



A Pan African Network Providing Reliable and Well researched Reports on International Aid Performance

# **BUSAN Partnership**

## **Challenges & Opportunities**

**for Creating an Enabling  
Environment for  
CSOs  
in Africa**

*A Synthesis of Six Countries*  
prepared by Reality of Aid Africa

## The Reality of Aid Africa

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## FOREWORD

*This report seeks to give an account of the level of readiness for the provisions of the Busan Partnership for Effective Development of December 2011, at the Fourth High Level Forum, to become a reality.*

*The partnership provided an opportunity to review modalities of development in the last 60 years and provided an opportunity to commit to a shift towards more effective and democratic ways of working. Ultimately the Busan Statement recognizes country ownership, donor alignment, harmonization, managing for results and mutual accountability with a significant focus on accountability (OECD 2011).*

*Africa is a significant receiver of donor aid, while also remaining an area where inequality and poverty exists. With the realization that Africa is not a homogenous land mass it was imperative to undertake research in the six countries documented in this report as a way to bring forth the unique national situations that exist in the different countries. This report focuses on Burundi, Cameroon, Lesotho, Tanzania and Zambia and attempts to answer the question of how ready these countries are to enable the Development Effectiveness.*



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The Reality of Aid Africa Network



## The Reality of Aid Africa

### ACRONYMS

ADB	African Development Bank
CSPR	Civil Society for Poverty Reduction
CSO	Civil society Organisations
CONGOMA	Council of NGOs in Malawi
DANIDA	Danish Development Assistance
DFID	Development for International Development
FNDP	Fifth National Development Plan
GTZ	German Organisation for Technical Cooperation
JCTR	Jesuit Centre for Theological Reflection
JASZ	Joint Assistance Strategy for Zambia
LCN	Lesotho Council of Non-Governmental organisation
MOU	Memorandum of Understanding
MDG	Millennium Development Goals
NDP	National Development Plan
NGO	Non-Governmental Organisation
NGOCC	Non-Governmental Organisations Coordinating Council
PMMP	Poverty Monitoring Master Plan
PRSP	Poverty Reduction Strategy Paper
PER	Public Expenditure Review
ROA-A	Reality of Aid- Africa
SIDA	Swedish International Development Cooperation Agency
TAS	Tanzania Assistance Strategy
UN	United Nations
USAID	United States of America International Aid
VAT	Value Added Tax

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# Reality of Aid



## INTRODUCTION

This report seeks to give an account of the level of readiness for the provisions of the Busan Partnership for Effective Development of December 2011, at the Fourth High Level Forum, to become a reality.

The High Level Forum provided an opportunity to review modalities of development in the last 60 years as well as an opportunity to commit to a shift towards more effective and democratic ways of working. Ultimately the Busan Statement recognises country ownership, donor alignment, harmonisation, managing for results and mutual accountability with a significant focus on accountability (OECD 2011).

Africa is a major recipient of donor aid, while also remaining an area where inequality and poverty persists. With the realisation that Africa is not a homogenous entity, the research in the six countries documented in this report is as a way to bring forth the unique national situations that exist in the different countries. The findings provide a lens into these countries' realities and ideally should inform development actors as well as governments' strategies going forward.

This report focuses on Burundi, Cameroon, Malawi, Lesotho, Tanzania and Zambia and attempts to answer the question of how ready these countries are to enable approaches for development effectiveness. The research focused on key areas of the aid chain to assess their strengths as well as their challenges in contributing to the national efficacy to deliver development goals that would ultimately result in equality, poverty reduction and sustainable development.

In this regard the research work focuses on national development processes adopted by each country and their inclusivity, the intersection of government, aid effectiveness and civil society; an analysis of existing CSO platforms and their readiness to enable development effectiveness; and lastly a focus on the governments' planning processes and how they relate to aid effectiveness in terms of national ownership, accountability and results.

### 1.1 Context

The research work took place three years after development actors identified with the Global Partnership and the outcomes of Busan in 2011.





The Busan Partnership was the fourth in a series of high level platforms which had been held previously with the aim of improving aid quality and fostering development.

The other three forums were Rome in 2003, Paris in 2005 and Accra in Ghana in 2008. The Accra Agenda for Action in 2008 went beyond the Paris Declaration, which has resulted in its positive uptake by CSOs and academics, namely the inclusion of the South-South Cooperation as a positive development and the recognition of CSOs as development actors in their own right. The recognition of the importance of the South-South Cooperation has been central to a reflection of traditional donor models, leading to a reconfiguration and rethinking of development modalities.

The provisions of the Busan Partnership Outcome also reveal a trend where development partners acknowledge in Paragraph 28 of the Busan Outcome that: governments are more accountable to their citizens. Simultaneously Busan confirms the importance of democratic ownership which is open to multi approaches to development by all aid actors. In this regard CSOs have the right to their own development programs and they too must be accountable to their beneficiaries. Ultimately Busan seeks to make governments accountable to their people, while allowing CSOs to maintain a level of freedom in their development agendas.

The partnership advocates greater dialogue and participation in developing the national development strategy.

## 1.2 Methodology

The research was carried out by undertaking a desk analysis, which entailed a literature review of relevant information, such as existing legislation, NGOs' information, media reports and existing research work related to aspects of the topic. Empirical evidence was gathered through one-on-one interviews with members of civil society organisations.

In other instances questionnaires were sent out for participants to answer by e-mail. Researchers also took part in CSO processes to obtain first-hand experience of the operating environment as part of the knowledge gathering.

This synthesis report's objective is to give development partners a perspective of the divergences and similarities among the researched countries and, hopefully, the research outcomes will shape and add value to development planning and decision making processes.

This report is also an invaluable source of information for African civil society, giving insight into approaches and modalities of development for learning as well as identifying potential solidarity platforms to strengthen regional advocacy.

While this report provides a comparative analysis of the state of readiness for development effectiveness, it must be read with the understanding that poverty and inequality remain central themes that require continued assessment and motivation towards the creation of a better world.

## THE INVOLVEMENT OF CSOS IN NATIONAL DEVELOPMENT PLANS

### 2.1 Introduction

Since the onset of a new development paradigm which focused on development effectiveness the issue of harmonisation in development objectives has become both a buzz phrase and controversial.

Busan Partnership Item 22 under the subheading 'Ownership Results and Accountability' states:

*Civil Society Organisations (CSOs) play a vital role in enabling people to claim their rights, in promoting rights-based approaches, in shaping development policies and partnerships, and in over-seeing their implementation. They also provide services in areas that are complementary to those provided by states.*

The above is juxtaposed with Item 28 of the Partnership Statement which emphasizes the realisation that governments have a central responsibility for development effectiveness, and are accountable to their people for the development they achieve.

In this regard the Busan Partnership acknowledges the strategic advantage of CSOs and govern-

ments and encourages them to work in partnership for development effectiveness.

A step in this direction is the setting up of inclusive national development processes, which through the incorporation of CSOs among other stakeholders, provide opportunities for the population's voice to be heard and incorporated into decision making through a bottom-up approach.

This part of the research sets to establish the nature of the environment in the researched six countries in terms of the partnership of Government and CSOs in the formulation of National Development Plans. The following is a breakdown of the findings of the research in each country. This is followed by an analysis of the findings, with emphasis on similarities and divergences.

## 2.1.2 Country Findings

### 2.1.2.1 Burundi

Burundi's process for national development planning is set in its Strategic Framework for Peace Building and Strategic Framework for Growth and Fight Against Poverty, as well as the Strategy for Good Governance and Fight Against Corruption. These key frameworks were conceptualised and are monitored with the full participation of CSOs.

Even with this close cooperation in evidence, the Burundi government remains suspicious of CSOs arguing that the non-governmental organisations do not show a clear line of representativeness.

While success has been registered in CSO participation in the conceptualisation of the above frameworks, Burundi's national budget process remains exclusionary. Although emphasised within the Accra Agenda for Action and Busan as an area that has to be popularised and reflect extensive bottom up contribution, the Burundi national budget remains a process that is exclusive to government with officials participating in the process on behalf of the people. In addition information on the budget remains inaccessible to the general public.

While there seems to be mainstream discourses around development which are available to the government of Burundi, the country still has a long way to go in comparison to countries like Malawi and Zambia, and in moving towards meaningful CSO and government partnership in national development planning. This is because while the conceptualisation process is inclusive of CSOs when it comes to execution, however, there is evidence of deviation from the objectives of NDPs on the part of the government.

The secretive nature of government with reference to the budgetary issue is also duplicated among Burundi's CSOs.

Part of the research findings showed that NGOs were not keen to disclose and declare their financial status.

This trend put this sector in a compromising position as this disqualified them from having the power to demand full financial disclosure from government, something which they themselves had failed to do.

### 2.1.2.2 Malawi

Malawi's engagement in policy formulation dates back to 1994, when the country moved to a pluralist type of government. However, 20 years on, the influence of CSOs on policy is limited because the majority of NGOs remain locked in service delivery while a smaller number of CSOs are exclusively involved in policy influencing and advocacy.

More recent strides in policy influencing are now evident among CSOs who are involved in service delivery and working closely with government. This is the case at the district level as well as through district executive levels, where the service CSOs are consulted regularly by government.

There has been evidence of success within the food and nutrition security sector where government and CSOs have established a Food and Nutrition Security Joint Task Force technical secretariat that supports the responsible Ministry in efficiently collecting and elaborating all stakeholder contributions on the political, strategic and operational decisions on food and nutrition security.

There is no denying that the CSOs in Malawi have been instrumental in policy formulation. For example it is the CSOs that have maintained a lively and positive debate on policies that recognise the rights of the Lesbians, Gay, Bisexual and Transgender (LGBT) society, and again it was NGOs who stopped the adoption of the Land Act of 2013 by citing its shortfalls in preserving the tenets of equality.

Other key successes of NGO involvement with policy formulation and government are evident in the way the nation dealt with the Millennium Development Goals policy formulation as well as the inception and policy formulation around the country's Growth and Development Strategy. This strategy contains a set of priorities for development whose successful implementation is expected to enable Malawi to move out of poverty over time.

CSOs remain a key partner of government as they are a key player in two critical sectors: health, where they provide 37% of the services and in education where their contribution is 65% of the education services to the population. In addition government cannot disentangle from working with CSOs as partners as this is also a publicized condition set by the development partners.

In terms of the national budget the CSOs are an integral part, providing submissions which have often been effectively adopted into the final national budget.

Malawi CSOs have also realised the power of coalitions, which have sprung up in Malawi as a way to consolidate influence by pooling available expertise, thereby forcing the government to recognise them as a critical part of policy formulation. For example, the Malawi Economic Justice Network (MEJN) is recognised as an expert in social and economic issues and thus its submissions are sought during the Annual Meeting that Government has exclusively with development partners.

### 2.1.2.3 Cameroon

Cameroon has its National Development Plan set in a document called the Growth and Employment Strategy Plan running from 2010 - 2020, in which the country's vision is set out. Out of this long term vision the country has clearly laid-out guidelines encompassing the Five Year Country Strategy Paper which runs from 2010 - 2014 (ORCE:2009).

Cameroon has endorsed the Paris Declaration as well as the Busan Partnership of 2011. But even though Cameroon has a high uptake of these ODA initiatives, it remains one of the countries with a lesser rate of foreign aid per inhabitant on the continent (Nelson, M:2014). The majority of financial aid that has been received by the country emanates from the International Monetary Fund (IMF), World Bank and the African Development Bank as well as France and the EU, Canada, Japan, USA, the Netherlands, UK and UNDP.

Cameroon CSOs' participation and contribution in national development planning has been evident since 2005, where together with the private sector they are part of the consultations convened jointly by the development partners and the government in an effort to draw up Country Strategy Plans.

The Country Strategy Paper which articulated the country's future plans from 2010 to 2015 was drawn up with consultation of the development partners. From when the country turned to pluralism, the Cameroon government has been working in partnership with CSOs with a sustained emphasis on service work in agriculture, education and health.

One of the Cameroon government's and CSO partnership successes has been evident in the ODTA ICT4 GOV of 2012; a programme that had Cameroon citizens directly input into the budget process using mobile telephone technology.

In addition the Cameroon government has mapped 37 areas in which the NGOs can contribute and participate and these include public finance, agriculture, forestry and environment, health and education. CSOs' contributions were evident in the 2012 Commonwealth Foundation Campaign which was instrumental in the formation of the Council of Non-governmental Organisations (PLANOSCAM) and strengthening it into a formidable force. The CSOs also take credit in the success of the MDG campaign, through advocacy work.



More policy advocacy and engagement with the government in National Development is expected as the CSOs organised themselves through PLANOSCAM, as a coalition that brings diversity and expertise, thus strengthening the advocacy possibilities.

#### 2.1.2.4 Lesotho

Lesotho prides itself in having a five year National Strategic Development Plan (NSDP) in place which runs from 2012 to 2017. In conceptualising this plan, as had happened previously when Lesotho dealt with the Poverty Reduction Strategy Plan (PRSP), the government worked through it in partnership with development partners.

CSOs were only sought once the plan was in place, limiting their ability to influence any tangible outcomes from the NSDP. To their credit, the CSOs have organised themselves into the Lesotho National Council of Non-Governmental Organisations (LCN), an umbrella body that mobilizes CSOs around policy dialogue and builds organisational capacity. However, even with the LCN, CSOs still have to master the ability to engage with government policy processes.

Exceptional cases do however exist, where CSOs have participated and contributed to national processes such as policy formulation around the country's Vision 2020. The PRSP, as well as the African Peer Review Mechanism, enabled large numbers of the country's citizens to participate in shaping these policies. However the challenge for CSOs is reflected in their failure to claim credit for their input in the process.

A lot of the CSOs' failure to make a real impact into the policy formulation and national development plans is attributed to their lack of human and financial resources to acquire skills to undertake prudent analysis and follow up government process effectively.

#### 2.1.2.5 Tanzania

Tanzania has a national plan framework set within its Mkukuta II and Mkukuta III, Tanzania Assistance Strategy (TAS) and the Poverty Monitoring Master Plan. Looking at these frameworks, particularly the TAS, it is evident that the role of CSOs was envisioned from the National Plan framework conception stage.

The Government of Tanzania has been proactive by providing structures for platforms to collaborate with NGOs on national policy issues. Recent successes were recorded in the Poverty Monitoring System technical groups, the Public Review Working Group as well as the Annual Consultative Group Meeting for CSOs. Under Mkukuta II the CSOs took the role of leading the implementation of the Poverty Monitoring system and in the case of the Public Expenditure Review (PER), the CSOs ensured a regulated documentation of the process.

But even with this history it is evident that the government and development partners, in their cooperation, do not envisage an official egalitarian role for CSOs. Instead CSOs are left to play the periphery role of dissemination of information on independent group findings.

The Tanzanian CSOs however are aware of the need to amplify their role and represent the voices of those in their constituencies in line with democratic policy formulation. In this regard they have reenergized their focus on organising through umbrella entities such as coalitions in order to acquire skills for gaining ground on key national issues.

#### 2.1.2.6 Zambia

Unlike other African countries in this research, Zambia civil society enjoys full participation and contribution in the national development processes. The CSOs participate in the process at two levels. At first level, the organisations hold group meetings and provincial hearings of a thematic focus which are conducted quarterly.

This initial process allows CSOs to come up with a position on each of the developmental issues at hand. At the second level the CSOs allocate representatives to each of the government working groups that undertake provincial consultations. In this process the CSOs play a strategic complementary role, as a way to divert from engaging in a parallel process with government. From these processes the CSOs document concerns raised and then review them to produce a number of papers on different thematic issues in a publication entitled A Civil Society Perspective. This publication, once launched, is presented to the Minister of Finance and National Planning as well as the National Development Coordinator. It provides a CSO systematic and substantive input to the government National Development Plan. So far it can be argued that 65% of the views expressed in the "A Civil Society Position" are adopted by government and incorporated into the NDP.

With this kind of effective structure, it is no wonder that Zambia's NGOs are way ahead and provide an ideal model for civil society and government partnerships in ensuring stakeholder participation that reflects the people's voice in national plans.

#### 2.1.3 Similarities and Divergences

In assessing the six countries what is evident is that each country's government has formulated a strategy or strategies, which guide development in the countries. The nature and depth of the strategies differ, but each of them shows different levels of impact from the PRSPs, which in turn provided both the governments and CSOs a training ground for collaborative and inclusive processes. There is evidence in the six countries of continued tension between the CSOs and the Government. Of course this tension is at different levels depending on the degree of advancement of the democracy discourse within each country. For example in Burundi, where the history of CSOs is fairly new and where most NGOs are found to be engaged in service provision, the level of tension is high.

This is particularly so when this scenario is juxtaposed with that of Malawi and Zambia, where the issue of democracy has continually been under review since the fall of the one party state.

Divergences were also observed on the level of engagement of CSOs at the national level in development plans. What was evident was that the countries that had emerged from one-party state governance had used the transition to strengthen the presence and power of the CSOs. The shift had created a reflective opportunity for the CSOs to find ways to reclaim some civic power in relation to the state. Therefore in previously strong one-party states such as Zambia, Malawi, Cameroon and Tanzania, CSOs had created strong advocacy platforms.

Burundi's government, which evolved from a civil war and Lesotho, which still operated a dual system of royalty and a democracy, showed that their histories affected the way CSOs operated. While CSOs in Burundi contributed and participated within the National Development Plan it was evident that the national budget process remained exclusive. This reality emphasizes how the government and CSOs have to start building trust in their relationship, as a first step towards a more productive collaboration.

Like Burundi, the Lesotho government drew up a national budget without consultation of civil society, thus allowing the government an exclusive role in deciding how national resources were to be utilised.

A common concern, however, is that the research findings did not mainstream issues in gender equality, a key contour of equality that demands illumination within discussion of national development. Gender implications were silenced in the six reports, which then raised questions about the level of commitment to equality in general. This can be viewed as an area of concern particularly since the research is carried within the narrative of poverty reduction and equality goals.



## FRAMEWORK FOR AID EFFECTIVENESS

The Aid Effectiveness narrative focuses on ownership, alignment, harmonisation, managing for results and mutual accountability, with attention to transparency and use of country systems as the key modalities. Several countries in Africa have prudently followed this discussion on aid effectiveness and many have incorporated recommendations from the High Level Forums into domestic law.

This research's findings reflect the different levels of progress for the six countries in institutionalising the aid effectiveness narrative, through national frameworks. This part of the research also illuminated the level of proactivity exhibited by development partners in assisting and strengthening each country's frameworks.

### 3.1 Country Findings

#### 3.1.1 Burundi

In 2005 the Burundi government set up the National Committee for Aid Co-ordination (CNCA). Its goals were described as: to coordinate and mobilize aid; to harmonize legal texts and statutes and to regulate public institutions and mechanisms. The CNCA was founded with the support of development partners.

More recently, in 2014, the CNCA goals and objectives were reinforced at a retreat attended by development partners. It is important to note that in 2007 donors supported the formation of the Group for Coordination of Partners as a framework for dialogue between the government of Burundi and its partners.

With this division of labour, the framework for aid management sat under the umbrella of CNCA, which today is the national operational unit with a special mandate to coordinate and ensure the efficacy of aid consistent with the Paris Declaration provisions. The CNCA is configured in such a way that its Permanent Secretariat is also the secretariat of the Group Coordination of Partners (GCP), and thus is able to undertake follow-up tasks and monitor decisions made by the CNCA.

While both the CNCA and the GCP were formed within an exclusive partnership between Government and development partners, CSOs have entered this realm by becoming members of the GCP where they have inserted themselves into thematic clusters. They therefore are able to participate in the Strategic Forum of the Group for Coordination of Partners which handles issues from group clusters.

#### 3.1.2 Cameroon

Cameroon has endorsed the Paris Declaration as well as the Busan Partnership of 2011. In terms of frameworks that oversee and monitor aid effectiveness, the government has in place the Director General for Cooperation and Integration and the Ministry in charge of Planning.

This structure although commendable was viewed as lacking in resources, thus making it ineffective. As an intervention, development partners (Germany, African Development Bank, IMF, World Bank, Japan, Great Britain, Netherlands, UNDP, Canada Spain, and the EU) initiated the PRSP Multi-Donor Monitoring Committee (MDC). MDC provided a platform for dialogue, exchanging ideas, coordinating activities, adopting common stances on key development issues. Since 2005 MDC has embarked on a process of alignment and harmonisation.

#### 3.1.3 Lesotho

Lesotho's development strategy is articulated through the country's National Development Plan, a Poverty Reduction Strategy and the National Vision 2020. The country has a Five-Year National Strategic Development Plan which runs from 2012

Linked to these plans is the fact that Lesotho endorsed the Paris Declaration in 2005 and subsequently the Busan Partnership for Effective Development Cooperation. As a way to fulfil the provisions of these key aid effectiveness platforms, the Lesotho government has been actively approaching development partners, CSOs as well as members of the private sector. While the government has ratified the outcomes of the High Level Forums, there is still lack of leadership and coordination within the government to begin to make the provisions of these declarations a reality.

According to the research findings, the government's capacity to deliver aid and development effectiveness remain limited. The following are the challenges that were evident in Lesotho's aid effectiveness framework:

1. The government still has to show leadership and promote ownership of its development and aid effectiveness agenda through aid coordination, transparency, harmonization, accountability, alignment and reduction of transaction costs,
2. The government has to create a framework that is inclusive of civil society and private sector critical contributions to developing strategies and policies.
3. Lesotho has to create an enabling environment for CSOs, so that they in turn can become valuable partners for the multi stakeholder platform and add value to the aid effectiveness process.

#### 3.1.4 Malawi

In Malawi aid emanating from the OECD Development Assistance Committee (DAC) donors continues to be locked in a donor-recipient relationship. The country has been able to maintain bilateral agreements with countries such as Norway, the Netherlands, the United Kingdom, Sweden and others who have funded 40% of the national budget. Simultaneously, the donor partners continue to provide funding to civil society organisations that are operating in isolation of the National Development Plan framework.



The government of Malawi has kept up with the aid effectiveness narrative from the Rome Agreement of 2003 right through to Busan in 2011.

Malawi has made some progress towards establishing and strengthening national systems as well as beginning to encourage the use of these systems in a context where implementation of the Paris Declaration Principles on Alignment has to date been low to moderate. The three key important pieces of legislation adopted in 2003 were the Public Finance Management Act, Public Procurement Act and the Public Audit Act.

Although these actions are commendable, they still do not accommodate civil society. This exclusive donor/partner relationship has meant that there remains a potential for duplication and competition for resources. In addition the lack of a coordinated multi-stake holder framework to manage aid effectiveness has resulted in under-capturing of the aid flowing into the country. This is because most of the projects that are funded by the development partners through NGOs are not captured in the national budgetary framework. This remains a primary concern for government.

### 3.1.5 Tanzania

Like Zambia, Tanzania has been prudent in following the aid effectiveness discourse. By 1997 Tanzania already had in place a National Medium Term Framework for managing external resources and guiding development, with development partners falling under the umbrella Tanzania Assistance Strategy (TAS). TAS's objectives were set out as: to promote national ownership and government leadership of the development process and enhance aid effectiveness through aid coordination, harmonization and reduction of transaction costs, greater transparency, accountability and alignment. TAS is guided by 13 best practices which are aligned to the Busan Global Partnership, one of which is government involvement of civil society and the private sector in developing national policies, strategies and priorities. TAS has also become the main instrument for government and development partners to address the tension inherent in the development cooperation at the national level.

#### 3.1.5.1 How TAS Works

TAS is integrated into government operations and structures through Poverty Reduction Strategies, Public Expenditure Reviews (PER) and general budget support processes. Institutionalization of the TAS agenda was facilitated by the development partners.

The Ministry of Finance's External Finance Department was set up to oversee the previous Joint Secretariat tasks of the TAS. This Department provides technical inputs and support to the TAS process, such as development of an action plan of implementation and maintaining a rationalised calendar of policy and consultative processes.

#### 3.1.5.2 Challenges faced by TAS

Although a key part of the government's framework in Aid Management and Effectiveness, TAS has faced the following challenges:

1. The TAS agenda has not received enthusiastic uptake from government ministries, regional and local government or non-state actors. This is partly due to lack of awareness, understanding and capacity limitations to adopt and engage the TAS agenda.

2. Right from the onset, at the conceptualisation stage of TAS, the role of non-state actors, i.e. CSOs, was never incorporated into the visioning. However, within the context of the Busan Global Partnership, the government now needs to revise and reconfigure TAS to accommodate CSOs as part of the expected shift to a multiple stakeholder approach.

With the highlighted challenges above, it is important to add that this is not to say that CSOs have not played a role in aid effectiveness already. Government has gone ahead to create formal and informal structures to collaborate with CSOs at national level. Collaboration does take place through consultative forums such as PER, Mkukuta Working Groups, the Parliamentary public hearings and the Poverty Monitoring System technical working groups. In addition CSOs are actively engaged in several sector review meetings and report writing.

However, even with what might seem as substantive engagement and participation of CSOs, it is important to bear in mind Tanzania remains without an institutional framework to manage and sustain a relationship with CSOs.

### 3.1.7 Zambia

Zambia has followed and domesticated the aid effectiveness consensus in the last decade, by having an aid effectiveness management strategy in place from as early as 2005.

This aid effectiveness strategy was initiated through the development of an Aid Policy and Strategy in 2005 on the heels of the Paris Declaration. Simultaneously Zambia's donors developed the Joint Strategy for Zambia (JSZ) with the aim of reducing Zambia's dependency on aid, promoting the use of the government's systems to manage aid resources, while encouraging a multi-year frame. Through the JSZ, development partners aimed to ultimately move towards direct budget support, which would result in the Ministry of Finance and National Planning as the entry point for aid cooperation.

#### 3.1.7.1 Harmonisation in Practice 2003

Harmonisation in Practice (HIP) was initiated by seven bilateral donors working in Zambia, namely: Sweden, Norway, the Netherlands, Ireland, Finland, Denmark and the United Kingdom. The objectives of HIP were set out in a Memorandum of Understanding with the main objectives emphasising an intention to push the provisions of the aid effectiveness narrative. The donors aimed to assist Zambia to develop an aid policy and promote a government leadership role in project and financial reporting as well as monitoring systems.

#### 3.1.7.2 2004 and the Wider Harmonisation in Practice

HIP attracted unprecedented attention from other donors and by 2004 signatories of the bilateral donors rose to 17. With such interest already surfacing it came as no surprise when, immediately after the Paris Declaration, development partners in Zambia signed the Poverty Reduction Budget

Support Memorandum of Understanding (MoU). This was an undertaking by development partners to support Zambia through the budget process without earmarking the financial support to a specific programme or project, giving Zambia autonomy to determine the way it would effectively use these resources.

This highlighted a shift in the development partners' approach that was previously typified by strict conditionalities, to a more accommodative one that would allow the government to make its own decisions on how to utilise aid.

#### 3.1.7.3 Aid Policy Strategy

In 2007 Zambia signed and adopted the Aid Policy Strategy with the support and recommendation of HIP. This was formulated around the provisions of the Paris Declaration on Aid Effectiveness.

#### 3.1.7.4 Joint Assistance Strategy for Zambia (JASZ)

As a follow up to the adoption of the Zambia Aid Policy Strategy, 16 cooperating partners responded by formulating the Joint Assistance Strategy for Zambia, within which they committed to support Zambia's Fifth National Development Plan (FNDP) 2005-2010.

With the adoption of the Sixth National Development Plan and Strategy by the government in 2011, again donor partners responded positively with the Joint Assistance Strategy for Zambia II. It is important to note that although the Government has in place ways of managing aid effectiveness, through capacity building, resources and skills training, which have come through from cooperating partners, the voice of CSOs remains on the periphery of these discourses.

Of course, even with the full cooperating support of the donors, this research has showed that there remains room for improvement in terms of government management of aid effectiveness. The following areas of concern were highlighted as needing attention in order for the country to reach the optimum level of aid effectiveness:



1. **Tightening of the National Development Plans (NDPs).**

While Zambia was able to draw up NDPs every five years, there was need to revise their content and initiate a shift from past vagueness, to more measurable and achievable goals. The NDP has to evolve to become a guideline for adapting strategic goals and identifiable indicators for accountability.

2. **Evidence of Inter-Ministry incoherence**

In working through the JASZ I and II frameworks, development partners focused their energies on building capacity and integration of the Ministry of Finance and National Planning (MoFNP). While this was commendable it was important to recognise that the process simultaneously isolated and centralised the capacity and power of the MoFNP. This has created incoherence between MoFNP and other ministries. Ultimately this incoherence resulted in the poor integrative capacity of the Ministry.

3. **Dual partnership that is reinforcing exclusion**

Because the government has been working in a bilateral partnership with development partners and its personnel were trained to effectively work within these parameters, this has meant that civil society has remained for the most part excluded from the critical National Development Planning discourse.

4. **Lack of political will**

The research revealed that government remained set on centralizing information and structures and lacked political will to push agendas such as decentralisation of authority and power, transparency and accountability.

3.2 **Similarities and Divergences**

With reference to frameworks for aid effectiveness, the most common among the findings is that the six governments discussed here are each aware of the Aid/Development Effectiveness rhetoric.

In each of the six countries the donor partners had been instrumental in creating frameworks with governments, which would enable them to execute development effectively. Examples of development partners' involvement are evident in the setting up of the JASZ in Zambia, the CNCA in Burundi and MDC in Cameroon. In these three cases the inclusion of CSOs as an unequal partner in the framework has been problematic if assessed within the Accra Agenda for Action and Busan Global Partnership context.

It is problematic because it ushers in a system of bilateral egalitarian partnership between government and development partners leaving CSOs to opt for alternative parallel processes.

This goes against the spirit of recognition of CSOs as development partners in paragraph 22 of the Busan Partnership.

Only Tanzania has established its own aid effectiveness framework. The Tanzania government founded this platform, TAS, long before the signing of the Paris Declaration. Although this is a commendable initiative for Tanzania, it also is similar to JASZ and CNCA in that its configuration does not include the role of civil society.

Where countries have no clear government framework aided by donor partners to make aid effectiveness a reality, donors have continued to uphold bilateral relationships in opposition to the harmonisation agenda. In the case of Malawi aid is provided separately between government and CSOs.

The same applies to Lesotho and Cameroon where there is no framework that allows synergies between government, donor partners and CSOs.

While this can be viewed as recognition of the independence of the two entities, questions of duplication, efficiency and unnecessary competition for resources should be addressed in upholding this model of allocation of resources.



CSO RELATIONS WITH DONORS, INTRA-CSOS AND WITH THE PRIVATE SECTOR

4.1 Introduction

This chapter focuses on three aspects of civil society, namely their relationships with development partners, within their own networks, and with the private sector. These three areas, alongside the legal and regulatory framework for CSOs (discussed in the next chapter), are imperative for an analysis of the readiness of these countries to actively pursue the Busan Partnership Principles and approaches to development effectiveness.

The relationship of donors and CSOs is critical because the Busan Partnership emphasises a shift from a hierarchical relationship to a more egalitarian one where the voice of the CSOs is evident right from the planning stages. Development actors framed their objective in Paragraph 22 of Busan as to meet fully their commitments to enable CSOs to exercise their roles as independent development partners with a particular focus on an enabling environment consistent with agreed international rights that maximize the contribution of CSOs.

This stance paves the way for supporting and strengthening the CSO structures to be able to incorporate and make the goals of the Busan Partnership a reality. Development partners further committed to strengthen collaboration, solidarity and synergies within themselves to benefit from this stance. In relation to these provisions of paragraph 22, this chapter examines the CSO intra-relations using the above set parameters as a way to gauge their progress.

The chapter analyses the relations between the CSOs and the Private Sector. These have become an imperative promoted by donors in the context of the Busan Partnership Paragraph 14 where the Private Sector is viewed as one of the key new actors within the development discourse. For donor and government actors the Private Sector is reflected in the Busan Partnership Outcome (Paragraph 32) as a positive key contributor to development in advancing innovation, creating wealth and jobs, all of which contribute to poverty reduction.

The history of CSOs and the private sector has in most parts been loaded with tension due to differing ideological approaches, where the Private Sector is associated with for-profit, individualist approach to wealth creation and distribution, while CSOs have for the most part continued to push for a social economic justice. With the Busan Global Partnership encouraging CSOs and the Private Sector to become equal participants in a multi stakeholder approach for poverty reduction, it may be with naive optimism that there is an expectation that the differences in approach could narrow between the two groups.

## 4.2 Country Findings

### 4.2.1 Burundi

#### 4.2.1.1 On Civil Society and Donor Relations

Civil society organisations in Burundi work on the basis of the funding provided by the development partners. Other sources of funding are limited. Different CSOs share funders and donors whose requirements in terms of reporting, funding procedures, monitoring and evaluation vary from donor to donor. Because some of these requirements are stringent, most organisations with poor management and operational capacity challenges are rarely able to access these resources.

In other instances donors have demanded co-financing, a system which requires that the CSO invests its own resources, in order to obtain commitment of funding. Because financial resources are generally scarce in the country, such a condition has marginalised many organisations. Co-financing is also likely to foster elite capture, meaning poor organisations, particularly those located in the rural areas, are excluded from ever accessing the resources the donors are availing.

The relationship between donors and CSOs differs from organisation to organisation with some having built strong relations that in turn have secured on-going support while others, particularly those operating in the rural areas, have not had the opportunity to create such productive relations.

Development partners have been forthcoming in providing resources for capacity building and fostering a relationship between CSOs and government. Ironically CSOs and the government draw resources from the same donors, namely the European Union, World Bank, United Nations, World Bank and Germany.

Nine years after the Paris Declaration, donor procedures and requirements remain the biggest challenge for Burundi CSOs and this has often affected the relationship between the two. In this regard the EU has come up with project OSCAR which serves as the interface between the CSOs and the EU and has been providing capacity building for organisations to master the procedures. But even after this initiative there remains fear and tension when it comes to issues of procedure, which many NGOs found complicated and unnecessarily cumbersome.

#### 4.2.1.2 Intra CSO relations

In relation to how the CSOs in Burundi organise, it is evident that there are indications of fragmentation and room for improvement. There is no evidence of a national umbrella body, to oversee and coordinate the work of the CSOs in Burundi. Instead the only reference to a united body of CSOs in the research was that to a legal framework for cooperation and coordination of development and peace stakeholders.

A partners' coordination group was established, the GCP, to enable monitoring and coordination and dialogue with partners, and this is the only platform where CSOs come together for a united cause. This GCP has allowed organisations to break into sector clusters, as a way to participate in national strategy and policy formulation. It is also important to note that the legal framework for CSOs in Burundi, as well as the history of the relations between the government and CSOs, have made it almost impossible to create a robust CSO movement that is self-constituted.

#### 4.2.1.3 Private Sector and CSOs

The report was silent on CSO and private sector relations

## 4.2.2 Cameroon

### 4.2.2.1 CSO-Donor relations

The European Union supports Cameroonian civil society strengthening through a host of frameworks. In 2009 the EU launched the Civil Society Strengthening Programme (PASSOC) designed to support collaboration, which resulted in the creation of the National Platform of CSOs in Cameroon (PLANOSCAM).

Following the 2008 World Economic Crisis which resulted in major government deficits and saw donors having less resources at their disposal, the dynamics between development partners and Cameroonian civil society changed. In response to the crisis, the donors increased emphasis on transparency, value for money and accountability, partly due to scarcity of resources.

In addition the crisis increased the competition for the scarce resources among the CSOs. Evidently CSOs were ill-prepared to fulfil these tighter funding requirements and many lost funding opportunities. To date CSOs in Cameroon are undergoing rigorous training as a way to meet the ever tightening funding requirements.

The majority of CSOs that were consulted during the research stressed that they needed the donors to be more receptive/responsive. They also called for donor transparency arguing that current funding mechanisms were opaque. In addition they highlighted that no progress had been made towards CSOs' policy engagements within donor partners' strategies and decision making.

#### 4.2.2.2 Intra-CSO relations

The founding and constituting of the National Platform for Civil Society Organisations for Cameroon, (PLANOSCAM) has provided CSOs with a platform for coordination of work. PLANOSCAM has gone ahead and adopted the Istanbul Principles by couching them as indicators to guide its members in creating an enabling environment for implementation of Busan Partnership commitments.

In addition, through the PLANOSCAM, CSOs have become aware that the government has a poor opinion of CSOs and there is a drive to find ways to change this context, even though there is also a realisation that the existing legal framework is not conducive.

In addition the CSOs also acknowledge that there is need to self-evaluate their operations through greater ownership of their public image. A positive public image was viewed as a step towards an enabling environment.

There is also among CSOs an awareness that their increased participation in multi-stakeholder committees and commissions are not leading to results whereby their inputs are being adopted or taken forward to inform national policy.

#### 4.2.2.3 CSOs and Private Sector Relations

As government and development partners push for a multi stakeholder platform, CSOs and the Private Sector are themselves being co-opted into national planning and strategy meetings to provide input. But both remain at the periphery of decision-making in these platforms. In this regard, it is not surprising that the research did not record any existing formal engagement of CSOs and the Private Sector.

## 4.2.3 Lesotho

### 4.2.3.1 CSO Relations with the Donor Community

The relationship of CSOs in Lesotho and development partners remains that of provider and receiver, meaning that it is skewed with power tipped in favour of the donors. This unequal relationship is exacerbated by the fact that CSOs' work is fragmented and their operations are without a set strategy or uniting framework. Therefore within this bilateral relationship the voice of CSOs is missing, while that of the development partners is dominant.

It is the development partners who determine the thematic areas of focus for CSOs. In addition most of the work that donors have targeted for funding is merely service based.



This has created a void in work around policy advocacy. Overall development partners continue to exclude CSOs in their decision making processes, which is problematic when juxtaposed against the Accra and the Busan Partnership provisions.

In addition the research found that CSOs viewed donor policies and aid modalities as rigid, strict and pedantic, consuming a lot of the CSOs' time and resources and ultimately taking them from the actual critical project work.

#### 4.2.3.2 Intra-CSO Relationship

Because the CSOs remain fragmented and mainly located in Maseru, there is evidence of lack of coordination and strategizing as an entity. Maseru represents the heart of all CSO policy advocacy work, while work in the rural areas remains limited. The rural population's voice is missing from mainstream national discourses. Currently CSOs are lacking collaborative efforts at both national and sub-national levels, which is problematic when viewed from the aid effectiveness context.

#### 4.2.3.3 CSO Relations with the Private Sector

The research report was silent on the CSO-Private sector relationship.

#### 4.2.4 Tanzania

##### 4.2.4.1 CSOs' Relations with Development Partners

CSOs in Tanzania are highly dependent on donor funding – with over 90 percent of CSOs fully dependent. Donor funding to CSOs goes beyond service provision but includes work in relation to advocacy and improving governance. In the last few years, CSOs have experienced a decrease in donor funding support as partners have moved from CSO managed projects to direct government support. This shift has seen more resources being channelled through the national budget, thus reducing the remaining portion of the resources ear-marked for CSO projects. The consequence is a negative effect on CSOs, creating insecurity and uncertainty as the government remains without a mechanism to directly support CSOs.

Currently, funding for CSOs is disbursed through basket funds such as the Foundation for Civil Society, allowing donors to harmonize funding and cope with administrative pressures.

CSOs continue to view aid modalities as rigid, uninformed and sometimes misplaced. There is a consensus among the CSOs that donors are failing to acknowledge and recognize the dynamism and heterogeneity among them. In this regard CSOs strongly push for more flexibility and a reduction of bureaucracy within development partners' systems. They also called for easier and accessible grant application mechanisms.

The relationship between donors and CSOs was however described as 'favourable' where policy work is involved. The CSOs are of the opinion that in order to improve relations they have to engage in a three-way conversation which includes not just development partners but government as well.

#### 4.2.4.2 Intra CSO relations

Tanzania's CSOs still have to establish a coordination platform in order to effectively operate and to be strategically located within the country's aid effectiveness agenda. The government constituted the NGO Council of Tanzania as part of the legal framework governing NGOs, as an initial step to include CSOs in participatory processes, around policy formulation. To date most of the lobby and advocacy work directed at government is undertaken by NGOs based in Dar-es-Salaam, marginalizing and silencing the voice of those in the rural areas. The CSOs, although visible, have not yet established a mechanism that would provide systematic inclusive engagement and collaboration at national and subnational levels.

#### 4.2.4.3 CSO and Private Sector Relationships

In terms of CSO relations with the private sector, these were found to be limited as those CSOs reviewed in this research only interacted with the private sector at cluster level meetings as parallel contributors to government policy and strategy formulation.

#### 4.2.5 Malawi

##### 4.2.5.1 CSO and Donor Partners Relationships

Malawi CSOs are fully-reliant on the donors who provide resources for their operations. Donors have significantly influenced the development of civil society in Malawi through provision of funding and programmes. Donors created the Tilitonse (we are together) Fund. The Tilitonse Fund is a multi-donor pooled resource provided by development partners DFID, Irish Aid and the Royal Norwegian Embassy.

This Fund was created to support CSOs working on issues of accountability, responsiveness and inclusive governance in Malawi. To date the main supporters of the Malawian CSOs are DFID, USAID, DANIDA, SIDA and Irish Aid, which have developed country strategies for their engagement with these partners.

Evidently the development partners have faith in CSOs in their ability to contribute positively to processes of democratisation. The expectation from development partners is that the CSOs can promote accountability, transparency of government institutions, advance the voices of the marginalised groups and promote human rights. There is a conviction that CSOs can reduce poverty by providing welfare services and undertaking advocacy of policies that are pro-poor.

It is important to note that in most instances donors have opted to sink resources into CSO projects as opposed to national budgets as they view these to be more accountable, effective and less bureaucratic than government structures. According to the research findings, however, donors ultimately determine the parameters under which the CSOs should operate to achieve their policy goals. This has resulted in many donor-driven projects, with CSOs having little or no say.

With the change in funding modalities especially where there is a push to direct resources to national budget there is anxiety and tension among the CSOs who are uncertain what the implications of this shift will be on them.

##### 4.2.5.2 Intra-CSO relationships

The Malawian CSOs have found themselves under the umbrella platform, the Council for Non- Government Organisations of Malawi (CONGOMA). CONGOMA is an outcome of the government's legal framework, the NGO Act of 2000, which makes it mandatory for CSOs to be registered under this umbrella body.

As the umbrella body, CONGOMA has allowed CSOs to become champions of human rights through various organisations. However CONGOMA continues to suffer from lack of substantive core funding, and currently relies on contributions from its members. Under this platform CSOs have also taken the opportunity to organise themselves into thematic working groups such as the sector working groups, Malawi Development Strategy, the Sectorial Parliamentary Committees, Agriculture and Natural Resources and the Budget and Finance Committees.

Malawi CSOs have found value in organising themselves into sector specific networks and coalitions. Prominent in these arrangements are the Malawi Economic Justice Network (MEJN), Malawi Health Equity Network, Malawi Electoral Support Network, Human Rights Consultative Committee, Civil Society Agriculture Network, Civil Society on Quality Basic Education, Landnet and the Gender Support Network, to mention a few.

#### 4.2.6 Zambia

##### 4.2.6.1 CSO and Donor Partners Relationships

Donors remain the source of funding for civil society work. The funding comes in different forms categorized as (i) unilateral direct support, (ii) support through an intermediary, and (iii) Joint Funding Models. Support can be given as core support, which makes it inclusive of administration costs of the organisations or it can be specific to project costs. The direct support from donors through agencies and embassies is given annually and through calls-for-proposals or as a result of unsolicited proposals made to embassies or agencies by the different CSOs.



All participants interviewed during the research revealed that donor/CSO relations were good, particularly between donors and CSOs that worked together. The relationships tended to develop simultaneously with the funding cycle and there is evidence of extensive dialogue during planning and monitoring of the process. In some cases the CSO/Donor relations had developed to the point where donors were comfortable in involving CSOs in their planning. Donors such as SIDA, GTZ and UN systems are on record as having involved CSOs in their planning. During these sessions these donors had often asked for CSO input to inform their decisions.

Donors in Zambia hold a monthly sector meeting where they meet as development partners to discuss the general development framework in the country. Members of the CSOs on occasion have been invited to make presentations to this platform.

But even with what is seemingly lateralisation of the relationship between CSOs and donors, the research found that CSOs still felt that the flow of CSO/donor information and dialogue tended to be one way, where they always felt they had to provide information, while donor partners did not reciprocate, but continued to withhold information about their own operations.

The overall consensus within the CSOs is that there was need for a framework that could guide the flow of Donor/CSO information into a two way stream. It was felt that the current system was too ad-hoc and failed to cater to mutual accountability. An informal platform was suggested with several CSOs stating that a platform similar to the one they were proposing had existed previously and could be resuscitated to eventually become formal.

#### 4.2.6.2 Intra-CSO relations

Zambia Civil society is organised into umbrella organisations that have allowed it to be more effective and coordinated. The biggest and most reputable body for CSOs in Zambia is the Non-Governmental Organisations Coordinating Committee (NGOCC).

This Coordinating Committee aims at strengthening CSOs, particularly community-based organisations. The organisation has introduced a gender perspective in all its work, and champions gender rights.

NGOCC works in conjunction with the Civil Society for Poverty Reduction, another umbrella body that brings together organisations coordinating effective participation in Zambia's National Development Plan.

While these initiatives are commendable the NGOs in Zambia have not yet put into place a framework to focus on aid effectiveness, nor have they begun to assess their work within the Istanbul Principles.

#### 4.2.6.3 CSOs and the Private Sector

Zambia civil society is one of the few in the continent that have recognised the value of engaging with the private sector. For example the Jesuit Centre for Theological Development of Zambia engaged the Private Sector Development Association in the need to improve tax payments as a way to contribute to national development. This effort was advanced through documentary and television programme production.

In addition, Zambian civil society has taken an active role in advocating constructive use of private sector entities' corporate responsibility budgets. Civil society has also been vocal and through advocacy has pushed mining companies to provide social services and improve infrastructure within mine workers' residences. Caritas Zambia and CSPR North Western provincial programme have been at the forefront of this advocacy work.

The research also recorded the work undertaken by members of the private sector to contribute to the development of the effectiveness agenda. A private company, Zambian Breweries, approached Oxfam to undertake research that would ascertain the impact of their business on poverty reduction. Once the research findings were out they were shared with CSOs who were given an opportunity to make recommendations.

While evidence of such relationships are indeed a positive development particularly within the Busan context, they remain few and far in between, meaning there needs to be a more proactive effort to forge relationships from both ends, with robust due diligence on the part of the CSOs.

### 4.3 Similarities and Divergences

#### (i) On CSO- donor relations

In analysing the CSO-donor relations what is evident is the long standing relationship between these two entities. All CSOs from the six researched countries had a reliance on the donor provided resources for their existence. While all the CSOs were aware of the shift in donors' approach towards providing development aid within government operations, all those interviewed exhibited a level of anxiety on this move's implications for their operations.

Also common among the CSOs was a continued hostility and tension in what they called strict and cumbersome donor priorities and procedures. This is of major concern because an integral part of the provisions of the Busan Partnership, following from the Paris Declaration, is country ownership, where development is guided through dialogue by the receiver of aid. The donor procedures sighted in the research reinforce conditionalities that were supposedly abandoned.

Evidently the donor partners were ploughing resources into CSOs' capacity building through Tillitonse, in Malawi, OSCAR in Burundi and PLANOSCAM in Cameroon.

While the Busan Platform emphasises capacity building targeted at government accountability and responsiveness, in closer reading of the resources provided to CSOs for capacity building, it was evident that many of these resources were aimed at imparting skills for CSOs to fulfil development partner procedures. This focus unfortunately is an indication of inflexibility on the part of donors, irrespective of the call for a more accommodative and flexible way of doing aid (such as paragraph 21 of the Paris Declaration).

Overall while there was a promise of a partnership as opposed to hierarchic relationship of donor and recipient in both the Paris Declaration and particularly the Busan Partnership, the power relations remain the same. Donors continue to demonstrate more ownership of the domestic development policy processes, deciding on the nature of projects, more than CSOs. They also determined the flow and nature of information between themselves and CSOs, as was highlighted in Zambia.

In Malawi, Zambia and Lesotho the accessing of development resources still entailed competition with government. While there was commitment to harmonisation and alignment of aid, development partners were still facilitating dichotomization of CSOs and their respective governments in the quest for funding. The onus therefore lies on both government and CSOs to become creative and vary their sources of funding. Developing partners are aware that leaving all the resources in governments' hands to allocate to civil society is not an option.

#### On Intra CSO relations

In the six countries what is common is that CSO coordination is imperative for the aid effectiveness agenda. Where a CSO co-ordination body had been established, as the NGOCC in Zambia, CONGOMA in Malawi, PLANOSCAM in Cameroon, there were indications of a united voice. Besides PLANOSCAM, other civil society coordinating bodies continue to suffer from lack of resources to strengthen membership and become a formidable force in domestic policy advocacy and formulation.

However fragmentation was also prevalent in countries such as Lesotho, Burundi and Tanzania where CSOs had not established coordinating bodies.

In addition to fragmentation in these countries there were indications that CSO work was concentrated in urban areas and particularly in the capital cities. In these three countries, CSO work was most visible in Dar-es-Salaam, Maseru and Bujumbura, thus indirectly silencing the rural people's voice in their advocacy positions.



## 5.0 The Preparedness of Institutional Frameworks

### 5.1 Introduction

In order to assess whether the national institutional framework is appropriate a country's legal and regulatory frameworks have to be evaluated on whether they aid or hinder development effectiveness within framework of the Busan Partnership Outcome. It goes without saying that a democratic government requires laws, regulations and practices that respect several fundamental human rights principles or standards, as preconditions for a robust and effective civil society. The Accra Agenda for Action, which preceded the Busan High Level Forum, had governments and development partners pledge that they share an interest in ensuring CSOs' contribution to development reach their full potential.

This commitment meant that there was an obligation to uphold fundamental human rights. This chapter focuses on the research findings on each country's national constitutional provisions, laws and regulations and asks how each nation upholds the tenets of freedom of expression, assembly and association in the context of development.

#### 5.1.1 Burundi

Burundi has a new constitution dating back to 2005. In addition Burundi is a signatory to several international agreements including the Universal Declaration of Human Rights, all which reinforce the right of association, expression and assembly.

Through its constitution, the country has an obligation to domesticate the provisions of international conventions. Already the country has domesticated the following:

- The Universal Declaration of Human Rights
- The African Charter on Human and People's Rights
- The Convention on the Elimination of all Forms of Discrimination Against Women
- The Rights of the Child

#### 5.1.1.1 NGO Regulatory Framework

Burundi took steps to harmonise the fragmented legislation that governed CSOs in 1992 by making efforts to conflate the Decree law of 1957 on NPOs, Order No. 11/234 of 8 May 1959 on Associations not governed by special legal provisions and the Royal Decree No. 100/170 of 1 March 1969, which was specific to 'organisations especially established by foreigners or where foreigners can exercise or dominate.' Burundi repealed these pieces of outdated laws and instead passed the Decree-Law of 1/11 of 18 April 1992 on the Organic Framework of Non- Profit organisations.

The people of Burundi are already grappling with this legislation as it has exhibited the following flaws:

1. Firstly, this legislation's definition of NGOs is problematic in that it does not take into consideration the diverse nature of the CSOs, but instead makes an assumption that NGOs are homogenous.
2. The law sets several staged processes which are cumbersome, time consuming, and difficult to see through as mandatory for registration of an NGO/CSO.
3. The process of registration is centred in Bujumbura and requires other documentation such as criminal record clearances, as well as certificates of good conduct, all which have to be submitted to offices located in the capital city.

This then makes the registration of a CSO a real challenge for people living in the rural areas.

4. Although the legislation is not limiting in terms of the scope of CSOs activities, it does however contain several barriers regarding the approval of an NGO, such as ???.
5. The legislation is silent on how the government could or would support CSOs, particularly with reference to funding, and this is critical within the context of the current trend that is pushing for financial support for CSOs to come directly from the national budget.

#### 5.1.1.2 The Media and Freedom of Expression

In 2014 Burundi's press freedom rating dropped 10 places from 132 to 142. This is according to the world ranking of press freedom. The drop was attributed to the passing by the Burundi legislature of Law No 1/11 of 4 June 2013 amending law No 1/025 of 27 November 2003 in an effort to regulate press.

This piece of controversial legislation has been criticised on the following:

1. Its failure to protect the information source: this legislation compels reporters to disclose their information sources before the law
2. This law and has been used to ban the dissemination of information that might be critical of government arguing that this might affect the state security and public safety of the nation
3. The law provides for random fines for media houses ranging from 2 to 8 million Burundian Francs
4. This law allows for immediate enforcement of this law without allowing for parties to seek an alternative recourse.
5. The law also remains unconstitutional according to the Constitution of Burundi particularly with reference to Articles 19b, I and H and Article 58 paragraph 13 and Articles 61, 67, 68 and 69.



### 5.1.1.3 Legislation around trade unions

Burundi has two pieces of neat legislation which upholds and regulates Freedom of Association. These are the Decree Law No 1/037 of July 1993 amending the Labour Code of Burundi, with regard to public and private companies, and Decree Law 1/015 of 29 November 2002 regulating the exercise of the right to form trade unions and the right to strike in public service.

While the recognition of the freedom of association can be applauded, a closer analysis shows that the legislation does in several ways curtail the right to freedom of expression.

The following provisions within the existing legislation are questionable:

(i). Article 250 of the law, which sets the maximum number of members of a union to 50, is problematic in that it takes a 'one size fits all' approach and does not factor in the size of the company and the capacity of the union to mobilize.

(ii). The law provides for an intricate and cumbersome process of registration which offers no guarantees even when followed meticulously and yet the registration of a union can be turned down at an official's whim, with the only recourse being an appeal to the Supreme Court.

(iii) The legislation demonstrates evidence of elite capture, which leaves the poor working class vulnerable and at times victimised as evident in the following:

1. The legislation protects union officials from prosecution
2. There is a provision which allows for the suspension of employer's obligation to the employee in the event of a strike action, which includes provision of remuneration. This undermines the unions and weakens their ability to organise and defend workers' rights.

### 5.1.1.4 Burundi's Legislation of Freedom Association

While Burundi's constitution recognizes everyone's freedom of association and expression and meeting, a deeper reading of this law on Freedom of Association (Article 320) reveals that it inversely restrains and curtails the same rights it purports to protect.

The law provides authorities with power to refuse permission to gather, meet or publicly demonstrate if this action is seen as putting public order at risk.

In this regard CSOs who need to organise demonstrations as a way of public expression, have to obtain the permission of the authority, and if their intended action is viewed as 'threatening public order' then permission is always withheld. Because notification of intention to have a public meeting or demonstration has to be declared four days before the event, this means that there is no possibility of spontaneity in demonstrations to express opinion.

In addition the law also gives the administrative authority excess power over any gathering or meeting taking place, as its representatives sent to these meeting have a right to disrupt, suspend or cancel the meeting without notice.

There are numerous examples of how, by using the law, authorities continue to repress the rights of CSO members and those wishing to have their voices heard through public protest, demonstrations or the media.

## 5.1.2 Cameroon

### 5.1.2.1 Regulating CSO work

In 1990 the Cameroonian government passed Law No 90/153 of 19 December 1990, under the Law on Freedom of Association. This law was set within the legislation on Co-operative Societies or Common Initiative Groups (Law 92/006 of August 1994). This legislation has received criticism for the following reasons:

- (i) There is no consensus on the merit of this legislative framework,
- (ii) Empirical research has shown that the legal framework is not conducive to greater civil society stakeholder ownership due to its overwhelming character,
- (iii) The framework does not promote the fundamental right of expression without being victimised,
- (iv) The nature of this partial reform is blamed by many CSOs for their rights being constantly violated as it allows for different individual interpretations of its provisions,
- (v) The law around regulation of the CSOs in the country remains fragmented and should be harmonised.

### 5.1.2.2 Freedom of Expression, Association and Assembly in Cameroon

Although Cameroon's institutions uphold the freedoms of expression, association and assembly, over time new legislation has been introduced to curtail these freedoms as a way to silence voices of dissent that are always assumed to emanate from the opposition. The censorship laws have facilitated the harassment of journalists and the closure of publications which do not view the government favourably.

### 5.1.2.3 Freedom of Association and Assembly

Meetings and processions are governed under the Law 90/55 of 1990, of which Section 3 stipulates that all meetings or public gatherings in public places have to be declared to authority three days prior. The declaration must include among other things, the names of the organisers of the meeting/gathering, their residential addresses and the purpose of the meeting. The administrative authority reserves the right to send representatives to attend the gathering and to stop the meetings if it perceives as disturbing the peace or in the interest of the public.

## 5.1.3 Lesotho

### 5.1.3.1 Regulating CSOs in Lesotho

In passing the Societies Act, the Lesotho Parliament had the intention of repealing the many fragmented Acts that regulate CSOs in the country and instead replace them with one. However government failed to repeal the other Acts but managed to pass the Societies Act. The result is that this legislation today still needs to be harmonized if it is to enable effective development.

The Societies Act has evoked criticism due to:

- Its provision for the Registrar to have power to refuse or approve an application by an NGO to register, if its activities are deemed to be working against public morality and order
- Its provision for making CSO registration mandatory, making it challenging for organisations to constitute themselves into loose coalitions where needs be.
- Facilitation of the registration power over the CSOs, which includes permission to randomly demand organisations' information causing unnecessary disruptions.
- The Act's inability to address further issues of development as opposed to emphasis laid on the organisation as an entity. The legislation does not take into consideration duplication that is facilitated by other fragmented pieces of legislation also regulating the work of CSOs.
- The Act's definition of CSOs and/or NGOs remains ambiguous and problematic and not in tandem with the definition that is used by government, development partners and CSOs.

The Government of Lesotho also requires a national policy for CSOs. This is particularly important as there has been an increase in the number CSOs that have sprung up over the years. Juxtaposed with this development, is the government's recognition of the important role that CSOs play in the development of the country.



### 5.1.3.2 Lesotho: Access to Information and the Media

Access to information is a fundamental right of the people of Lesotho which is provided for in the country's constitution.

The media in Lesotho can be viewed as generally free. The country has many private electronic media houses operating independently. Unfortunately a lot of these have little scope, their coverage being limited to Maseru only. Only the public broadcaster which is state-owned has national coverage. However the media has in the past few years played a key role in calling government to account on issues of transparency. But even with this diverse outlook, the tolerance for criticism remains low and has sometimes caused government to invoke outdated legislation as a way to silence critics.

The Lesotho government continues to invoke Sedition Proclamation No 44 of 1938, which prohibits specific forms of criticism of the government. Even under the current democratic government this piece of legislation invocation has resulted in libel suits against the media.

### 5.1.3.3 Freedom of Assembly, Association and Expression

Section 14 of the Lesotho Constitution guarantees freedom of expression. However this provision can be denied when public health, morality, safety and order are viewed as being under threat. The Constitution remains vague in its definition of morality.

### 5.1.3.4 Freedom of Peaceful Assembly

Section 16 of the Lesotho Constitution provides for the right to freedom of 'peaceful assembly without arms' meaning that the individual is free to associate with others for ideological, religious, political, economic, labour, social, cultural, recreational and similar purpose.

Again the provisions of Section 16 of the Constitution are hindered when public morality and safety are evoked.

With particular reference to CSOs, Freedom of Assembly can be curtailed by invoking the Societies Act which prohibits association with unregistered groups. In addition any group wanting to hold a big gathering or demonstration requires police permission. The process of securing permission is in itself laden with bureaucracy, as it intersects with the Internal Security Act of 1984, which criminalises non-disclosure of certain information about a gathering.

Lastly, the government passed a law which regulates and restricts protests and private citizen meetings. Protestors are often forbidden from marching in First Street of the capital city.

### 5.1.4 Malawi

Malawi's Constitution was drawn up in 1994. It constitutes a Bill of Rights that guarantees a democratic, multiparty state, certain fundamental rights to all people of Malawi. The non-delineable rights contained in the Bill of Rights include the right to life, dignity, equality and the right to freedom of conscience, belief, thought, religion and academic freedom. The Constitution includes freedom of expression, association, movement and assembly.

Malawi also has organisations whose sole objective is to safeguard the provisions of the Constitution. These institutions include the Human Rights Commission, the Anti-Corruption Bureau, the Ombudsman Office and the Law Mission. The new Constitution provides for separation of powers between the Executive, Legislature and the judicial arms of government. This framework provides CSOs excellent opportunities for advocacy.

Although Malawi has all necessary legal instruments to enforce the provisions of the Constitution, the country still encounters challenges. For instance there is limited awareness of human rights among members of the population, which makes it difficult for them to be assertive enough to claim them. In addition the courts of Malawi, which are the main enforcers of human rights, are inaccessible to the majority of the citizens who are the rural population. A critical institution like the Human Rights Commission is poorly funded and has on several occasions failed to fulfil its mandate.

### 5.1.4.1 Malawi's Legal and Regulatory Framework governing the CSOs

In Malawi, CSOs are governed by the Non-Governmental Organisations Act. The NGO Act sets a completely new framework for the legal efficacy of CSOs in Malawi. Government has justified the Act and its provisions by arguing that this law is meant to protect the public interest by ensuring that CSOs operate in a transparent and accountable manner.

The act has five set goals which are spelt out as follows:

- To develop an independent strong civil society for the benefit of the people
- To create a conducive environment for CSOs' development and operation
- To promote donor and public confidence in the CSO sector
- To facilitate a relationship between the CSOs and government which will benefit the population of Malawi
- To reinforce the human rights enshrined in the Malawi Constitution

The Act also makes it mandatory for CSOs to register with the NGO Board of Malawi (even though there are some exemptions). This provision therefore makes it illegal for a CSO to operate in the country without being registered.

While the Act can pass as a way for government to guard against undesirable and dangerous organisations, it is however its insistence on a rather detailed process of registration that has been criticised by many activists. For example a CSO has to have its activities approved by the responsible Ministry. This is problematic because it means that CSOs cannot engage or list activities that might be deemed as criticising the ministry of the responsible minister, or the government in general.

In addition the Act carries the following problematic clause

*".....the NGO shall not engage in partisan politics, including electioneering and politicking."*

In addition to all these discrepancies, the actual registration process is lengthy, onerous, expensive and difficult for the smaller or poorly resourced CSOs.

The Act also carries a problematic definition of NGOs. Here NGOs are defined as compartmented groups involved only in relief welfare services and advocacy for the benefit or interest of the public. The organisations are deemed to be involved in the promotion of civil education, advocacy, human rights, social welfare, development, charity, research or any other activity for the benefit of the public.

While the Act looks progressive it has been criticized for allowing government to exert excessive control over CSOs. In addition the Act sets inflexible parameters within which CSOs must operate.

### 5.1.4.2 Malawi and Access to Information

Malawi's administration of access to information is a challenge. While Malawi's Constitution provides for public access to information there are statutes within the country's legislation that limit that access as provided by Section 37 of the Constitution. Malawi's Parliament has so far passed 20 Acts and Amendments that limit Section 37 provisions.

Among these Acts that go against Section 37 of the Constitution are:

**The Official Secrets Act (1913)**, which allows any government official to withhold information as long as the official deems it too sensitive to national security.

**Preservation of Public Security Act (1960):** This law allows for the arrest without warrant and detention of a person for up to 28 days without charge. While this law was passed 54 years ago to facilitate the detention of perceived opponents of President Dr Hastings Banda's regime, today it is being used to deny space for peaceful demonstration. Human rights activists have been detained unlawfully under this piece of legislation

**The Police Services Act (2009):** This act stipulates that CSOs cannot hold demonstrations until granted permission by the police or city councils. This process is often entrenched in bureaucracy and frustrates the CSOs who have a cause to advocate. The violence that culminated out of the protests of 2011 resulting in 20 people being killed by police is solely blamed on the enforcement of this Police Act.

**Access to Information:** The government has been for a while working on an Access to Information Bill.

Government is treading carefully, for fear of passing a law that might force it to lose some of the power and control it has over the public access to information. In several respects, government has continued to handle information in a reproduction of the way information was handled during the one-party -state era, where access to information was a privilege of those in the high offices of the government only.

## 5.1.5 Tanzania

### 5.1.5.1 Regulatory Policy for CSOs

Tanzania has national legislation for the regulation of CSOs, which was adopted in 2001. The National Policy on Non-Governmental Organisations provides operational definitions and a broad framework for legal and institutional arrangement to facilitate for the operation of CSOs. The legislation has streamlined the registration of CSOs by removing current deficiencies in the existing laws and harmonising laws dealing with CSO matters by enacting one single law for the country. The resulting policy forms the bedrock of the NGO Act. In line with this new framework the government formed the National council of NGOs, whose main objective is to supervise adherence to the NGOs Code of Conduct and initiate civil societies' peer-review and self-assessment mechanisms.

### 5.1.5.2 Access to Information and the Media

Accessing information by Tanzanian citizens remains a challenge but is exacerbated among the

rural communities. Tanzanian population's right to information is curtailed by bureaucratic systems, high level of ignorance among the people and repressive legislation, particularly relating to media, as well as misuse of power by state officials. Of course the negative impact emanating from the above is cushioned in the urban areas where people are within the proximity of government offices and can access some information. With reference to Information, three Acts of Parliament stand out as draconian and repressive:

**The Newspaper Act 150:** This Act allows the government to stop publication at any time if it deems the information or publication to be against public interest, and maintains that its actions are in the interest of good order and peace. Under this same Act the Minister in charge of information can also prohibit publication if he feels that his/her actions are in the public interest or in the interest of peace and or good order. The Act empowers the President in 'his 'absolute discretion' to restrict importation of a publication if he is of the opinion that it would be contrary to the public interest.

**The National Security Act:** This Act allows the government to control the dissemination of information to the public in the interest of national security. In this case the term "national interest" is not defined and in many instances has been used as a euphemism for anything that threatens the existing status quo.

**Broadcasting Services Act 155:** This Act allows the government to regulate electronic media. While this is acceptable, this Act has been used acrimoniously, resulting in suspension of newspapers on allegations of publication of seditious stories against the government.

Tanzania has not been able to move forward and enact its Right to Information Bill of 2008. The contents of this Bill are believed to be contentious and in contradiction of the provisions of the Constitution of the country. A particular provision that has been a bone of contention is its proposed facilitation of access to information from government structures. The Bill is seen as an impediment to constitutional rights of Tanzanians to access and impart information.

## 5.1.6 Zambia

### 5.1.6.1 Management of the CSOs

The research findings revealed that the Zambian government and CSOs continue to work within bifurcated approaches and interests. Therefore the critical role played by CSOs is often underplayed by government. Government continues to pursue ways to curtail the presence of CSOs through legislative provisions.

The Non-Government Organisations Act of 2009 was passed to restrict the operating environment of CSOs. Among some of its unfavourable provisions is re-registration of NGOs/CSOs every five years, submission of annual information on activities, funders and accounts.

It also requires the personal wealth of officials, with failure to comply resulting in de-registration. The government passed the Act despite the documented history of this Bill since its first reading in 2007 when there had been protests to its content, which were viewed as unconstitutional and illegal.

### 5.1.6.2 Freedom of Expression and the Media.

Despite having moved away from a one party state in 1991, the state continued to control the media with a heavy hand. In the last two years oppressive media laws were passed and the government still lacks legislation on access to information

However, with the coming to power of the Patriotic Front in 2011, Zambia had seen three significant changes to the media including, increased freedom for the state media, the establishment of a self-regulatory body called the Zambian Media Council, and the publication of a new Constitution that among other things guarantees the freedom and independence of the media. In addition the constitution prohibits the government from exercising any control over a person engaged in broadcasting production or circulating any publication or disseminating any information by any medium. The draft Constitution upholds the right of individuals to broadcast or publish their opinions.

The Constitution goes further to give citizens the right to access information held by government and obliges government to publicize any information that is in the public interest (Irex Media Sustainable Report: 2013). However, even though the Bill was publicized in 2013, at the time of writing in 2014 this report remained unpassed and was still not law.

### 5.1.6.2 Freedom of Assembly

In the last three years, 2012 to current, Zambia's respect for the Right to Freedom of Assembly has been under scrutiny, after government opted to invoke the Public Order Act, a piece of legislation that emanates from British colonial administration. The Public Order Act is being used to restrict the opposition activities as well as civil society groups that have expressed opinions which are not in favour of the current government.

## 5.2 Similarities and Divergences

In analysing the six countries' Constitutions it was evident that each of the countries had a democratic Constitution that clearly upheld fundamental human rights, including the Freedoms of Assembly, Association and Expression.

While the regulatory frameworks ideally should be guided by the Constitution, all six countries had used the legislature to curtail the freedoms provided for in the countries' Constitution, by passing new laws, some of which prevailed despite being deemed unconstitutional.

In terms of regulatory frameworks for CSOs all countries except for Tanzania have put in place regulatory frameworks that are intended to lessen the autonomy of the CSOs. The legislation initiated reflects the mistrust that exists between the majority of African governments and CSOs. Governments continue to associate NGOs with opposition politics and often do not separate between the two. Thus the legislation in the five countries is restrictive and is preoccupied with opposition politics. In all instances it provides a platform for government to assert and exercise power over civil society. In all instances the definition of CSOs was found to be flawed.



## 6.0

## Conclusion

The research took place in Burundi, Cameroon, Lesotho, Malawi, Tanzania and Zambia and provides an insight into diverse realities in the different geographical settings. From the perspective of Development Effectiveness, the six case studies call for a deeper reflection on the implementation of the provisions of the Busan Partnership in a very diverse terrain. The research also calls on donors and other development partners to reflect on how aid effectiveness discourse has been put into practice, and in particular with respect to subjective interpretations of issues of ownership. Nine years after the Paris Declaration it is interesting that only three of the governments have mainstreamed aid effectiveness into their policy framework. This reality should be reason for concern for the development partners as it reveals a less than enthusiastic uptake, for a set of commitments that are framed as ones that can only be of benefit to Africa. The development partners have to review their own role and question if they have done enough for developing countries implement the necessary measures; or does this agenda remain implicated with the negatively perceived conditionalities. There is a need to communicate the Busan Partnership commitments holistically, incorporating issues of aid volatility and predictability as key parameters guiding the aid effectiveness agenda, in order for it to be received with enthusiasm and permit ownership on the part of receivers of aid. In all six countries there is evidence of donors moving towards centralisation of aid through harmonisation and alignment, with little understanding of the implications for the rights of CSOs as development actors and no evidence of transitional mechanisms in place for those who are likely to lose their source of funding if all resources are going to be channelled through the national budget. In many countries government has worked in opposition with civil society, and a change in strategy by the funder, does not make the two automatic effective partners.

In other cases that were highlighted by the research, there was evidence of development partners being comfortable with working with government and at times with the private sector, without any instance on CSOs being incorporated into the dialogue right at conception stage. While the rhetoric of aid/development effectiveness emphasised a change in the narrative around aid, it remains to be seen if this would translate into a change in approach by the stakeholders. From this report the implication is that not much had changed in the way development partners did business with CSOs. Donors and governments needed to consider a bottom-up approach to realistically incorporate civil society as equal partners.

The report does reveal that even though there are areas for reservation African governments were making positive strides toward inclusive and democratic participation in areas of policy dialogue and formulation. There is, however evidence of governments' wrath being directed at the media and CSOs in most cases as they are often viewed as enablers of the opposition, which is a major preoccupation. While the development partners have leverage to influence governments towards a more accommodative approach which upholds fundamental human rights, the research does not reflect any incident where donors have used their leverage to this end.

Cognisant of the above it is evident from the research that CSOs fall short of being ready to see through the aid/development effectiveness agenda. There needs to be more investment in capacity building and a realization of a truly enabling environment for CSOs to make their contributions. Capacity development includes expanding an understanding of this agenda and more importantly forging ownership of it. Without ownership from the CSOs the Busan Partnership provisions will remain new conditionalities, which are divorced from the goal of poverty reduction.

## 5.3 Freedom of Association and Assembly

In all the six countries the curtailment of these freedoms has been evident where CSOs and opposition political parties were concerned. The six governments came down hard on these two groups as they viewed them as threats to the status quo and tended to evoke 'morality', 'public security' and 'threat to public peace' as justification for some of the coercive ways to enforce the law and regulate these freedoms. For example Malawi's protests of 2011 where deaths were recorded is a reflection that this remained an area for lobbying and advocacy, in order for government to begin to view these freedoms as tenets of democratic governments.

Because all the governments demanded notification or declaration of intention to assemble three days prior to such action, this also closed the option to immediately react to an issue. Other details that were included in the declaration/notice left organisers vulnerable, and were in most cases likely to opt out of using demonstrations as a way to register grievances.

In countries such as Malawi and Lesotho the definition remained entrenched in old definitions that did not take into considerations the evolution of the sector.

Similar to their perceptions of CSOs, the six governments tended to view the media with suspicion. The media's freedom to disseminate or access information is curtailed with countries such as Burundi passing draconian legislation that allows government authorities to arrest media practitioner or in the case of Malawi, disrupt the dissemination of information. These incidences have been common in all the six countries.

Governments have become increasingly aware of the new ways to view media as a necessary development and the importance of allowing it to operate in a conducive environment. This understanding informed the governments of Malawi and Zambia in formulating an Access to Information Bill. The time required for the Malawian Bill to pass this into law, i.e. 2008 to 2014, reflects the caution that African governments generally apply to issues of media freedom. Zambia, which has taken the same route, still has a publicised Bill from 2008 that still has not passed into law.



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