

Citizens for Justice 2016 – 2021 Strategic Plan

“Equality and Justice for Every Malawian”

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Table of Contents

LIST OF ACRONYMS	3
EXECUTIVE SUMMARY	6
Introduction.....	6
The Strategy Context	7
Strategy Focus.....	7
Our Value Proposition	8
INEQUALITY AND SOCIAL-ECONOMIC JUSTICE IN MALAWI.....	9
The Economy	9
Social Policy	10
Poverty	11
Inequality	12
Gender & Inequality	13
Corruption & Inequality.....	13
Good Governance in Malawi:	13
The Concept of Governance in Malawi	13
Governance and Development in Malawi.....	14
Accountability	14
Government Effectiveness	15
Rule of Law.....	15
Access to Justice	16
Control of Corruption	17
Citizen Participation and Accountability	18
FROM LESSONS TO SHIFTS	19
Engagement Approach.....	20
Enhancing the Social Contract through Private-Social Interface.....	20
From empowering citizens to monitoring Duty Bearers.....	21
Malawi's Commitments to Selected International and Regional Agendas.....	21
THEORY OF CHANGE.....	23
Assumptions.....	24
Outcome to Impact Assumptions.....	24
Output to Outcome Assumptions:.....	24
Where We Work	24
How We Work	24
Who We Work With.....	24

STRATEGY PILLARS	25
External Strategic Objectives.....	25
Strategic Objective One:	25
To increased knowledge on accountable use of public resources among citizens	25
Strategic Objective Two:	26
To contribute to the empowerment of and creation of a responsible citizenry, participating in decisions that affect their lives.....	26
Strategic Objective Three:	26
To improve access to justice and public services for marginalized Malawians.....	26
Strategic Objective Four:	27
To promote equality under the law for vulnerable and marginalized Malawians.....	27
ACCOUNTABILITY, MONITORING, EVALUATION AND LEARNING.....	27
ANNEXES.....	28
ANNEX 1: CORPORATE RESULTS FRAMEWORK.....	28
ANNEX 2: MALAWI FACT SHEET	28
ANNEX 3: GLOSSARY OF TERMS	28

LIST OF ACRONYMS

ACB:	Anti-Corruption Bureau
ADR:	Alternative Dispute Resolution
AEO:	African Economic Outlook
AU 2063:	The African Union Commission Agenda 2063
AFROSAI:	African Organization of Supreme Audit Institutions
AG:	Auditor General
AIs:	Accountability Institutions
APNAC:	African Parliamentarians Network against Corruption
BET:	Budget and Expenditure Transparency
BVR:	Biometric Voter Registration
CPA:	Corrupt Practices Act
CRP:	Child Rights Principles
CSO:	Civil Society Organizations
CFJ:	Citizens for Justice
DGSS:	Democratic Governance Sector Strategy
DHRMD:	Department of Human Resources and Management and Development
DPOD:	Office of the Director of Public Officer's Declarations
DPP:	Director of Public Persecutions
DFID:	Department for International Development
EITI:	Malawi Extractive Industries Transparency Initiative
FEDOMA:	Federation of Disability Organizations in Malawi
FRC Act 2011:	Financial Reporting Act 2011
FIU:	Financial Intelligence Unit
GOPAC:	Global Organization of Parliamentarians against Corruption
GGGR:	Global Gender Gap Report
GRF:	General Resource Fund

GDP:	Gross Domestic Product
HDI:	Human Development Index
HDR:	Human Development Report
HRBA:	Human Rights Based Approach
IDEA:	International Institute for Democracy and Electoral Assistance
IANRA:	International Alliance on Natural Resources in Africa
IFAD:	International Fund for Agricultural Development
IFMIS:	Integrated Financial Management System
IICs:	Internal Integrity Committees
JTI:	Judiciary Training Institute
MEJN:	Malawi Economic Justice Network
MDGS II:	Malawi Development and Growth Strategy II
MHRC:	Malawi Human Rights Commission
MDG:	Millennium Development Goals
MoJ:	Ministry of Justice
MOU:	Memorandum of Understanding
NRJN:	Natural Resources Justice Network
NAICOM Act:	National Insurance Commission Act
NIS:	National Integrity System
NSO:	National Statistics Office
OPC:	Office of the President and Cabinet
OGP:	Open Government Partnership
ODPP:	Office of the Director of Public Procurements
OSISA:	Open Society Initiative for Southern Africa
PASI:	The Paralegal Advisory Service
PESTEL: Analysis	Political, Economic, Social, Technological, Environmental and Legal
RISDP:	Regional Indicative Strategic Development Plan

SDGs:	The Sustainable Development Goals
SWOT:	Strengths, Weaknesses, Opportunities and Threats
SADC:	Southern African Development Community
UNDP:	United Nations Development Program
WJP:	World Justice Project Index Report
WBCPIA:	World Bank Country Policy Annex Index
WHO:	World Health Organization

EXECUTIVE SUMMARY

Introduction

Malawi, in spite of 50 peaceful years since attaining political independence, suffers one of the greatest social and economic injustices in the world – poverty and human indignation. With an annual income per capita of 230 USD and approximately 50 percent of the population living below the national poverty line, Malawi has one of the poorest populations in the world. In 2010 over 70 percent of the country lived on less than 1.25 USD per day and in 2014 the Human Development Index (HDI) ranked Malawi 174th out of 187 countries. Malawi also remains one of the most unequal societies in the world and its HDI Score almost halves in value when accounting for inequality of the composite indicators of income, education and health (UNDP, 2014). Although Malawi has registered some progress in reducing inequality since the early 1990s (ODI, 2011), the official Gini coefficient has risen again between 2004 (at .39) and 2011 (at .452).

Malawi has signed and ratified all major human rights conventions and is consistently re-establishing respect and enforcement of the same following a serious roll back during the Bingu wa Mutharika administration between 2009 and 2012. During this period, there was a general decline in the observance of the rule of law; NGO's and activists were oppressed and sometimes detained, free speech and press were under threat and protests in 2011 were met by violent repression (IBAHRI, 2012). Human rights abuses are investigated by the Malawi Human Rights Commission, but it has since the Bingu Mutharika administration remained weak due to political interference, financial and staffing constraints (Meinhardt, 2014). Human rights protection is thus a persistent challenge in the country: harsh and life-threatening conditions dominate the country's prison system (US Department of State, 2013).

Violence against children is also pervasive, with more than 60% of all Malawians reportedly having been violated in some way during their childhood (Ministry of Gender, 2014). Although child labour is illegal it remains rampant, particularly in the agricultural sector (Meinhardt, 2014): According to the US Department of Labour (2013), 21 percent of 5-14 year olds work as child labourers. Malawi also has some of the highest child marriage rates in the world, with half of all girls married before the age of eighteen, rendering them susceptible to dropping out of school and domestic violence (Human Rights Watch, 2014). Malawi also registers high cases of disproportionate police violence and alleged torture (UN Human Rights Commission, 2014). Homosexuality remains a crime in Malawi and is punishable by a custodial prison sentence. Discrimination against homosexuals is widespread and rooted in both culture and religion.

The biggest governance challenge facing the country part-originate from the unchecked concentration of power in the Presidency and Executive. This concentration creates 'executive arrogance' and is compounded by the limitations of other actors to act as effective checks and balances. Parliament rarely confronts the executive and parliamentary committees are purposely rendered financially and politically constrained. Other accountability institutions such as the National Audit Office or the Anti-Corruption Bureau are similarly constrained and subject to undue political interference, and obstructions by the executive.

Although Malawi's judiciary is relatively independent from political interference, it has a weak self-regulating mechanism. There is poor transparency in judicial appointments, lacks performance measures and is often subject to executive curtailment of investigations and prosecution

of politicians in office. The problem of checks and balances is further compounded by a weak civil society. While civil society is free to operate in Malawi, it has profound institutional capacity deficiencies, credibility limitations, is under-financed and concentrated in the few urban areas. Some CSOs leaders have been compromised and have joined partisan politics.

The Strategy Context

The CFJ 2016 – 2020 Strategy responds to a general decline in the integrity and effectiveness of the Malawian polity and growing empathy in the general public. There has been a general decline in the rule of law; i) access to justice and judicial review; ii) legal certainty; iii) proportionality¹; iv) equality and non-discrimination; and v) transparency. The rule of law provides the framework within which economic, cultural, political and social aspirations are equitably and justly realised by every citizen. Although Malawians have over the last two decades enjoyed the constitutionally protected civil and political rights, the social, cultural and economic rights – the so called second generation rights - do not enjoy the same constitutional protection and are hence subjected to policy and political debates. Although Malawi is a thriving democracy, there are concerns that democracy is widely understood to be elections and freedom of speech. A Majority of Malawians remain passive and disinterested in holding their colleagues and leaders to account, some sectors of the society are starting to demand for accountability. Since 1999 this democratic deficit has resulted into looting of public funds by politicians and public officials in what has come to be referred to as “cashgate”.

This gross lack of accountability has led to withdrawal of budget support by international cooperating partners. They demand that proper public finance management systems been put in place and that government demonstrate commitment to curbing corruption through successful prosecution of perpetrators, and safeguards. The development partners have also insisted that government demonstrate commitment to accountability by prosecuting the perpetrators of corruption. According to Open Data for International Development² ‘The adoption of the Aid Management Platform – an aid information management system supported by AidData partner Development Gateway – by Malawi’s Ministry of Finance has increased transparency of where project aid is going – literally, on a map. However, technical fixes don’t remove the need for political will on the part of politicians to instigate changes in how public finances are managed. Ground-truthing project aid disbursements is possible, but it depends on civil society organizations in Malawi or other interested parties using the publicly available Aid Management Platform to identify aid project locations and investigate the status of projects’

The withdrawal of development assistance has resulted into further entrenchment of inequality and extreme poverty; lack of basic needs are violations of the rights to health, education, housing and social protection. Specifically, the continued lack of access to clean and safe water, good sanitation and a nutritious diet for most rural Malawians.

Strategy Focus

The focus of the strategy is on popularising and localising citizen responsibilities to create credible voices and demand accountability. The strategy also seeks to lobby for the institutionalisation of mechanism for enhancing accountability of the state, through legislative and institutional reforms, and

¹A means-end relationship between the aims pursued by a specific action of government, and the means employed to achieve these end. Requires that action taken must be proportional to its objectives.

²<http://aiddata.org/blog/donor-dependence-donor-withdrawal-implications-of-malawis-cashgate-scandal>

strengthening compliance and observance of the rule of law. Last but not least CFJ has set out to support various constituencies monitor use of public resources, quality and access to judicial and social services.

Thus the strategy seeks to support Malawians to call for accountability, create credible CSOs and systematically hold government, industry and society as a whole to responsibility and account. CFJ will pursue these goals in the wisdom of Section 12 of the Malawian Republican Constitution which provides and calls for horizontal accountability. CFJ will also pursue these goals within the framework of the Sustainable Development Goal number 16: Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels. CFJ will pursue both objectives of the goal;

a) Strengthen relevant national institutions, including through international cooperation, for building capacity at all levels, in particular in developing countries, to prevent violence and combat terrorism and crime;

b) Promote and enforce non-discriminatory laws and policies for Sustainable Development. Specifically, CFJ will contribute to targets; 3) Promote the rule of law at the national and international levels and ensure equal access to justice for all; 5) Substantially reduce corruption and bribery in all their forms; 6) Develop effective, accountable and transparent institutions at all levels; 7) Ensure responsive, inclusive, participatory and representative decision-making at all levels; 10) Ensure public access to information and protect fundamental freedoms, in accordance with national legislation and international agreements.

Finally, in pursuing these goals CFJ will employ a consultative and cooperative approach, working with government, development partners, like-minded CSOs, CBOs and citizens within the confines of the Malawi constitution and universal laws.

Our Value Proposition

In a terrain where civil society has rapidly diminishing political and social capital from years of redundant and ineffectual agendas, CFJ occupies the space of a credible broker, facilitator and mediator, trusted by both duty bearers and rights holders. CFJ is accountable to both its constituents, its funders and government. It does so with a strict sense of value for money, sustainable development ethos and organizational dynamism that brings together a variety of thought leaders. CFJ will boldly invest in initiatives that speak to our vision, mission, theory of change and our corporate results frameworks. Where necessary, CFJ will apply the ‘Chatham House Rules’³ to encourage the freedom of speech and flow of vital information. In summary, CFJ is setting out to promote the social contract but our approach is through the principle of engagement in all the spectrum of our programming.

³A rule or principle according to which information disclosed during a meeting may be reported by those present, but the source of that information may not be explicitly or implicitly identified.

INEQUALITY AND SOCIAL-ECONOMIC JUSTICE IN MALAWI

The Economy

The economy of Malawi is predominantly agricultural. Agriculture accounts for estimated values of 37% of GDP and 85% of export revenues. The economy depends on substantial inflows of economic assistance from the IMF, the World Bank, and individual donor nations. Malawi's most important export crop is tobacco, which accounts for about 70% of export revenues. The country also relies heavily on tea, sugarcane and coffee, with these three plus tobacco making up more than 90% of Malawi's export revenue.

In Mining, since 2009, with new licenses granted to extract Uranium from the Kayelekera mines, its production has contributed to an increase of Malawi's GDP from 1% to 10% as of 2013. Mining and quarrying contributed 0.9% to Malawi's Gross Domestic Product in 2014. Contributions are projected to remain below 1% for the next two years according to the Malawi Government's Annual Economic Report, 2015. Industry, Malawi's manufacturing sector, contributes 18.9% to the national GDP. Main sectors are food processing, construction, consumer goods, cement, fertilizer, ginning, furniture production and cigarette production. Services contribute about 51.7% (2013 est.) to the country's GDP - (Index Mundi, 2015).

Since 2014, Malawi's economy continued on the path to recovery in the aftermath of the economic crisis of 2012, which saw a contraction in real GDP growth to 2.1%. Real GDP growth in 2014 is estimated to have been 5.7%, driven largely by agriculture, but with significant contributions from manufacturing, wholesale and retail trade, and services. Growth in 2015 was projected to slow to 5.5% following the late arrival of rains and the severe floods experienced in January 2015, which damaged crops and infrastructure. Growth momentum is expected to resume in 2016, with projected growth of 5.7%, assuming improved investor confidence, favourable weather conditions, higher agricultural exports, lower inflation and moderate interest rates, (Malawi: Africa Economic Outlook, 2015).

Malawi's current Gini Coefficient is ranked at 174 out of 187 countries in the world. The Gini Coefficient values above look moderate compared to a number of countries in the region. A possible reason for the moderate Gini Coefficient is the subsistence nature of the economy. With over 80% involved in agriculture, and more especially subsistence farming, it is difficult to have the exact measures of income to have the right average Gini Coefficient, (OSISA, Poverty in Malawi, 2011).

These challenges notwithstanding there has been progress on human development. The country ranks among the top 20 performers on several Millennium Development Goal (MDG) indicators in terms of both absolute and relative progress, even though the reality is more complicated than the indicators reflect. Since 2006, Malawi has increased its performance on the overall Index, and between 2013 and 2014 it increased its score from 71.4% to 72.8%. The country ranks in the top five on the Economic Participation and Opportunity sub-index, tops the ranking on Labour force participation and is a top regional performer on Enrolment in primary education and sex ratio at birth.

The government continues to run a fiscal deficit estimated at 5.9 percent in 2014/15 and is expected to remain as such in FY2015/16. The economy continues to operate in a difficult fiscal environment characterized by a large budget deficit compounded by an accumulation of arrears and rising debt service costs. With limited scope for foreign financing at levels previously available to the government following the "cashgate" scandal, the authorities continue to borrow heavily from

domestic sources, which further runs the risk of pushing inflation and lending rates up, crowding out private sector investment and hence constraining economic growth.⁴

Social Policy

A major policy efficacy challenge in Malawi emanates from the practice of various political parties. Different government administrations have a short term approach to policy implementation. Policy discontinuity is thus a major challenge. According to Chinsinga (2007) social policy in Malawi faces three main challenges;

- 1) the social protection policy process is treated entirely as a technical process;
- 2) lack of capacity among leading government agencies to provide the necessary leadership and technical guidance and direction to the policy process; and
- 3) the fact that policy design has so far been totally driven and determined by donor agencies, particularly DFID and the World Bank.

Politicians are yet to be engaged in the process and to date social policy responds primarily to externally driven interests who have the resources to finance the agenda which is mostly tailored towards political appeasement to maintain political influence and hence stay in power.

Against this background it is important to note that Malawi has a total fertility rate of 5.7, one of the highest population densities in sub-Saharan Africa, (WHO, 2014). Access to health remains a challenge. Malawi has a three tier healthcare system in which each level is connected by a patient referral system. Patients enter into the system at the first tier and flow to higher tier facilities as needed. However, medical supplies and human resources flow in the opposite direction. The already limited resources are first allocated to the top tier facilities, leaving the second and third tier facilities with little to no resources. Drug pilferage underlines the health system.

Projections for 2000-2015 enrolment in education shows a continued decline in gross intake enrolment for both males and females. Although the pupil-teacher ratio in primary schools has been increasing and now stands at about 1:74, the quality has not improved. This ratio is also higher than the average of the Sub-Saharan countries. Increasing rates of teachers' turnover as a result of poor housing and school infrastructure and little salaries also continues to affect the quality of education among others. The Malawi Progress Report on Millennium Development Goals (2012) revealed that the enrolment ratio of girls to boys in primary education reached parity in the 2008/2009 school year. The highest was at 1.04 in 2009, but dropped to 1.02 in 2011.

Children in Malawi are subject to various forms of abuse, violence and exploitations including child labour, defilement, harmful cultural practices, school dropout, early marriages and juvenile injustice. To address the problem, the Malawi Government has put in place a number of policies and laws that include the ratification of international, continental and regional treaties, conventions and protocols. Some of these include; The Employment of Women, Young Persons and Children Act; National Policy on Youth (1998); United Nations Convention on the Rights of the Child (UNCRC); and the African Convention on the Rights and Welfare of the Child (ACRWC). According to Child Rights International Network (CRIN), there are a number challenges in the laws which include; laws

⁴<http://www.worldbank.org/en/country/malawi/overview> [accessed 14-01-2016]

to protect children from violence and abuse co-exist alongside traditional norms which permit behaviour that contravene UNCRC and ACRWC; limited public knowledge on the child protection policy; and poverty and HIV/AIDs increases the vulnerability of children. In addition, there is limited attention paid to the specific impacts of other policies, laws, projects and investment on the rights of the child and further work is required to scrutinise the implementation of child safeguards by international financial institutions and the private sector across the country. These are some of the issues that need to be addressed to improve child care and protection policy in Malawi.

For over a decade however, Malawi has implemented a policy and programme on food security that has raised serious debates about the effects of the country's social policy on the population. The Targeted Inputs Programme introduced in 2004 by the Bingu wa Mutharika administration, expanded to what is today called the Farm Inputs Subsidy Programme (FISP), distributes input amounts—100kg of fertilizer, 5kg and 7.5kg bags of maize seed, and a 2kg bag of legume seed—to around 1.5-million beneficiaries, depending on the resources available in a particular year.

But in July 2014, the Institute of Chartered Accountants in Malawi (ICAM), during its contribution to the 2014/15 budget consultations, joined calls for the complete abandonment of FISP, describing it as a big drain on public resources. ICAM indicated that government should rather begin to subsidise production rather than consumption by channeling the resources to commercial farming through partnerships with rural Masses. ICAM highlighted that FISP drains the country's foreign exchange amounting to US\$152.3 million an equivalent of K68 billion in 2013, but has created a dependency syndrome where beneficiaries rely on government to provide coupons every year. They also indicated that FISP has created a favourable ground for misuse of government resources and corruption, raising administration costs of implementing the policy, while failing to deliver subsidized fertilizer to intended recipients – the very poor.

Poverty

According to the World Bank (2014), Malawi is the poorest country in the world, with a GDP per capita value of US\$255. With a population estimate of 17.26 million as of 1st January, 2015), the World Bank reported that Malawi has been able to make important economic and structural reforms and sustain its economic growth rates over the last decade. But that, nevertheless, poverty is still widespread and the economy remains undiversified and vulnerable to external shocks

Malawians rely on subsistence farming, but the food supply situation is precarious and the country is prone to natural disasters of both extremes - from drought to heavy rainfalls - putting it in constant need of thousands of tonnes of food aid every year. UNDP's Human Development Report for 2014 states that 61.64 per cent of the population still lives below the income poverty line of US\$1.25 a day, and 29.8 per cent of the population in severe poverty.

Malawi's unemployment rate has been at its highest in the past two decades since 2001. As of 2013, the rate was at 7.2% which was highest for the previous seven years. The country has not seen a decrease in the unemployment rate since 2008. With the majority of the population (>80%) living in rural areas, both wage employment and the chances of escaping poverty are as such based on the success of the smallholder agriculture sector, which are currently very limited, (Norad, 2009). In the country of an average annual growth rate of 2.8, more than 90 per cent of the rural population (2.5-3 million households) are smallholder farmers with customary land tenure. Average landholding size had fallen from 1.5 hectares in 1968 to around 0.8 hectares in 2009. - (IFAD, 2010).

The impacts of poverty seem to be more severe on children than on any other group in the country. Poverty hits children the hardest and threatens their most basic rights to survival, health and

nutrition, education, participation and protection from harm and exploitation. There has unfortunately been no change in children's nutritional status in the country since 1992 and malnutrition rates remain unacceptably high. According to UNICEF, around 46 percent of children under five are stunted, 21 percent are underweight, and 4 percent are wasted. Right to education is also infringed, mainly for girls, as reported by Mzuza et al. (2013) because due to poverty, parents resort to send girls to do piece work such as gardening and starting small businesses to earn a living. The same paper reports that girls are also forced into early marriages by their parents as the parents are not able to take care of the children. Malawi has one of the highest rates of child marriage in the world. It is ranked eighth of the 20 countries that are considered to have the highest rates of child marriage by the UN Population Fund (UNFPA). Even though Malawi updated legislation to prohibit marriage of under-18s and some signs suggest authorities, including traditional leaders, are working to stop child marriage since the passing of legislation, the Constitution must be amended to protect the rights of children in respect to marriage.

In response, over the past decade, the Malawi government has developed two major overarching strategies; a) the Malawi Growth and Development Strategy II (MGDS II), a second medium term national development strategy focusing on Sustainable Economic Growth; Social Development; Social Support and Disaster Risk Management; Infrastructure Development; Improved Governance; and b) the Malawi Economic Growth Strategy both of 2004. Despite improvements in economic growth rates, these strategies have yielded poorly for the poor.

Inequality

Access to assets, services and economic opportunities is profoundly unequal across the population. Access to education, a major driver of relative wealth, is highly inequitable as well. Almost 30 per cent of poor children do not even start primary school, which is free in Malawi. Secondary and higher education is largely confined to non-poor households, mainly due to the required enrolment fees. Limited access to markets and services is another constraint. Poor rural people tend to live in remote areas with few roads and means of transport, which limits their economic opportunities. Access to financial services is severely restricted, especially for smallholder farmers. Only 12 per cent of households have access to credit, (IFAD, 2010).

According to the Malawi Growth and Development Strategy (MGDS) of 2006, the poor have limited opportunities for integration into the modern economy. Female-headed households are worse off and income inequality persists in Malawi, with the richest 10 percent of the population having a median per capita income that is eight times higher (MK50,373 per person per annum) than the median per capita income of the poorest 10% (K6,370 per person per annum).

The Malawi Poverty Reduction Strategy Paper (MPRSP, 2002) stated that the richest 20 percent of the population consumed 46.3 per cent while the poorest 20 percent consumed only 6.3 percent of the total reported consumption of goods and services. In urban areas, the richest 20 percent consumed 58.4 percent while the poorest 20 percent consumed only 4.5 percent.

According to the Malawi Integrated Household Survey (HIS) 2010/11, poverty is more prevalent in rural areas; and within rural areas, it is most prevalent in the southern region (60%). The southern region has not only the highest prevalence of poverty but also the deepest poverty. Among the causes is high population density. Most people in the south have very small land holding compared to the central region with only 44% of the poor and the northern region with about 54%. Among cities, Lilongwe has the highest prevalence of poverty. Urban poverty does not follow the rural pattern as cities in the central and northern regions contain more extensive poverty than Blantyre and Zomba in the south.

Gender & Inequality

Malawi has been termed a patriarchal society with male dominance over women. In 2009, despite an aggressive 50/50 campaign, only about 20% of parliamentary seats were held by women. In secondary schools, girls only make up 23% of enrolments. There is also gender inequality in the public sphere. In parliament, 22 per cent were women while 78 per cent were men, and 32 per cent in ministerial positions were women while 68 per cent were men, (Global Gender Gap Report, 2014). According to Ministry of Gender, Children, Disability and Social Welfare report of 2014, there was reduced number of women in Parliament from 22 percent in 2009 elections to 16.7 percent in 2014, reduced number of women Ministers from 28.1 percent in 2013 to 15 percent in 2014. Between the IHS of 2004/5 and 2010/11, poverty levels for female headed households in rural areas increased by 3 percentage points, while those for male headed households remained static.

Corruption & Inequality

Not only does corruption affect economic development in terms of economic efficiency and growth, it also affects equitable distribution of resources across the population, increasing income inequalities. As measured by the Gini coefficient, using panel data from African countries, a study finds that a one point increase in the corruption index is associated with a seven point increase in the Gini coefficient of income inequality (Gyimah-Brempong, 2001). A study looking at the effect of corruption on income inequality and growth using data from US states finds robust evidence that an increase in corruption increases the Gini coefficient of income inequality and decreases income growth (Dincer and Gunalp, 2005). The Malawi 2008 National Anti-corruption Strategy remains ineffective due to the institutional constraints facing the Anti-corruption Bureau. According to Transparency International (2014) Malawi's CPI fell by 4 points in 2014, translating into a 28 point increase in the Gini-coefficient.

Children & Inequality

Malawi signed many international treaties like the African Charter on the Rights and Welfare of the Child (ACRWC) and the United Nations Convention on the Rights of the Child (UNCRC). Despite this and the existence of many laws that govern child care and protection in the country, inequality among children is still observed in the country. A study by Masanjala and Mussa (2015) shows that regardless of gender or location, education qualifications are unfairly distributed in favour of the better-off children. The study also revealed that at all levels of education, access to education, as measured by school enrolment, is regressive (unequally distributed to the disadvantage of the poor). In the health-care system, vertical inequities are observed in the use of interventions (treatment of diarrhoea, ARI among under-five children), in that the non-poor who experience less burden from these diseases receive more of the treatment/interventions, whereas the poor who have a greater proportion of the disease burden have less access to the interventions. It is also observed that the publicly provided services for some of the selected interventions (e.g. child delivery) benefit the non-poor more than the poor, (Zere, et al., 2007).

Good Governance in Malawi:

The Concept of Governance in Malawi

In a Concept Note by the Ministry Justice and Constitutional Affairs on defining the Justice Sector in Malawi, the ministry defines democratic governance as “the management of societal affairs in accordance with the universal principles of democracy as a system of rules that maximizes popular

consent and participation, the legitimacy and accountability of rulers, and the responsiveness of the latter to the expressed interests and needs of the public.”

The ministry further qualifies this definition with fundamental principles noting that, on the basis of this definition democratic governance is both an end in itself as it is a means towards other ends; it is never perfect because it is a process rather than an end product; and it is a form of political practice based on universal principles of the rule of law, integrity, participation, transparency, accountability and human rights. Democratic governance is thus as much about the process and political legitimacy that involves authentic and quality participation as well as the institutions, structures and rules.

Governance and Development in Malawi

Malawi has enjoyed 21 years of multiparty democracy with five successful elections post the 1993 Referendum which led to the first democratic election in 1994 which saw the demise of the 30 year rule of Malawi Congress Party. The peaceful transition distinguishes Malawi from its Southern African counterparts as it has managed to successfully transition from single-party rule in a relatively bloodless manner

According to the MGDS II, the absence of good governance not only undermines the strategies and MGDS themes, it also has the potential of creating an unstable society. The DGSS 2013- 2017 highlights that governance matters in Malawi for three reasons. First, because the quality and depth of the country’s economic development depends on the quality and depth of its institutions. Second, because equality and the protection of disadvantaged or marginalized eliminates conflict and thus stabilizes the country. Third, because appropriate investment environment and large scale farming secures sustainable growth by protecting the rights of the current generation without destroying that of future generations.

CFJ employs the definition of good governance as established by the World Governance Indicators; voice and accountability; political stability and the absence of violence; government effectiveness; regulatory quality; rule of law; and control of corruption.

Accountability

Malawi has a progressive legal and policy framework to support the entrenchment of accountability. The Malawian Constitution provides a comprehensive bill of rights covering political, civil, social and economic rights. Malawi has also created several institutions to promote accountability in Malawi which obtain their legal mandate under section 12 1 (c). Additionally, in section 13 (o), accountability is stated as an important principle for national policy. Lastly, Malawi’s commitment to these principles and rights is further entrenched by various international instruments which it has ratified or acceded to.

These obligations are also consistent with Malawi’s development goal articulated in MGDS II (2011-2016) of wealth creation and poverty reduction through sustainable economic growth. In this regard, MGDS II recognises that governance, which is one of the six thematic areas, is central to the realisation of its development agenda as this ensures equitable allocation and distribution of public resources. The DGS Policy Framework Paper (2012) and the DGSS (2013-2017) both emphasise that sustainable democratic governance depends largely on open, transparent and accountable government system. Realization of Malawi’s development agenda thus depends on integrity of government and strengthening confidence in public institutions by enabling citizens to hold public officials

accountable for their actions. For Malawi, government accountability and attainment of development goals are both hampered by governance failures. Although there has been some progress in tackling poverty and improving governance some systemic constraints and challenges facing accountability institutions. These challenges include; a) Gaps in the legal frameworks; b) Inadequate enforcement mechanisms; c) Weakness and instability of accountability institutions; d) Insufficient human resources; e) Inadequate or outdated infrastructure; f) Weak systems and procedures being used by the individual institutions; and g) Limited capacity by right holders to demand accountability from duty bearers.

The poor accountability negatively impact on the efficient, effective and equitable delivery of public goods and services and there can be little or no accountability if governments are not transparent. Transparency is therefore a precondition for attaining accountability and it imposes a duty on service providers to disclose information and allow service users to obtain such information. Once citizens possess this information they will be not only able to influence development policies but also advocate for better access and equitable provision of adequate services to all especially, the poor, vulnerable and marginalised groups.

These challenges can be addressed through citizen empowerment especially poor, marginalized and disadvantaged groups, strengthening accountability in terms of power relations and social norms at individual, community and national levels. In principle, initiatives on empowerment and accountability should encompass interventions that enable citizens to have the resources and capabilities to exercise greater choice and control over their own development and to hold decision-makers accountable.

Government Effectiveness

Public sector reforms have been an on -going process since independence. However there is mixed performance characterized by inadequate and low quality of public services, a deterioration of work ethics, fraud and corruption. Consequently, the Malawian citizenry has lost trust and confidence in the government's delivery of public service. An efficient and effective public sector is a bedrock for sustainable development. A robust public service provides a sufficient capacity necessary to retain a competent workforce and achieve national development outcomes. Therefore government and all stakeholders must pursue and implement concrete and results oriented reforms that will revitalize the public service delivery machinery, process and systems. Specifically, improvements of the public sector delivery should be underpinned by the broader public reforms currently being championed by the Office of the Vice President through the Public Service Sector Reform Commission. These reforms seek to improve government effectiveness by; depoliticizing the public service; entrenching ethics, integrity and discipline; systematic development of human resource; harmonizing remuneration and conditions of service; effective implementation of performance management systems; establishing efficient and effective funding and payment systems; decentralizing service delivery, fostering efficient utilisation of public resources; and adopting technological innovations that improve efficiency and effectiveness of public service delivery, and undertaking public service legal reforms.

Rule of Law

Decades after the adoption of Malawi's Constitution in 1994, citizens are yet to enjoy the political and democratic rights as articulated in the Constitution. It has been argued by academics that the 1994 Constitution was hurriedly done to respond to political pressure prevailing in early 1990's. Consequently, Malawians are not enjoying the benefits accruing from the Constitution due to weak

compliance to its authority. Addressing these shortfalls requires amendments to some of the provisions as well as enactment and implementation of enabling legislation.

To this end, from 2004 to 2006, the Malawi Law Commission undertook a comprehensive review of the Constitution. In 2007, a report containing its findings and recommendations was submitted to government, accompanied by draft bills. The recommended reforms were far reaching and would have gone a long way to consolidate democratic governance. Reluctance to implement these constitutional reforms has significantly undermined efforts to enforce law and strengthen commitment to the Constitution.

The 1994 Constitution of Malawi clearly provides for separation of powers between the executive, the legislature and the judiciary. However, these checks and balances built into the 1994 Constitution have not functioned effectively. Power is still highly concentrated in the hands of the executive. This situation has allowed the executive to make arbitrary decisions. The crux of the problem stems from the fact that there is a lack of an environment for the domestic incorporation of international human rights treaties. Simply put, there has been a lack of initiative in the domestication of international treaties thus causing a lack of enforcement of these international principles on statutory and customary law.

Legal and judicial reform is essential to the promotion of rule of law but this is not possible without strengthening judicial independence and capacity. The reforms on judicial independence include creating a politically insulated method of appointing judges; providing a neutral process of discipline and removal; granting financial autonomy for the courts and providing for an independently appointed and inclusive Judicial Service Commission. In terms of capacity building, proposals focus on reforms to improve adequacy and sustainability of government funding, harmonisation of organisational and human resource development measures relating to functional review, staff training and development, and staff performance management and for the establishment of a Judiciary Training Institute (JTI) with the aim of developing competencies of judicial officers and members of staff of the judiciary to effectively administer justice.

Access to Justice

Malawi's formal justice system remains challenged in fulfilling its primary role of providing access to justice for all. Among these challenges are insufficient manpower, lack of access to legal representation for the poor, excessive caseload, insufficient funds, and under-resourced government departments. The slow processing of cases in the judicial system leaves the majority of Malawians (most of who are poor) incarcerated awaiting trial. This situation pertains while Malawi remains one of the World's poorest economies with insufficient budgetary allocation to tackle its access to justice challenges.

In 2011, OSISA launched a study into Malawi's pre-trial detention, which examined case flow management and conditions of incarceration at the time. The study revealed primary issues affecting the proper functioning of Malawi's criminal justice system such as excessive pre-trial detention and lack of efficient case flow management.

In 2013, the WJP Rule of Law Index 2013/14 revealed four serious problems with Malawi's formal justice system. Among them were that, cases take too long, there is lack of mechanisms to track court efficiency, court congestion and a lack of pro bono lawyers to represent poor and vulnerable clients. The WJP Index exposed specific challenges in both the formal and informal justice mechanisms in Malawi. In a country where many fail to attain formal justice due to excessive caseload and

insufficient manpower, such problems only exacerbate the theory most rural Malawians hold, that 'justice is for the rich' and prefer customary/informal justice systems that are riddled with problems of inconsistencies and corruption. Additionally, customary/informal systems do not comply with standards of non-discrimination and equality before the law, further disenfranchising the rural and peri-urban poor.

There remains a need to address access to justice gaps particularly those relating to pre-trial detention. By conducting camp courts, legal clinics and addressing capacity gaps and insufficient dissemination of legal information, the gap between formal access to justice mechanisms and the vulnerable beneficiaries the mechanisms target. It is CFJ's belief that furthering the realisation of human rights particularly of the vulnerable and enforcing the duty bearer's capacity to perform their obligations and on rights holders' right to claim those obligations falls within the framework of human rights norms and standards.

For instance, in our Implementation of the Legal Aid Act, a project that seeks to; Reduce prison congestion; Reduce case backlog; Increase speedy conclusion of cases; Reduce court congestion; Decrease pre-trial detention period and improve legal awareness of prisoners, we learnt that Judicial bureaucracy, court strikes, inefficiency driven court delays seriously hamper access to justice. We have therefore undertaken to embark on monitoring trends in judicial performance across facilities and geographies in the country.

Malawistance, in our Implementation of the Legal Aid Act, a project that seeks to; Reduce prison congestion; Reduce case backlog; Increase spe. A host of problems such as insufficient personnel, lack of access to legal representation for the poor and excessive caseload continue to hamper the movement of cases in the system thus resulting in the majority of Malawians (most of who are poor) spending years in prison awaiting trial with minimal or no access to justice. This has resulted in children being detained for extensive periods at a time, in often overcrowded prisons where they are deprived of education, recreation and are at risk of abuse (IRLI). While the Government has launched several juvenile-tailored programmes, there is still a need to improve access to justice for the youth. CFJ is interested on implementing a Juvenile Justice Project to work on reducing youth detention and incarceration by conducting camp courts and promoting non-custodial sentences for lesser crimes. This project is aimed at improving access to justice for children and to support and empower young people who are subjected to the Juvenile Justice System.

Control of Corruption

Corruption is a significant challenge in Malawi despite public support and government commitment to address the problem. Malawi's law has created several accountability mechanisms and institutions to deal with issues of accountability, transparency and anti-corruption as part of its campaign for a corrupt-free society. Malawi is a signatory to the United Nations Convention against Corruption, the African Convention on Combating Corruption and the SADC protocol against Corruption. In 1995, Parliament enacted the Corrupt Practices Act which established the Anti- Corruption Bureau as an autonomous body mandated to lead the fight against corruption. Furthermore, The National Anti-Corruption Strategy was launched in 2009 with the ultimate objective of making Malawi a corrupt-free country. The strategy provides a sector holistic approach to the fight against corruption through institutionalisation of the fight against corruption within sector institutions under 8 pillars of Executive, Judiciary, Legislature, Civil Society, Private, Media, Traditional Leaders and Faith Based Organisations.

Despite these efforts, the national anti-corruption strategy has yielded mixed results as demonstrated by Malawi's low ranking in international indices on corruption and integrity. Assessments on the progress the country has made in the combating corruption demonstrate that the translation of the international and national commitments remains a challenge. According to the Democratic Accountability Survey (2011), corruption was seen as a serious problem with 40% of Malawians considering service providers as "very corrupt". The Survey also revealed that 55% of Malawians were dissatisfied with the way cases are handled by the Anti-Corruption Bureau. The 2013 National Corruption Perception Survey reported that Malawians perceived greed and selfishness as the leading causes of corruption. This indicates that Malawians are yet to appreciate the role of institutions in regulating human behaviour. The survey also revealed that although some progress has been made in combating corruption generally, corruption was still a serious problem in the Police, the Judiciary, Ministry of Health, Customs and the National Revenue Authority.

The Transparency International Corruption Perception Index of 2013 also shows Malawi's poor performance in the fight against corruption. According to the Index, Malawi was ranked 97 out of 177 countries with a low score of 37. The World Bank Doing Business Survey (2012) highlighted the urgent need for Malawi to implement urgent governance reform in order to improve its economic competitiveness. This Survey ranked Malawi 145 out of 183 economies in the world.

The recent revelations about massive looting of public funds by civil servants and politicians who exploited the lack of institutional oversight of the Integrated Financial Management Systems (IFMIS) dubbed the "Cashgate", is indicative of the pervasive nature of corruption in the country. A Forensic Audit Report by Baker Tilly released in February 2014, revealed that U\$30 million was siphoned from Government coffers between April and December 2013.

The low confidence by the Malawians regarding national efforts to curb corruption, the low scores on international corruption index and the recent corruption scandals call for concerted efforts to improve the effectiveness of anti-corruption measures. The Institutional Policy and Legal Audit recently conducted on the ACB revealed that the Bureau remains financially constrained and could not produce efficient and effective results. A transformative agenda which addresses attitudes and practices among duty bearers and provides an impetus for influencing behaviour change is needed.

To address this, CFJ implements a project on the Open Government Partnership (OGP), an international platform which supports domestic reformers make governments more open, accountable and responsive to citizens. CFJ leads civil society organisations in this undertaking. Finally under good governance CFJ implements the Budget and Expenditure Transparency initiative which aims at promoting accountability for resource management by enabling citizens to understand national and district budgets and be able to participate and hold those in authority accountable for the budget. This programme also targets accountability institutions.

Citizen Participation and Accountability

Since 2000 Malawi has seen a decline in citizens participation. The UK Guardian reported that 'in Malawi, citizen participation in committees is often poor, and decentralisation has been ad hoc and fragmented. Political power remains concentrated at the national level, meaning there is little or no local accountability in practice. This has led to the poor performance of many key services, with staff

often unsure who reports to whom. There is often little accountability for service providers or for politicians, resulting in a dysfunctional system that echoes the broader national problem'⁵.

Although, the 2005, 2009 and 2014 parliamentary and presidential elections in Malawi have all been deemed to be free and fair but they have revealed profound administrative, political and legal challenges. Both local and international observers have made recommendations to address these challenges but implementation of these recommendations has been deliberately slowed and curtailed. For instance, the 2014 tripartite elections demonstrated the importance of engaging stakeholders in addressing the identified challenges such as lack of organisation and logistical preparedness, lack and delay of essential voting materials at polling stations both of which have impacted on the integrity of the tabulation process and arrangements for transmission of the results.

Several recommendations have been advanced to address these anti-democratic challenges. First is to introduce a legal requirement that all parties and candidates disclose political party sources of financing and to report on campaign spending. This would improve transparency and public accountability of political financing. Second is to introduce a clear and enforceable ban on the use of state resources for campaigning purposes into the electoral legislation, together with an independent oversight mechanism to ensure that state resources for public office are not used for campaigning to accord undue advantages to the incumbent president and his party. Third, is to explore technologies and related training used for the voter register for suitability and possible future use for civil register purposes. Consideration should be given to the introduction of Biometric Voter Registration (BVR). Fourth, is to conduct effective and timely training of polling staff. Provisions for extra tallying staff where necessary, to avoid cheating and errors due to exhaustion. Particular focus on procedures for reconciliation and result forms, packing of election material and material transfer could enhance the overall credibility of the process and accelerate the results tallying process. The fifth recommendation regards tallying procedures and proposes it be redesigned to ensure easy traceability from polling station results onwards, including for those cases where arithmetic corrections are needed due to reconciliation errors. Sixth and final CFJ-relevant recommendation calls for an adequate and reliable results management system, designed to ensure integrity and reliability in the collection, aggregation and publication of results. The system used should be thoroughly tested well in advance and an alternative or a parallel option of results transmission should be put into place.

In order to advance the recommendations, CFJ will advocate in three main areas. The first area is on unification and harmonisation of electoral laws. This shall include advocacy and lobbying for proposed law reforms. The second is in the area of review of the electoral system and this shall include advocacy and lobbying for electoral system review following recommendations made by various stakeholders. The third and final area is on levelling the electoral playing field and this shall include advocacy and lobbying for the development and/or finalisation of the Political Party legislation.

FROM LESSONS TO SHIFTS

Over the past five years CFJ has accrued valuable insights from its experiences working with a variety of stakeholders; governments, civil society and private actors. This section presents a summary of the strategic shifts that DFID will undertake in the new strategy in order to remain context relevant and

⁵Malawi's Cashgate corruption scandal highlights importance of accountability.

<http://www.theguardian.com/global-development/poverty-matters/2014/feb/28/malawi-cashgate-corruption-scandal-accountability> [accessed 15-01-2015]

effective. The shifts are based on our experiences and the reading of the external context; national and international political economy and global governance.

Engagement Approach

CFJ mission is ‘to speak with and for the poor and voiceless so they are a part of development processes’ as the institution premier in research and advocacy from a rights perspective. This approach primarily means that we stand and side with the poor. We exist to primarily secure the interests of the poor in the economic, cultural, political and social life of Malawi. Our philosophy derives from the tenets of the International Convention on Economic, Social and Cultural Rights (ICESCR). These are; the right to self-determination for every Malawian; the right to non-discrimination based on sex, colour, ethnicity, religion, political and other opinion, social origin, property, birth or other status; the right to work; the right to form social unions; the right to social protection and security; the right to adequate standard of living; the right to education; the right to health; and the right to cultural freedoms.

From experiences in our Budget Expenditure and Transparency (BET) Initiative, established to promote the efficient utilization of local resources; to enhance delivery of stated objectives, priorities and services at the local level; and to engage citizen participation in budget and expenditure transparency we learnt as follows. There are challenges in establishing effective collaboration especially in the area of obtaining financial data. This was particularly pronounced when the engagement was directly between CFJ and the district executive.

In the new strategy period CFJ will increasingly work with and through the district governance structure for the primary purpose of securing their support in obtaining critical information and enhancing their oversight capabilities. CFJ will also migrate from a projects approach to long-term collaboration with local government, particularly for initiatives such as BET where success is incumbent upon long term commitments and institutionalised collaboration arrangements between the local assembly and citizens and non-state actors.

CFJ from October 2015 started implementing a child rights project - Child Rights and Safety in the Extractives Industry Sector in Malawi, Tanzania and Uganda – the first of its kind in the organization in relation to child rights. The research results from this child rights project will be used for advocacy and lobbying for World Bank to review their Safeguard Policies for better protection of children’s rights. CFJ has also been working on integrating the Child Rights Principles (CRP) in the organization and in the way we work developed by Child To Child – a British-registered organisation. The aim is to ensure that each of the CRPs are considered in projects directly related to children. These include: child-rights based, child participation, non-discrimination, best interests of the child, respecting and building on strengths and do no harm. To help our partners with the same, CFJ is and will be working on introducing the CRP to partners we work and will be working with in child-related projects at the local, national and international levels.

Enhancing the Social Contract through Private-Social Interface

The idea of the social contract is one of the foundations of many political systems. It is the belief that the state only exists to serve the will of the people, and they are the source of all political power enjoyed by the state. The people can choose to give or withhold this power. This ideal is expressed in

the Malawi republican constitution through various provisions. In principle, the social contract is a simple proposition to conceive. In practice, achieving this relationship between the state and the people, has many determinants. In the case of Malawi; culture, illiteracy, poverty and 'big man' politics affect this relationship. The obligations of the state for which it holds power have historically been largely unmet. It can be argued that the extent to which the state derives its power from the citizens remains debatable if not insignificant. Historically, the social contract in Malawi has been brokered by the rich and industry. In recent years this dynamic has been witnessed in the young mining industry in Malawi.

Through our different programs, we will aim to; increased capacity and voice of poor and vulnerable communities, especially women to influence decisions on issues that affect them and their livelihoods at community level; and improve collective action among CSOs to pursue joint advocacy matters related to promoting a just, fair and equitable Malawi.

In the new strategy CFJ will focus on active engagement of communities in decision making aimed at creating a bilateral interface between private actors such as investors, and communities. This shift is in keeping with CFJ's pursuit of the social contract as it enables government to meet its obligations without direct engagement with communities and private sectors. CFJ plans to make the shift to exclusive engagement between non-state actors.

From empowering citizens to monitoring Duty Bearers

From facilitating dialogue to tracking implementation of recommended reforms – Through our Strengthening of Accountability Institutions which seeks to strengthen accountability institutions by making them more accountable, transparent and effective, we learnt that lack of proper dissemination of the Audit Report and others bearing recommendation limits effective oversight on implementation. CFJ plans to undertake annual assessments of compliance to and implementation of recommendations on reforms.

This shift also concerns our OGP initiative which seeks to provide a platform for domestic reformers to secure concrete commitments and make their governments more responsive, accountable and transparent to their citizens, and also seeks to promote the principles of transparency, accountability, citizen participation and innovation. CFJ will thus accordingly monitor implementation of the National OGP Action Plan from 2016.

Malawi's Commitments to Selected International and Regional Agendas

The work of CFJ is guided by International, regional and national development framework. These include the UN Sustainable Development goals, AU Africa Union Agenda 2063 (AU), the SADC Regional Indicative Strategic development plan and Malawi Development Goals (MDGs). Our work is also guided by the Universal Declaration on Human Rights, the International Convention on Civil and Political Rights (ICCPR), and the International Convention on Economic, Social and Cultural Rights (ICESCR).

These frameworks each has specific policy proposals and targets that resonate with the mission of CFJ, but more importantly, they outline benchmarks to which Malawi has committed and upon which CFJ can hold the government to account.

The Sustainable Development Goals (SDGs) are officially known as transforming our world. The sustainable development goals, followed the millennium development goals which were developed in September 2000 and cover the period of 2000-2015. Out of the 8 MDGs, four of them are particularly relevant for CFJ which are, MDG 1 Eradicating poverty and hunger, MDG 3 Gender equality and empower women, MDG 7 Ensure environmental sustainability, MDG 8 Global Partnership for development,

According to the last Malawi MDG report, the country has only been able to meet its target on four of the eight. These are, MDG 4: reduce child mortality, MDG 6: combating HIV/AIDS, malaria and other diseases, MDG 7: Environmental sustainability, and MDG 8: Develop global partnership for development. A Civil society review (CSOs) concluded that the most significant progress has been made on Goals 2 and 6, while they believe Goal 4 could be brought on target with increased effort. They see Goals 1 and 3 as unlikely to be achieved, as with Goal 8, although here progress is mixed, and view Goal 5 as being off track and performance on Goal 7 as very poor.

Of the 17 SDGs, CFJ is interested in advocating for the implementation of SDGs 16. SDG 16 state “Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels.” CFJ will therefore monitor 2 Of the 10 targets. These are, SDG 1: End poverty in all its forms everywhere, and SDG 13: Take urgent action to combat climate change and its impact.

Finally, CFJ will align its work with relevant priorities in the SADC Southern Africa Development Community (SADC) 2016-2020 RISDP framework four pillars of; i) industrial development and market integration; ii) peace, security and regional stability; iii) infrastructure for regional integration; and iv) special program of regional dimension. CFJ is interested in I, II, and IV.

In the 2010-2015 Regional indicative strategic plan, Malawi was committed to implementing a number of protocols and certain pillars of the framework. Malawi was required to adopt and ratify the following protocols water courses protocol and SADC Protocol on gender and development. The water sources protocol was signed by the SADC Member States on 7th August, 2000 and entered into force on 22nd September 2003. The primary goal of the water courses protocol is to foster closer cooperation and to develop sustainable and coordinated management of the shared water courses of the SADC Member States. The Member States have also entered into various other agreements relevant to water bodies. On 17th August, 2008 SADC Protocol on Gender and development was adopted and signed, signed by 13 SADC Member States and ratified by 10 Member States. Malawi has signed on all the protocols.

On 22nd October, 2015 Malawi joined the EITI, the global transparency standard which compels government to disclose taxes and payments made by companies and companies will have to disclose what they pay to government. The Standard requires extensive disclosure and measures to improve accountability in how oil, gas and minerals are governed. The transparency will help the people of Malawi ensure that natural resources are managed for their benefit.

In furtherance of EITI, Malawi plans to produce a checklist for the agencies that award licenses and contracts to ensure that due diligence of investors is performed. They are also planning to disclose the beneficial owners of extractive companies and also needs to meet all of the requirements in the EITI Standard within three years to become EITI compliant, which include publishing its annual activity

report for 2015, by 1st July, 2016, publishing its first EITI report by 22nd April, 2017. Validation will be commence by 22nd April, 2018 which is within 2.5 year after Malawi become a candidate of EITI.

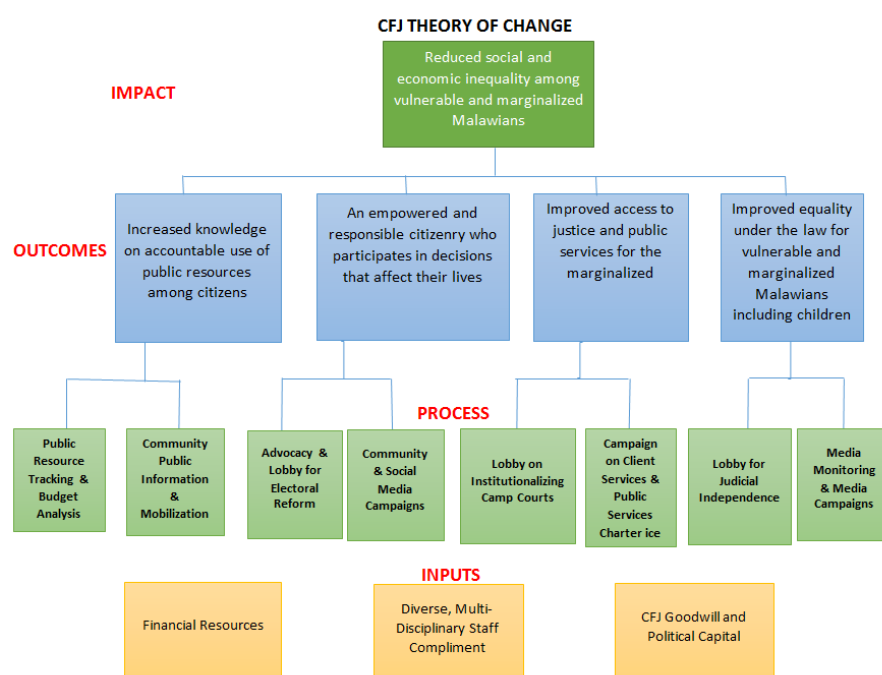
Finally, the AU 2063 Agenda 2063. The Africa we want, commonly referred to as “Agenda 2063” is an approach to how the continent should effectively learn from the lessons of the past, build on the progress now underway and strategically exploit all possible opportunities available in the immediate and medium term, so as to ensure positive socioeconomic transformation within the next 50 years.

The African Union’s emerging 50-year development plan, Agenda 2063, aims to cap a century of the organization’s work with a thoroughly transformed continent. A central theme is the integration of the AU’s 54 member states, opening up borders, emerging markets and speaking with a common voice in global fora. CFJ is also interested in seeing how Malawi plans to implement the target in that framework.

Malawi has also been committing itself to a number of regional and international child care and protection agendas. Malawi has undergone tremendous reform in the area of child justice and rights of children. From ratification of the Convention on the Rights of the Child (CRC) in 1991 to the enactment of the Child Care Protection and Justice Act which led to the creation of Child Justice Courts in 2010, to increasing the age of a child from 16 to 18 in 2015, the recent revamping of the laws demonstrate the Government of Malawi’s increasing concern in properly handling cases dealing with children. It is the State-borne duty to protect its youngest citizens from being unnecessarily thrust into the criminal justice system. CFJ is committed to ensuring, where possible, it can advocate for the improved implementation and compliance with these laws and conventions especially in relation to child-related projects in the area of business and human rights.

THEORY OF CHANGE

This Theory of Change defines through illustration the logic behind CFJ’s strategy choices and programme design for delivery of the strategy. It presents the causal relationships between inputs, process, results and ultimately the impact that CFJ is set to contribute to in the next 5 years.



Assumptions

The CFJ ToC is based on assumptions derived from governance experiences in and outside Malawi, as well as a variety of sociological and psychological models about human behaviour. To an extent the theory borrow from political science theories as well as public governance theories.

Outcome to Impact Assumptions

The theory asserts that four preconditions necessarily contribute to the reduction of economic and social inequality which is the impact that CFJ seeks to achieve through this strategy. The first assumption is that when there is an increase in knowledge on accountable use of public resources among citizens, they have greater interest and capability to hold governments to account leading to more efficient and equitable provision of services. It is this improvement in service provision that contributes to the reduction of economic and social injustices. The second assumption being made is that empowered and responsible citizens who participate in decision making can contribute to a reduction in economic and social inequality. Underlining assumption here is that these citizens live in a society where there are sufficient skills needed to grow an economy. The third assumption being made here is that improved access to justice reduces economic and social inequality because every individual has the right to seek recourse for discrimination and disenfranchisement. The assertion is on the assumption that Malawi has a sufficiently literate population that understands the significance of judicial review, and that they ultimately prefer such course over traditional forms of redress. Finally, the last assumption being made on the effect of outcomes on impact is that by promoting equality under the law you create a level playing field in which the system protects everyone thereby opening opportunities that allow movement of people between income brackets and the social ladder. This movement ultimately reduces inequality.

Output to Outcome Assumptions:

The theory asserts that advocacy, public information campaign, lobbying and tracking or monitoring public policy and government commitment are interventions central to empowering citizens and holding government to account. The theory specifies areas of judicial and electoral reforms and resource tracking as key processes in this endeavour based on the assumption that government can enforce laws and penalties as consequences of default.

Where We Work

CFJ works throughout Malawi and in selected occasions in other parts of the region. Within Malawi CFJ covers the rural and peri-urban areas as primary geographies but where required it also work in the urban areas especially when conducting lobby and dialogue.

How We Work

CFJ believes in cooperation and collaboration over confrontation and contestation. Where necessary however CFJ will confront authorities in both the public and private sector

Who We Work With

CFJ works with a variety of actors in the public, private and social sector within and outside Malawi. CFJ recognises the challenges of the international political economy to its work and has thus resolved

to establish itself as both a national and regional player. We are committed to serving and partnering with all Malawians both adults and children in ensuring rights are realised.

STRATEGY PILLARS

External Strategic Objectives

This strategic plan recognises that despite the challenges presented by the context in Malawi, there are bankable opportunities. CFJ recognises that there is a growing number of other like-minded institutions at national and regional level with which it can collaborate. CFJ also recognises that there calls for improving transparency and accountability among corporations and public institutions is a growing global political agenda with goodwill from a variety of actors. At national level CFJ specifically seeks to pursue opportunities pertaining to the agenda on electoral reforms.

Equally significant and particular to CFJ is the shared interest in the CFJ agenda within the leadership in Malawi government; Office of the President and Cabinet; Treasury, Anti-corruption Bureau, Ministry of Justice; the Department of Mines; Local Government; and the Natural Resources and Legal Affairs Committees in Parliament.

To the inverse, CFJ also seeks to capitalise on gaps in participation in political decisions and leadership by citizens, failure to hold government to account, and a gross deficit in demand. Among others these challenges have been exacerbated by the diminishing credibility of CSOs.

The work of CFJ is guided by International, regional and national development framework. These include the UN Sustainable Development goals, AU Africa Union Agenda 2063 (AU), the SADC Regional Indicative Strategic development plan and Malawi Development Goals (MDGs). These frameworks each has specific policy proposals and targets that resonate with the mission of CFJ. Some of the specific instruments are SDG 16: Peace, stability, human rights and effective governance based on the rule of law are important conduits for sustainable development. The goals in SADC Protocol which CFJ is interested in are: Protocol against corruption 2001, protocol on mining 1997 and protocol on energy are also considered.

The external strategic objectives have thus been informed by the above.

Strategic Objective One:

To increased knowledge on accountable use of public resources among citizens

Knowledge of how public resources are used empowers citizens and keeps government accountable. It also allows society to assess the effectiveness and efficiency with which resources are generated, allocated and used so as to continually better tailor their use. This objective focuses on the use of public resources as a major anchor and instrument in the social contract between citizens and their government. In its implementation the objective targets both citizens and government.

Under this strategic objective CFJ will implement a variety of activities which include; resource tracking, community public information, mobilization, and capacity building. The foci of the interventions will be to target government institutions such as the ministry of finance and others providing social services. This will be at both national and decentralised levels for resource tracking, and rural/peri-urban communities for information and mobilization.

Strategic Objective Two:

To contribute to the empowerment of and creation of a responsible citizenry, participating in decisions that affect their lives

This objective seeks to give expression to our work in advancing and advocating for attainment of the social contract. It targets the Malawian citizens who throughout the literature is arguably complacent, disinterested, disempowered and most critically with a diminished sense of responsibility. Citizens are the agents of change and the custodians of progress. Their empowerment to both demand accountability but also to be self-sufficient has direct bearing on economic and social development. More specifically for CFJ is the citizen's ability to participate in decisions at community, local government and national government level. The objective seeks to take Malawians from the passenger seat to the driver's seat.

This strategic objective will be delivered through a variety of interventions which include; advocacy and lobby for electoral reform, and community and social media campaigns. The interventions will primarily target the Malawi Electoral Commission and the Electoral Network. It will also target that national assembly, the Law Commission and communities themselves.

Strategic Objective Three:

To improve access to justice and public services for marginalized Malawians

The Malawi government has set to hold itself accountable for the improvement of public services through the Malawi Public Services Charter, which seeks to create a highly motivated, productive and results-oriented public service. The charter pronounces that the mission of the Malawi government civil service is to deliver quality services to the public in an efficient, effective and responsive manner, in order to satisfy national aspirations and promote the advancement of the people of Malawi. To this date no effective non-state mechanism, or efforts to monitor progress towards the attainment of this mission has been established.

CFJ recognises the mammoth nature of this task and has resolved to focus on the dimension of access to justice. A modern democracy is anchored in the rule of Law and Malawi is no exception. An important feature of the rule of law is access to justice. Owing to a colonial legacy Malawi was established from central to local and the progression in various sectors hasn't been the same. In the judiciary the effects have been profound. Thirty years of an autocracy essentially underdeveloped the judiciary. In the late 1980s structural adjustment programmes contested expansion of public services. And culturally, Malawi has always had a default judicial system through its traditional authorities. These factors compounded by a democratically elected autocracy has resulted into limited access to justice. This deficiency impact on property rights, social protection and human dignity. This objective seeks to address these challenges.

This strategic objective will be delivered through interventions which include; lobby to institutionalise camp courts and campaign and compliance monitoring of the Client Services Charter and the Malawi

Public Service Charter. Essentially the interventions will target the Malawi judiciary, Malawi Prison Services, the Malawi Police Services and the Malawi Human Rights Commission and the Law Commission.

Strategic Objective Four:

To promote equality under the law for vulnerable and marginalized Malawians including children

All persons are created equal and the socialization of people into classes with varying entitlements is the greatest historical, contemporary and future challenge for mankind and Malawians. The law has a long history as a tool for disenfranchisement and persecution. CFJ recognises that the architecture of the law in Malawi is work in progress based on borrowed notions and tenets, which emerged out of foreign and exogenous influences. It requires regular improvements to enhance its relevance for the most marginalised Malawian. With a system of paid legal advocates equality under the law is often determined by one's means. CFJ seeks to affect the balance in the scales of justice by advocating and lobbying for institutional reforms and practices that progressively create equality under the law for all Malawians and those who live in Malawi, based on the tenets of the ICESCR.

This strategic objective will be delivered through interventions which include; Lobby Rule of Law, Judicial Independence, checks and balances and Media Monitoring and Media Campaigns. These interventions will primarily target the Judicial Services Commission, the Presidency, the National Assembly and the Law Commission. Instrumental to delivery of these interventions will be the media which will both monitor and disseminate/broadcast on progress of lack thereof in this regard.

ACCOUNTABILITY, MONITORING, EVALUATION AND LEARNING

Consistent with our commitment to accountability and continuous learning, CFJ will employ the use of several tools to monitor, evaluate and learn of the effectiveness of its interventions; Advocacy; Lobbying; Research; Engaging stakeholders; Community Mobilization; Knowledge sharing and management; Trainings; Capacity building; Networking and collaboration with other stakeholders; Information Dissemination/civic education/public outreach and Investigative Information Gathering.

Monitoring tables and reports as well as evaluation mid-term and final reports will clearly be underlining the respect of the CRPs for child-related programmes. M&E tools and guidelines will also be child friendly and feedback on research findings to children will also be child appropriate. Children will be provided with clear feedback on how their participation influenced any outcomes.

Undertake reviews to assess our overall strategies, test the core assumptions about how CFJ contributes to change in economic, political and social justice in Malawi.

Provide information on the scope of our work using outcome and output reporting data.

Undertake several reviews to understanding our achievements as well as our challenges and how we address them.

Consultations will be undertaken with stakeholders to elicit their insights and assessment on our overall and collective efforts.

During the implementation stage of the strategy, the control and assessment of attainment of objectives will be guided by appropriate tools and instruments where actual results will be compared against indicators and targets.

An M&E system will be developed with the following specific objectives:

1. To assess the extent to which efforts are conforming to the plan as a whole and whether the execution of the strategy is on track.
2. To assess the extent to which the results being
3. To allow for corrective action to be taken where deviation is detected and for necessary changes to be made to focus and tactics in order to get back on course
4. To assess the extent to which the plan is providing a bridge between the plan as outlined on paper and day-to-day operations.
5. To act as an early warning system that allows detection of problems before they get out of control

To these ends relevant, existing systems and tools will be used to collect data and information, for example partner reports. Where this is not possible external reports will be used to collect data and information. CFJ will generate baseline information related to indicators/ benchmarks in the Results Framework against which progress, results and impact will be monitored

ANNEXES

ANNEX 1: CORPORATE RESULTS FRAMEWORK

ANNEX 2: MALAWI FACT SHEET

ANNEX 3: GLOSSARY OF TERMS