp committees or boards Officials educate, persuade and advise citizens not the reverse.
	2. Therapy	Officials assume mental retardation or ignorance on the part of the people. Officials provide group therapy instead of responding to public policy problems identified by the people.
	3. Informing	One-way communication from officials to the people about policy or programmes. It covers both passive access to information upon demand by citizens and active measures by government to disseminate information to citizens.
	4. Consultation	It is based on prior definition by government of the issue on which citizens' views are being sought and requires the provision of information. Citizens provide feedback. Often reduces people to statistical units – measured by how many people attended meeting.
Transformative	5. Placation	Citizens actively engage in policy process and have some degree of influence in shaping policy dialogue and content though tokenism is apparent.
	6. Partnership	Planning and decision-making responsibilities through joint committees. Requires an organized power base in the community.
	7. Delegated	Citizens achieve dominant position over a particular policy, plan or program. In some cases, citizens may have veto power.
	8. Citizen control	Citizens have a degree of power or control which guarantees that they can be in full charge of policy and managerial aspects and can negotiate the conditions.

Source: Chingaipe 2012 (modified by author)

## CENTRE FOR HUMAN RIGHTS AND REHABILITATION

Enablers for citizens' acquisition of power for better participation include a framework of laws, policies, principles, and techniques, which ensure that citizens and communities, individuals, groups, and organizations have the opportunity to take part in a meaningful way in the key arenas of political, social and economic governance.

Citizens can participate in political, actual policy making as well as in legislative processes. Under certain circumstances public participation is made more effective through civic engagement where CSOs are involved. The following paragraphs explain these modes.

### 1.3.1 Civic Participation in Political Affairs

Political participation is often differentiated from the general participation in public affairs in a democracy. This participation influences the selection of government and the actions it takes. Such participation can involve voting in elections, engagement with political representatives and demonstrations or citizen action on the streets to force government action on an issue.<sup>12</sup> Civil participation in political electoral processes allows citizens to vote for candidates who will represent their interests within the ruling circles. This participation also allows citizens to challenge those representative positions.

In Malawi, political participation has been high especially during elections. Section 40 of Malawi's Constitution specifically singles out political participation by recognising the rights of every person:

**“(a) to form, join, participate in the activities of, and to recruit members for, a political party; (b) to campaign for a political party or cause; participate in peaceful political activity intended to influence the composition and policies of the Government; and (c) freely to make political choices”.**

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The push for justice in the 2019 contested elections is an example of the extent to which Malawi citizens can make use of their constitutional rights to push for justice during electoral period. The rest of public participation modes have lacked this drive.

### 1.3.2 Civic Participation in Legislative Processes

In representative democracies, representatives are elected to, among other things, represent constituents in parliament when making laws and passing other resolutions. This however does not suspend citizens' constitutional right to participate directly in the legislative process, according to the OHCHR Guidelines on Public Participation<sup>13</sup>.

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<sup>12</sup> Mansbridge (2018)

<sup>13</sup> <https://www.ohchr.org/EN/Issues/Pages/DraftGuidelinesRighttoParticipationPublicAffairs.aspx>

Participation in the legislative process requires some enabling structures in parliament and other legislative bodies, that allows citizens to express their views on pieces of legislation under discussion. Numerous inadequacies in the representative systems necessitate direct participation of citizens, otherwise, many perspectives would be left out of law-making processes.

### 1.3.3 CSO Engagement

The existence of CSOs is often taken as one effective means of including the poor and excluded in decision making processes. CSOs are viewed as independent voices providing oversight and pushing for reform and efficiency on responsible government agencies. Citizens may organize themselves or CSOs can take up the role of mobilizing citizens' voices to be heard in decision-making and legislative processes. Even though this trust is often placed in CSOs, there have been many concerns about their accountability and legitimacy on account of receiving foreign funding. Another fear is that CSOs may extend their roles to take up government obligations. The following section explains these concerns.

### 1.3.4 Key Elements that Crucially Affect the Role of CSOs

The United Nations Research Institute for Social Development (UNRISD, 2000) lists four key elements that crucially affect the role of CSOs in relation to the making and implementation of policy at national and local levels:

- i. *Existence*: in many countries, people face severe constraints in seeking to establish and maintain a CSO. There may be legal constraints to registering CSOs, as well as political constraints, which may include violence and intimidation. Financial constraints often exist because members are typically unable to make substantial financial contributions to their organizations. Furthermore, the preference of many donors to fund reparatory work rather than advocacy that addresses underlying causes of social problems, together with their tendency to issue short-term funding, exacerbates these financial constraints.
- ii. *Knowledge*: there is a need for practical knowledge that involves front line experience to avoid patronizing attitudes. CSOs also need technical expertise and experience in policy-making processes. They require familiarity with the key structures, procedures and personalities involved in the development and implementation of policy in order to influence policy.
- iii. *Access* both to government and the public: CSOs need to gain and maintain access to the people most influential in policy formulation. CSOs also need access to the public through the media and other means with better

communication strategies in order to better persuade people of the validity of their goals and strategies.

- iv. *Influence* may be achieved through: intellectual persuasion, where discussions include constructive and specific recommendations; political strength that depends heavily on the existence of accountability and integrity in governance; or financial power that depends on achieving mass support to build financial resources, or to mobilize pressure on the financial position of other actors.

The key elements point to the need for CSOs to have adequate capacity to do their job, a good and conducive legal and policy environment for their operations as well as the ability to mobilize resources to finance their operations.

### 1.4 Methodology

The study was conducted in Malawi between July and August 2020. The research examined the extent to which existing regulatory frameworks provide an enabling environment for citizen engagement at the national and local government levels and identified gaps and practical obstacles that hamper civic participation in law and policy formulation.

The research collected primary and secondary data to inform a comprehensive assessment of the relevant participation issues impacting on civic space. The data was collected from three main sources –that is, literature, focus group discussions (FGDs) and interviews.

An in-depth literature review was undertaken using online sources as well as statutes, articles and other sources. A desk review of existing legal and institutional frameworks on public participation assessed whether these provide an enabling environment for civil society in line with international norms and best practice; and identified the regulatory policies that affect citizen participation and engagement in law and policymaking. This involved collecting and reviewing policies, laws and regulations relating to public participation. CHRR had access to public offices where these documents are kept. CHRR also made use of various electronic sources available on the internet. This enabled CHRR gather relevant information that guided the study.

Key informant interviews were conducted with 16 key stakeholders including, 4 from Government agencies, 11 from civil society actors/leaders and networks (including representatives of women, youth, persons with disabilities and LGBTIQ community), and 1 academic. Interviews were guided by a semi-structured questionnaire (***attached in the annexes***) and largely through telephone calls due to the COVID-19 preventive restrictions that demand social distancing and minimum physical contacts among individuals.

Focus Group Discussions were conducted with two Village Development Committees in Salima district. The first was from Mayambo and Kazembe villages comprising of 18 respondents. The second comprised 15 members from Chisepo, Waya and Nkhono villages. (***The list of participants is attached in annex 1).***

Through content analysis, the study synthesized and searched for the general pattern by grouping data into meaningful categories. Quantitative data was organized, coded, and analyzed using the Kobo Tool kit and Microsoft excel. Consequently, data was summarized, compiled and presented using tables and graphs to enable comparison and for easy interpretation.

During the study, a number of ethical principles were followed. Identifying information about the participants and their associations/organizations remained confidential. Participation in this study was completely voluntary. Participants were given freedom not to respond to questions they were not comfortable with.

### 1.5 Study limitations

It must be stated at the outset that time was one of the biggest limitations to this study as we had a limited timeframe to accomplish the task. In addition, due to the Coronavirus Disease (COVID-19) outbreak and related restrictions, the survey relied mostly on online and telephone interviews.



### 2.0 INTERNATIONAL NORMS ON THE RIGHT TO PARTICIPATION

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#### 2.1 Introduction

There are a number of laws and policies, as well as guidelines, which inform the processes for public participation in policy and lawmaking in Malawi. These frameworks are found at international, regional, and national levels.

#### 2.2 International and Regional Legal and Policy Frameworks

The right to public participation is one of the fundamental rights guaranteed in various international human rights instruments to which Malawi is bound. These include the Universal Declaration of Human Rights (UDHR), the International Convention on Civil and Political Rights (ICCPR), the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) and the Convention on the Rights of Persons with Disabilities (CRPD).

The UDHR (Article 21) stipulates that the will of the people shall be the basis of authority of a government. In addition, the UDHR states that every person has a right and should have the opportunity to, directly or through a chosen representative, take part in public affairs or government activities.<sup>14</sup> Article 25 of the International Covenant on Civil and Political Rights (ICCPR) provides that every citizen has the right and the opportunity without unreasonable restrictions to participate in the conduct of public affairs directly or through freely chosen representatives, has the right to vote and access on an equal footing the public service in their country.

Upon becoming signatories to the Convention on the Elimination of all forms of Discrimination against Women (CEDAW), States commit themselves to undertake a series of measures to end discrimination against women in all forms. Under the Convention on the Rights of Persons with Disabilities (CRPD), States Parties are obligated to take all appropriate measures to ensure that persons with disabilities can exercise the right to freedom of expression and opinion, including the freedom to seek, receive and impart information and ideas on an equal basis with others and through all forms of communication of their choice.

The United Nations Convention Against Corruption, Article 13 provides that each State Party shall take appropriate measures, within its means and in accordance with fundamental principles of its domestic law, to promote the active participation of

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<sup>14</sup> UDHR is a non-binding instrument as it is not a treaty: <https://www.amnesty.org/en/what-we-do/universal-declaration-of-human-rights/>

individuals and groups outside the public sector, such as civil society, nongovernmental organizations and community-based organizations, in the prevention of and the fight against corruption and to raise public awareness regarding the existence, causes and gravity of and the threat posed by corruption.

### 2.3 UN Human Rights Council Guidelines for States on the effective implementation of the right to participate in public affairs<sup>15</sup>

In October 2018, the United Nations Office of the High Commissioner for Human Rights (OHCHR) released new guidelines providing practical recommendations on how States can effectively implement the right to participate in public affairs. The guidelines set forth the following basic principles and requirements for the effective implementation of Article 25 of the ICCPR on the right to take part in the conduct of public affairs, directly or through freely chosen representatives. The guidelines specifically require the following:

- “states to create and maintain an environment where all human rights, particularly the rights to equality and non-discrimination, freedom of opinion and expression, and freedom of peaceful assembly and association, are fully respected and enjoyed by all individuals.”<sup>16</sup>
- “life, physical integrity, liberty, security and privacy of all individuals, including journalists and human rights defenders, should be protected at all times.”<sup>17</sup>
- “Rights to equality and non-discrimination should be protected and implemented to ensure inclusiveness in the exercise of the right to participate in public affairs.”<sup>18</sup>
- “support and encouragement of individuals, empowered and equipped with the knowledge and capacity to claim and exercise their rights to participate. States should encourage this through civic education programs at all levels.”<sup>19</sup>
- “promoting transparency in all aspects of decision making processes and ensuring accountability for public authorities.”<sup>20</sup>

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<sup>15</sup> [https://www.ohchr.org/Documents/Issues/PublicAffairs/GuidelinesRightParticipatePublicAffairs\\_web.pdf](https://www.ohchr.org/Documents/Issues/PublicAffairs/GuidelinesRightParticipatePublicAffairs_web.pdf)

<sup>16</sup> Ibid

<sup>17</sup> Ibid

<sup>18</sup> Ibid

<sup>19</sup> Ibid

<sup>20</sup> Ibid

## 2.4 Regional and Sub-Regional Legal and Policy Frameworks

Malawi ratified the African Charter on Human and Peoples' Rights (ACHPR) in 1981. According to Article 13 (1) of the ACHPR, every citizen shall have the right to participate freely in the government of their country directly or indirectly through freely chosen representatives. The right to freedom of association is guaranteed under Article 10 of the African Charter, Article 8 of the African Charter on the Rights and Welfare of the Child, and Articles 12(3), 27(2) and 28 of the African Charter on Democracy, Elections and Governance. It is also guaranteed in the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa (**Maputo Protocol**), the African Charter on the Rights and Welfare of the Child, African Youth Charter (Article 11) etc. all ratified by Malawi.

At the subregional level, Malawi is a signatory to the Southern Africa Development Community (SADC) Protocol and Article 12 requires that at least 50% of the composition of the National Assembly should be female. Article 13 of the same legislation calls for special measures for equal opportunities in electoral processes. Neither the government nor the individual political parties have put in place deliberative policies for the inclusion of more women in Parliament. Proposals to include quotas for women in Parliament were not adopted in the electoral reforms bills that were tabled in Parliament in 2018 and no political party has proposed any quotas for women in the national governing committees; women continue to play subordinate roles in parties.

In addition, the SADC Treaty – Article 16A obligates member states to establish a SADC National Committee, as well as a national steering committee, sub-committees and technical committees consisting of key stakeholders including civil society and NGOs, to provide input at national level in the formulation of SADC policies, strategies, and programmes of action. In Malawi, the committee has only been established. It was launched in Malawi on 1<sup>st</sup> April 2021 by Malawi President, Dr. Lazarus Chakwera<sup>21</sup>. As such, it is too soon to assess its effectiveness in helping Malawians to actively participate in the formulation of important regional policies, strategies, and programmes of action.

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<sup>21</sup> <https://times.mw/lazarus-chakwera-launches-malawi-sadc-committee/>

## 2.5 African Commission Guidelines on Freedom of Association and Assembly in Africa

At the regional level, the African Commission on Human and Peoples' Rights (African Commission) adopted guidelines on Freedom of Association and Assembly in 2017<sup>22</sup>. The Guidelines, which were developed in accordance with the relevant provisions of the African Charter on Human and Peoples' Rights (African Charter), prescribe ten fundamental principles, which need to be borne in the mind by member countries, including Malawi, when contemplating and interpreting the rights in question and their specifications. The Guidelines highlight ten key fundamental principles, which underscore, among others, that the independence of civil society and the public sphere shall be ensured, and the participation of individuals in the political, social, and cultural life of their communities shall be enabled.<sup>23</sup>

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<sup>22</sup>[https://www.achpr.org/public/Document/file/English/guidelines\\_on\\_freedom\\_of\\_association\\_and\\_assembly\\_in\\_africa\\_eng.pdf](https://www.achpr.org/public/Document/file/English/guidelines_on_freedom_of_association_and_assembly_in_africa_eng.pdf)

<sup>23</sup> Ibid. See, fundamental principle iii, p8

### 3.0 THE RIGHT TO PARTICIPATION REFLECTED IN MALAWI'S LAWS/POLICIES

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Malawi's legal system remains dualist; the applicability of treaty law in the country is conditional upon domestication. Section 211 of the Constitution, which governs the relations between international law and domestic law, provides that: (1) "Any international agreement entered into after the commencement of this Constitution shall form part of the law of the Republic if so, provided by an Act of Parliament; (2) "Binding international agreements entered into before the commencement of this Constitution shall continue to bind the Republic unless otherwise provided by an Act of Parliament."

The above provisions notwithstanding, the practice in terms of incorporation of international treaties into Malawian law has been inconsistent. The ICCPR has not been incorporated into the domestic laws of Malawi although courts have sometimes referred to its provisions. Borrowing from the international best practices, Malawi could improve its public participation practices using the different institutions and legal and policy frameworks that exist and explore further gaps that need to be filled to attain required levels of participation.

## 3.1 National Legal and Policy Frameworks governing public participation.

### 3.1.1 Constitution

The Malawi Constitution provides a strong foundation upon which strategies for better participation can be built. The Constitution states that the authority to govern derives from the people of Malawi as expressed through universal and equal suffrage;<sup>24</sup> it therefore places responsibility for initiating policies and legislation and implementation of all laws of Malawi which embody the express wishes of the people in the hands of the executive;<sup>25</sup> it further stresses the obligation that the legislature has to reflect the interests of all the people of Malawi in its deliberations when enacting laws.<sup>26</sup> These principles lay the groundwork for better participation.

Section 7 of the Constitution expressly directs the executive to initiate and implement policies and legislation, which reflect the express wishes of the people of Malawi and which promote the principles of the Constitution. It follows, therefore, that a policy or legislative process that does not seek to engage the public violates this constitutional principle and may therefore be challenged to that extent. This, of course, assumes that

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<sup>24</sup> Section 6

<sup>25</sup> Section 7

<sup>26</sup> Section 8

the citizen has the capacity to bring a suit or utilize such other tribunal to enforce the right. The reality is that there are constraints, which may hinder the realization of this right.

The Constitution, in Section 40(1)(c)(1995), states that every person shall have the right to participate in peaceful political activity intended to influence the composition and policies of the government.

However, the Constitution does not have specific procedural rights for promoting public participation in law-making. There are a few instances in which the Constitution establishes mechanisms for ensuring public participation in policy and decision-making. Of particular interest is part XIV of the Constitution, which spells out the powers and functions of local government authorities. Section 146 (2) outlines the responsibilities of local authorities, which include the consolidation, and promotion of local democratic institutions and democratic participation. Section 146 (4) further provides that Parliament may provide those issues of local policy and administration be decided on at local level under the supervision of local government officials.

The Constitution also protects a range of fundamental human rights and freedoms necessary for public participation, including the right to information. Section 37 of the Constitution states that “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 or her rights.”

The Constitution underscores the importance of access to information by providing in its underlying principles that citizen’s trust in the government can only be maintained through open, accountable, and transparent government and informed democratic choice (section 12(1)(c)). However, the guarantee of the right of access to information enshrined in section 37 of the Constitution is limited to information that a person requires for the exercise of his or her rights and thus bars access by people who may wish to access information required for the defense of the rights of third parties. This is particularly pertinent in the context of Malawi where the majority of people rely on intermediaries such as members of parliament, civil society organizations and others to act on their behalf in the protection and enforcement of their rights.

### 3.1.2 The Access to Information (ATI) Act

Apart from guaranteeing the right of access to information in section 37 of the Constitution, Malawi has the Access to Information Act, which was passed by the Malawi Parliament in December 2016. The main objective of this Act is to improve the flow of information from the government to citizens and ensure that citizens access the information held by government. One crucial aspect of enabling citizen participation –

whether by individuals or groups –is their access to information and the mode in which they access information.

Although the Access to Information Act provides an enabling environment for public participation, there are still numerous laws in Malawi, some dating back to colonial times, that promote government secrecy and withholding of public information. For instance, under section 4(1) of the Official Secrets Act (Cap 14:01), every person is prohibited from disclosing a wide range of information, including any official information which the person has accessed by virtue of working in government. This provision applies to civil servants and members of the security forces, officials of the Anti-Corruption Bureau, the Financial Intelligence Unit, the National Audit Office, the Malawi Revenue Authority, the Reserve Bank, the Malawi Bureau of Standards, and others. The aforementioned section defeats the purpose of Malawi's Access to Information Act, 2017 whose main objective is to improve the flow of information from the government to citizens and ensure that citizens access the information held by government. Maintaining such a provision may render the Access to Information Act weak as some public officers may deny Malawians legitimate access to information on the basis that Section 4(1) of the Official Secrets Act prohibits them from doing so.

There is need to lobby the government to urgently review and repeal the Official Secrets Act. This is important particularly since Part VI of the ATI Act now provides for information that is exempted from public disclosure. There is also a need to lobby for the review and repeal of section 38 (4) of the Mines and Minerals Act, 2018, which prevents individuals from accessing information on mining companies until two years after the expiry or termination of the mining license. This is important for natural resource governance and citizen oversight.

### 3.1.3 Laws regulating ICT in Malawi

The internet plays an important role in fostering citizen participation and influencing the electoral and administrative decisions of government. The [third Malawi Growth and Development Strategy \(MGDS III\)](#) (2017–2022), recognises Information and Communication Technology (ICT) among the five priority areas in accelerating development. The strategy aims to increase access to ICT services; provide well-developed ICT broadband and infrastructure services; and increase the number of ICT-skilled and industry-ready workforce in public and private sector institutions.

ICT in Malawi is regulated by a number of policies and laws that are critical tools for ensuring public participation in law and policy making, as discussed below:

### 3.1.4 National ICT policy

In 2013 the Malawi Government introduced the National ICT Policy<sup>27</sup>. The aim of the policy is to develop “the ICT sector, promoting the development and use of ICT in all sectors and enhancing universal access to ICT services to achieve widespread socio-economic development.”

Although the ICT policy has not achieved its aims – as measured by the low access and usage of ICTs in the country (see the ICT usage and Access section below) -- this policy marked the beginning of a period in which the Malawi Government would enact ICT-related legislation. In the next three years, the country enacted Electronic Transaction and Cyber Security Act of 2016 and in the same year, the Government amended the Communications Act of 1998. These two Acts are discussed in detail later in this section.

There have been barriers, however, to the implementation of the policy as observed by Makoza and Chigona (2016) who note that there were delays in approval of the policy, lack of leadership, limited prioritization of the policy, as well as the effects of electoral cycle and lack of national ICT direction. These, and other factors, have resulted in the slow growth of the ICT sector in Malawi. According to a survey<sup>28</sup> by National Statistics office (NSO), only 43.2% of Malawians own a mobile phone. Only 14.6% Malawians use the internet while 3.5% of households have a functioning computer and only 9.9% of households have internet. Given the UN resolution that freedoms offline are also freedoms online<sup>29</sup>, the slow growth of the ICT sector has undermined freedoms online, including the right of the majority of the Malawian citizens to participate in policy and legislative processes online. The table below summarizes ICT sector statistics in Malawi as of 2019:

**Table 2: Population with access to ICT**

<b>Country population</b>	<b>17.5 Million people</b>
Number of the telecommunication companies in the country & their respective percentage share of market	Two mobile networks and 2 Landline services. Mobile market Airtel: 70.1 & TNM: 60.1% Landline market: MTL: 0.1% and ACL: 0.1%
Percentage of internet users	Individual users: 14.6%

<sup>27</sup> National ICT Policy: An ICT-Led Malawi (2013).

<sup>28</sup> National Statistics Office (2020) National Survey on Access and Use of Information and Communication Technologies by Households and Individuals in Malawi 2019

<sup>29</sup> Human Rights Council (2017) Promotion and Protection of all Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development <https://freedex.org/wp-content/blogs.dir/2015/files/2017/05/AHRC3522.pdf> accessed 12 January 2021



	Households: 9.9%
Number of mobile phones capable of browsing the internet	Total: 29.5% Urban areas: 50.7% Rural areas: 21.3%

Source: National Statistics Office: Access and Use of ICTS 2019

The Communication Act of 2016 provides for a Universal Service Fund (USF) to promote universal access to ICT services in rural and underserved areas in the country. The Fund was established in response to the National ICT Policy of 2013, which put a deliberate policy statement aimed at making ICTs available and accessible to all the people throughout the country particularly those in rural and underserved areas. The Act mandates the Malawi Communications Regulatory Authority (MACRA) to collect levies from all its licensees in the communications sector, allocate and disburse some part of the levy to address ICT access gap in the country<sup>30</sup>.

Article 158(2) states that the proceeds of the USF shall be used, among other things, to offer subsidies on a competitive basis to licensees in order to provide them with incentives to provide universal access in areas that are not yet economically viable or that are marginally viable without subsidies. This is meant to address the problem of insufficient infrastructure, which is one of the biggest problems, insofar as internet connectivity is concerned.

Currently, only 76.2% of the country is covered by mobile network, inclusive of 2G, 3G and 4G<sup>31</sup>. This means that a good number of Malawians are living in areas without mobile network coverage and are, therefore, unable to use the internet. Article 160 of the Communications Act says the USF shall be financed, among others, through operators' levy as prescribed in the license, which shall be set by the Authority and reviewed from time to time. Although this law came into effect in 2016, USF has not been implemented and the lack of implementation limits people's access, use and benefit from the internet.

### 3.1.5 Communications Act, 2016

The Malawi Communications Act was passed into law by Parliament in November 1998 and was revised in 2016. The Act establishes a legal framework for the regulation and provision of services in the Communications Sector in Malawi comprising telecommunications, posts and broadcasting. The Act, among other things, also

<sup>30</sup> <https://www.macra.org.mw/wp-content/uploads/2021/04/COMMUNICATIONS-ACT-2016.pdf>

<sup>31</sup> GSMA Mobile Connectivity Index: <https://www.mobileconnectivityindex.com/#year=2019&zonesocode=MWI&analysisView=MWI&comparison=1&geographys=MWI.ZMB.TZA.MOZ&metricsIndex=overall> accessed January 15, 2021

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provides for the establishment of the Malawi Communications Regulatory Authority (MACRA) and for the reconstitution of the Malawi Broadcasting Corporation (MBC) as a public broadcaster. However, the Act has some provisions which impact negatively on the ability of citizens to freely communicate. For example, Article 92(I) of the Act provides for a mandatory SIM card registration. The article obliges all individuals who use a generic number or own or intend to use a SIM card for voice telephony services to register that generic number or SIM card. The registration must be done with any electronic communications licensee or with the distributor, agent, or dealer of the electronic communications licensee, authorized to provide or sell generic numbers or SIM cards. The article provides that, where a potential subscriber is a natural person, they must obtain and fill in a form requiring the following information:

- i. the full name of the subscriber;
- ii. the identity card number, or any other document that proves the identity of the subscriber; and
- iii. The residential and business or registered physical address of the subscriber.

In January 2018, the regulatory authority, MACRA, announced the mandatory national SIM card registration exercise. Based on the Communications Act of 2016, this exercise required everyone with a mobile phone number in the country to register their SIM card. MACRA issued a deadline of March 31, 2018, to register every SIM card, after which date all unregistered numbers would stop working<sup>32</sup>. The deadline was later extended to September 30, 2018 with a requirement that all newly bought SIM cards must be registered within seven days. By October 2018, it was estimated that up to 9 million Malawians had registered with the National Register against a population of over 18 million. The de-activation of unregistered SIM cards severely restricted millions of people from sharing or accessing information and ideas online. MACRA argued that SIM registration<sup>33</sup> was important for several reasons: preventing a fraudulent practice called “SIM boxing;”<sup>34</sup> helping to recover stolen phones; offering protection from violent, threatening, or hateful texts; instilling “discipline” for abusers; helping law enforcement solve crimes; and checking fraud and theft committed via mobile phones.

However, mandatory SIM card registration has the potential to negatively affect people’s participation in law and policymaking processes. Mobile services provide important civic spaces<sup>35</sup> that help promote people’s participation in law and policymaking. However, since access to these services is conditioned upon possessing

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<sup>32</sup> <https://www.manaonline.gov.mw/index.php/sports/item/7632-macra-introduces-mandatory-sim-card-registration>

<sup>33</sup> [https://www.macra.org.mw/?page\\_id=9582](https://www.macra.org.mw/?page_id=9582)

<sup>34</sup> <https://androidkenya.com/2019/03/sim-boxing/>

<sup>35</sup> <https://privacyinternational.org/long-read/2852/protecting-civic-spaces>

national ID, people who do not have or cannot afford to have the national ID due to costs that government charges to process the IDs or mobility challenges (as is often the case for persons with disabilities and elderly) are excluded from such important civic spaces. The ability to participate in the civic space should not be conditioned on possessing a national ID. Studies have shown that compared to men, women are more likely to lack access to official government identification and be denied access to prepaid SIM cards<sup>36</sup>. For instance, a 2018 World Bank survey<sup>37</sup> showed that 1 in 2 women in low-income countries does not have national ID, limiting their access to critical services and participation in political and economic life. One of the reasons is the high costs that governments charge to process the national IDs. The other concern is that mandatory SIM card registration enables state surveillance on mobile phone users. However, even if the government is not actually surveilling people, the fact that people may fear they are being tracked may affect people's behaviour online, including what information they look up on the Internet, who they contact, and how they express themselves.

### 3.1.6 Electronic Transaction and Cyber Security Act

The Electronic Transactions and Cyber Security Act No. 33 of 2016,<sup>38</sup> (E-Transactions Act) is the only law in the country directly legislating the use of the internet. The E-Transactions Act is modelled on the SADC Model Laws on Electronic Transaction and Electronic Commerce.<sup>39</sup> The law has three objectives:

- (a) to set up responsive information and communication technology legal framework that shall facilitate competition, development of information and communication technology and the participation of Malawi in the information age and economy;
- (b) to ensure information and communication technology users are protected from undesirable impacts of information and communication technology, including the spread of pornographic material, cyber-crime and digital fraud;
- (c) to put in place mechanisms that safeguard information and communication technology users from fraud, breach of privacy, misuse of information and immoral behaviour brought by the use of information and communication technology.

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<sup>36</sup> <https://blogs.worldbank.org/voices/global-identification-challenge-who-are-1-billion-people-without-proof-identity>

<sup>37</sup> <https://id4d.worldbank.org/global-dataset>

<sup>38</sup> The Malawi Gazette supplement: <http://www.macra.org.mw/wp-content/uploads/2014/07/E-Transactions-Act-2016.pdf> accessed January 15, 2021

<sup>39</sup> Electronic Transaction and Electronic Commerce: Southern African Development Community (SADC) Model Law: [https://www.itu.int/en/ITU-D/Projects/ITU-EC-ACP/HIPSSA/Documents/FINAL%20DOCUMENTS/FINAL%20DOCS%20ENGLISH/sadc\\_model\\_law\\_e-transactions.pdf](https://www.itu.int/en/ITU-D/Projects/ITU-EC-ACP/HIPSSA/Documents/FINAL%20DOCUMENTS/FINAL%20DOCS%20ENGLISH/sadc_model_law_e-transactions.pdf) accessed January 15, 2021

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However, the Act includes a number of provisions that restrict, or could be used to restrict or curtail online freedoms. For instance, section 24(1) of the Act guarantees freedom of online communications, stating that “there shall be no limitation to online public communication.” However, Article 24(2) seems to contradict that assertion by providing grounds under which online communication may be limited some of which are inconsistent with international law.<sup>40</sup> In practice, these clauses may allow government to limit access to internet or aspects of it, effectively denying free access to information that is vital for meaningful public participation in governance affairs. The provisions may, for example, enable the government to implement internet shutdowns,<sup>41</sup> rendering internet-based communications inaccessible or effectively unavailable to the general public in violation of human rights standards.

Furthermore, Article 31(1) of the E-Transaction Act requires online content providers to display personal information on their webpage which exposes them to being targeted by state authorities or non-state actors for their online activities.<sup>42</sup>

Any online communication restrictions have the potential to undermine public participation especially in the COVID 19 pandemic era. In light of COVID-19 restrictions currently in place -compulsory quarantines, restrictions on public gatherings and closure of education institutions, online communication is crucial to enable continuity in service provision, business operations, access to health services, eLearning, and remote work. Moreover, the Internet, mobile phones and related technologies are playing a crucial role in the fight against COVID-19 by facilitating access to information on health and safety during the pandemic.

At present, social media has become an important channel to promote risk communication during the epidemic crisis. Increasing numbers of public health departments and individuals tend to use social media platforms to communicate and share information.

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<sup>40</sup> The article provides that online communication may be restricted in order to: (a) prohibit child pornography; (b) prohibit incitement on racial hatred, xenophobia or violence; (c) prohibit justification for crimes against humanity; (d) promote human dignity and pluralism in the expression of thoughts and opinions; (e) protect public order and national security; (f) facilitate technical restriction to conditional access to online communication; and (g) enhance compliance with the requirements of any other written law. The wording of these provisions is vague such that it is open to interpretation and thus it may be abused to meet political interests.

<sup>41</sup> Internet shutdown is defined as “an intentional disruption of internet-based communications, rendering them inaccessible or effectively unavailable, for a specific population, location, or mode of access, often to exert control over the flow of information.” See, Policy Brief: Internet Shutdowns: <https://www.internetsociety.org/policybriefs/internet-shutdowns> accessed January 15, 2021

<sup>42</sup> These include: (a) in case of a natural person, full name, domicile, telephone number, and email address, of the editor; (b) in case of a legal entity, corporate name, postal and physical address of the registered office, telephone number, email address, authorised share capital, and registration number, of the editor; (c) where applicable, the name of the corporate officer appointed as director of the publication of the online public communication and the editor in chief; and (d) the name, title, corporate name, postal and physical address and telephone number, email address of the intermediary service provider prescribed in this section.

Table 3: Summary of laws restricting internet freedom in Malawi.

Legislation	Effect on internet freedom	Suggested action
E-Transaction Act, 2016 – article 24(1) provisions (e) and (f)	Provisions are framed in vague language. This, affords the state leeway to shutdown the internet, thus limiting internet freedom	Provisions should be amended so it is clear and not open to abuse by the state.
E-Transaction Act, 2016 – article 31(1)	Provision violates people’s right to communicate anonymously. This violates internet freedom for people who can only communicate anonymously for various legitimate reasons	Provision should be repealed
Communications Act, 2016 – article 92(2)(a)	Provision violates people’s right to communicate anonymously. This violates internet freedom for people who can only communicate anonymously for various legitimate reasons.	Provision must be amended so that SIM card registration is not mandatory.  In addition, the country needs personal data protection law to protect abuse of people’s private communication information.
	Lack of implementation of Universal Services	Universal Service Fund must be implemented

Communications Act, 2016 – articles 158(1) and 160	Fund limits access to the internet and therefore limits internet freedom	immediately to improve internet accessibility and affordability
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### 3.1.7 The Local Government Act

Citizen participation in the local government system is regulated by the Local Government Act (LGA) (1998 and subsequent amendments). The LGA was enacted with respect to Section 146 of the Malawi Constitution, which provides for establishment of a local government system. The LGA stipulates that the objectives of local government are “to further the constitutional order based on democratic principles, accountability, transparency and participation of the people in decision-making and development processes.”<sup>43</sup>

There is resonance between the LGA and the Constitution’s political right stipulation on ensuring that local citizens participate in determining actions of the government. The LGA recognizes that all citizens have an important role to play in local governance. Their main role is to participate in policy formulation, to take part in the implementation of development activities and to demand transparency, accountability, and services from their council<sup>44</sup>. This is one of the objectives of the decentralization process, which will be discussed later in this chapter. Section 42(1) of the LGA mandates the Assembly to provide information to the public concerning its work, including available services,

Citizens participate in local governance through Local Government Elections. Citizens can run for the office of a councilor and/or vote in Local Government Elections for candidates contesting in their wards. Citizens also participate in local government development planning and consultations on policy frameworks. The LGA also provides for interaction between the council and the citizens. The LGA provides for a number of mandatory committees: finance, development, education, works, health and environment, and human resources. Membership comprises elected councilors and MPs, council officers from the relevant sectors who provide technical advice and secretarial services and representatives of interest groups (women, persons with disabilities etc).

Council meetings are supposed to be held at least four times a year. During these meetings, councillors present and discuss important issues from their wards and the Local Government Area as a whole. Before councillors attend council meetings, they are

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<sup>43</sup> Section 3

<sup>44</sup><https://www.resakss.org/sites/default/files/Malawi%201998%20Local%20Government%20Act%2042%20of%201998.pdf>

encouraged to hold open discussions with the electorate in order to receive development concerns that require council attention. In turn, councillors have to provide feedback to the electorate in order for the citizens to appreciate resolutions of the council and their implications.

### 3.1.8 Police Act, 2009

The Police Act has provisions that affect citizens' right to participation. Among other things, the Act provides for the regulation of public order in relation to public assemblies, processions, and demonstrations. The right to assemble and demonstrate peacefully is an essential condition for the exercise of other rights such as the right to participation. It allows people to bring attention to issues, demand change, and get answers from public officials. Without freedom of assembly, there are fewer channels between elections for people to use to participate in governance processes.

In Malawi, the right to freedom of assembly is guaranteed in section 38 of the Constitution, which states that "Every person shall have the right to assemble and demonstrate with others peacefully and unarmed."<sup>45</sup> This right can only be "limited by law, and then only to the extent that the limitation is reasonable, justifiable in an open and democratic society". However, this right faces a number of obstacles.

Under Malawi law, the right to demonstrate is not subject to prior authorization by the authorities. The Police Act only requires notice of the intended demonstration or assembly and not application for permission to hold the demonstration or assembly. However, in practice the Police have interpreted the notification requirement as authority to seek permission to hold such events. There are numerous instances, where police have stopped peaceful demonstrations on the excuse that the demonstrators did not seek authorization to hold the demonstrations.

Part IX of the Police Act<sup>46</sup> provides for excessive powers of a police officer in relation to assemblies and demonstrations. Examples of such powers include, but are not limited to, stop and search, arrest and detention, seizure of weapons and erection of road barriers. However, the law requires police officers to use such powers only to protect the right to peaceful assembly. This is in line with section 153 of the Constitution, which mandates the police to provide for the protection of public safety and rights of persons in Malawi, which includes facilitating and protecting the right to assemble or demonstrate peacefully and unarmed. Other police powers in relation to assemblies and demonstrations are provided for under the Constitution and in various pieces of legislation, including the Criminal Procedure and Evidence Code<sup>47</sup>. However, such

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<sup>45</sup> [http://www.nice.mw/images/Constitution\\_Malawi.pdf](http://www.nice.mw/images/Constitution_Malawi.pdf)

<sup>46</sup> Sections 4, 34, 35, 39, 40, 41, 42, 43, 44 and 45 of the Police Act

<sup>47</sup> Section 32 of the Criminal Procedure and Evidence Code.

powers have often been abused by police officers to prevent people from exercising their right to peacefully demonstrate.

## 3.2 Laws that affect the participation of marginalized groups.

### 3.2.1 The Constitution of Malawi

Section 20 (2) and Section 24 (2), provides that legislation may be passed that addresses inequalities in society, including gender inequalities. One may argue that this also includes inequalities based on disability and inequalities based on sexual orientation and gender identity.

In relation to women, the Constitution provides that any law that discriminates against women on the basis of gender shall be invalid.

Section 24 of the Constitution provides that:

“(1) Women have the right to full and equal protection by the law, and have the right not to be discriminated against on the basis of their gender or marital status ...

(2) Any law that discriminates against women on the basis of gender or marital status shall be invalid and legislation shall be passed to eliminate customs and practices that discriminate against women, particularly practices such as:

- (a) sexual abuse, harassment, and violence.
- (b) discrimination in work, business, and public affairs; and
- (c) deprivation of property, including property obtained by inheritance.”

It may be argued that these provisions introduce an aspect of affirmative action to promote women participation in governance processes, but they need to be translated into an enabling statute to give guidance on how such affirmative action can be accomplished in practice.

Malawi has adopted various laws that specifically target to improve the participation of women and other marginalized groups, but these are not undermined by practical challenges as noted below.

### 3.2.2 Disability Act

Section 16 States that “Every person with a disability shall have the right to

- (a) form and join any group or association of his choice; and
- (b) be represented at any level in such group or association.



Section 17 states: “The Government shall, through deliberate policies and participation measures, guarantee participation in political and public life by persons with disabilities, by—

- (a) creating a conducive environment for persons with disabilities to effectively and fully exercise their political rights, directly or through their freely chosen representatives ....
- (iii) ensuring that they stand for elections, effectively hold office and perform all public functions at all levels of government”.

The Disability Act, 2012, specifically in Section 16, provides for the right of association and representation to persons with disabilities.<sup>48</sup> The Disability Act further mandates the Government to institute deliberate policies and measures to guarantee participation in political and public life by persons with disabilities. This law thus prohibits discrimination of persons with disabilities in political and public life.

Malawi’s Disability Act, thus, adequately provides for persons with disabilities. However, there are still some challenges. For instance, the Disability Act, provides for the establishment of a National Advisory and Coordinating Committee on Disability Issues (NACCODI) which is yet to be operationalised to date.<sup>49</sup> Additionally, the enforcement of these provisions has been lacking due to inadequate resources.

Persons with disabilities in Malawi also face obstacles that result in their exclusion from policy and lawmaking processes. Section 25 of the Disability Act provides that persons with disabilities shall have the right to access information and communication technologies at an affordable cost. However, persons with disabilities still face many challenges in accessing information in accessible formats. Notably in Malawi the sign language interpretation has not received formal recognition, as stipulated by the Disability Act. Currently sign language is used by a few organizations. In the media sector for instance, while the national television, Malawi Broadcasting Corporation (MBC) TV uses sign language interpreters, the Government has not put in place measures to compel private media houses to provide similar services for persons with disabilities.

Currently, few public documents in Malawi are accessible to persons with visual impairments for their respective purposes.

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<sup>48</sup> The provision states that every person with a disability shall have the right to form and join any group or association of his choice and be represented at any level in such group or association.

<sup>49</sup> The functions of NACCODI are to: (a) provide a forum for all key stakeholders on disability issues to receive, discuss and review reports from Government ministries and departments and other relevant stakeholders on disability mainstreaming; (b) make recommendations to Government on best practices regarding the formulation of policies, legislation and programmes, with respect to disability; and (c) oversee the implementation, monitoring and evaluation of disability related programmes. (Section 5)

### 3.2.3 Gender Equality Act, 2013<sup>50</sup>

The Gender Equality Act seeks to promote equal integration, influence, empowerment, dignity, and opportunities for men and women in all functions of society; to prohibit and provide redress for gender discrimination, harmful practices, and sexual harassment, and to provide public awareness on the promotion of gender equality.

One of the advantages of the Act is that it promotes a greater visibility of women in decision-making positions in Malawi, at least outside of the political arena. The Act provides quotas for employment in the public service, and pegs this at no less than 40 per cent of the workforce. This means that an appointing or recruiting authority should appoint or recruit no less than 40 per cent and no more than 60 per cent of either gender in any department. However, the Act does not apply to the ‘political sphere’, including the political parties, as these are not considered public service institutions.

Nevertheless, the law opens the way for the possible introduction of gender quotas to achieve this. It would be more effective if political parties were subjected to legally binding quotas to complement the current progressive legal framework.

### 3.2.4 National Youth Council of Malawi Act (Cap. 31:04)

The Act provides for the promotion, coordination, and implementation of youth development programmes in Malawi and the establishment of a National Youth Council of Malawi to contribute towards formulation of policies and programmes that will promote the youth.

## 3.3 Policies and other institutional measures for public participation.

### 3.3.1 Malawi 2063

The Malawi 2063 (MW2063)<sup>51</sup> is a new development vision for Malawi, replacing Vision 2020 which expired in December 2020. The MW2063 aims to transform Malawi into a wealthy and self-reliant industrialized ‘upper middle-income country’ by the year 2063. The MW2063 outlines collective aspirations and goals of the people of Malawi towards the year 2063. It is anchored on the three pillars of Agricultural Productivity and Commercialization; Industrialization; and Urbanization. One of its aspirations is a

*“united, peaceful, patriotic and proud people that believe in their own abilities and are active participants in building their nation.”*

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<sup>50</sup> <https://malawilii.org/mw/legislation/act/2013/3>

<sup>51</sup> <https://secureservercdn.net/45.40.146.28/pbj.a19.myftpupload.com/wp-content/uploads/2021/02/MW2063-VISION-FINAL.pdf>

*An over-arching enabler of such aspirations and goals is a “positive, ‘business unusual’ and action-oriented mindset...urging us all as Malawians to take personal responsibility in this journey as the primary agents of the transformation we want to see in our country by 2063.”*

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The MW2063 articulates the enablers that will propel the country towards achieving economic independence, inclusive wealth creation, self-reliance and a high quality of life for all its citizens. The attainment of these three pillars will be catalyzed by seven enablers, namely:

- Mindset Change
- Effective Governance System
- Public Sector Performance
- Private Sector Dynamism
- Human Capital Development
- Economic Infrastructure; and
- Environmental Sustainability.

The MW2063 was developed through a consultative process involving representation of all stakeholders, including Government Ministries, Departments and Agencies (MDAs), private sector, academia, research institutions, Civil Society Organizations (CSOs), Non-Governmental Organizations (NGOs), political and traditional leaders, Faith-Based Organizations (FBOs), trade unions, development partners and the general public. Further, MW2063 embodies the views and aspirations of various groups of people including women, the youth, persons with disabilities, those in diaspora and minority groups. The inclusive and participatory process of developing MW2063 ensures and safeguards the national ownership of the development agenda that it articulates.

### 3.3.2 National Development Plan/policy

The third Malawi Growth and Development Strategy (MGDS III) (2017 – 2022), under Chapter 4 on governance recognizes that “The implementation of human rights relies on a conducive and enabling environment. This includes appropriate legal frameworks and institutions as well as political, managerial and administrative processes responsible for responding to the rights and needs of the population.”

### 3.3.3 National Civic Education Policy, 2020

In 2020, the government launched the first ever National Civic Education Policy to guide the process of imparting and empowering citizens with knowledge and

understanding on social, economic, and political matters through civic engagement. The policy was developed through wide consultations that engaged both public and private spheres after years of slow and tedious development process. This policy provides a strong foundation for citizen empowerment that is critical for public participation.

### 3.3.4 National Gender Policy, 2011

The goal of the National Gender Policy is “to mainstream gender in the national development process in order to enhance participation of women and men, girls and boys for sustainable and equitable development.

Policy theme 5 on governance and human rights, includes the following strategy (among others):

- Empower women to participate effectively in socio-economic and political arenas through leadership, management, and gender training. Advocate for legislation and policies to enhance women participation at all levels of governance and decision making. Create and strengthen support systems for women to take an active part in decision making at all levels. Engender socialization process for boys and girls to increase equal participation in decision making.

Participation of marginalized groups is best enhanced when those who are left behind participate at the higher levels of decision making. This policy would assist attaining this goal if well executed.

### 3.3.5 National Youth Policy of 2013<sup>52</sup>

The National Youth Policy provides a framework with guidelines for the facilitation of meaningful youth development programs and services with full participation of the youth themselves at all levels. Among its strategic outcomes, the Policy seeks improve youth participation in development initiatives, and through its primary objective to advocate for the active participation of young people in the formulation of legislation and policies affecting the youth at all levels. On this basis, the government has established various coordination structures including the Sector Working Group on Gender, Children, Youth and Sports, the Technical Working Group on Youth (TWGY), the Youth Technical Committees (YTC) – an inter-agency coordination structure at district level to work with all district-level structures in the youth sector.

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<sup>52</sup> [https://www.youthpolicy.org/national/Malawi\\_2013\\_National\\_Youth\\_Policy.pdf](https://www.youthpolicy.org/national/Malawi_2013_National_Youth_Policy.pdf)

### 3.3.6 National Policy on Equalization of Opportunities for Persons with Disabilities, 2006

The Policy seeks to, among others, promote participation and inclusion of persons with disabilities at all levels in decision-making, planning and development activities. It recognizes that disabled people are frequently excluded from decision-making processes, including the fundamental right to participate in elections due to barriers to access, such as lack of access to information. The policy commits government to promote representation of persons with disabilities in leadership structures, and to strengthen the National Advisory and Coordination Committee on Disability Issues by, among other things, ensuring the effective representation of disabled persons and other stakeholder organisations.

### 3.3.7 National NGO Policy

The broad policy goal is “to fortify the relationship between the NGO Sector and Government and enhance capacities and effectiveness in the areas of regulation, coordination, service delivery, advocacy and community empowerment”.

One of the policy goals is

*“Coordination, Partnerships and Networking” while one of the policy statements is on “...making different NGOs that are registered with the Board to work together for a common goal through partnership that ensures that the NGOs cooperate to advance their mutual interest which is achieved through networking that fosters the exchange of information and ideas among NGOs for the benefit of the general public.”*

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As coordination has been one of the challenges among different players in Malawi, the stress on this element in the policy would enhance participation of more stakeholders in policy and legislative processes.

### 3.3.8 National Decentralization Policy

The National Decentralisation Policy devolves administration and political authority to the district level; diverts the centre of implementation responsibilities and transfers these to the districts and promotes popular participation in the governance and development of districts.<sup>53</sup>

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<sup>53</sup> Malawi Decentralisation Policy, 1998

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The Policy has five purposes, four of which have to do with the devolution of functions and resources from central to local government areas. The fifth purpose is of particular importance to this study. This purpose is aimed at promoting popular participation in the governance and development processes of the local government areas. Such work entails involving the ordinary citizen in identifying, planning, and executing development policies and interventions. Not only would this institutional reform promote accountability and good governance, it would also empower citizens to contribute towards poverty reduction and spurring economic growth. In other words, the change would transform the ordinary citizen from being a passive recipient of development policies to an active agent of his or her own development and interventions.

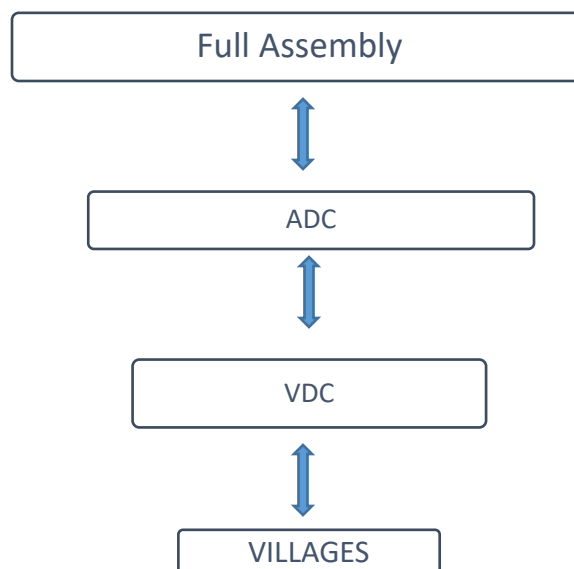
In pursuit of these ideals, the Decentralization Policy and the Local Government Act require local government councils to provide for local people's participation in the formulation and implementation of development plans through action committees at ward, area, and village levels. Ideally, development plans of local government areas are expected to feed into the District Development Plans (DDPs) and the national development plans.

Decentralization is expected to achieve two objectives. One is economic, to improve the delivery of public services in the country, and the second is political, to further the involvement of citizens in local decision-making, thereby spreading and deepening citizen participation in policies and politics and improving governance.

The local development structures provided for in the Decentralization Policy include:

- i. **Village Development Committees (VDCs)** – responsible for facilitating development planning and implementation at village level.
- ii. **Area Development Committees (ADCs)** – represent all VDCs in the Traditional Authority (TA) area to among others, set priorities and prepare project proposals addressing community needs which cover more than one VDC.
- iii. **District Executive Committee (DEC)** – a technical and advisory body to the district assembly and ADCs as well as VDCs and Area Executive Committees. whose overall responsibility is the formulation and implementation of District Development Plans (DDPs).
- iv. The assemblies, wards, ADCs and VDCs are therefore, forums for debate on public issues, coordination points for development activities at the local level, and starting points for development plans. (Chirwa 2014).

**Figure 1: Decentralisation structure in Malawi.**



### 3.4 National and multilateral Initiatives to promote civic participation.

#### 3.4.1 Public Service Charter

In keeping with the Malawi Public Sector Reforms, the Malawi Government institutionalized service charters whose main objective is to improve performance, transparency, and accountability by public service and hence help the public to demand quality services and to hold public servants accountable for their action and inaction.<sup>54</sup>

Through the charters, public institutions are required to:

- publish performance against charter commitments in the institutions annual report and in public “State of Service Delivery” reports.
- provide charter performance information quarterly to the Secretary for Public Sector Reforms (Service Charter Unit), Secretary to the Treasury, and Secretary for Economic Planning and Development.
- publish performance report in newspapers.

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<sup>54</sup> Guidelines for Developing and Implementing service charters in public service

### 3.4.2 Open Government Partnership

The Government of Malawi through Malawi's Open Government Partnership (OGP) and the Nation Action Plan (2016) committed to carry out democratic and public sector reforms in order to improve public service delivery, reduce poverty levels, fight corruption, and promote inclusive and sustainable development. The country identified key priority areas to address to include:

- Access to Information- To improve the flow of information from the government to citizens and ensure that citizens access the information held by government.
- The fight against corruption- To improve the effectiveness of the national integrity system in preventing and fighting corruption and promoting transparency, accountability, and integrity in Malawi.
- Empowerment of citizens and citizen participation, public sector reforms and public service delivery.
- Extractive Industry Transparency Initiative (EITI) - to ensure proper management and beneficial ownership on revenue from natural resources.

All these commitments revolve around OGP principles on transparency and accountability and embracing new technologies. The OGP End of Term Evaluation Report<sup>55</sup> in 2018 for Malawi, however, revealed that the two initiatives that were completed, namely freedom of information and the EITI, have not resulted in the government opening up.

The Government had established the National OGP Steering Committee consisting of government, civil society and private sector representatives to monitor action plan implementation. However, the committee did not meet during the implementation period, 2016 – 2018. Lack of resources was cited as the reason for not meeting. It was further noted that the Ministry of Finance did not allocate a dedicated budget for the activities of the plan and the implementation period ended before the government had carried out the self-assessment. The fact that some activities were carried out by civil society shows lack of ownership and commitment by the government.

The government adopted the ATI Act of 2017 and ATI Policy of 2014 in line with the OGP commitment with the overall goal of keeping the public well informed in order to participate in national development and governance.

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<sup>55</sup> [https://www.opengovpartnership.org/wp-content/uploads/2019/03/Malawi\\_End-Term-Report\\_2016-2018\\_for-public-comment.pdf](https://www.opengovpartnership.org/wp-content/uploads/2019/03/Malawi_End-Term-Report_2016-2018_for-public-comment.pdf)



### 3.4.3 The Extractive Industry Transparency Initiative (EITI)

Malawi joined the Extractive Industry Transparency Initiative (EITI) in 2014, and established the Multi-Stakeholder Group (MSG) and the Malawi EITI (MWEITI) Secretariat in February 2015.

The government has made various EITI commitments with respect to public participation, accountability, and citizen oversight, which include: (i) establishing the MSG Malawi as a platform for multi-stakeholder dialogue on extractives governance to drive improvements in transparency and accountability; (ii) Open Data Policy; (iii) Extractive Contract Disclosure; (iv) Production and dissemination of annual reports; (v) Enacting the Access to Information Bill and (vi) Revision of the Mines and Minerals Act, among others.

In February 2019, following the conclusion of Malawi's Validation of 2018, the EITI Board concluded that Malawi had made "meaningful progress overall in implementing the EITI Standard" but noted several concerns such as limited access to extractive data, non-disclosure of extractive licenses, etc., as undermining public oversight<sup>56</sup>. Malawi was urged to ensure that the EITI process is based on consultations with stakeholders beyond MSG members, going forward.

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<sup>56</sup> <https://eiti.org/scorecard-pdf?filter%5Bcountry%5D=55&filter%5Byear%5D=2018>

## 4.0 RESEARCH FINDINGS ON POLICY AND LEGISLATIVE PROCESSES IN MALAWI.

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### 4.1 Public participation in policy making processes in Malawi.

Policymaking in Malawi does not have a structured process or core guidelines. Generally, the concerned ministry will record challenges met by the public and then initiate policy proposals to address such challenges. Proposals will then be shared with stakeholders (government, donors, and NGOs) within the sector for fine-tuning the document into draft policy. The draft is then sent to the cabinet, which coordinates all policy issues. Once approved by cabinet, it becomes Government policy. While the general agreement within the democratic dispensation is that policy processes should involve wide consultations, the parent ministry often ends up deciding how wide and/or broad and/or representative these consultations are going to be.

According to the Guidelines on the Institutionalization of Sector Working Groups (SWG) in Malawi, SWGs were introduced by government in

*Policy process used in the development of Malawi's Trade Policy as presented by MEJN (Lombardt, 2008)*

Policy process started with stakeholders' consultations, through regular inter-agency meetings convened by the parent ministry, in this case the Department of Trade in the Ministry of Trade and quarterly meetings of the National Working Group on Trade Policy (NWGTP). Technical working groups assisted collecting inputs from stakeholders on the formulation, implementation and management of trade policies. These stakeholders included representatives from private sector, civil society, academia, media, government departments, donor partners and trade unions. Recommendations from the NWGTP were then submitted to the parent ministry as draft policy and the ministry took the draft to Cabinet for consideration.

2008 with the aim of implementing the Development Assistance Strategy (DAS). The DAS is a framework for ensuring that external resources mobilized by Government are effectively utilized to implement the Government five-year development framework called the Malawi Growth and Development Framework (MGDS). SWGs provide a forum for negotiation, policy dialogues, and agreement on plans between the government and its development partners at sectoral level. Although the primary expectation was the utilization of donor resources, this sector-wide approach has played a key role of 48 harmonizing sector policy development, planning, budgeting, execution, monitoring and evaluation.

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The SWG is therefore the commonly used structure for policy development and execution. Chaired by the principal secretary of the relevant line ministry, the SWG also is comprised of senior government officials, NGO representatives, private sector, and donor representatives. Below this cadre are technical working groups. Representatives from the same institutions form lower cadre technical working groups to carry out wider consultations on various issues and come up with draft documents for consideration at the sector level. The mainstreaming and policy harmonization function has recently been aided by the National Planning Commission (NPC)<sup>57</sup> to ensure that policies at sector levels are in line with national and international agendas.<sup>58</sup>

The decentralization of government structures is aimed at increasing space for the participation of grassroots stakeholders in policy processes at national level. Utilization of these structures has, however, depended on the perceptions of the initiating ministry on the relevance of the grassroots community to the nature of the proposed policy. The policy process for the development of the Malawi Trade Policy for instance, as presented by Malawi Economic Justice Network (MEJN), shows that the consultations involved stakeholders within the sector while a look at the National Land Policy of 2002<sup>59</sup> shows that consultations went as far down as the village groups to regional workshops, expert groups, and national stakeholder workshops. Later the policy was submitted to cabinet for approval.

Interviews with officials from the Office of the President and Cabinet (OPC) revealed that policies are supposed to undergo some screening processes. For instance, the Ministry of Economic Planning and Development screens policies that affect public finances or may result in development projects, while the Ministry of Justice may need to screen other sensitive policies that have legal implications. At Cabinet level, policies are supposed to be submitted to a subcommittee for an assessment on intended or unintended impact of the policy on the poor who usually have no platform for participation.

In 2006, Government decided to use the World Bank Poverty and Social Impact Analysis (PSIA) tool for policymaking in general and developed a PSIA institutionalization framework, which covers economic, social, political, and institutional issues. the PSIA approach. While embedding PSIA in already existing government structures and procedures, an independent research center or think tank would be established to aid decision making at the cabinet sub-committee level. In 2009, the Cabinet approved this framework but to date the framework has not been institutionalized.

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<sup>57</sup> Established under the National Planning Commission Act 2017 [www.malawilaws.com](http://www.malawilaws.com)

<sup>58</sup> MGDS III,

<sup>59</sup> National Land Policy, 2002, [www.cepa.rmpportal.net](http://www.cepa.rmpportal.net)

Another common feature in the policymaking in Malawi is the political influence that affords fast-tracked approvals of policies that are not in line with medium- and long-term development frameworks. Since the advent of multiparty democracy in 1993/4, a good number of policies came as directives from the president or cabinet. The urgency of the issues may call for such directives but often this has been a result of campaign promises that require implementation as governments attempt to strengthen their legitimacy. Subsidy programs such as input subsidies in 2005 and 2020 and the Decent and Affordable Housing Subsidy project (2014) have followed a similar process.

### 4.1.1 MDA perceptions on public participation in policymaking.

The Public Service Management Policy approved by government in 2018 covers a number of areas including creating an enabling policy, legislative and institutional environment for an effective public service and aligning the public service to the national development agenda. The policy promotes greater transparency, accountability and citizen participation in the management and delivery of public services.

From the results of the survey conducted to inform this report, 50% of the respondents from the Executive felt that the general public is aware of the policymaking processes, while the other 50% were of the contrary view that the general public is not aware of the policy making processes. The respondents contended that, although not all members of the public are involved in policy making processes, most policies have been developed with involvement of the general public through representatives from various organizations. Respondents revealed that efforts have been made to ensure public awareness of the policymaking processes and involvement of the public mainly through radio and newspaper adverts, but to no avail. Access to these media in Malawi is relatively low with 44.8% of the population regularly accessing the radio, while only 8.1% use internet daily as of 2019<sup>60</sup> and 3% access newspapers daily<sup>61</sup> as of 2014.

According to representatives from Ministries, Departments and Agencies (MDAs), some CSOs are conversant with policymaking frameworks while others are not. Constructive efforts have been made by MDAs to ensure CSO awareness on policy and law-making processes and their involvement. For example, when carrying out law reforms, the Malawi Law Commission makes legislative as well as policy recommendations.<sup>62</sup> It should be pointed out, however, that there is nothing in the law

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<sup>60</sup><https://www.afrobarometer.org/publications/malawi-summary-results-round-8>

<sup>61</sup> <https://www.afrobarometer.org/publications/malawi-round-6-summary-results-2014>

<sup>62</sup> The Malawi Law Commission is a constitutional body established under section 132 of the Constitution specifically mandated to review and make recommendations regarding any matter pertaining to the laws of Malawi. See, Law Commission Act 1998

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compelling the Commission to ensure that CSO participation and consultations are undertaken.

The decision makers surveyed for this study admitted that currently public participation in the design and implementation of policy in government is not sufficient. Most information about laws/policies is communicated through written form. Therefore, if a person is illiterate, she or he is unlikely to learn about a law or policy until it affects his/her life. According to the 2018 National Population and Housing Census, Malawi's literacy rate stands at 68.6 percent<sup>63</sup>. In addition, Malawi has more literate men than women, 71.6 percent, and 65.9 percent, respectively.

Decision makers that were interviewed noted that financial status of CSOs does not affect CSOs' participation in policy making since CSOs are facilitated by the State to attend consultation meetings on policy issues. On the other hand, the respondents also pointed out that CSOs lack interest and are sometimes passive in engaging with responsible government institutions or agencies, which affects their image as valuable actors in the policy arena.

Decision makers argued that public participation in policy formulation is important because it provides an avenue for obtaining more views on particular issue and building consensus on an issue relating to policy and its implementation. It also highlights implementation challenges if a policy is to be adopted. Thus, solutions to such challenges may be developed in advance. Decision makers use public meetings, conferences/workshops, mass media, consultations, public debates, survey questionnaires, FGDs, public hearings and press briefings in their consultations with the public.

**Table 4: Respondents were asked to rate participation of different groups on a scale of 1 – 5 where 1 was very poor and five, best and results are summarized in the table below.**

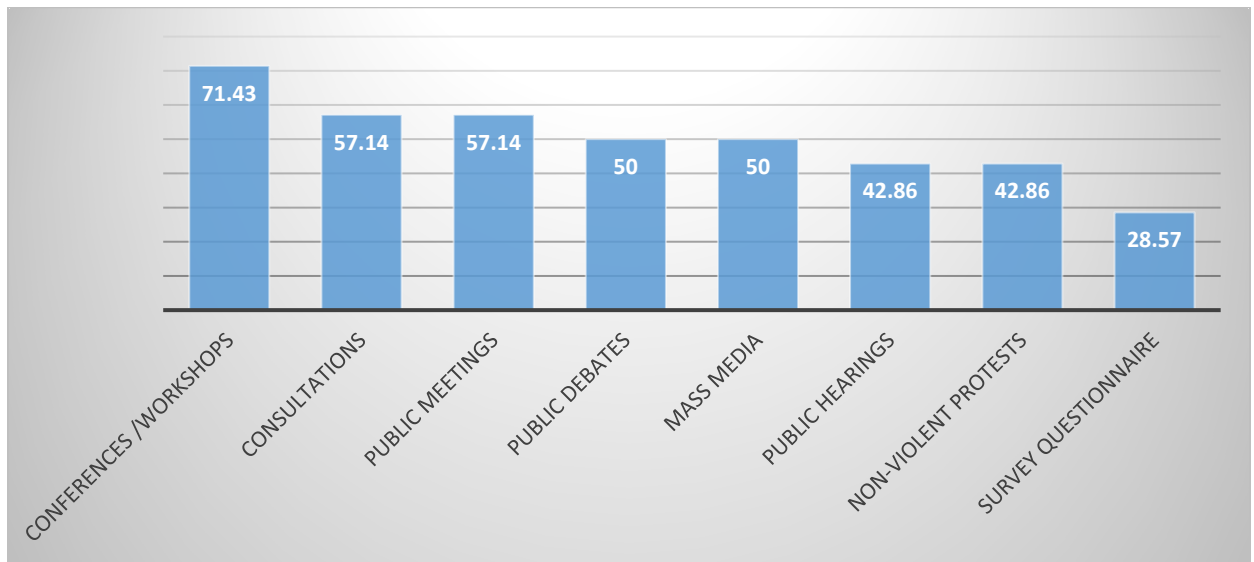
Description	Rate				
	Very poor	Poor	Neutral	Better	Best
Participation of the public in public hearing					
Participation of the public in radio talks					

<sup>63</sup> [http://www.nsomalawi.mw/index.php%3Foption%3Dcom\\_content%26view%3Darticle%26id%3D226:2018-malawi-population-and-housing-census%26catid%26%80%89%3D%26%80%898:reports%26Itemid%26%80%89%3D%26%80%896](http://www.nsomalawi.mw/index.php%3Foption%3Dcom_content%26view%3Darticle%26id%3D226:2018-malawi-population-and-housing-census%26catid%26%80%89%3D%26%80%898:reports%26Itemid%26%80%89%3D%26%80%896)  
[http://www.nsomalawi.mw/images/stories/data\\_on\\_line/demography/census\\_2018/2018%20Malawi%20Population%20and%20Housing%20Census%20Main%20Report.pdf](http://www.nsomalawi.mw/images/stories/data_on_line/demography/census_2018/2018%20Malawi%20Population%20and%20Housing%20Census%20Main%20Report.pdf)

Participation in making inquiries to MDAs					
Participation in a protest against policies					
Participation of CSOs in radio talks					
Participation of CSOs in making any inquiries					
Participation of CSOs in protest against policies					

MDAs were also asked about the modes of public participation and the figure below indicates the levels of use of these modes.

**Figure 2: Modes of Public Participation used in the Making and Implementation of Policy in MDAs**



The figure above shows that conferences are the most used modes of public participation in the making and implementation of policy in MDAs. On the other hand, the figure shows that survey questionnaires are the least used modes of public participation used in the making and implementation of policy in MDAs.<sup>64</sup> Due to low literacy levels questionnaires are not preferred by the general public while workshops seem to be attractive because of the monetary incentives provided by the organizers in the form of allowances. Donors have often complained about the “allowance syndrome” in Malawi.

<sup>64</sup> See [www.nyasatimes.com/no-more-per-diem-hunting](http://www.nyasatimes.com/no-more-per-diem-hunting)

### 4.1.2 Parliamentarians' perceptions on public participation in legislative processes

Interviews with Members of Parliament revealed that the legislature has outreach programmes targeting rural communities in Malawi. According to one Parliamentarian, the legislature has an outreach office whose role is to facilitate public awareness on Parliamentary processes and encourage public participation in law making. Public advertisements on parliamentary business are posted in various media considered most accessible at grassroots level including radios and local television channels. The aim of these adverts is to inform the public on different activities at Parliament so the public can participate and make inputs. Contact information is provided for those who may wish to write Parliament on specific issues on the bills. Parliament also facilitates public participation in the legislative process by publicizing committee proceedings through the radio, newspapers, and television<sup>65</sup>. Parliamentary committees issue invitations for the ordinary citizens to make submissions on bills before Parliament. These adverts will also come through newspapers, radios, and television. Sometimes special invitations are extended to specific groups in accordance with the nature of the bill. For instance, in the case of the Interest Capping Bill,<sup>66</sup> which was debated in 2018 and 2019, special invitations were made to financial experts and professional bankers. On the other hand, the Access to Information Bill primarily required much input from the media bodies and information-handling officers in government. CSOs, the academia and general researchers were also primary targets.

In terms of mechanisms practically utilized by different organizations and the public, Parliamentarians noted these to include: (a) petitions to a Member of Parliament; (b) petitions to a Parliamentary Committee; (c) oral representations to a Parliamentary Committee; (d) private Members Bills; (e) submissions to the Law Commission on a proposed law; and (f) attending consultations by the Malawi Law Commission on a proposed law.

Adverts are relayed through the mass media to the general public (radio, TV, newspapers, and online news sources) both in English and local languages. However, only a small percentage of Malawians have access to the mass media. According to the 2018 Malawi Housing and Population Census, only 33.6 percent of Malawians have a radio, 11.8 percent have a television and 16.4 percent have access to the Internet<sup>67</sup>. The low percentage of people with access to the mass media means that a large percentage

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<sup>65</sup> [www.parliament.gov.mw](http://www.parliament.gov.mw) has at times published gazettes and order papers however continuity has been a challenge

<sup>66</sup> Also known as Financial Services Amendment bill, proposed a regulatory measure to prevent banks and financial institutions from charging more than certain levels of interest especially on loans

<sup>67</sup>

of the population misses out on important announcements regarding parliamentary proceedings.

Interviews with the parliamentary outreach office revealed that, much as their outreach office would wish to reach out to all citizens to make them aware of the channels that exist for participating in the law making, the outreach office faces many challenges. One such challenge is resource limitation for the outreach program. The office acknowledged the assistance that CSOs offer by informing the public about parliament business. However, knowledge by the CSOs on parliamentary processes is limited and they often misinform the public on parliamentary business. A [report](#) commissioned by GIZ in 2011 observed that Malawi's CSOs have the following characteristics: they are highly dependent on foreign funding, they are one-man shows where decision making is influenced by the founder, their work lacks quality; they operate without strategies, profiles and/or change objectives and directions of their work like chameleons<sup>68</sup>. There have not been recent studies that show an improvement of the CSOs' situation. Though the challenges cited relate to formation issues, the low capacity of CSOs is the most prominent challenge, which undermines their impact in entrusting them with a representative role to inform policy and legislation.

### 4.2 CSO perceptions on public participation in policymaking.

Malawi has experienced the mushrooming of a vibrant and growing civil society that is actively involved in the country's economic, social, and political spaces since the transition to multiparty democracy in 1993. Chirwa (2014) outlines three common ways through which civil society organizations (CSOs) are consulted by government on official policy. Some CSOs are included in the governing boards of state institutions mostly, parastatal organisations<sup>69</sup>. CSOs may also be invited by government or by any state institution to take part in the formulation of a particular policy or law. CSOs can as well become members of a permanent forum of engagement.<sup>70</sup> Pre-budget workshops and 'breakfast meetings' organized by the Ministry of Finance every year are another example where CSOs are involved. These take place before the budget session of Parliament drawing participation from the civil society sector, faith-based organizations, universities, and the private sector.

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<sup>68</sup> The report acknowledges other studies where these characteristics were also observed. (Afrodad, 2003, Chirwa, 2000, Fozzard and Simwaka, 2002, George-Coker et al, 2009, Kuppens, 2009, The Courier, 2003).

<sup>69</sup> The Executive Director of Council for NGOs was appointed a representative member to Technical Entrepreneurial and Vocational Education and Training Authority in 2014. [wamauluka.blogpost.com](http://wamauluka.blogpost.com)

<sup>70</sup> For example, Malawi Network for People Living with HIV (MANET Plus), Coalition for Women Living with HIV and AIDS, Malawi Interfaith AIDS Association, NGO - Gender Coordination Network, National coalition for sex workers, National association for young PLHIV and NYCOM were all in the coordinating committee for the National Gender and HIV and AIDS Implementation Plan (NGHIVIP) (2016-2020).



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Another example where Government has widely consulted is in the processes of formulating and adopting the national development strategies. The Malawi Growth and Development Strategy (MGDS) and the Malawi Poverty Reduction Strategy (MPRS) that preceded it, were developed in a consultative manner. The formulation of some new social policies, for example on disabilities, education, gender, land, reproductive health, maternal health, HIV and AIDS and orphans, has also been consultative.<sup>71</sup>

According to CSOs/NGOs, public participation is important in the making and implementation of policy in both national and local government. NGOs/CSO also indicate that participation of each and every member of society is very important in as far as policy making is concerned. CSOs/NGOs agreed that they were engaged in a number of policymaking processes and interacted with officials in the Ministries, Departments and Agencies and local councils.

NGOs/CSOs acknowledged conferences/workshops, consultations public, meetings, public debates, mass media, public hearings, non-violent protests, and survey questionnaires as modes of public participation used in the making and implementation of policy in Ministries/Departments and other government Agencies (MDAs).

Most of respondents from NGOs/CSOs participated in the radio talk shows that dealt with policy making, public hearings organized by MDAs, protests against policies made by MDAs<sup>72</sup> and make enquiries to MDAs about any policies made. According to information obtained in this survey from NGOs/CSOs, public participation is beneficial for a number of reasons including increase in public awareness, information acquisition on public views, increase in community empowerment, better policy making, improved implementation of policy, improved policymaking on specific points, improved public services, deciding on particular options, empowering the Ministry, Department or Agency and to meet statutory requirements.

CSOs were asked to identify principal factors that can contribute towards the improvement of public participation in the making and implementation of public policy in Malawi. Awareness of the participation processes, publicizing the proposed policies and media engagement were cited as the principal factors.

One issue that emerged from the interviews was lack of meaningful CSO participation in policymaking processes. Despite a plethora of efforts to democratize policy processes in Malawi, many CSOs felt that the shadow of authoritarian governance is still strongly

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<sup>71</sup> The consultations involved District Executive Committees (DECs), Area Development Committees (ADCs), development partners, the academia, the media, the private sector, CSO, Political Parties, Members of Parliament, Eminent Persons, and Ministries, Departments and Agencies (MDAs), and interest groups which include youth, women, the elderly, and persons living with disability.

<sup>72</sup> Right to protest has been defended in Malawi including in 2019 when Government applied for an injunction against protests relating to post elections disputes [www.africanews.com](http://www.africanews.com).

entrenched in government institutions in Malawi. Many of the respondents felt that consultations with CSOs are often made in order for policymakers to be seen to be inclusive and open but often times CSO perspectives are never incorporated. For instance, the pre-budget consultation meetings that are conducted by the Ministry of Finance, Economic Planning and Development. The consultations are an annual event that attract various stakeholders, ranging from civil society groups, economic bodies, academia, and members of the general public. However, over the years, stakeholders have complained that contributions made during such consultations are rarely taken on board. Some considered them a waste of time and resources.

Some of the respondents observed that government officials are very wary of, and mistrust CSOs, especially governance CSOs. CSOs repeatedly mentioned the need for policymakers to work on being more open and accommodating in their attitudes towards CSO involvement in policy processes.

Access to information was another issue that was raised. Respondents pointed out that access to information for CSOs is still a challenge despite the enactment of the Access to Information Act. This is due to the existence of secrecy laws, such as the Official Secrets Act. In the absence of accurate information, it becomes difficult not only to put forward an informed argument to policymakers and to understand the depth of the situation under review in order to create a constructive agenda.

### 4.3 Public perception on participation opportunities in policymaking

MDAs have not involved the public much in the policy making process. Community members felt they do not participate adequately as citizens. The members indicated that the policymaking process takes a top-down approach. The traditional leaders (also known as Traditional Authority or TA) who participate at the district level when the MDAs come for consultations have no power to contest some of the proposals as they fear losing their benefits, which include the monthly honoraria that they receive from the government. Respondents feel that the process needs to be reversed and start consultations from the ground to the district level.

## 4.4 Participation in the Legislative Process

### 4.4.1 Legislative process

The Constitution of Malawi in section 48 (1) vests all legislative powers of the Republic of Malawi in Parliament. Section 66 (2) of the Constitution provides for two types of Bills –that is, Government Bill and Private Bill. Section 66(2)(a) states that “a Government Bill shall be a Bill promulgated by the Government and introduced to Parliament on

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behalf of the Government. Section 66(2)(a) states that a Private Bill a Private Bill shall be

- (i) promulgated by an agency that is not part of the Government; and
- (ii) introduced to Parliament on behalf of that agency where that agency is mandated by an Act of Parliament so to do.

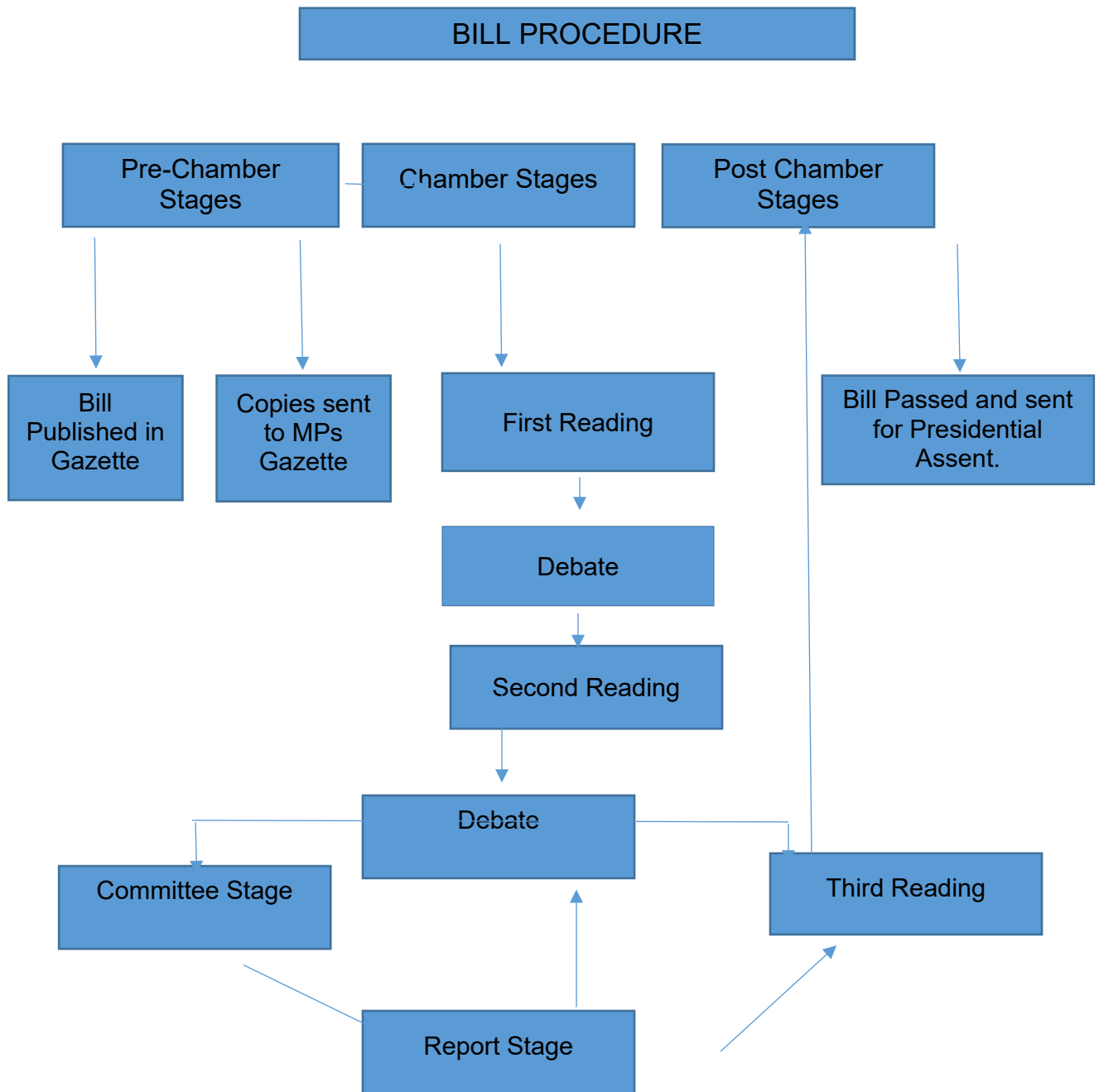
Section 66(2)(c) states that a Private Member's Bill shall be:

- (i) promulgated by a member of Parliament; and
- (ii) introduced by that member in the National Assembly in accordance with its own procedure.

Parliamentary Standing Orders No.110-112 further explain that such bills will often be in response to societal demands. Government bills come through the Ministry of Justice as described above and often with the involvement of the Law Commission who conduct consultations and draft bills in liaison with the concerned ministry.

Parliamentary Standing Orders stipulate the process for introducing and passing the bills into law in Parliament. During the pre-chamber stages, parliament receives bills from different sources as described above and these are introduced on the order paper, published in gazettes and parliamentarians receive copies of the same. During the chamber stage bills are supposed to be read three times with intervals that allow for further consultations with stakeholders. Debates on the bills are done between the readings but after the second reading some bills that require more input from stakeholders are referred to appropriate committees. Bills may be passed or rejected after the third reading. If passed in the House they are further referred to the president for assent.

Figure 3: Procedure for introducing and Passing Bills.



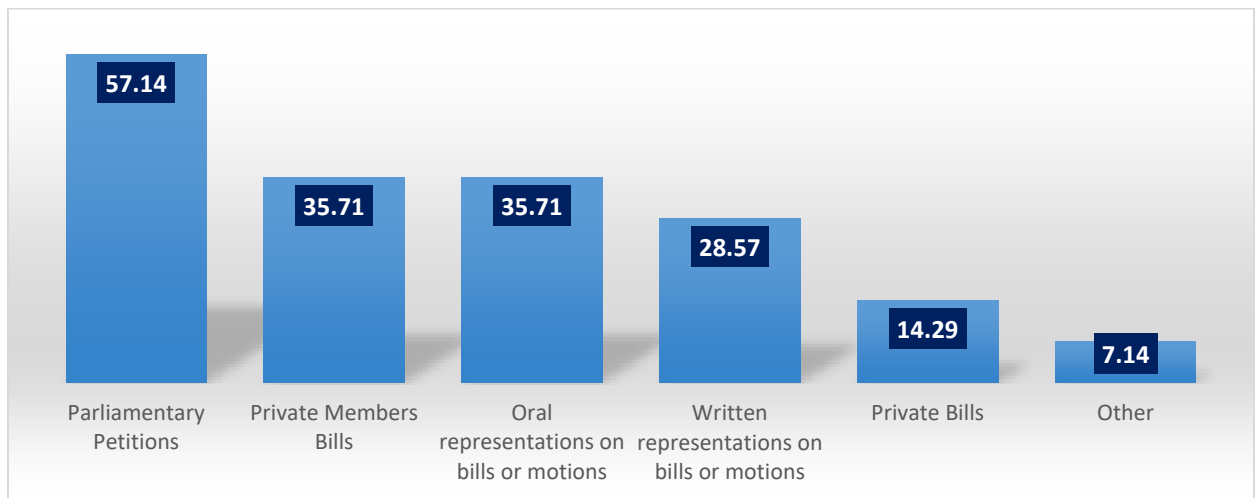
## 4.5 CSO/NGO perceptions on public participation in legislative processes

Individuals from various local and international organizations were asked if the citizens and NGOs/CSOs are conversant with and use the following mechanisms for engaging Parliamentarians.

- a) Parliamentary Petitions.
- b) Private Members Bills.
- c) Oral representations on bills or motions.
- d) Written representations on bills or motions.
- e) Private Bills

Responses on knowledge of mechanisms for engaging parliamentarians are shown in the following figure:

**Figure 4: Awareness of Mechanisms for Engaging Parliamentarians**



According to the figure above, 57.14% of respondents indicated that citizens and NGOs/CSOs are aware of Parliamentary Petitions and use them, 35.71% of respondents said citizens are aware of and use both Private Members Bills and Oral representations on bills or motions. Written representations on bills or motions and Private Bills are known and used by citizens according to 28.57 and 14.29% of respondents respectively. Respondents who said there were other mechanisms known to citizens and NGOs/CSOs argued that Parliamentarians are supposed to represent them rather than them directly taking part in policy and law making.

Table 5 shows respondents' views about the actual NGO/CSO level of utilization of participation mechanisms.

Table 5: Respondents' views on Level of Utilization of Means of Legislative Participation

Means of Legislative Participation	Level of Utilization in Percentage
Petitions to a Parliamentary Committee	64.29
Written representations to a Parliamentary Committee	42.86
Petitions to a Member of Parliament	35.71
Oral representations to a Parliamentary Committee	35.71
Submissions to the Law Commission on a proposed law	35.71
Attending consultations by the Law Commission on a proposed law.	35.71
Private Members Bills	21.43
Petitions or written submissions to the President (in favour of or against the assenting of a Bill)	14.29

Table 5 above shows what respondents think are the most used mechanisms of legislative participation. The table shows that petitions to parliamentary committees is perceived as the most utilized means of legislative participation by CSOs in Malawi with 64.29% of respondents seeing this as the most frequently used participation mechanism. The survey has shown that petitions or written submissions to the President (in favour of or against the assenting of a Bill) are perceived as the least used means of legislative participation by organizations. The presidency in Malawi has often been viewed with fear after a history of dictatorship during the one-party system. As such there is need for demystification of the office. Presidents are supposed to answer questions in Parliament periodically but since multiparty elections no president has ever presented him/herself in the house for questioning.

Another mechanism put in place for wider consultations in the process of formulating a bill is through the Law Commission. However, from the results of this study, they are

perceived as one of the least utilized channels by the CSOs at 35.71%. While the office has a broad mandate that includes receiving submissions, not all bills go through the Law Commission. The few bills that do go through the Law Commission often require specialist stakeholder inputs. Issues of financing for outreach programs also pose challenges for the Law Commission to publicize their roles to the public.

### 4.6 Public perceptions on participation opportunities in legislative processes

In keeping with the constitutional requirement that obliges the legislature to reflect the interests of all the people of Malawi in its deliberations when enacting laws,<sup>73</sup> Members of Parliament are expected to consult people they represent for better deliberations on bills. Members of the communities that were involved in focus group discussions in Salima indicated that MPs had not involved any of the community members in discussions or consultations on legislative processes but expressed the desire to get involved.

“It would be nice for them to visit us and for the community to take part in the law-making processes,” one member was quoted as saying.

*“sizinayambe zachitikapo tisaname,” meaning that “it has never happened, let’s not lie to you”.*

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They went on to state that the MPs only show up during campaign periods and in the 2020 general elections, they only reminded people to vote for the president and outlined their manifesto.

The respondents also said that the Law Commission has never visited their community.

One participant was quoted as saying:

“What my peers are saying is true, we are not trying to paint them as villains, but this is the truth. We know what the Law Commission is but they have never visited us. We just hear about them on the radio.”

The participants highlighted that the only Ministry that invites public stakeholders to consultative meetings is the Ministry of Finance during budget consultations, but community members rarely attend because such meetings are often held in urban centers.

Some respondents indicated that they knew about the Ministry of Gender meeting with the district council and the District Executive Committee (DEC) to publicize the

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<sup>73</sup> Section 8

Marriage Act in 2015 and reform of the Land Bill in 2017. The ministry's expectation was that the chiefs (who sit in the district council) would educate their communities but in reality, chiefs cannot fully address some of the concerns that people have. On the other hand, some noted that it would be a challenge to expect representatives from the ministries to reach out to all members of the community. The institution of decentralization structures is meant to ease this challenge. Ineffective structures are, therefore, the reason why people at the grassroots complain that they are not consulted.

The community members acknowledged radio programs as a channel for sharing information and raising awareness on law making. For instance, Chisomo radio in Salima airs a programme titled 'Mbali Yanga' (*my views*) that solicits views of the public on laws and law-making processes. People in the same community also know that Times radio airs a program whose focus is on discussing laws and it invites lawmakers on air.

Overall, knowledge in local communities on the procedures for law making processes was observed to be insufficient. For instance, in Salima, respondents were able to describe some parts of the process, such as the requirement for bills to be debated upon when in Parliament before assented to by the President. As consultation starts at the district level at the District Commissioner's (DC) office and the District Executive Committee (DEC), the respondents suggested that the DCs should be consulted separately from the chiefs to allow a safe space for the chief to freely express the real issues affecting the community without being hampered by the DC.

### 4.7 Public perceptions on Participation Opportunities at Local Government Level

Consolidation and promotion of local democratic institutions and democratic participation are among the prime functions of the local authorities as outlined in section 146 (2) of the Constitution of Malawi. The Malawi Decentralization policy of 1998 and Local Government Act of 1998 provide the political and legal basis for the transfer of power, responsibilities, and financial resources from central government to local government.

Just as Focus Discussion Group (FDG) members complained about MPs lack of engagement with local communities, they expressed similar sentiments about the local council leadership, complaining that councilors have never visited communities--unlike NGOs.<sup>74</sup> The FDG respondents reiterated that councilors do not involve people

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<sup>74</sup> In Salima, Community members acknowledged NGOs such as Centre for Human Rights and Rehabilitation (CHRR), National Initiative for Civic Education (NICE) and Women Law Resource Center (WOLREC) involved them in some law-making processes. For instance, CHRR involved them in the law-making process on the new Land Bill, labor law and fair remuneration, the Gender Equality Act, and the Marriage Bill before they became Acts.



in making by-laws. Councilors, just like MPs, are elected on a party ticket that involves campaigning with lots of promises and often times distribution of resources. FDG members felt that, once elected in office councilors do not wish to associate much with the people for fear that constituents still expect them to award personal benefits--just as the councilors do in campaign times.

One FDG participant mentioned that, usually when the community wants some development like a borehole, community members sit down and agree to map a water source and one community member goes to the councilor to source help involving the VDC. The councilor does not appear often in the community he/she represents. FDG members felt that the MP might have an excuse not to reach community members since MPs often reside in the capital city to conduct legislative business, but councilors should be more accessible. FDG members felt better civic awareness might assist in devising better strategies to hold the councilors accountable on decisions they make at the district council.<sup>75</sup>

FDG members said that NGOs, including CHRR and WOLREC, have been involved in making by-laws and other decisions at local council. NGOs do this through conducting community dialogues and civic education. NGOs have made efforts to involve community members participation in development discussions. Despite NGO efforts, FDG respondents felt there is need for more awareness on by-laws and policies so the community can participate better in the implementation of the same.

### 4.8 Gaps/Barriers to Public Participation

Participation of the public in policy and legislative processes contributes to efficiency of representative democracy in different ways such as ownership of the policies or laws, enhancing transparency in the conduct of government business, improved quality of adopted public policies and their efficient implementation, and ensure legitimacy for better implementation. However, in Malawi there are a number of factors that prevent ordinary people from adequately participating in the legislative and policy process. These barriers include knowledge gaps, lack of contact with representatives and information gaps.

#### *Knowledge levels*

According to the survey, ignorance of legislative processes and how citizens can take part in the processes is the biggest hindrance to ordinary people's adequate participation in the legislative process. The same applies to lack of knowledge on policy processes in government ministries. This ignorance is made worse by the fact that

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<sup>75</sup> Civic education on law processes have been done by CHRR and WORLEC but there is still a strong need for the government bodies responsible for civic awareness to come in with a more comprehensive program.

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government does not have a clear standard procedure to be followed during policy making.

Parliament does not have a communications strategy and respondents felt that it does not effectively publicize parliamentary mechanisms for public participation. The perception is that government's publicity offices are preoccupied with publicizing political programmes rather than mainline government policies and processes.

### *Information gaps*

The survey has revealed that, though Parliament advertises its activities through such media as gazettes and order papers and radios, these media sources do not reach the local communities. Several reasons account for this failure, either because people cannot access these media or because the packaging of the messages is not simplified and translated in local languages since parliamentary deliberations are held in English. There have been attempts to post order papers on Parliament's website, but these efforts are not consistent.<sup>76</sup>

Additionally, the use of internet to access information is often frustrated by the high internet charges in Malawi. In 2019, a report by Media Institute for Southern Africa (MISA) Malawi Chapter showed that 1GB of unbundled data cost \$6.86, yet the average income for a Malawian is about \$40.96. This inaccessibility of internet due to cost is pronounced when one considers that an average Malawian cannot afford basic commodities.

A large part of the public has also not shown much interest in the legislative processes. This mainly results from lack of awareness on the benefits of following parliamentary deliberations. Barriers to public participation in policy formulation are worsened by political forces that often control access to information through control of the media, especially the public owned broadcasting house, the Malawi Broadcasting Corporation. Even after information is available to the public, most of the bills are in English language and are rarely translated into local languages.

### *Lack of contact with Parliament and MDAs*

Public opinion surveys on democracy and governance in Malawi indicate that citizen participation in the legislative process is low as many members of parliament rarely meet with their constituents. Most members of parliament do not have offices in their constituencies where they could meet the people they represent, and some rarely hold public meetings. (Erdmann et al, 2000). Another reason for the low participation, according to Chingaipe and Gondwe, (2016), is the inaccessibility of information to the general public through order papers that are not easily available, Hansards and gazettes that are also rarely accessible to the public. Additionally, the lack of strong

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<sup>76</sup> A visit to the website on [www.parliament.gov.mw](http://www.parliament.gov.mw) shows outdated posts such as a news item from 2019.

Parliamentary systems and structures for public participation, the lack of programmes by CSOs and other players to encourage legislative participation and the inadequacy of resources to take parliament business to the local communities add to the reasons for limited participation.

MDAs are not persuaded on the need to consult a wide range of stakeholders. There are no minimum standards such that decision as to whether to consult the public remains at the discretion of the initiating offices. At the local level, participatory structures are dominated by local chiefs at various levels on the assumption that such chiefs will carry views from the grassroots; however, chiefs often present views that sustain the favours obtained from government and hence may not accurately represent grassroots opinions. Decentralisation structures like the area and village development committees that were put in place by the same central government are rarely used.

### 4.9 Barriers to CSO Participation

The involvement of CSOs in policy and legislative processes comes with its own challenges. While Members of Parliament are mandated to represent different constituencies, there is often a challenge in establishing the legitimacy of CSOs. Most CSOs, except for the faith-based organisations, are concentrated in urban centres and have no constituencies in rural areas where the majority of the Malawians live. The survey has established that sometimes CSOs/NGOs face difficulties when interacting with officials in the MDAs. Mistrust characterizes the relationship between CSOs and the government. There does not appear to be formal institutions or processes to facilitate policy dialogue and the government appears to consult civil society in an ad-hoc manner regarding policy issues. The government is rather skeptical of critical CSOs and individuals, carefully choosing those who participate in policy dialogue.

On their part, the CSOs have tended to be more event-driven than being systematically issue-based in their approach to policy matters posing questions as to whether indeed they represent the broad interests of the poor. However, CSOs blame financial resources as the cause for not reaching out to the wider public in the rural areas. They also blame regulatory frameworks for discouraging them from participating in policymaking. CSOs that exclusively deal with LGBTIQ issues, for example, are denied registration on the basis that same-sex relationships and gender transitions are still illegal in Malawi. Such organizations are therefore said to illegally exist in Malawi and thus unrepresented in policy circles.

Sector Wide Approaches (SWAP) have been publicized by the government of Malawi whereby tasks, programmes and policies are supposed to involve as many stakeholders as possible within the sector concerned. This ensures that CSOs get involved in policy

processes. There are however very few SWAPs that are functional and hence that space for participation exists only on paper in most sectors.

Most policy documents in Malawi recognize the contribution of CSOs. However, one of the biggest challenges facing CSO networks is organizational identity. As CSO networks<sup>77</sup> have established secretariats, registered, and secured project funding from donors, they have found themselves working increasingly independently from their members. This challenge has arisen from the process of institutionalisation that CSO networks have followed, as well as from the exigencies of the Malawian context. Most CSO networks hold regular network meetings. However, those who often attend such meetings are those who are easily contactable by phone or email. Consequently, most rural members who have no access to phone or email, especially women, are excluded from participation.

Cohesion within networks often suffers when interests of individual NGOs obscure general interests. Capacity building on forming and sustaining such networks has been lacking. Some networks have died or hibernated because of capacity challenges, including lack of funding.

### 4.9 Participation of Marginalized Groups in Public Affairs<sup>78</sup>

The study also sought to find out how effectively marginalized groups participate in policy and law-making process. The study shows that women, youth, people with disabilities and LGBTIQ persons do not participate effectively in policy processes in Malawi.

#### 4.9.1 Participation of women in public affairs

From a legal perspective, Malawi has made substantial progress in enhancing gender equality. Malawi's Constitution states that women enjoy the same rights as men. Malawi is a state party to CEDAW and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, better known as the Maputo Protocol, that encourage gender equality. Malawi is also party to the 2008 Southern African Development Community (SADC) Protocol on Gender and Development. The

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<sup>77</sup> A number of CSO networks have existed for some time, such as (i) Civil Society Education Coalition (CSEC), which advocates for a right to quality education for all by influencing policy, mobilising communities for action, and exploring innovations that bring meaningful change; (ii) Malawi Health Equity Network (MEHN), an alliance of 95 CSOs in the health sector that advocate for health systems that promote the delivery of equitable and quality health care services by influencing policy; and (iii) Civil Society Agriculture Network (CISANET), a grouping of CSOs and individuals that promote agricultural development and sustainable livelihoods for the poor by influencing desirable change in policies, practices and attitudes of Government, donors, civil society and private sector.

<sup>78</sup> Marginalized groups include women (rural women), youth, persons with disabilities, sexual and gender minorities (Lesbian, Gay, Bisexual, Transgender and Intersex persons), people living with HIV and AIDS and sex workers.

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country has enacted several laws aimed at promoting gender equality, most notably the Gender Equality Act. Despite these provisions, women have struggled to get sufficient seats in Parliament, as the lawmaking body in Malawi. This was especially made very clear in the 2014 elections, when relatively fewer women managed to gain political positions. Most notably, the percentage of female MPs jumped from 13.99% to 22.27% from 2004 to 2009; however, that percentage dropped to 16.58% after the 2014 elections, marking the only drop in the percentage of female MPs since the country's restoration of democratic elections in 1994. The May 2019 tripartite elections saw female candidates increase their share of parliamentary seats from 16.58% to 23.3% slightly above the 2009 level.

Many factors have been pointed out as influencing the low numbers of women in parliament. These range from social and economic to legal factors. Women have significantly lower levels of literacy, education, formal and informal employment, and general access to resources. Women are also discouraged by electoral malpractice and misconduct such as intimidation, harassment, voter card buying, abuse of public resources, and campaign violence (MESN, 2014). This misconduct continues despite the existence of legislation, such as the Presidential and Parliamentary Elections (PPEA) and the Local Government Acts, which prohibit such practices. There is, therefore, need to lobby for strict implementation of the legal framework if women representation in law-making is to improve.

A 2014 Afrobarometer Survey showed that women in Malawi are less likely than men to participate in political activities. The survey results further showed that women in Malawi are less likely than men to discuss politics and to be interested in public affairs. On this account, CSOs need to play an active role to encourage more women to show more interest and take part in politics.

Inadequate laws may also influence the low numbers of women in Parliament and other decision-making structures. This claim is based on the contention that equality and non-discrimination principles have not been consistently applied in the electoral laws. Although equality and non-discrimination are the basic principles for enhancing female participation, these principles have not been consistently incorporated into the electoral laws, policies, regulations, and guidelines. For example, most party constitutions reflect recognition of formal equality by indicating that the party will be "guided by" or is "founded on" principles of equality. However, most of these principles are stated in broad and general terms and are not gender specific.

Since the law is vague as to whether people working in public office may run for political office, women are dissuaded from running for political posts because of the fear of losing their jobs if they do so. Moreover, the impact of losing a job is worse for women because, given discrimination against women, women who lose their jobs will not have

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the same opportunities to regain work as men. It is necessary, therefore, to review the leave-of-absence provisions in the conditions of service of public offices and statutory corporations to ensure that women who opt to contest for political positions are financially secure.

Furthermore, the requirements for standing for and of being elected to public office are also not very clear and sometimes punitive. For instance, the Constitution (Section 52) provides that only people who are able to read and speak the English language can stand for parliamentary elections. Similarly, the Local Government Elections Act (Section 27 (b)) states that a person should not be elected as a councilor unless that person is able to speak and to read the English language well enough to take an active part in the proceedings of the council. The majority of women are unable to meet this requirement because they lack formal education. These challenges militate against women's eligibility to stand for political positions. As such, there is need to assess how such barriers impact on women representation in public offices with a view of addressing them effectively.

Eligibility for women is also hindered by the nomination fees that are payable by aspiring candidates. Section 45 of the Presidential and Parliamentary Act provides for a nomination fee to be paid to the Malawi Electoral Commission as fixed by the commission. Likewise, the Local Government Elections Act (Section 37 (1)) provides that a candidate for local elections should deposit a sum (an election fee) as fixed by the commission. There are no guidelines on how to establish the amount and this provides room for abuse. The fees are exorbitant, thereby excluding disadvantaged groups, including women, from contesting the elections. This should necessitate consultation with affected groups and key stakeholders to identify a reasonable amount with a view of addressing traditional and persistent barriers faced by vulnerable groups.

The Political Parties (Registration and Regulations) Act (1993) governs citizens' participation in politics. This Act provides the legal framework for the registration and deregistration of political parties. However, the Act does not provide for gender parity as a condition. It does not set any minimum number of female members, for example, as a condition for the registration of a political party. It is therefore possible for a party to be registered with a leadership and membership that is all male, despite having objectives or purposes are intended to promote gender non-discrimination.

It should be noted that a party may be refused registration only if it discriminates on racial, color, ethnic or religious grounds, but gender is not specified. A gender-discriminatory purpose may, however, be challenged as unconstitutional. It is important to make gender equality and non-discrimination principles a pre-condition for the registration of political parties. These principles can be made into legal requirements, for instance, in the founding principles of the parties, in the leadership

composition of the parties; and ensure that women are part of the signatories of political party constitutions.

The Gender Equality Act, as noted earlier, promotes a greater visibility of women in decision-making positions in Malawi. However, the Act does not apply to the political sphere, including the political parties, as these are not considered government or public service institutions. The political parties, nevertheless, can implement voluntary quotas. It would, however, be more effective if the parties were subjected to legally binding quotas to complement the current progressive legal framework. Malawi could learn from other African countries that have adopted legislation to promote women's participation in political affairs.<sup>79</sup>

### 4.9.2 Participation of persons with disabilities in public affairs

In 2012, Malawi enacted the Disability Act to make provision for the equalization of opportunities for persons with disabilities through the promotion and protection of their rights. The Act domesticates most of the provisions of the Convention on the Rights of Persons with Disabilities (CRPD), which Malawi ratified in 2009. This Act, albeit progressive and normative in its own right, is yet to be fully operationalized. The Act, among other things, provides for the right of association and representation to every person with a disability. It also provides for the right to participation in political and public life.

Persons with disabilities participated in the drafting of the Disability Act through their mother body, the Federation of People with Disabilities in Malawi (FEDOMA).<sup>80</sup> However, there have been concerns that FEDOMA is not fully representative of the disability community in Malawi, which shows exclusion of certain groups in the sector as a challenge<sup>81</sup>.

FEDOMA has specifically called for the introduction of special measures that will ensure that people with disabilities have self-representation in Parliament<sup>82</sup>. A [report](#)

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<sup>79</sup> For example, in Kenya, Article 91 of the 2010 Constitution sets the requirement for political parties to “respect the right of all persons to participate in the political process, including minorities and marginalized groups.” Furthermore, Section 7 of Kenya’s Political Parties Act, requires governing bodies of political parties to reflect gender balance with no more than two thirds of their members being of the same gender. Other countries, like Rwanda, Senegal, South Africa, and Uganda have the world’s highest rates of women representation in parliament as a result of the adoption of affirmative action policies.

<sup>80</sup> Its membership is drawn from its affiliated Disabled People’s Organisations (DPOs) representing different disabilities.

<sup>81</sup> Currently, it has six affiliates, namely Malawi Union of the Blind (MUB), Malawi National Association for the Deaf (MANAD), Disabled Women in Development (DIWODE), Association of Persons with Albinism (APAM), Association for the Physically Disabled and the Parents of Disabled Children Association in Malawi (PODCAM). However, there are no specialized support groups for those with epilepsy, dyslexia, down syndrome, cerebral palsy, intellectual disabilities, deaf blind; those with mental illness and complex disabilities; hence these groups are underrepresented. See, <https://afri-can.org/wp-content/uploads/2015/10/Situation-analysis-of-PWDs-in-Malawi-Final-Report.pdf>

<sup>82</sup> <https://www.yonecofm.com/index.php/2017/11/11/fedoma-for-more-disability-representation-in-parliament/>

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from the Law Commission proposes having some seats reserved for special competition by women. FEDOMA feels the same should also apply to persons with disabilities.

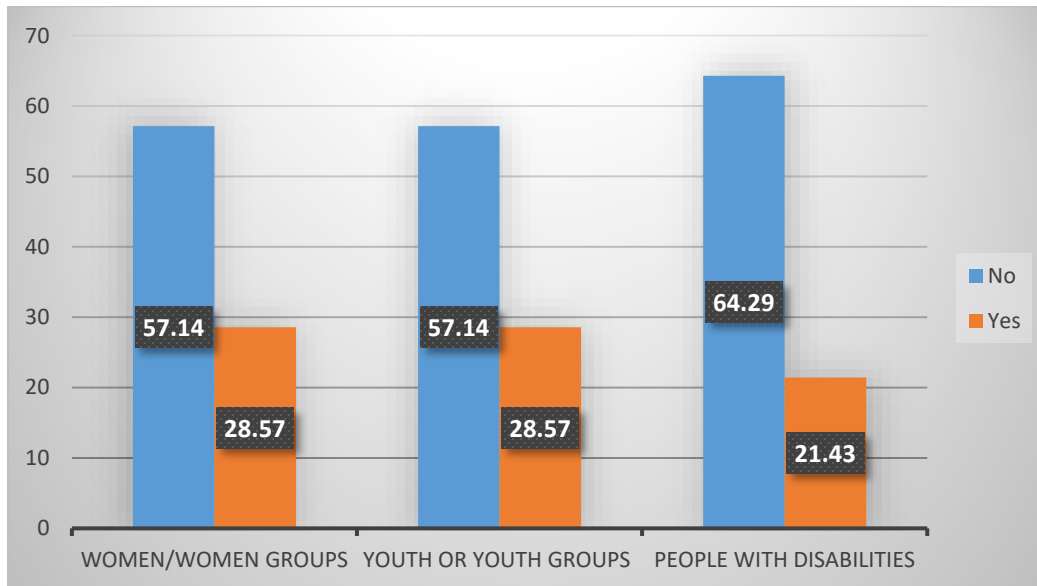
Persons with intellectual or psychosocial disabilities face exceptional challenges. This community experiences multiple legal, institutional, communicational, and social barriers to exercise their rights; barriers that prevent them from voting, from standing for election for public office, from exercising their civic participation, or simply from having a say in their own lives. Their legal capacity is often denied or restricted on the basis of having a medical condition or impairment, having made a decision perceived as poor, or being perceived as having deficient decision-making skills. Other obstacles include negative attitudes due to prejudices and/or physical and communication inaccessibility, and the lack of supported decision-making policies and schemes. These barriers are exacerbated among historically marginalized groups--for example, women with disabilities.

Since November 2014, Malawi has seen a sharp increase in human rights abuses against people with albinism, including abductions, killings and grave robberies by individuals and criminal gangs. At least 25 people have been killed and at least five have been abducted and remain missing. According to the Malawi Police Service, at least 69 cases involving crimes related to people with albinism have been reported since November 2014. People with albinism are being targeted for their body parts by those who believe that they contain magical powers and bring good luck. As a result, people with albinism live in fear of losing their lives to criminal gangs who, in some instances, include close family members. This has affected their participation in politics and the need for affirmative action for such groups. Malawi is yet to produce a legislator with albinism, which means their representation in Parliament is currently zero.

From interviews with marginalized groups, the following were the results:



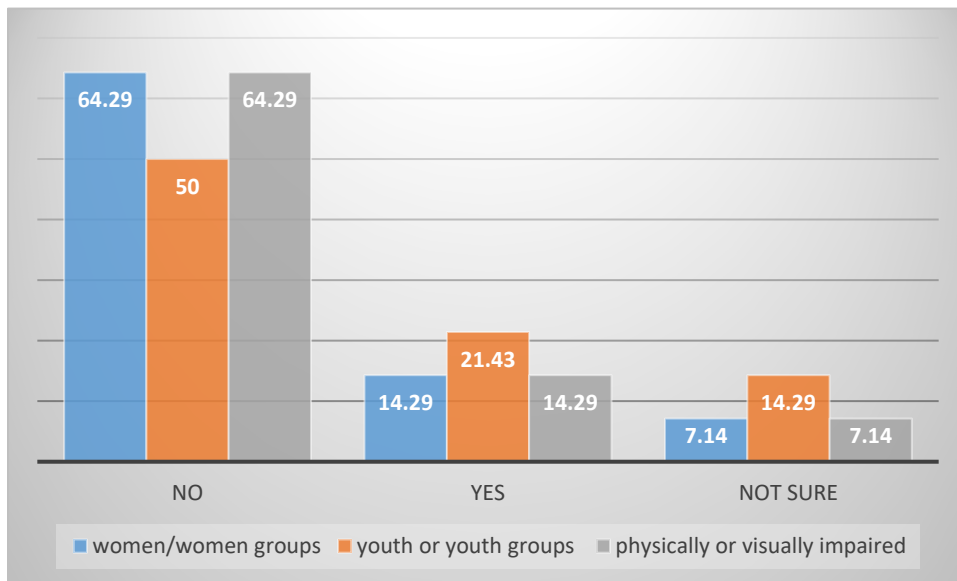
Figure 5: Effective Participation of Marginalized Groups in Policy Processes



The histogram above shows that respondents indicated that women and people with disabilities do not participate effectively in policy processes in Malawi.

The histogram shows that 64% of responders confirmed that physically or visually impaired individuals in Malawi do not take part in policy processes. It is not easy for other groups to participate effectively in legislative and public policy processes according to responses from NGOs/CSOs. Women or women's groups, physically or visually impaired citizens and youth or youth groups are the most marginalized as far as public participation in law and policy making is concerned.

Figure 6: Effective Participation of Marginalized Groups in Legislative Processes



According to responses from the CSOs that work directly with these groups, women, youth, and persons with disabilities do not participate effectively in legislative processes. For instance, the histogram above shows that 64% of respondents indicated that women and people with disabilities do not participate effectively in legislative processes in Malawi.

#### 4.9.3 Participation of LGBTI+ persons in public affairs

Other groups that do not effectively participate in legislative processes are minority groups like the Lesbian, Gay, Bisexual Transgender, Intersex (LGBTI+) community. These are rarely consulted in legislative processes in Malawi precisely because same-sex relations are illegal in Malawi according to sections 153(a), 156 and 137A of the Penal Code.

Sylvia (not the real name), who works for an LGBT+ led organisation, said:

“The government does not want us to be visible, that’s why they will never invite us.”

Allan, who works for an LGBTI+ led organisation said apart from being involved in discussions around HIV and AIDS, he had never attended any other policy development processes in Malawi.

*“They only think of us when they are discussing HIV because they do not want to lose Global Fund money.”<sup>83</sup>*

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LGBTI+ led organisations are illegal and therefore rarely invited to policy consultation meetings. In July 2016, the Nyasa Rainbow Alliance, an organization based in Blantyre that works on LGBTI rights, was denied registration by the Registrar General on the basis that the ‘membership practices’ are recognized as an offence under the Laws of Malawi. Such organizations are never invited to meetings by government due to their “illegal” status hence disregarding their right to participation.

The challenges facing LGBTI people in Malawi have been further exacerbated by the lack of clarity and divergent opinions regarding the legality of a moratorium on arrests and prosecutions for consensual homosexual acts, issued in 2012 by the Ministry of Justice and Constitutional Affairs. In 2016, a high court order suspended the moratorium pending judicial review by the Constitutional Court. This uncertainty, combined with routine discrimination and stigma, has created barriers to seeking political office and deters LGBTI+ persons from actively participating in policy and lawmaking processes.

#### 4.9.4 Participation of youth in public affairs

With more than 46% of the population below the age 15, and youth (aged 15-29) accounting for one-quarter of the population<sup>84</sup>, Malawi is a youthful country and will remain one in the next decades. One of the rights applicable to young people is the right to participate in all decision-making processes relating to the welfare of the youth, including governance issues. Yet, Malawian youth face multiple and interconnected challenges with regard to participation in public affairs.

The National Youth Council of Malawi Act (Cap. 31:04) provides for the promotion, coordination, and implementation of youth development programmes in Malawi. It specifically establishes the National Youth Council of Malawi to contribute towards formulation of policies and programmes that will promote the youth.

The National Youth Policy of 2013<sup>85</sup>, which is currently being reviewed, recognizes that youth have not been actively and meaningfully involved in decision making on issues that affect them. The policy further recognizes that to ensure that issues affecting the youths and other target groups are adequately addressed, it is imperative that the youth themselves do not only actively participate in the key decision-making processes but that they are also given leadership roles. This would ensure that the decisions made, and

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<sup>83</sup> In Malawi, the only policies that recognize Men who have Sex with Men (MSM) are those related to HIV and AIDS such as the HIV Policy, the National HIV Prevention Strategy, and the Nation Condom Strategy.

<sup>84</sup> <http://www.nsomalawi.mw/>

<sup>85</sup> [https://www.youthpolicy.org/national/Malawi\\_2013\\_National\\_Youth\\_Policy.pdf](https://www.youthpolicy.org/national/Malawi_2013_National_Youth_Policy.pdf)

programs designed are in the final analysis reflective of the needs of the youth as seen from the perspective of the youth themselves. However, young people are still largely excluded from decision-making positions.

One of the challenges cited by respondents is limited opportunities for effective and meaningful youth participation in decision-making processes. For instance, in the area of political participation, eligibility for parliament and ward counselor starts at 21 years. Politics itself is typically regarded as a space for politically experienced men. As a result, young people are systematically marginalized in political institutions and decision-making processes because of their young age, limited opportunities, and projected lack of experience. For example, young people are underrepresented in parliament and ward councils. This is despite the fact that young people constitute a majority of voters<sup>86</sup>. With such limited opportunities and exposure to meaningfully participate in inclusive decision-making processes, young men and women feel excluded and marginalized in their societies and communities.

At local government level, young people remain underrepresented. Currently, the Malawi Government is following a district-focus approach to development where the Village Development Committees (VDCs), Area Development Committees (ADCs) and District Executive Committees (DECs) are key and yet the youth are still underrepresented in these structures. The District Development Plans (DDPs) also scarcely address youth issues among district priorities. Such marginalization and discrimination are key issues undermining youth participation.

The other challenge cited by respondents as impeding young people's participation in decision-making processes is rigid social and cultural norms. Traditionally, young people are expected to be seen and not heard, and therefore, expected to be passive recipients of services from adults and institutions. As a result, they have not been actively and meaningfully involved in decision-making and interventions about issues, which affect them as a target group and the nation as whole. In this connection, the youth are unable to visibly contribute to national development.

Youth also face poverty, multiple forms of discrimination due to socio-cultural norms, and limited employment prospects and opportunities. Due to high levels of poverty, many youths in Malawi prioritize their socio-economic wellbeing instead of engaging in political or governance affairs. In this regard, youth are often manipulated by political candidates to lead their campaigns during elections rather than seeking their legitimate interests in the political arena.

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<sup>86</sup> For instance, in the 2019 elections, the Malawi Electoral Commission (MEC) had registered a total of 6,859,570 eligible voters. Of the total registered voters, 3.7 million were youth representing 53 percent of the registered voters. See, <https://mec.org.mw/2019-tripartite-elections/>

### 5.0 OPPORTUNITIES FOR CIVIL SOCIETY ENGAGEMENT

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Despite the many challenges on the public space in Malawi, lots of opportunities exist that, if utilized, would enhance the participation of the public in law and policy making.

#### 5.1 Legal frameworks

Strong legal, policy and institutional frameworks have been put in place to facilitate public participation in law and policy making processes in Malawi. In particular, the Constitution of Malawi and existing statutory laws including the Gender Equality Act, National Youth Council of Malawi Act, Disability Act, and the Access to Information Act, as well as accompanying policies, such as the National Gender Policy, National Development Plan/Policy, National Civic Education Policy, National NGO Policy, National Policy on Equalization of Opportunities for Persons with Disabilities and National Decentralisation policy, among others, present valuable opportunities to foster participatory governance in legislative and policy making and implementation processes. For instance, operationalization of the gender equality and access to information laws would oblige public offices to involve the general population in policy processes. The challenge is to translate the rhetoric of political commitment towards ensuring the effective implementation of these standards, in particular raising public awareness on these opportunities is crucial.

#### 5.2 Structures

Similarly, a number of institutional frameworks exist that could further ensure public participation in law and policy making especially for vulnerable groups. These include: the outreach office at Parliament, which provides a strategic opportunity that would assist with raising public awareness of parliamentary processes for participation. At Executive level, Poverty and Social Impact Assessment Committee at Cabinet level as well as functional Sector Working Groups such as Democratic Governance SWG and Agriculture and Health SWGs present an opportunity for government and the civil society to work together in the policy processes.

Similarly, various coordination structures targeting marginalised groups such as persons with disabilities such as the National Advisory and Coordination Committee on Disability Issues; women, children, youth - Sector Working Group on Gender, Children, Youth and Sports, the Technical Working Group on Youth (TWGY), the Youth Technical Committees (YTC) should be strengthened to operate effectively.

In terms of broader citizen empowerment, the existing National Initiative for Civic Education (NICE) with structures across all districts in Malawi is another opportunity to raise public awareness in the rural areas. The Malawi Human Rights Commission, with its broad mandate on human rights including the promotion and monitoring

mandates, would also provide a strong legal basis for promoting the right to participate at the grassroots level.

### 5.3 Recommendations

The following recommendations need to be considered to enhance participation in law and policy making.

#### 5.3.1 In relation to the legal framework, Government should:

- Ensure effective and robust implementation of the ATI law by all public institutions including empowering the public through awareness creation campaigns on the importance of this law. Provide adequate resources to facilitate capacity development of all state entities on their responsibilities under the Act.
- Ensure effective and robust implementation of existing legal frameworks that are key to ensure participation of marginalized groups in public affairs, such as the Gender Equality Act and the Disability Act.
- Harmonize all domestic laws and policies with the Convention on the Rights of Persons with Disabilities, the UN Convention on the Rights of the Child, the African Charter on the Rights and Welfare of the Child, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, and the African Youth Charter to enable women, children, persons with disabilities and young people participate in public policy processes more effectively.
- Enforce the 60:40 ratio in relation to gender representation as required under section 11(1) of the Gender Equality Act. Specific laws on enforcing these quotas in Parliament and public service should be enacted.
- Adopt comprehensive legislation that promotes diversity and inclusion for all, and prohibit all forms of discrimination, including on the grounds of sexual orientation and gender identity.
- Create an enabling environment for journalists, human rights defenders, and other civil society actors to ensure their active and informed engagement/oversight in public policy and law making. Consultations on impending bills such as the proposed NGO Bill, the National Youth Council of Malawi Bill, 2019, and the National Peace Commission Bill among others, should be inclusive and exhaustive to ensure that all views of affected stakeholders are considered and the laws are consistent with applicable human

rights norms, including the African Commission Guidelines on Freedom of Association and Assembly in Africa (2017).

### 5.3.2 In relation to law making in practice, Government should:

- Provide information on participation processes, across all government institutions, including in Parliament, to the public through easily accessible traditional media outlets like the radio. Such information should be provided in local languages where access to modern ICT tools is limited.
- Adequately resource Parliament's outreach office to include modern and innovative information and communication technologies (ICTs) such as mobile phones and social media platforms. Parliament should also seek to make information available to the public through easily accessible traditional media outlets, like the radio, in local languages.
- Build a strong partnership between Government institutions, Parliament and CSOs to improve public awareness on law making processes.
- Strengthen the capacity of the Malawi Law Commission to fulfil its broad mandate on promoting legal reforms with emphasis on ensuring participatory processes with diverse actors, including CSOs. Human and financial resourcing of the institution are some of the key areas that require investment.

### 5.3.3 In relation to policy making in practice, Government should:

- Clearly articulate and publicize the standard policy-making process in Malawi, which should outline modalities through which public participation will be undertaken. These processes need to be complemented with administrative mechanisms to promote adherence and monitor compliance with these requirements.
- Strengthen the public and private media to enable outreach at the grassroots level through programmes aimed at inclusion of different groups in policymaking and implementation processes.
- Ensure the editorial independence of the public broadcaster, the Malawi Broadcasting Corporation, and provide adequate resources so that it can reach out to the grassroots with programmes that target inclusion of different groups in the policy making and implementation processes.
- Ensure the representation of marginalized groups, such as women, youth, persons with disabilities and the LGBTI+ community, in all policymaking processes, not only those related to their specific needs.

- Resuscitate the Poverty and Social Impact Assessment Committee at cabinet level so that all policies are assessed on intended or possible unintended impacts on the poor who usually have no platform to express their concerns.
- Ensure involvement of more citizens and CSOs in multilateral initiatives such as the OGP in order to provide space for all major stakeholders to make input in government commitments and their domestic implementation. This would also ensure that the public holds those in government accountable for their obligations under such agreements.
- Enhance e-governance systems across all state institutions in order to ensure that public policy tools and strategies are in line with and take advantage of technological developments and advancements for greater public participation.

### 5.3.4 In relation to enhancing participation at the local government level, Government should:

- Government should ensure that local government structures are accessible and understandable by all who intend to use them. The roles of chiefs, Area Development Committees, Village Development Committees, and ward councilors should be streamlined so the general public understands the specific role and mandate of these institutions.
- Government should develop the capacity of members of local government structures at all levels on law and policy making processes and the importance of ensuring meaningful citizen participation in such processes.

### 5.3.5 In relation to enhancing CSO participation.

#### (a) Government should:

- Establish a governmental office for cooperation with civil society, which would be in charge of creating an enabling environment for CSO activities and capacity building for civil society actors.
- Design a national strategy for civil society development, which would identify issues of importance related to civil society activities and sustainability, as well as obligations of different social actors in that context.
- Establish transparent and efficient CSO participation mechanisms in the procedure of designing laws and other public policy instruments. Such mechanisms should in more detail define minimum standards of participation and consultation for both executive and legislative authorities and for local self-government bodies.



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- Establish a system of continuous education of civil servants and employees in local self-government bodies on the role and importance of civil society in a democratic society, as well as necessity and usefulness of CSO-government cooperation in decision making processes.

### **(b) CSOs should:**

- Collaboratively engage in advocacy in order to strengthen the implementation of the Access to Information law. CSOs need to take advantage of the advocacy opportunities available while the new government establishes itself.
- Mobilize strong CSO networks and dialogue with the new government to ensure that the establishment of the NGO Regulatory Authority under the 2019 NGO policy is not used as an instrument to interfere with the work of NGOs, or to undermine their independent role in policymaking.
- Collaborate with government to come up with the national strategy for civil society development, which should identify priorities for CSO operations and their sustainability as influential actors in policy and law-making processes.
- Promote transparent and efficient civic participation mechanisms in the procedure of designing of laws and other public policy instruments. Such mechanisms should in more detail define minimum standards of participation and consultation (this refers to both executive and legislative authorities and to local self-government bodies).
- Establish more consistent collaboration and/or partnerships with broader CSO actors including independent media, academic, research and educational institutions to increase demand for public participation in law and policy making.
- Dedicated capacity building for CSOs to appreciate the functioning of the State administration, as well as on the procedures and mechanisms of designing and adopting laws and other public policy instruments in order to communicate such information effectively to the public and better facilitate public participation.
- Undertake stakeholder awareness and public campaigns to sensitise local communities on the importance of participating in government decision making and especially in law and policy making processes.
- Mainstream gender equality representation in the CSO sector and ensure that the needs and voices of marginalised groups are identified and integrated in sector priorities and engagements with government, including on law and policy making issues.

### 5.3.6 In relation to enhancing participation of marginalized groups, Government should:

- Conduct training for government structures at all levels to orient them on the inclusion of vulnerable groups, such as women, persons with disabilities, youth and LGBTI+ community members.
- Ensure effective and robust implementation of existing frameworks promoting the participation of marginalised groups such as the Gender Equality Act, Disability Act, National Youth Council of Malawi Act, among others, and ensure these are in line with international human rights norms.
- Create consultative committees with representatives of vulnerable groups to promote their participation in policymaking and decision-making processes.
- Intensify and accelerate public awareness raising and outreach campaigns for the vulnerable groups. Ensure participation of LGBTI people in public and political life is 'normalised' through national and local awareness campaigns, and assertive outreach to LGBTI communities by public and political bodies.
- Adopt laws and/or policies that require equitable representation of women and youth in decision-making bodies.
- Adopt comprehensive legislation that prohibits all forms of discrimination, including on the grounds of sexual orientation and gender identity.
- Put in place effective measures to protect persons with albinism from abductions, killings and mutilation and implement without any delay the action plan to improve the security and well-being of people with albinism. Such measures will ensure that persons with albinism participate freely in policy and lawmaking processes.
- Adopt measures such as criminalisation of political violence that discourages persons with disabilities and women from competing for positions in political parties and national elections need to be stressed for better participation.
- Electoral laws such as the Presidential and Parliamentary Elections Act (PPEA), the Local Government Elections Act (LGEA), the Electoral Commission Act (ECA), and all electoral regulations and guidelines, including the constitutions of the political parties, should be reviewed to assess their impact towards attaining equality and non-discrimination at the political level.
- Malawi's political parties need to put in place deliberate policies, programmes, and strategies to target youth, women and persons with disabilities and promote their participation in politics.

### 5.4 Conclusion

This study has identified the key gaps and challenges facing civic participation in law and policymaking processes in Malawi, especially for women and CSOs working on gender issues. The study has found that, though the space for public participation is more open than during the one-party era, actual participation remains sporadic. This is mainly due to government agencies' top-down approaches, inadequate publicity of policy and legislative processes, capacity gaps in civil society and low levels of literacy to grasp the policy procedures and what the policies imply.

The study has found that the right to public participation has been recognized in various legal and policy instruments in Malawi and reflected in provisions in the various international legal treaties to which Malawi is party. Despite such legal guarantees, the study has found that the non-participation is widespread due to inadequate implementation of these instruments, a culture of limited willingness to meaningfully engage the public in policy matters (a legacy of the one-party era) and the existence of colonial era laws that promote government secrecy and withholding of public information.

The study has also found that although structures such as sector working groups and decentralization frameworks exist to provide forums for negotiation and policy dialogue, the Government has not come up with an agreed upon overarching framework for policy processes. This has resulted in varying processes amongst the government agencies that originate policies, each of which makes their own decisions on modalities for consultations based on the subject matter. This open process leaves out key constituencies from consultative processes, especially marginalized groups that need to be deliberately targeted in order to ensure their effective participation.

However, some opportunities for participation exist where stakeholders are willing to pursue the processes and structures that can be utilized for greater participation in the policy-making processes. The recommendations set out in this report identify such opportunities in order to map the way forward to fulfill Malawians' right to participate in public affairs.

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## ANNEX 1 –list of respondents

### List of CSOs

1. Plan international
2. Fortmed International
3. Coalition for the Empowerment of Women and Girls
4. Malawi SRHR Alliance
5. Church and Society Program
6. Mzuzu Entrepreneur Hub
7. Save the Children International
8. Mango Network
9. Centre for The Development of People
10. Nyasa Rainbow Coalition
11. Lesbian, Intersex, Transgender and other Extensions (LITE)

### Academia

1. Exploits University

### List of government ministries, departments and agencies

1. Office of the President and Cabinet
2. Ministry of Justice
3. Ministry of Civic Education and National Unity
4. Malawi Law Commission

## Annex 2 –questionnaires

### I. Guide for the FGDs

#### **Part A: Participation in Parliamentary Business:**

- I. Have you ever been involved in law making process directly by the MP in your area?  
(Yes/No). If yes,
  - a. What was the bill about?
  - b. Please explain how this was done.  
If no, why? (Explain)

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2. Have you ever been involved in law making process by the Law Commission?  
(Yes/No). If yes,
  - a. What was the bill about?
  - b. Please explain how this was done.If no, why? (Explain)
  - a. What was the bill about?
  - b. Please explain how this was done.
3. Have you ever been involved in law making process by an NGO?  
(Yes/No). If yes,
  - a. What was the bill about?
  - b. Please explain how this was done.If no, why? (Explain)
  - a. What was the bill about?
  - b. Please explain how this was done
4. Have you participated in debates or radio programmes aimed at soliciting views on a law?
  - a. What was the bill about?
  - b. Please explain how this was done.
  - c. Who initiated the debate of consultation?
5. Do you understand parliamentary procedures for making laws?
  - a. If yes, which ones do you know and how did you come to know them?
  - b. Have you used or been involved in any of them?
6. Do you think there are adequate mechanisms for ensuring that ordinary citizens participate in law making process?
  - a. If yes, please explain those mechanisms.
  - b. If no, please explain the gaps and how you think things can improve.

### **Part B: Participation at Local Assembly**

1. Have you ever been involved in making bylaws or decisions at your local council?
  - a) What was the by law or decision about?
  - b) Please explain how this was done.
2. How often do you interact with your councilor?
  - a) What business do you discuss?
  - b) Does he communicate adequately on decisions being proposed and made at the local council? If yes provide examples

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3. Are NGOs involved in ensuring that citizens participate in making bylaws and other decisions at the local council?
  - a) Mention examples of NGOs
  - b) How do they facilitate this process?
4. Does the local council have other means of communicating to citizens about the decisions they propose or undertake?
  - a) If yes, please mention the means.
  - b) Through what other means do you come to know what happens at the local council? (Chiefs? Community radio? Other – mention them)
5. What do you think are the main purposes of public participation in the making and implementation of bylaws and policies at the local council?
6. Do you think there are adequate mechanisms for ensuring that ordinary citizens participate in making of bylaws and other decisions at the local council?
  - a) If yes, please explain those mechanisms
  - b) If No, please explain the gaps and how you think things can improve

### **Part C. Participation in Policy Making at Central Government Level**

1. What do you know about policy making processes in Malawi Government?
2. Are you communicated to when government Ministries/departments/ and other agencies (MDAS) are making policies?
  - a. How were you communicated? (radio/newspaper/meeting by officials/other means –mention them)
3. Have you participated in the policy making process by the MDAs?
  - a. How did you participate? (Radio debates/ meetings/ phone in programmes/ other-mention them)
8. Do you think that public participation is important in the making and implementation of policy at the central government? If so, why?
9. Would you say that government is making adequate efforts to involve the general public in the making and implementation of policy?
10. What do you think are the main problems of public participation in the making and implementation of policy in Malawi? (Lack of channels for participation/ Lack of public interest/ Lack of time /lack of resources/ Ignorance on policy making processes and how citizens can participate in the process/ Lack of officer/ technical support)



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11. What do you think are the principal factors that can contribute towards the improvement of public participation in the making and implementation of public policy?

12. Any last word or comment?

### 2. NGO/CSO questionnaire

Public Participation in law and policy making in Malawi – NGO/CSO questionnaire

Name of Organisation: .....

Name of Respondent (optional):  
.....

Gender:	Male	Female	Other	
Age Group:	18-35	36 to 40	41 to 50	51 plus
Highest level of education	Non-formal	Primary	Secondary	
	Tertiary			

Position in the organisation: .....

Date: .....

**Table 6: Questionnaire I**

	1	2	3	4	Explanation (i.e. Limiting factors, strengthening factors, recommendations)
<b>PART I:</b> <b>LEGISLATIVE PARTICIPATION</b>  Rating scale: 1= Never (No evidence) 2= Negligibly (sporadic); 3= Partially (incomplete 4= Fully					
<b>A. Involvement of Citizens and CSOs</b>					

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I. Citizens are well conversant with the following mechanisms for engaging Parliamentarians:					
Parliamentary Petitions					
Written representations on bills or motions.					
Oral representations on bills or motions					
Private Members Bills					
Private Bills					
Other					
2. The following mechanisms for legislative participation are mostly used by NGOs/CSOs or citizens					
Parliamentary Petitions					
Written representations on bills or motions.					
Oral representations on bills or motions					
Private Members Bills					
Private Bills					
Other					

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3.I know at least one organisation that has ever utilised the following means of legislative participation					
Petitions to a Member of Parliament					
Petitions to a Parliamentary Committee					
Petitions or written submissions to the President (in favour of or against the assenting of a Bill)					
Written representations to a Parliamentary Committee.					
Oral representations to a Parliamentary Committee					
Private Members Bills					
Private Bill					
Submissions to the Law Commission on a proposed law					
Attending consultations by the Law Commission on a proposed law.					
Other					
4. The following factors prevent ordinary people from adequately participating in the legislative process					
Parliament and its committees meet infrequently					
Ignorance on legislative processes and how citizens can participate in the process					

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Lack of strong Parliamentary systems and structures for public participation					
Lack of programmes (by CSOs and other players) to encourage legislative participation					
Lack of interest by Members of Parliament 'to take parliament to the people'.					
Lack of interest on the part of the public					
Other reasons (Please mention them					
5. It is easy for:					
Women or women's groups to participate effectively in legislative processes					
Physically or visually impaired citizens to participate in legislative/parliamentary process					
Youth to participate in legislative processes					
Women or women's groups to participate in law making processes initiated by Law Commission					
Physically or visually impaired citizens to participate in law making processes initiated by Law Commission					
Youth to participate in law making process processes initiated by Law Commission					

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PART II: POLICY MAKING PARTICIPATION	1	2	3	4	Explanation (i.e. Limiting factors, strengthening factors, recommendations)
1. State your view on adequacy of the constitutional and legislative framework for participation of the following in public policy making:					
Citizens					
Civil society					
2. How conversant are CSOs with policy making frameworks in Malawi?					
3. How would you assess the technical capacities of CSOs on policy processes (please mention areas of strengths and weaknesses)					
4. Are CSOs/NGOs communicated about policy-making processes at Ministries/departments/ and other government agencies (MDAs)?					
5. What are the modes of public participation used in the making and implementation of policy in the MDAs?					
Public meetings					
Conference /workshop					
Mass media					
Public hearings					
Consultation					
Public debates					
Non-violent protest					

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Survey questionnaire					
Other (Mention them)					
6. Has your organisation ever participated in the following?					
public hearing in these MDAs?					
radio talk that dealt with policy making					
made any enquiries to MDAs about any policies made?					
in a protest against policies made by MDAs?					
7. Have you ever faced difficulties when interacting with officials in the MDAs? (Mention)					
8. Do you think that public participation is important in the making and implementation of policy at the local government?					
9. What do you think are the main purposes of public participation in the making and implementation of policy					
To meet statutory requirements					
To increase public awareness					
To gain information on public views					
To decide between particular options					
To empower the ministry/department agency and make it visible					
Other (please mention)					
10. What do you think are the main problems of public participation in					

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the making and implementation of policy in government?					
Lack of channels for participation					
Lack of public interest					
Lack of time					
Lack of resources					
Ignorance on policy making processes and how citizens can participate in the process					
Lack of officer/ technical support					
Other (mention)					
II. What do you think are the main benefits that public participation brings in the making and implementation of policy in Malawi?					
Better making of policy					
Better implementation of policy					
Better policymaking on specific points					
Improvements in public service					
Greater public awareness					
Community empowerment					
Other (please mention it)					
12. How would you rate the overall impact of public participation in the making and implementation of public policy?					
13. Would you say that the present public participation in the making and implementation of policy in government is sufficient?					

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14. Do you think it makes a difference in your life when you participate in the making and implementation of government policy?					
15. Has your locality ever been visited by a councillor in order to discuss issues regarding public participation in the making and implementation of policy at local government?					
16. What do you think are the principal factors that can contribute towards the improvement of public participation in the making and implementation of public policy?					
Awareness of the participation processes					
Publicizing the proposed policies					
Media engagement					
Other (please mention them)					
18. How easy is it for the following to participate effectively in public policy processes?					
women or women's groups?					
youth or youth groups to participate effectively in public policy processes?					
People with disabilities or groups of PWDs?					
Other (mention)					
19. Do the following aspects of the operational environment for CSOs					



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affect their participation in policy making?					
Regulatory environment					
Financial capacity					
Networks					
Donor influence					
Others (mention them)					

20. Please provide any other comments on the participation of the public and CSOs in policy making.....  
 .....

**3. Questionnaire for Policymakers**  
**Public Participation in Policy Making in Malawi –Policy makers/Decision makers Questionnaire.**

Name of Organisation: .....

Name of Respondent: .....

Gender:                      Male                      Female                      Other  
 Age Group:                      18-35                      36 to 40                      41 to 50                      51 plus  
 Highest level of education                      Non-formal                      Primary                      Secondary  
 Tertiary

Position in the organisation: .....

Date: .....

**Table 7: Questionnaire II**

PART II: POLICY MAKING PARTICIPATION	1	2	3	4	Explanation (i.e. Limiting factors, strengthening factors, recommendations)
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1. State your view on adequacy of the constitutional and legislative framework for participation of the following in public policy making:					
Citizens					
Civil society					
2. Do you think the general public is aware of policy making processes?					
3. Have you made efforts at making the public aware of the policy making processes and how they can get involved?					
4. How conversant are CSOs with policy making frameworks in Malawi?					
5. Have you made efforts at making the CSOs aware of the policy making processes and how they can get involved?					
6. How would you assess the technical capacities of CSOs on policy processes (please mention areas of strengths and weaknesses)					
7. Is the general public communicated to when your department is proposing a policy?					
8. Are CSOs/NGOs communicated about policy-making processes at Ministries/departments/ and other government agencies (MDAS)?					
9. What are the modes of public participation you use in the making and implementation of policy in your department?					

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Public meetings					
Conference /workshop					
Mass media					
Public hearings					
Consultation					
Public debates					
Non-violet protest					
Survey questionnaire					
Other (Mention them)					
10. How do you rate participation of the public in the following?					
at public hearing in these MDAs?					
in radio talk that dealt with policy making					
making any enquiries to MDAs about any policies made?					
in a protest against policies made by MDAs?					
Other (Mention them)					
11. How do you rate participation of NGOs in the following?					
at public hearing in these MDAs?					
in radio talk that dealt with policy making					
making any enquiries to MDAs about any policies made?					
in a protest against policies made by MDAs?					
Other (Mention them)					

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12. What do you think are the main purposes of public participation in the making and implementation of policy					
To meet statutory requirements					
To increase public awareness					
To gain information on public views					
To decide between particular options					
To empower the ministry/department agency and make it visible					
Other (please mention)					
13. What do you think are the main problems of public participation in the making and implementation of policy in government?					
Lack of channels for participation					
Lack of public interest					
Lack of time					
Lack of resources					
Ignorance on policy making processes and how citizens can participate in the process					
Lack of officer/ technical support					
Other (Mention them)					
14. What do you think are the main benefits that public participation brings in the making and implementation of policy in Malawi?					
Better making of policy					

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Better implementation of policy					
Better policymaking on specific points					
Improvements in public service					
Greater public awareness					
Community empowerment					
Other (please mention it)					
15. How would you describe the overall impact of public participation in the making and implementation of public policy?					
16. Would you say that the present public participation in the making and implementation of policy in government is sufficient?					
17. What do you think are the principal factors that can contribute towards the improvement of public participation in the making and implementation of public policy?					
Awareness of the participation processes					
Publicizing the proposed policies					
Media engagement					
Other (please mention them)					
18. How much do you involve the following in public policy processes?					
women or women's groups?					
youth or youth groups to participate effectively in public policy processes?					

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People with disabilities or groups of PWDs?					
19. How much do you involve the following in public policy processes?					
women or women's groups?					
youth or youth groups to participate effectively in public policy processes?					
People with disabilities or groups of PWDs?					
20. Do the following aspects of the operational environment for CSOs affect their participation in policy making? (Explain)					
Regulatory environment					
Financial capacity					
Networks					
Donor influence					
Others (mention them)					

21. Please provide any other comments on the participation of the public and CSOs in policy making

.....  
 .....  
 .....