



Enabling Environment National Assessment of CSOs

The Case of Mozambique

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Translated from Portuguese

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LIST OF ACRONYMS

BR	Bulletin of the Republic (gazette)
LAB	Local Advisory Board
CESC	Centre for Learning and Capacity Building of Civil Society
CINSFLU	Survey of Non-Profit Entities
CIP	Centre for Public Integrity
CIVICUS	World Alliance for Citizen Participation
CNDH	National Human Rights Commission
CNE	Mozambique Electoral Commission
CPO	Parliament Planning and Budgeting Commission
CRM	Constitution of the Republic of Mozambique
CSPI	Civic Space Initiative
CSCS	Supreme Council for the Media
DFID	UK Department for International Development
DUAT	Right of Use and Benefit of Land
EEI	Enabling Environment Index
EENA	Enabling Environment National Assessment
FDD	District Development Fund
FIR	Rapid Intervention Force
FMO	Civil Society Budget Monitoring Forum
FORCOM	National Forum of Community Radios
FUNDAC	Fund for Artistic and Cultural Development
ICNL	International Center for Not-for-Profit Law
INE	National Statistics Institute
CIT	Corporate Income Tax
PIT	Personal Income Tax
VAT	Value-Added Tax
JOINT	League of NGOs in Mozambique
LOLE	Law on Local State Organs
SMCS	Support Mechanism to Civil Society
CBO	Community-Based Organisation
OD	Observatory of Development
SB	State Budget
OCM	Followers of Mozambique Organisation
NGO	Non-Governmental Organisation
CSO	Civil Society Organisation
EPRAP	Extended Plan for the Reduction of Absolute Poverty

DP	Development Partner
SEP	Social and Economic Plan of the Government
PRM	Police of the Republic of Mozambique

TABLE OF CONTENTS

Executive Summary	5
I. Introduction	7
II. Methodology	10
III. Formation	13
IV. Operation	24
V. Access to Resources	31
VI. Expression	39
VII. Peaceful Assembly	44
VIII. Government and CSO Relations	48
IX. Taxation	57
X. Conclusion	61
Bibliography	64
Annex 1 – Requirements for the Registration of a CSO	68
Annex 2 – Notes on the Proposal to Change the Law of Associations	70
Annex 3 – Assessment Matrix	71

EXECUTIVE SUMMARY

This report presents the main findings of a study conducted in Mozambique by JOINT – Liga de ONGs em Moçambique¹ with the aim of providing an accurate picture of the enabling environment for civil society in Mozambique. The EENA research methodology was jointly developed by the CIVICUS World Alliance for Citizen Participation (CIVICUS) and the International Center for Non-for-Profit Law (ICNL) as part of the Civic Space Initiative.

This study, called the "Enabling Environment National Assessment (EENA) of Civil Society Organisations (CSOs) in Mozambique," evaluated the enabling environment through seven dimensions, namely the: (1) Formation; (2) Operation; (3) Access to Resources; (4) Expression; (5) Peaceful Assembly; (6) Government and CSO Relations; and (7) Taxation.

In the Formation dimension, the main finding of this study shows that the Law of Associations (Law 8/91 of 18 July), is decontextualized from the current reality of the country and from the level of development of CSOs, making its revision and adaptation to the current context an urgent matter. At the level of Operation, the current legislation is not sufficiently clear on how CSOs should operate and how they relate with the State/Government as part of its intervention at different levels. This weakness in the law opens up the possibility for interference in the operations of CSOs, and in certain situations in violation of the legislation itself.

With regards to the dimension of Access to Resources, it was found that there is no specific legislation in Mozambique that regulates how CSOs gain access to financial resources for their operation, given that the access to different existing sources of financing is conditioned among other reasons, by the lack of registration of CSOs, mainly from those which are rural-based. In the dimension related to Expression, despite there being a favourable legal framework for freedom of expression and opinion, there are serious limitations in the exercise of this right, which prevent and constrain the full realisation of the right to expression by citizens, CSOs, and media. The main finding regarding the dimension of Peaceful Assembly, related to the right to demonstrate and assemble, shows that the current legal framework governing the exercise of this right is not properly implemented and respected in practice, inhibiting citizens and CSOs to freely and openly exert their constitutionally guaranteed right.

¹ League of NGOs in Mozambique

In terms of the dimension of Government and CSO Relations, it was found that although there exists a certain openness on the part of State/Government for CSOs to participate and influence the governance process and policy-making and legislation at different levels, space is not always provided for them to participate with the influence that is expected in the decision-making process, resulting in conflict between them at certain moments. In the dimension of Taxation, the main findings are related to the fact that CSOs in Mozambique are subject to taxation, paying, therefore, taxes to the State, although they do so as non-profit organisations- and because they are non-profit and public interest organisations they should be considered as such.

The study concludes that, based on the analysis of the legal framework and on the perception of its practice, there remains serious challenges to the operation of CSOs in Mozambique. Although in some dimensions the legal and practical environment is more favourable than in others, in general the environment cannot be considered an enabling one, which is why the following are recommended:

- The revision of Law 8/91, the Law of Associations, adapting it to the current development challenges of CSOs and of the country, in such a way as to allow easier access to registration at all levels and facilitate the effective operation of CSOs;
- The creation of a more equitable financing architecture for CSOs, to ease dependence on external funds and allow access to internal public funds;
- Make legislation on freedom of expression and peaceful assembly effectively known and implemented accordingly, ensuring respect for the rights of citizens and CSOs in general;
- The creation of a political environment that guarantees the effective participation of CSOs in governance processes at different levels;
- The establishment of a fairer tax system which is adequate to the real context of CSOs in Mozambique.

I. INTRODUCTION

1.1 – Overview of Civil Society Organisations in Mozambique

Civil Society Organisations (CSOs) have acquired throughout the years, a relevance that has been indispensable in the process of the country's development and in the strengthening of democracy and rule of law. Starting from a very fragile and incipient base in 1990, with the adoption of the first Multiparty Constitution of the country that introduced the right to fundamental freedoms by citizens, such as the right to free expression, opinion, and assembly, rights strengthened in the 2004 Constitution of the Republic² nearly twenty-five years later, CSOs have been growing and developing in terms of diversity, scope, and intervention.

CSOs in Mozambique occupy different spaces and can be equally classified in different ways. The Civil Society Index (Francisco *et al*, 2008), based on the census of the National Statistics Institute (INE, 2006) on Non-Profit Entities (CINSFLU 2004-2005), classified CSOs in Mozambique by grouping them into twelve areas of action and thirty-seven subgroups of categories. However, the Report of the Joint Evaluation on the Support of Participation of Civil Society in the Policy Dialogue of the Ministry of Foreign Affairs in Denmark, conducted by ITAD and COWI (2012:28), divides CSOs in Mozambique into three big groups, considering: 1^o) a small elite of urban, intellectual, and academic organisations; 2^o) medium-sized organisations with little potential to participate in policy-dialogue; 3^o) Community-Based Organisations (CBOs) and other local organisations in general, that also have low capacity to participate.

All of these CSOs, classified in the most diverse categories, are involved in the development process and in the strengthening of democracy and the rule of law, either in an individual or grouped manner through networks, platforms, or forums at different levels, and are able to suitably put their agendas in the public space. However, the last ten years have been characterised by important changes in the intervention/operation environment of CSOs due to three main factors: 1) Better control of political power with regards to CSOs and their interventions at all levels; 2) Accelerated economic growth with direct benefits for public revenues that implied the need to change the dynamics of *elite* CSOs, highlighting a growing interest in the monitoring and advocacy of policies and services; 3) Profound changes in the supporting/funding models of big donors, which tends to reduce support for CSOs that provide services at the community level. These three factors find somehow their support in a liberal idea that "*the role of the State has to be "reduced" and*

² The 2004 Constitution of the Republic is the one currently in effect.

that civil society has to act as a ‘watchdog’ of the State” (Ilal, 2014). Therefore, the intervention/operation of CSOs in Mozambique has been characterised by profound changes induced by the main factors mentioned above, which have been instrumental in its development process.

For the purposes of this evaluation, a CSO is defined as "a formalized group of individuals that are independent of government and do not function as for-profit businesses. Owing to the fact that different legal frameworks govern their formation, CSOs in this assessment do not include trade unions, political parties, or communities of worship."³

Objective of the Report

The Enabling Environment National Assessments (EENA), developed jointly by CIVICUS World Alliance for Citizen Participation (CIVICUS) and the International Center for Not-for-Profit Law (ICNL) as part of the Civic Space Initiative (CSPI), span multiple countries and were designed to provide a step-by-step guide that fully analyses the nature of the enabling environment for civil society at the national level of countries targeted by the evaluations.

This report seeks to provide an in-depth analysis of the enabling environment of CSOs, based on seven dimensions, all set out in the EENA Research Guide, namely: (1) Formation, (2) Operation, (3) Access to Resources, (4) Expression, (5) Peaceful Assembly, (6) Government and CSO Relations, and (7) Taxation. A discussion of these seven dimensions in the case of Mozambique is relevant given the importance of the factors mentioned above in the creation of an enabling environment for civil society organisations in the country.

Structure of the Report

The report consists of eleven sections, starting with an **introductory** section. The analysis of the seven dimensions referenced above follows the **methodology** of the EENA Research Guide, whose detail is discussed in Section II of this report. In the following sections that address each of the seven dimensions, the legal environment and its practice are discussed, as well as the limitations that restrict or favour the operation of CSOs in Mozambique.

In Section III the dimension of **formation** of CSOs is discussed, while in Section IV the focus is on the **operation** dimension. In Section V the dimension of **access to resources** is analysed, in Section VI the dimension on **freedom of expression** is discussed, and in

³ EENA Research Guide. Annex 2: Assessment Matrix.

Section VII the dimension of **peaceful assembly** is examined. The dimension on **Government and CSO relations** is explained in Section VIII, and the dimension on **taxation** is analysed in Section IX.

Finally, the report provides in Section X a general characterisation of the legal and regulatory environment for CSOs in the form of a **conclusion**, and highlights key challenges for the future regarding CSOs in Mozambique. In this section, the report suggests the steps that can be implemented in response to the identified challenges found in the seven dimensions analysed.

II. METHODOLOGY

The methodology used to carry out this evaluation strictly followed the EENA Research Guide.⁴ Three main methods were used, namely: i) Research and analysis of studies and documents that included laws and regulations that surround CSOs, academic articles, studies, and publications about CSOs in Mozambique; ii) Interviews that were conducted with stakeholders and key informants on different levels; iii) Three focus groups carried out with CSOs that discussed the issues raised by the desktop research and brought new information that allowed a deepening of the evaluation regarding the 7 dimensions studied.

The EENA Research Guide contemplated the questions that served as the basis for the desk research, interviews, and focus groups. These questions are grouped into factual issues and perception questions, the factual ones oriented towards desktop research while the perception ones were geared towards the collection of information on the basis of interviews and focus groups.

An Expert Advisory Panel (EAP) for the EENA was also established, as referred to in the EENA Research Guide. This Panel, made up of five members representing CSOs⁵, was responsible for following and supporting the entire implementation process of the research, including the providing comments on the preliminary and final reports.

Given the time constraints and limited financial resources for the implementation of the EENA, the number of interviews conducted was limited and most of the contributions from provincial organisations were collected through telephone interviews. According to the methodology designed for the EENAs, the realisation of an eminently qualitative research was prioritised, in line with the provisions of the EENA Research Guide.

- i) **Literature Review:** It consisted primarily of the analysis of the legal, regulatory and policy framework of CSOs, a revision of academic articles, studies and publications about CSOs in Mozambique. An extensive online research was made

⁴ An important reason behind the creation the EENAs was a shared recognition of the limitations of the Enabling Environment Index, a composite index being created by CIVICUS. Given the limited data available on the legal and regulatory environment for civil society, the EENA is an attempt by ICNL and CIVICUS to develop a more in-depth national level monitoring framework that will complement the EEI.

⁵ The Expert Advisory Panel for the EENA in Mozambique was made up by the following members: Benilde Nhalevilo, Executive Director of the National Forum of Community Radios (FORCOM); Minna Tuominen, Kepa Representative in Mozambique; Paula Monjane, Executive Director of the Centre for Learning and Capacity Building of Civil Society (CESC); Simão Tila, Coordinator of Joint – League of NGOs in Mozambique; and Tomas Vieira Mario, Executive Director of SEKELEKANI Centre for Communication Studies. All of these individuals are of recognized merit in their work with CSOs in Mozambique, having played a key role in the entire implementation process of the research.

- through research sources provided in the EENA research guide, as well as through a search of national legislation that regulates the intervention of CSOs. Access to the legislation was made possible through the National Press, an institution responsible for publishing existing legislation in Mozambique. Academic articles and other publications from research institutions and CSOs at the national, regional and international levels were also consulted.
- ii) **Interviews:** These were conducted with stakeholders and key informants. In-person interviews involved leaders and representatives of CSOs, networks, platforms, and fora of CSOs at national and provincial levels, academics and researchers that conduct research on civil society in Mozambique, senior Government officials at the level of the Ministries of Justice and of the Economy and Finance⁶, journalists and donor partners of CSOs. A total of 23 interviews were conducted, most of them in person and others by telephone when it was not possible to hold a face-to-face interview⁷. All interviews placed emphasis on the perception questions foreseen in each of the analysed dimensions under this research.
- iii) **Focus Groups:** Three focus groups were conducted covering each of the following dimensions: 1º) Formation and Operation; 2º) Access to Resources and Taxation; 3º) Expression, Peaceful Assembly, and Government and CSO Relations. Due to time constraints and the limited availability of potential participants, it was not possible to organise a focus group for each dimension, making the Expert Advisory Panel of the EENA to identify individuals and groups which are close in content based on the nature of the dimensions analysed, so as to facilitate the discussion. Focus groups were held for three days in a row⁸, with eight representatives of equal numbers of CSOs participating on the first day, six representatives on the second day, and nine representatives in the third focus group- the total number being twenty-three people and CSOs. As happened during the interviews, the focus group discussions placed emphasis on perception questions within the seven dimensions under analysis, taking into account a deepened discussion on the practice of interventions regarding the environment in which CSOs operate as laid down in

⁶ Both Ministries play a central role in the regulation and relationship between Government and CSOs in Mozambique. The Ministry of Justice is responsible for the establishment of the legal framework of CSOs, being through this that CSOs are authorised or not to register within the framework of the existing law. The Ministry of Economy and Finance has influenced the participation of CSOs in the political dialogue with the Government through different mechanisms of participation that it promotes at the central, provincial, and district levels.

⁷ Eight interviews were conducted by telephone for an equal number of key informants. All eight people interviewed in the referenced eight provinces (Cabo Delgado, Niassa, Nampula, Zambézia, Tete, Manica, Sofala e Inhambane), are representatives of local CSOs. The interview with the CSO representative from Gaza was conducted in person.

⁸ The focus groups were conducted on the 24, 25 and 26th of March 2015, all in the city of Maputo.

the provisions within the existing regulatory and legal framework.

In addition to the three main methods described above, a national consultation was organised involving all of the participants of the evaluation and other key invited actors, as foreseen in the EENA Research Guide.⁹ This national consultation had the participation of 60 people, of which 9 were from provinces representing the respective provincial forums of CSOs. The National Consultation served to validate the preliminary research report taking into account the main findings, and to discuss the main challenges which was the basis for the advocacy plan.

All of the collected and analysed information in each of the methods described above, including the validation meeting at the national consultation, was used to make this report - the Enabling Environment National Assessment of CSOs in Mozambique.

Limitations of the EENA

The main limitations of the present evaluation were linked to two main factors: (i) Scarce financial resources to conduct a more comprehensive and participatory evaluation on the part of the main stakeholders involved in the development of civil society in Mozambique, especially at the local level and in the provinces; (ii) Limited time to conduct the evaluation, which in a certain way conditioned the involvement of other actors that could not participate in the period established for the realisation of the field research. This last factor influenced the work timetable initially proposed to conduct the evaluation, to the extent that some of the key informants contacted at the level of CSOs, Government institutions, and academia could not make themselves available to be interviewed for this evaluation.

⁹ The EENA National Consultation took place on April 28, 2015 in Maputo.

III. FORMATION

This dimension makes an assessment of the way that CSOs/associations¹⁰ are created and registered based on relevant national legislation, and the existing legal challenges in this process and the challenges that CSOs themselves find, within themselves, in the process of its formation and constitution as legally established organisations.

3.1 Key Findings

In Mozambique, CSOs are formed under the Law 8/91 of 18 July, which regulates the right to free association, based on paragraph 1 of art.76 of the Constitution of the Republic of Mozambique (CRM) of 1990 and art.78 of the CRM of 2004, currently in place. It appears however that it does not facilitate access to registration, resulting in there being a considerable number of CSOs, mainly at the local level, which for reasons developed in the following chapters, are not able to gain access to a final registration. The fact that Law 8/91 has not been regulated for the specific aspect related to the procedures and access requirements for registration, contributes to this problem. On the other hand, by giving the same treatment to all CSOs and by not considering their nature, scope and diversity, Law 8/91 presents itself as being decontextualised to the current level of development in the country and in CSOs themselves.

3.2 Legal Framework in Force

The CRM (1990) constitutes the cornerstone for creation, growth, and strengthening of an enabling environment of civil society organisations in Mozambique (CSOs). Between 1975, the year of independence of the country, and 1990, the Constitution in force did not allow the right to free association and assembly, not allowing space for the formation of CSOs that were not already established within the then sole ruling political party.

From this point, in 1990, it was legally permitted for groups of citizens to organise themselves into associations to pursue different purposes and interests, and covering the most diverse areas of activity. As Francisco states (2007:1),

“with the political liberalisation process that allowed the right to freedom of expression and freedom of assembly and association, many associations and Non-Governmental Organisations (NGOs) dealing with the most diverse areas of social interest started to appear in the country. Thus, the emergence of these associations

¹⁰ This evaluation uses the term CSO or association interchangeably, to the extent that existing legislation only uses the term "association" to refer to organisations of a non-profit nature, under which the CSOs fall under.

and NGOs within a new reality became a challenge that society itself had to assume.”

The formation of CSOs in Mozambique has been forged in a context characterised by the reality prior to the 1990 Constitution, and within the challenges that the new reality imposed inherent to the new political, economic, and social framework, and in an environment of national post-conflict reconstruction. It is in this context that the Law n° 8/91 of 18 July was approved, which regulates the right to free association, in accordance with the provisions of paragraph 1, article 76, of the CRM (1990), which guarantees the fundamental rights of citizens. These two instruments, the CRM (1990) revised by the CRM (2004)¹¹, and the Law n° 8/91, are the main legal instruments governing the formation of CSOs in Mozambique. However, there is a third instrument that also holds central importance in the regulation of associations in Mozambique, which is the Civil Code (1996). In its article 157, it considers that its provisions "shall apply to associations which do not have economic benefits in mind for its associates, being foundations of social interest, as well as societies, when the analogy of the situations so warrants it"¹².

The Constitution of the Republic (2004) states in its article 78 (related to Chapter IV on Rights, Liberties, and Guarantees of Political Participation) that

“1. Social organisations, as forms of association with their own affinities and interests, play an important role in the promotion of democracy and in the participation of citizens in political affairs; 2. Social organisations contribute to the realisation of rights and liberties of citizens, as well as for raising individual and collective awareness about the fulfilling of civic duties.”

This constitutional provision is the recognition by the State that citizens not only have the right to join an association to pursue and achieve their own interests as a group, but also play an important role in the promotion of democracy and in the participation of citizens in political affairs, which is one of the main roles that CSOs play in the current democratic context.

¹¹ In contrast to the large differences between the 1975 and 1990 Constitutions, the 2004 Constitution is very similar to the one from 1990. Rather than represent a break with the past, it aims to strengthen the changes initiated in 1990. The 2004 Constitution improved and clarified a number of provisions related to the protection of human rights and also recognised some new rights such as the right to popular action (art. 81), stipulating that both individually or collectively, citizens have the right to claim damages, as well as the right to act in defense of public health, the rights of consumers, the preservation of the environment, and cultural heritage (AfriMAP).

¹² Civil Code (1996), Book I (General Part), Title II (Of Legal Affairs), Subtitle I (Of People), Chapter II (Legal Persons), Section I (General Provisions).

The Law n° 8/91, founded in the Constitution of the Republic of 1990, determines in its article 1 that associations which are of a non-profit nature and whose end is in conformity with the constitutional principles underlying moral, economic, and social order and don't offend the rights of third parties or the public good, can be formed. Article 3 of the same Law establishes that

“1. Associations may be freely established by citizens older than eighteen years of age in full possession of their civil rights¹³; 2. Citizens younger than eighteen years old are guaranteed freedom of association in the formation of youth organisations provided that the management structure itself is composed of members older than eighteen years old.”

The Civil Code (1996) in turn, in its articles 167 and 168¹⁴, specifies what constitutes the act of the formation of an association, including the public bookkeeping process and the manner of its publication.¹⁵

Therefore, the freedom to form a CSO, called an association under the law, is given to any individual regardless of age, however, individuals less than eighteen years old must obey certain conditions provided in the law itself. On the other hand, the minimum number of individuals needed to form an association is ten, according to article 4, paragraph a, of Law 8/91. Here, the Law places a restriction, in which only those older than eighteen years old and composed of a number of 10 individuals can form associations and, in the case of minors under the age of eighteen, their leaders must be older than eighteen years old- this is the case of the Followers of Mozambique Organisation (OCM)¹⁶.

An association only acquires legal personality after its legal recognition, which does not mean however that those associations which are not registered due to own reasons or other types of constraints, are unable to perform their activities. The Law 8/91 foresees in its article 5, paragraphs 1 and 2, that

¹³ Though not expressed in the Law, only national citizens have the right to form associations in Mozambique.

¹⁴ Revised article by the Decree-Law 3/2006 of 23 August, “that lays down arrangements for the constitution, alteration, and dissolution of legal persons and alters articles 168, 185, 1143, 1232 and 1239 of the Civil Code.

¹⁵ Law 8/91, art. 4, paragraph b), by establishing that “respective statutes comply with the provisions of this law and the law in general”, makes reference to a general rule, in this case the Civil Code, regarding the issues which the Law 8/91 doesn't explain itself.

¹⁶ The OCM is an organisation comprised of youth under eighteen years of age, therefore children (as are called all individuals under eighteen years of age, according to Law 7/2008 on the Promotion and Protection of the Rights of Children). This organisation works as a youth arm of the Frelimo Political Party, the current party in power in Mozambique.

“1. The recognition of associations will be made by the Government or by its provincial representative, when the activity of the association is confined to the territory of a certain province; 2. The order for recognition must be given within a period of forty-five days and will be published in the Bulletin of the Republic as well as in the respective statutes.”

In 2006, through the Decree-Law n° 2/2006 of 3 May, the Government introduced however an innovation in the process of the recognition of associations that consisted of the decentralisation of powers for their authorization. Since then, the recognition of agro-livestock associations for example, is done by the District Director or Head of Post, and the recognition of unions (two or more associations) of districts of the same province, is made by the Provincial Governor¹⁷ By the same philosophy, with the approval of Decree n.º 44/2007, 30 of October, the recognition of youth associations can be made by the District Administrator or the Head of Post, in the case of district level associations or of an administrative post, respectively, and by the Consular Representative for associations in the diaspora.¹⁸

Box 1: Summary of the process of constitution of associations, which obeys the following sequence and requirements:

- The existence of a minimum of ten (10) founding members in full possession of their civil rights to subscribe the petition;
- Presentation of an ID card or other valid document;
- Presentation of statutes;
- Submission of the application to the competent institution of the Ministry of Justice;
- Order of recognition from the competent authority, within 45 days;
- Registration at the Registry of Legal Entities;
- Publication of the Order and the statutes in the Bulletin of the Republic.

Source: Provincial Government of Maputo.

According to Law 8/91, article 5, paragraph 3, the government entity can only refuse recognition by a properly reasoned order, which can be appealed at the Administrative Court within fifteen days, from the date of its notification. Therefore, Law 8/91 considers the possibility of refusal by the competent authority regarding the recognition of an

¹⁷ According to Articles 5 and 9 of the Decree-Law n.º 2/2006, of 3 May, at the level of municipal districts in Maputo recognition is under the responsibility of Councilors of municipal districts.

¹⁸ Article 5 of Decree n.º 44/2007, 30 of October.

association, not foreseeing however, and explicitly, the kind of reasons which can lead to an eventual refusal, other than those relating to the compliance of the foreseen procedures in article 3 of the Law.

CSOs or associations are not obliged by Law, at the time of their formation, to adhere to certain pre-defined or government established categories or areas of intervention. However, the statutes of associations approved by the Constituent Assembly should specify

“the goods or services with which the associates use to contribute to social heritage, the denomination, purpose and headquarters of the legal entity, the way it functions, as well as its duration, when the association isn't constituted for an indefinite period” (Civil Code, 1996).¹⁹

On this basis, all CSOs/associations should indicate the purpose of their formation within their statutes. According to the Civil Code (1996),

“the statutes of the legal entity will designate their respective organs, among which there will be a collegiate body of directors and a fiscal council, both of them constituted by an odd number of members, of which one will be the president”.²⁰

Therefore, the statutes of a CSO/association should be in accordance with the rules, this being an important aspect for associations to take into account when preparing their respective statutes.

The necessary procedures that the Law 8/91 requires for the formation of an association are foreseen in article 4, however, these are not presented in a fully detailed manner from the point of view of documentation that must be gathered for the registration process. Apart from the requirement that demands a minimum number of ten people as founding members for the formation of an association, it is also required that the applicants present the statutes of the association, which must be in conformity with this Law and other legislation, as well as prove the existence of necessary means for their functioning in accordance with respective statutes.²¹

Although costs for the formation of an association is not outlined, other fees are paid for that purpose, namely at the level of recognition by the responsible entity for the personal

¹⁹ Civil Code (1996), art. 167 (Act of Constitution and Statutes).

²⁰ Civil Code (1996), art. 162 (Bodies).

²¹ See in Annex 1 the detailed list of required documentation for the registration process and the respective steps for its implementation.

identification documents of founding members²², from the criminal record of each founding member and from the publication in the Bulletin of the Republic (BR), once it's cleared by the competent authority.

However a fixed established amount for the payment of the entire registration process, including the official publication in the BR, does not exist. The amounts involved vary according to the number of pages processed in the act of certification (minutes of the constituent assembly, statutes of the association, copies of identification documents of founding members, and respective criminal record certificates), as well as the volume of the final text to be recognised and the statutes which are to be published in the BR. Thus, the cost that the applying association must pay is, on average, 15.000,00 MT (fifteen thousand Meticaís), or the equivalent of \$440 USD (four hundred and forty Dollars).

In Mozambique, CSOs/associations are not obliged by Law to regularly renew their registration²³ except when they alter their purpose, an act which obliges them to renew their registration. Currently there is no official knowledge of the actual number of registered associations in the country.²⁴ The latest updated figures that have been made public stem from the Census of the National Statistics Institute (INE) conducted in 2003.²⁵ In relation to the formation of foundations, considered the same as CSOs, the legal framework for their establishment is also provided for in the Civil Code (1996)²⁶, taking into account that its recognition is made by the Council of Ministers.

CSOs have proposed a reform to the current Law 8/91 so as to respond to the growing challenges affecting development and in the current context of the country. In August 2008, a group of CSOs initiated a process of consultations with the aim to reform Law 8/91, with

²² The required personal identification documents are the following: Identity Card or Passport, submitted in copies duly recognised by the Notary.

²³ However, foreign Non-Governmental Organisations (NGOs) that operate in Mozambique do it under the Law 8/914, art. 17, which refers to Decree 55/98 of 13 October the “creation of the legal framework, objectives to be achieved and mechanism of action of Foreign Non-Governmental Organisations”. This Decree provides in article 6, paragraph 2, that the foreign NGOs' authorisation is valid for 2 years, which can be renewed if “all parties so agree upon”.

²⁴ The entity responsible for the registration of CSOs/associations in Mozambique is the Ministry of Justice. It was not possible to obtain the current number of associations registered in the country from this institution.

²⁵ According to Francisco *et al* (2008), in 2003 the INE identified 4.853 non-profit associations in Mozambique, with around 70% of these associations working only in five provinces, while less than 30% operated in the remaining six provinces. The majority of units were concentrated in the province of Nampula (19.5%) followed by Gaza (14.6), Inhambane (14%), the city of Maputo (12.9%) and the province of Maputo (9.5%). In the remaining provinces the number was inferior or equal to 6.1%.

²⁶ Civil Code (1996), Section III (Foundations), articles 185 to 194.

a special focus on aspects that should include deeper changes.²⁷ This process was concluded in June 2009 and included CSO participation in the entire country, with the participation of CSOs at district, provincial, and national levels. In the same year, the proposal to review Law 8/91 was submitted to the Ministry of Justice, with presentation and discussion meetings between CSOs and the Ministry having been conducted, which should result in the Ministry's review, an examination by the Council of Ministers, and a subsequent review for evaluation and final approval by the Assembly of the Republic. However from the side of the Ministry of Justice there has not been any new developments, with absolutely nothing being known about the current state of the proposed revision submitted by CSOs.²⁸

3.2 Perceptions on the Practice

Although in the country there exists a legal and regulatory framework for the formation and registration of CSOs, covered mainly by the Constitution of the Republic (2004) and by the Law 8/91, the general perception is that its practical implementation still remains a challenge. Based on the interviews conducted for this study, it was found that the Law does not consider the diversity of CSOs in Mozambique, considering them all to be the same within the registration process. For example, the Law considers all networks, platforms and CSO forums, which bring together CSOs as members, as associations, a fact that creates limitations in their operations and interventions. On the other hand, there are situations in which the right to registration is barricaded by people or entities at local level who consider that CSOs should periodically renew their registration through local governments, as has been happening in the province of Sofala for example.²⁹

On the other hand, the requirements for registration have been the main obstacle for applying CSOs/associations, whereby four main aspects contribute to this finding: 1) The capabilities and skills of CSOs especially at the local level to meet the requirements of the registration process are limited; 2) Access to registration documents at the district and local level is limited; 3) Often organisations do not possess sufficient resources to facilitate the registration process; 4) State agents responsible for the registration process have certain discretionary power, which sometimes hinders this process.

- 1) Different skills and capabilities of CSOs at local level to meet the requirements of the registration process.** The Law 8/91 establishes in its article 3 that any citizen older

²⁷ See Annex 2: "Notes on the Proposal to Change the Law of Associations".

²⁸ Representative of the Reference Group on the Proposal to Review Law 8/91. Interview conducted on 27 April 2015.

²⁹ Interview with a member of civil society, 31 March 2015.

than eighteen years old can constitute an association as long as he is in full possession of his civil rights. On the other hand, the requirement that the Law makes with respect to the gathering of a minimum of ten members in order to recognize the registration of the association poses a constraint since they should, by legal requirements, be in possession of personal identification documents and have access to a criminal record certificate. Gaining access to these two documents is a challenge at the local level, since many citizens do not have personal identification documents due to lack of knowledge or the inexistence, close to their areas of residence, of institutions or services responsible for issuing such documents³⁰;

- 2) **Limited access to registration documents at the district and local levels.** Most of the associations that are unable to gain access to registration are found at the district and community levels, where the difficulties to access documents that would allow its applicants to initiate the registration process are higher due to a lack of available services. Law 8/91, article 5, paragraph 1, establishes that the recognition of associations will be made by the Government, and that in the case of associations at the provincial level, this duty will be delegated to the Provincial Governor, and at the district level this falls under the respective Administrator. Although the Decree-Law n° 2/2006, of 3 May, has decentralised the recognition process to the District Administrator in the case of agricultural or livestock associations, allowing these to be recognised at this level, a huge number of community-based CSOs/associations³¹ continue experiencing increased difficulties to obtain their legal recognition. Recognition is seen by these associations as a way to access certain privileges, namely, the access to formal sources of funding.
- 3) **Financial resources to facilitate the registration process.** The various stages of the registration process have costs related to it and many locally-based CSOs/associations do not possess sufficient financial resources to initiate the process; a portion of those who are able to begin the process end up not completing it due to limited resources to publish the registration order and statutes of the association in the BR.³² For these associations the publication of the registration order and their statutes in the BR have been the most onerous step of the registration process. The costs of the publication are not fixed, to the extent that they vary according to the volume of pages to be published (the number of pages of the statutes of the association).
- 4) **Existence of a certain discretionary power on the part of State agents responsible**

³⁰ Interview with a member of civil society, 30 March 2015.

³¹ The Civil Society Index (FDC 2008), draws attention to the complexity of the dynamics of CSOs/associations in Mozambican society, many of them characterised by their informality, although they are socially relevant.

³² Interview with a member of civil society, 31 March 2015.

for the registration process. Although the procedures for registering an association are clearly established, there is a strong perception among those interviewed that the State agents in charge of the registration of institutions in fact possess discretionary power to influence positively or negatively the process. There does not exist in practice, for example, a certain deadline for the registration process to be concluded, varying greatly case by case, depending on the agent's willingness to meet and effectuate the process. The liberty of action that is given to the agent responsible for pursuing the procedure and the discretion that the final decision-maker has to decide whether or not to authorise the registration order have been one of the constraining factors in facilitating an enabling environment for the registration of CSOs/associations in the country. The case of Lambda is an example of such discretion, whose clearance for registration still has not been granted since its application in 2007. According to its representative³³, an excessive discretionary power on the part of State agents has prevented the registration process becoming transparent, although there are no known cases of other CSOs in the country which fulfilled the registration requirements and had their registration application rejected. Lambda, a CSO that defends the rights of sexual minorities in Mozambique, has been fighting the Ministry of Justice to become a legal recognised association pursuant to the provisions in the Constitution of the Republic and the Law 8/91. This is a case where the applying association, having fulfilled all requirements, still has not received approval of its registration. According to those interviewed, the Administrative Court would need to appeal in accordance with the provisions of the Law, but Lambda instead decided to opt for other non-judicial means to solve this problem.

On the other hand, other interviewees³⁴ considered that

“the entities responsible for the registration of CSOs, mainly at local level, are not endowed with human resources in possession of a legal background in order to facilitate the analysis and processing of documents. This situation becomes more complex when all CSOs are treated as associations under Law 8/91 and there does not exist, at the level of local registers and notaries, a specific unit that deals with the issue of registration of CSOs”.

Based on the four aspects mentioned above, it can be stated that in Mozambique the process for a CSO/association to obtain legal personality still remains a challenge. Legal barriers to gain access to registration are not explicitly presented in the legal framework, though the challenges start with the application process, which requires certain funds that

³³ Interview conducted on 10 March 2015.

³⁴ Interview with a member of civil society, 2 April 2015.

associations, especially those that are locally- and community-based, do not have for the registration process.

Even urban-based CSOs/associations that have more robust resources find difficulties in the registration process, to the extent that procedures and requirements laid down are not sufficiently clear in order for the registration process to happen in a swift and transparent way.³⁵ Nevertheless, the general perception from CSOs/associations consulted regarding registration is that there are serious obstacles to their access, since

“the difficulties encountered at the local level are not only at the level of the applicants but also at the level of the responsible entities themselves (bureaucracy in terms of registries and in the clearance process),”³⁶ and at the same time that “the Government displays an openness to local organisations to register but does not create practical conditions for them to access this registration in a simple and flexible manner”³⁷.

3.3 Main Weaknesses and Challenges

In conclusion, it can be stated that there does not exist serious obstacles to the process of formation and registration of CSOs/associations in Mozambique. The legal framework is generally functional and relatively open to the creation and registration of CSOs, although some important challenges in its implementation exist. Law 8/91 of 18 July opens up the space so that all citizens, as long as they have an equal or superior age of eighteen years and have full possession of their civil rights, can constitute an association. However, there are weaknesses and challenges that must be taken into account in this process:

- CSOs/associations in Mozambique are very diverse in their scope, nature, origin and size. However, Law 8/91 does not consider the richness of this diversity by treating all CSOs/associations in equal fashion within its terminology, which creates weaknesses in the strengthening of a civil society that hopes to be more robust and participatory in the development process;
- The procedures and requirements for a CSO/association to gain access to legal recognition consist of a long process. Some documents required for the registration process, such as the personal identification document (Identity Card) and the criminal record certificate, are of little accessibility to applicants, especially at the district level, seen services for this purpose are limited at this level. This constrains

³⁵ Interview with a member of civil society, 30 March 2015.

³⁶ Focus group conducted on 24 March 2015.

³⁷ Interview with a member of civil society, 31 March 2015.

- the ability of associations to access the registry;
- The amount required to complete the registration process is on average \$440USD (four hundred and forty Dollars), a fee that has been too expensive for the budget of many community-based CSOs/associations. For this reason, a large part of associations do not manage to complete the process;
 - Law 8/91, article 5, establishes that the order for recognition should be given within 45 days, however, this deadline is almost never respected by the competent authorities. This is a factor that creates a great deal of unpredictability in the process;
 - Law 8/91 currently in force should be revised taking into account this set of identified weaknesses and challenges, making it more comprehensive for the different kinds of existing CSOs and also considering that it must meet the current challenges that CSOs/associations face in the country.

IV. OPERATION

The operation dimension focuses on the main challenges that CSOs in Mozambique face in the process of their intervention, taking into account the legal environment, its practice and the limitations that restrict or favour this intervention.

4.1 Key Findings

The main finding in this dimension is that in Mozambique CSOs are not obliged under Law 8/91 to report to the Government on their interventions. Additionally, the Law does not envisage the Government carrying out audits or inspections on CSOs, nor obligating them to publish any of their information or activity reports. Therefore, CSOs in Mozambique have the freedom to operate and intervene in different areas of activity provided they are in line with the Constitution of the Republic.

4.2 Legal Framework in Force

For a CSO/association to formally operate in Mozambique, it must be recognised through its legal registration. However, as mentioned in the previous dimension, there are many associations that operate in Mozambique without being registered. These informal and various types of associations, many of them at community-level, are socially relevant in the process of development (Francisco *et al.*, 2008).

Operation of CSOs/ associations is not only covered by Law 8/91 but also by other legislation approved for this purpose, as is the case of Law 9/91 of 18 July and 7/2001 of 7 July³⁸, which regulate the freedom of assembly and demonstration. These two Laws (9/91 and 7/2001) establish that citizens, associations or other groups of interest are obliged to inform the authorities on activities related to public acts that are related to the realisation of meetings or demonstrations. Article 10, paragraph 1 of this Law establishes that:

“persons or entities wishing to hold meetings or demonstrations in public places or in places open to the public should inform in writing their purpose and give at least four working days' notice to the civil authorities and policemen of the area”.

Therefore, associations or single individuals should inform authorities regarding every public meeting or demonstration that they may want to hold. This notice is not, however, extended to those meetings that occur in closed areas and that are related to internal issues of a CSO/association. Similarly, both Law 8/91 and 9/91 do not establish an obligation for

³⁸ Law 7/2001 introduced changes to Law 9/91, with a focus towards articles 3, 4, 7, 8, 16 and 17, adapting it better to the Constitution of the Republic (2004) in force.

associations to inform the authorities on the names of members of their governing bodies, although in the act of formation/registration this information is contained in the memorandum of association of the association.

CSOs or associations are not obliged by Law to report to the Government on their interventions. Similarly, the Law does not provide for the Government making audits or inspections on associations nor does it oblige associations to publish any kind of information or activity reports.³⁹ Other legal barriers that affect the operation of CSOs are, firstly, the lack of a specific entity within the Government responsible for dealing with issues that govern CSOs, and in second place, the lack of an explicit legal basis that indicates the obligations and rights of CSOs.

With regards to the prohibition of CSOs to distribute profits or other types of private benefits to their members and collaborators, Law 8/91, upon designating associations as having a “non-profit nature”⁴⁰, states that these cannot produce profits that come to translate into dividends to be shared between the partners. On the other hand, this issue shall be referred to the statutes of the CSOs themselves. In effect, CSOs aware of this important aspect, approved in 2014 an Agreement on the Principles of Conduct and Ethics (JOINT, CESC, ROSC, 2014), which having no equivalence or legal weight, is an instrument that regulates the operation of CSOs based on principles of conduct and ethics that reinforce their accountability to its constituents and society. Under Law 8/91, associations may become extinct as defined in its own statutes⁴¹ or by judicial decision (article 10, paragraph 1). A judicial decision revoking the association is based on the same article, paragraph 2, with four main reasons for this purpose, namely:

“a) The presence of less than ten of its members for a period not less than a year; b) By declaration of insolvency; c) By the pursuit of its objectives being depleted or turned impossible; d) when it is established that the purpose of the association is unlawful or contrary to public moral or being that its purpose in reality is different from what was declared in its respective statutes”.

On the other hand, the Civil Code (1996) in its article 166 makes reference to the ultimate destination of goods and assets in the event of dissolution of a CSO/association, leaving it to its members and according to its statutes to decide on its fate, or alternatively through a

³⁹ However, Decree 55/98, which regulates international NGOs in Mozambique, requires them to periodically submit reports of their activities to the Government.

⁴⁰ Law 8/91, article 1, general principle.

⁴¹ Subject to the provisions of special laws, in accordance with article 166 of the Civil Code (1996).

decision of the court. Articles 182, 183, and 184 provides for the causes, forms, and effects of its termination respectively.

In short, from a legal point of view, the environment for the operation of CSOs/associations in Mozambique is favourable, although the legislation contains gaps that open the space for limitations on the operation of CSOs imposed by the Government at different levels.

4.3 Perceptions on the Practice

The nature and diversity of CSOs in Mozambique allow them to participate in the process of development by influencing processes of decision-making and public policy through their participation, for example, in the different mechanisms of dialogue in existence, or through providing services to its population, although this participation still remains a challenge for the CSOs themselves. It is at this level of intervention where limitations and constraints imposed on CSOs/associations by the Government, which limit its ability to operate and intervene with its target group. The prevailing perception in this dimension is that at local level,

*“Governments are very interested in knowing what CSOs/associations do, mainly with regards to activities that by their nature are the primary responsibility of the Government to implement, like for example the construction of public infrastructure such as schools, hospitals and water holes. CSOs/associations that implement this type of activities are requested to inform and share with the Government their plans and respective periodic reports because the Government use this information to feed its own reports”.*⁴²

Therefore, associations that have operated at local level (province, district, community), have been requested by the Government and local authorities to periodically report on their activities, as part of the process of produce an activity report from the Governments itself, which is why associations are also encouraged to align their annual activity plans to the plans of the public authorities at local level⁴³. In general, if on the one hand local Governments request essential information on the social services delivered and infrastructure constructed by CSOs, on the other hand, many CSOs, independently of their area of operation, feel the need to share this information with the local Governments,

⁴² Focus group conducted on 24 March 2015 in Maputo.

⁴³ Economic, Social, and Budgetary Plan of the Province (PESOP) and Economic, Social, and Budgetary Plan of the District (PESOD).

especially with relevant local authorities for their sector of work.⁴⁴

The perception of those interviewed is that the Government's intervention has been limited on issues that are not sensitive to its own interests. However, some mobilisation and community-awareness activities related to the rights of communities on natural resources for example - which is a sensitive current issue - have been repressed by their local Governments. In 2013, for example, in the province of Cabo Delgado, incidences of intimidation of CSOs were reported. The CSOs were involved in the social preparation of Palma district communities in view of future social, economic, and environmental impacts of the exploration of natural gas in the Rovuma River Basin.⁴⁵

Another important observation made by the interviewees is that the interference by the Government in the actions of CSOs/associations varies according to the province and official (Governor) who is heading the province. In the province of Tete for example,

"... CSOs are not required to inform the Government about their activities and also there is no obligation for them to submit their activity reports, despite the fact that CSOs share with sectors of Government - with which they work - information on their activities without needing to show accountability. But in the recent past, we have had a Governor who required that CSOs be accountable to the Government".⁴⁶

Another perspective from an interviewee in the province of Sofala,

"... CSOs are required to inform the Government about their activities, and the Provincial Forum of CSOs is also required to submit an activity report to the Government. Therefore we have a situation in which the Government oversees the operations of CSOs and not the other way around"⁴⁷. "In Manica, CSOs are annually requested to present reports and budgets by the supervisory institutions in their scope of operation, but there is no legal basis that requires this".⁴⁸

Another perception is that in general, CSOs/associations are recommended to align their operational plans with the Government, where in some cases there is a tendency to transform the CSO into an implementing arm of the Government- in Niassa for example, a CSO that works in the area of education indicated that the local Government called upon

⁴⁴ Focus group conducted on 24 March 2015 in Maputo.

⁴⁵ Mario (2013). "No one ever claps... in Palma"

⁴⁶ Interview with a member of civil society, 2 April 2015.

⁴⁷ Interview with a member of civil society, 31 March 2015.

⁴⁸ Interview with a member of civil society, 2 April of 2015.

CSOs to align their plans with the plans of the Government.⁴⁹ However, this issue is also analysed in another way by CSOs themselves that consider that

*“the Government should know more about what CSOs do, mainly those that provide services, because there has been much duplication of efforts and lack of coordination among the CSOs themselves in the implementation of their activities”.*⁵⁰

The perception that CSOs/associations share information with local authorities about their actions and participate on their own initiative in the local processes of governance, was prevalent among some of those interviewed, even because they affirmed that this should be a constant practice of CSOs themselves, without needing to have the Government to tell them what they should or should not do⁵¹, in the same way that the Government should do in the context of accountability and transparency in governance. This has been however a critical issue in the way that CSOs operate and perform their operations on the ground, to the extent that the sharing of information on the part of CSOs and Government has been difficult.

Regarding the supervision or control of CSOs by the Government, the perception is that the Government doesn't make itself known with much intensity, even from the provincial level downwards, although there is a tendency from the Government in this sense.⁵² On the other hand, the level of supervision or control by the Government over CSOs depends a lot on political situation in the country at that moment. Particularly during periods that precedes elections, this sort of control is felt. The invisible hand of the Government becomes visible and heavy in a certain way with regards to the operations of CSOs. Therefore there is no supervision, but there is surveillance.⁵³

Still related to the issue of control of CSOs on the part of Government, there are situations in which local authorities asked CSOs/associations to stop their activities temporarily until there was clarification on what the CSOs/associations were doing in case when the action was unknown to the authorities. These situations have occurred when there were changes in leadership and the new officials had no knowledge of the actions taking place. One example comes from Niassa where a CSO was ordered to stop its activities due to them

⁴⁹ Focus group conducted on 24 March 2015 in Maputo.

⁵⁰ Focus group conducted on 24 March 2015 in Maputo.

⁵¹ Interview with a member of civil society, 11 March 2015.

⁵² Interview with a member of civil society, 31 March 2015.

⁵³ Interview with a member of civil society, 2 April 2015.

supposedly not being known to the local authorities.⁵⁴ On the other hand, for those CSOs that provide some type of social services such as health assistance or care to vulnerable children, when they do not meet the requirements in the operating regulations for this type of services, the competent authorities can order them to cease their activities.⁵⁵

Therefore, with regards to the operations of CSOs/associations in Mozambique, the general perception is that although one cannot speak of official and widespread political control over CSOs, there has been a trend towards limiting or even intimidating the operation of certain CSOs, particularly when they monitor issues related to governance or the management of public resources, especially natural resources. It is also acknowledged that there is a strong tendency and pressure for CSOs to become aligned with the Government so that they become

“...required to stay connected to a Government body (the ministry of a sector), given that the Government considers that CSOs are mainly organisations that provide services which support the execution of government programs in various sectors” (ITAD and COWI, 2012:31).

On the other hand, CSOs face difficulties in their capacity to operate because, firstly, many of them still show weaknesses in the implementation of good management practices of non-profit organisations, which are oriented towards transparency of their actions.⁵⁶ Secondly, they often experience difficulties in establishing a common agenda for their coordinated action, favouring isolated actions, without the sharing of information between them on what they are doing. This is allied to challenges linked to their institutional capacity which remains quite fragile.⁵⁷

4.4 Main Weaknesses and Challenges

Although the legal framework for the operation of CSOs/associations in Mozambique has been established, its practical implementation shows that there is a tendency for the Government to exercise control over CSOs. In the last three to five years, cases have been reported in which provincial or district Governments intimidated or blocked activities of CSOs, namely when it dealt with governance monitoring activities, including in the field of natural resource management and the defence of the rights of local communities. On the other hand, a major challenge remains to strengthen the internal capacity of

⁵⁴ Focus group conducted on 24 March 2015 in Maputo.

⁵⁵ Interview with a member of civil society, 17 March 2015.

⁵⁶ JOINT, CESC, ROSC (2014).

⁵⁷ Focus group conducted on 24 March 2015 in Maputo.

CSOs/associations themselves in the knowledge of this legal framework and of their rights, so as to be better able to position themselves against non-institutionalised or non-legal practices originating from Government institutions that constrain the operation capacity of CSOs. In these terms, the following weaknesses and challenges were identified for this dimension:

- The operation of CSOs/associations in Mozambique has been characterized by their weakness at the level of its structure and values⁵⁸ which pose an obstacle for their own intervention capacity, and are utilised by the Government so that these CSOs/associations become their arms of implementation. According to an interviewee, CSOs should have a Code of Conduct which regulates them and warns them over a series of internal issues of the organisations themselves that can constrain their ability to operate⁵⁹, such as for example appropriate management systems and functional mechanisms of governance;
- The fact that Law 8/91 is not adequate for the current challenges of the operation of CSOs/associations opens up the space for ambiguity by the Government in how it deals with and approaches CSOs. For this reason, the approach varies greatly according to the place (institution, province, or district, etc.), and also according to the degree of openness of the person in charge at the level of the State/Government institution. Similarly, the participation of CSOs in initiatives and mechanisms of decision-making is highly conditioned by this ambiguity;
- The creation of an institutional and regulatory framework favourable to the operation of CSOs/associations at the different levels of their intervention⁶⁰, which would necessarily require a review and adaptation of the Law 8/91 to the current challenges of the context in which CSOs operate, constitutes one of the main challenges identified in this dimension.

⁵⁸ UNDP (2011).

⁵⁹ Interview with a member of civil society, 16 March 2015.

⁶⁰ Interview with a senior official of the Ministry of Justice, 2 April 2015.

V. ACCESS TO RESOURCES

The dimension related to access to resources aims to understand, based on an analysis of the legal framework and the perception on practices, in which way CSOs in Mozambique gain access to financial resources, which allow them to implement their activities. It also discusses the main challenges and limitations that constrain their capacity to access these resources.

5.1 Main Findings

In Mozambique, there does not exist specific legislation that regulates the way in which CSOs can access financial resources for their operation. The Law 8/91 is silent in this regard, which is favourable to CSOs. However, other legislation in force such as Law 4/94 of 13 September, called the Patronage Law, regulates the access to donations as a source of funds, and Decree 37/2000 of 17 October which limit the access to these resources and requires the declaration of public utility. That is, only CSOs/associations that can prove they pursue ends of national and community interest and that cooperate with the Public Administration in providing services are entitled to the declaration of public utility.

On the other hand, the access to different sources of funding is hampered by the lack of registration of CSOs and other key factors such as: i) a weak technical capacity to formulate quality proposals; ii) poor access to information; iii) a weak capacity to administer and implement projects, including weaknesses in management systems; iv) informal access to resources and; v) the absence of a track record of the applicant CSO.

5.2 Legal Framework in Force

The Law 8/91 of 18 July does not state in a clear way to which sources of funding CSOs/associations can gain access to, whether they be funds deriving from national or foreign sources, as this is a very positive aspect to consider in this Law. An interpretation that can be made from this Law regarding the access of CSOs to resources has to do with the fact that they cannot legally access these sources of funding without being properly registered.

However, the access to donations from public funds, as a source of resources, is covered under Law 4/94 of 13 September, called the Patronage Law, which establishes the basic principles of action of individual or collective legal entities, public or private, which develop activities, or financially and materially support them in the field of the arts,

literature, sciences, culture and social action.⁶¹ In its article 2, Law 4/94 establishes that donations are destined to institutions established under Law 8/91 and to other public or private associations, also covering philanthropic actions.

Regarding the funding from the State/Government, Law 8/91 states in its article 11 that

“associations may require a declaration of public utility as long as they pursue an objective of general or community interest, cooperating with the Public Administration in the provision of services at a central or local level and present all necessary evidence to file their claim.”

In turn, Decree 37/2000 of 17 October⁶², foresees in its article 1, paragraph 2, that

“the cooperation with Public Administration, State, or Local Government should be established concretely through written agreements or contractual relations of cooperation that are used as evidence of the existence of such cooperation”.

This point therefore already establishes that an association that requires a declaration of public utility upon entering into agreements or contracts of cooperation with the State/Government can access funds that institutions make available to implement a certain type of agreed activity in these agreements or contracts. For example, the Fund for Artistic and Cultural Development, (FUNDAC), an institution supervised by the current Ministry of Culture and Tourism, finances activities of CSOs/associations that work and intervene in the cultural and arts sector.

For this reason, article 2 of the same Decree establishes that in order for an association to obtain a declaration of public utility its social objective must state the contribution to the economic and social development of the country, highlighting areas such as education, learning, justice, sports, and culture. However, the Law limits the definition of an organisation with public utility to those that “cooperate with the public administration”, which ends up affecting the independence of CSOs that require public utility- and can be a factor explaining, on the one hand, the reason why the Patronage Law is not broadly utilised by CSOs, and on the other hand, the limited number of CSOs that adhere to a declaration of public utility.

⁶¹ Law 4/94, article 1, paragraph 1. According to this Law, these are the only areas where public funds are available to support CSOs in the context of public utility.

⁶² It establishes the procedures and requirements for the declaration of public utility of associations.

5.3 Perceptions on the Practice

Although not provided for in the Law, practice shows that in Mozambique CSOs have access to the following sources of funding:

- **Funding from foreign donors**, that can come from governments of countries that cooperate with Mozambique, bilateral agencies (that finance directly or through an intermediate entity) and multilateral organisations⁶³, or other international organisations or foundations aimed at funding CSOs;
- **Donations**, that can come from national or international humanitarian organisations, individuals, religious bodies, or other kinds of institutions;
- **Financing through the own generation of funds**, which has been gaining ground among Mozambican CSOs to address the challenges of their sustainability, manifested not only through the contributions of members through the payment of membership fees, but also by creating their own initiatives to generate income – for example, CSOs that produce goods based on local or recycled material which is then sold on the market, but whose revenues are reverted exclusively to the organisation;
- **Funding from the State/Government**, is not very common in the Mozambican reality⁶⁴, although some organisations benefit from funds coming from the State/Government for the realisation of activities that are of public interest and that the Government finances either through its own internal resources or through its development partners. The funds used by the National Council to Combat AIDS (CNCS), which is a Government institution to support CSOs that implement services in the area of HIV and AIDS, and the District Development Fund (FDD), which local community-based CSOs can access, are an example of this practice. However, there is no established mechanism to channel public funds to CSOs.

Therefore, the legislation in place does not put legal barriers for CSOs to have access to sources of internal and external financing. As also observed by ITAD and COWI (2012), CSOs are free to raise funds from various sources to reach their objectives, though in practical terms, they are influenced by the priorities of international Development Partners.

⁶³ The governments of countries that cooperate with Mozambique, bilateral agencies and multilaterals, fall under the category of Development Partners.

⁶⁴ However mostly restricted to determined social organisations with historic links to the party in power, such as the Association of Mozambican Writers (AEMO), the National Union of Journalists (SNJ), the National Union of Teachers (ONP), among others, a disputed practice for expressing discrimination on behalf of the State.

Most CSOs in Mozambique are highly dependent on funds not only from these Development Partners but also from international Non-Governmental Organisations (NGOs) that are working in the country⁶⁵ and looking for local partners, such as CSOs/associations, to implement their projects. However, in order for these local partners to become eligible to access these funds from the Development Partners as well as from the international NGOs, the basic requirement is that they be registered according to the Law in force. This has been one of the main barriers hindering the access of CSOs, especially those that are community-based, to the main existing sources of funding (Development Partners and international NGOs), although these are considered the most reliable sources for the CSOs themselves, from the point of view of availability of resources to CSOs.

Other non-legal barriers that make the access to sources of funding difficult to CSOs have mainly been: i) the weak technical capacity to formulate quality proposals; ii) poor access to information- CSOs have not had timely knowledge of tenders that donors release to access their funds⁶⁶; iii) weak management capacity and capacity to implement projects, including weaknesses in management systems.⁶⁷ These barriers contribute to making a non-favourable environment for CSOs to access resources, effectively limiting their capacity to compete for and access different sources of funding. Apart from these barriers, aspects linked to the informality in the access to resources (called donor engagement – which is the relationship at the most personal level that can be made with people/decision-makers in donor agencies), and the background of the applicant CSO (donors use informal sources to know, for example, the profile of CSOs that compete for their funds), have been equally decisive in the capacity of CSOs to access funds from donors. For this reason, it is important that CSOs organise themselves properly so that they gain the trust of donors, given that this trust plays a determining factor in the decision to grant them access to funds.

The Government does not interfere directly in the CSOs' capacity to be financially sustainable, or in the CSOs' capacity to access funding. However, the fact that funding partners place requirements on CSOs, such as legal registration, is enough for Government influence to take place. But it should be noted that registration is important for CSOs to the

⁶⁵ International NGOs are authorised to intervene in Mozambique under Decree 55/98 which “creates the legal framework that defines the criteria of authorisation, objectives to be pursued, and mechanisms of operation of foreign Non-Governmental Organisations”.

⁶⁶ It should be noted however that the so-called “big donors”, which are generally the Development Partners, have recently made a massive and timely effort to communicate their tenders within CSOs at the central and provincial levels.

⁶⁷ Interview to a member of civil society, 19 March 2015.

extent that for them to receive funding they must have bank accounts, for which registration is a pre-requisite.

Over the past decade, the financing environment for CSOs at the national level has changed significantly. Mainly, at the level of the so-called “big donors”, the funding approach has been changing through the way they channel their funding to CSOs, currently prioritizing two main approaches, namely: i) the use of the so-called “intermediary organisations” – usually being international NGOs that receive funds from these donors to finance CSOs; and ii) the preference to fund consortia of CSOs. The main impact that these changes have brought to the funding environment is the fact that increasingly there are more CSOs with reduced capacity to access funding and as a result, there are more CSOs facing difficulties to stay active.

As mentioned above, this indicates the strong dependence CSOs in Mozambique have of international donors, which is also changing their programmatic priorities and contributing to the difficulty of the least prepared CSOs to respond to this dynamic. Indeed, the 2007 Civil Society Index (Francisco *et al* 2008), already recommended a gradual reduction of the dependence of international organisations for the sustainability of CSOs, recognising that international donor organisations tend to change their program priorities at the expense of the priorities of the communities with which CSOs work. This makes it urgent to challenge the conditional allocation of funds to CSOs and to increasingly diversify sources of financing, by making the maximum use of the growing entrepreneurial class in the country.

On the other hand, the use of the entrepreneurial class to finance CSOs has been a prevailing trend among “big donors” such as the Department for International Development (DFID) from the UK for example, which has used large private consulting firms to finance activities carried out by CSOs. This approach was considered by some interviewees as

*“a major limitation that CSOs have had to access funding, as these intermediate private companies have retained a large part of these resources, and what comes down to CSOs are very limited resources that don't contribute to the strengthening and survival of these CSOs”.*⁶⁸

In another aspect, large national and multinational companies based in the country have had funds for CSOs, as part of their social and corporate responsibility, but the access has been difficult due to the complexity of requirements for which many CSOs are not prepared

⁶⁸ Focus group conducted on 25 March 2015.

to meet, in addition to the lack of information about the funding mechanisms used. However, this issue needs to be properly regulated, by including the regular publication of philanthropic actions of large multinational companies that operate in Mozambique in various areas such as in natural resources- an area in which they stand out more- without ruling out some public companies like telecom operators, banking, and others.

With regards to funding from the Government and State, CSOs in general don't receive funds from them. There is however a certain group of CSOs that have benefited from direct support of the State through the Public Budget- which is a blatant case of discrimination towards the vast majority of remaining CSOs. Such are the cases of socio-professional organisations created in the one-party period (between 1975 and 1990), such as for example the Association of Mozambican Writers (AEMO), among others. Although this concerns only a small amount of funds, this practice constitutes a historical remnant that translates into an act of discrimination against other Mozambican CSOs.

Both the resources allocated by the State as well as the number of organisations benefiting from those resources have been insignificant: according to the ITAD and COWI (2012) report, only 3% of funds used by CSOs originate from State sources. On the other hand, "the Government sometimes finances CSOs with funds from some international partners, but this has been done sporadically".⁶⁹ However some respondents consider that CSOs have the right to receive funds from the State/Government:

"the Government should institutionalise the right of Mozambican CSOs to access funding through the State Budget, as this is a right that supports us in contributing to the process of development in this country".⁷⁰

But this has been in general a critical issue within CSOs because many of them are afraid of being "captured" by the State/Government through funding that they could eventually receive.

There are no specific legal provisions related to government funding for CSOs. There are however rules and procedures contained in legislation concerning the acquisition and requisition of services to organs of the State apparatus and subordinate institutions.⁷¹ In this context, CSOs that receive funding from the State/Government to implement certain specific services through their request are covered under this legislation. So in practical terms, one cannot speak of the existence of a legal framework for the targeted funding of

⁶⁹ Interview with a member of civil society, 31 March 2015.

⁷⁰ Interview with a member of civil society, 2 April 2015.

⁷¹ Decree n° 29/97 of 23 September; Law n° 9/2002 of 12 February; Decree n° 54/2005 of 13 December.

CSOs, as this does not exist in the country.

With regard to requirements and legal barriers to access international funding, this issue falls within the capacity of CSOs to compete and access sources of funding, which in large part, come from international donors. These donors, regardless of whether or not they are locally represented, finance CSOs as there does not exist legal barriers for this purpose. But for this funding to take place, these donors, which are bilateral government agencies and multilateral agencies, sign cooperation agreements with the Government through which are identified specific and direct windows of financing for CSOs. Those considered "big donors," however, generally fund CSOs through their local representative offices and increasingly through intermediary organisations, and other lenders such as international funding agencies (ex. foundations) do it from abroad.

5.4 Main Weaknesses and Challenges

In this dimension, the main identified weaknesses have to do with: i) a very limited access to sources of financing from the State/Government by CSOs; ii) a double standard in the constraints of donors who allow access to their funds by CSOs; iii) new approaches to financing introduced by "big donors" that limit the ability of CSOs to access their funds. In conclusion, the general perception on the environment for CSOs/associations to access resources is not favourable, considering the following main challenges:

- Legislation that regulates CSOs/associations in Mozambique does not establish any limitation with regards to how CSOs/associations access funding, including international NGOs that operate in the country. The perception is that the regulation of this matter would make access to sources of funding more equal between international NGOs and CSOs/associations, a situation which currently does not exist;
- Lack of sufficient transparency in the access to different sources of funding (mainly from "big donors" and intermediary international NGOs), being that there is no transparency regarding the results of tenders launched, as well as a level of subjectivity in the criteria of evaluation and even a lack or evasion of information that reveals which CSOs won the tenders and which ones lost, so that this can be used for the learning benefit of CSOs that want to pursue other opportunities. In this particular aspect, the perception is that there has not been any transparency on the part of donors and their intermediaries, although these are the most reliable sources for CSOs from the standpoint of availability of resources to finance their activities;
- The ability to access funding through international NGOs is moderate, to the extent that they evaluate the capacity of CSO applicants based on a number of criteria, such

as the CSO's ability to remain accountable and the CSO's background on applying to funds. The subjectivity in the evaluation criteria of tenders is also cited as a limiting factor in the access to sources of funding;

- With regard to the funding provided by "big donors", the perception is that there should be more openness in the sharing of information related to the results of tenders, and an appropriate explanation given to CSO applicants on the reasons that led to the exclusion or approval of the projects they submitted.

VI. EXPRESSION

In this dimension, taking into account the legal framework and perception of practice point of view, the ability of CSOs to express their opinions publicly, and influence and criticise public policy and political power over aspects related to their public interests is analysed.

6.1 Main Findings

In Mozambique there is a favourable legal framework for the exercise of freedom of expression and opinion by citizens, CSOs, and independent social communication outlets. However, practice shows that there are serious limitations on the exercise of these rights, characterised by threats originating from anonymous sources, at different levels, which block and constrain the full realisation of the right to expression on the part of citizens, CSOs, and independent social communication outlets.

6.2 Legal Framework in Force

After the independence of Mozambique in June 1975, the country adopted a One-Party Constitution, based on the power of one-party which did not enshrine fundamental freedoms to citizens as regards the right to freedom of expression, opinion, and assembly. With the approval of a new Constitution of the Republic in 1990, a new milestone was achieved in the process of strengthening individual freedoms of citizens, with the introduction of rights, duties and freedoms of citizens.⁷²

The Constitution of the Republic of Mozambique (CRM 2004) reaffirms the exercise of these rights. In its article 48, paragraph 1, it establishes that “all citizens have the right to freedom of expression, freedom of the press, and the right to information”. Therefore, the right to expression appears as a constitutionally guaranteed right, referring to specific legislation in its regulation. One of the main indicators that can show the level of freedom of expression in a country is the freedom of the press. Indeed, the Mozambican State passed the Law 18/91 – the Law of the Press, and establishes in its article 2 that

“the freedom of the press corresponds, namely, to the freedom of expression and creation of journalists, the access to sources of information, the protection of independence and professional secrecy and the right to establish newspapers and other publications”.

⁷² Constitution of the Republic (1990), articles 73 to 85.

In this same Law 18/91, by mentioning the right to information in its article 3, paragraph 1, it states that this right means every citizen has the power to inform himself and be informed of relevant facts and opinions, as well as the right to disclose information, opinions, and ideas through the press. In turn, the Law 34/2014 of 31 December⁷³, article 8, establishes that

“the permanent democratic participation of citizens in political affairs requires their access to information of public interest, so as to be able to formulate and express their opinion on the management of public affairs and thus influence decision-making processes in the entities that exercise public power.”

The Right to Information Act fills this existing gap on the regulation of the constitutional right of citizens to access information and its respective sources, guaranteeing that they have access to information of public interest and can express their opinion freely, influencing decision-making processes.

Both the Law of the Press as well as the Right to Information Act are configured as the two main legal instruments that ensure the exercise of the constitutionally guaranteed right related to freedom of expression and opinion. Both laws, covered under the CRM (2014), are the main legal instruments that give citizens and CSOs the ability to freely express their opinions.

It should be noted however, that the Law of the Press draws attention in its article 38, paragraph f, to the need for journalists to have a duty to *“repudiate plagiarism, slander, defamation, lying, accusation without evidence, injury, and match-fixing documents,”* a factor that has limited journalistic activity to it being not completely free. On the other hand, the Penal Code recently reviewed and approved⁷⁴, in its articles 229 and 235, foresees a penalty for *“those who defame others publicly, by word of mouth, in writing or in published drawings or by any other means of publication ..”*, which subjects the citizen to limitations in their ability to freely express his opinions.

Thus, from the point of view of the legal environment, it can be affirmed that the environment for CSOs/associations to express their opinions is favourable, within the framework of a democratic rule of law and through the respect for the fundamental rights of citizens that the Constitution of the Republic (2004) enshrines.

⁷³ Law of the Right to Information, recently approved, after eight years of discussion in the Parliament.

⁷⁴ Law N° 35/2014 of 31 December, Law of Revision of the Penal Code.

6.3 Perceptions on the Practice

Despite the existence of a favourable legal environment for the exercise of freedom of expression by CSOs in Mozambique and the ample space for the participation of media in Mozambican society, there are still certain challenges in the exercise of citizens' right to freedom of expression and opinion. These challenges to the exercise of rights on the part of citizens, CSOs/associations, and independent media have taken many forms, such as direct or subtle threats that have been communicated in the form of advice from anonymous people/individuals. These threats are characterised by their "social and psychological intimidation" (ITAD and COWI, 2012), and are intended to discourage critical opinions coming from CSOs. This kind of behaviour originates not only from Government/State institutions but also from private companies whose actions in defence of the interests of communities are at times questioned by CSOs.⁷⁵

With regard to freedom of the press, for example, the year 2014 was particularly full of situations of this nature. Having been a year of general elections,

“contributed to the occurrence of cases of violation of press freedoms, as in the following cases, among many others: (i) assault, detention, and theft of work material of a journalist and editor of the Diary of Zambezia occurred in February 2014; (ii) verbal death threat to a journalist of the Catandica Community Radio in the province of Manica, occurred on 29 of September 2014; (iii) temporary closure of the Progresso Community Radio in the city of Maxixe, province of Inhambane, occurred on 28 August 2014. In all three cases, the victims filed complaints to the justice authorities, however, the first is still pending and in the other two cases the outcome was not favorable to the victims” (CIP, 2014)⁷⁶.

In general there is a strong perception that threats, which often are politically motivated, take place because there are sectors within the State/Government that are not prepared to tolerate criticism coming from CSOs and citizens in general, including the independent media. However this type of threat to the work and role of CSOs in society varies greatly depending on the sensitivity of the issues addressed such as, issues of political and economic nature that have been, in the opinion of most respondents, what has raised the most confrontation between Government and civil society.⁷⁷ On the other hand, the Government's attempt to control these organs has been mentioned, as stated by the Journal

⁷⁵ Focus group conducted on 26 March 2015

⁷⁶ Presentation made at the National Conference on Freedom of the Press in Mozambique which took place on 7 May 2014 in the Mozambique Telecommunications Conference Center in Maputo.

⁷⁷ Focus group conducted on 26 March 2015.

“The Truth” in its online edition of 5 April 2013:

*“The Superior Council on Social Communication condemned, in a two-page resolution, the trampling of the legal, ethical, and deontological norms of the journalistic profession in articles of the Channel of Mozambique, Savana, Public and Zambeze”.*⁷⁸

To the targeted bodies, and according to the journal cited above, this deliberation was intended to intimidate and censor their mission to report independently to the citizens.

However, the independent media “*has made an effort to establish itself in opposition to the reigning power in Mozambique, which is why journalists are frequently harassed or threatened by politicians, businessmen, and other forces who are affected by their work*” (Chichava and Pohlmann, 2010:136). Despite this fact, the media has played a leading role in the exercise of the right to expression and opinion, ensuring the production and publication of information of interest to citizens. As Chichava and Pohlmann (2010:131) state,

“political openness has enabled the emergence of an independent investigative, serious, and combative press, no longer at the service of party interests, but free to disclose its interpretation of the facts. Led by individuals such as Carlos Cardoso... this press, apart from informing the citizen about his rights and collaborating to build a democratic State, has exercised the supervisory role of the Government, which had been removed during the one-party regime, denouncing as well the abuse of state resources by politicians and the negative effects of some policies of the Mozambican state...”

Therefore, although there are no legal barriers preventing the ability of CSOs to express freely their opinions- even with certain deterrent limitations in the exercise of that expression⁷⁹- there exist non-legal barriers that constrain the exercise of this right, even though these non-legal barriers manifest themselves through signs of indirect intimidation that inhibit the citizen, CSOs and independent media to openly express their opinions. As mentioned in the report of ITAD and COWI (2012),

“the participation of civil society in policy dialogue is increasingly being hampered by a hostile and often intimidating political environment. The exercise of political freedom is very limited by threats made by government authorities, a situation aggravated by the weak performance of the judiciary. Citizens and civil

⁷⁸ A Verdade Online (5 April 2012). *Canal de Moçambique e Público falam em “censura”, do Conselho Superior da Comunicação Social*. Accessed via: <http://www.verdade.co.mz/tema-de-fundo/35-themadefundo/26287-canal-de-mocambique-e-publico-falam-em-censura>

⁷⁹ Article 38, paragraph f, of the Law of the Press and articles 229 and 235 of the Penal Code.

society consider political institutions to be intolerant to dialogue and disagreement”.

This limitation to the freedom of expression and opinion imposed by authorities inhibits the capacity of the citizen to participate effectively in political, economic, and social life of the country. For this reason, Mozambicans, among a set of eighteen African countries, present very low indicators regarding their ability to give critical views on governance (Shenga and Mattes, 2009).

The open criticism of government policies is not always tolerated and the reaction of the Government to these criticisms has been verbally aggressive, attacking CSOs and citizens with undignified adjectives in general.⁸⁰ Critical opinions are seen as an opposition and a threat to current government. For example, the Attorney General of the Republic (AGR), directed in 2013 a criminal case against Professor Carlos Nuno Castel-Branco for having written and published an opinion piece critical to the then Head of State, Armando Guebuza.⁸¹

Thus, even with a growing awareness from citizens and CSOs with regards to their rights on freedom of expression, practice shows that the current political culture does not openly support the exercise of these rights, although they are not actively suppressed.

6.4 Main Weaknesses and Challenges

Despite the existence of a favourable legal environment for the exercise of freedom of expression on the part of CSOs in Mozambique, practice shows that the exercise of this right has been violated by authorities at different levels. In this dimension on expression, the main weaknesses and challenges identified are:

- The existence of a favourable legal framework for the exercise of the right to expression, however, its practical application inhibits citizens, CSOs, and independent media to freely and openly exercise that right;
- A strong influence and surveillance on the exercise of fundamental freedoms of citizens and CSOs on the part of State/Government, which indicates a high level of distrust in relation to the actions of CSOs substantiated by a horizontal legitimacy, also embedded on a fragile base, that needs to be strengthened by giving space to

⁸⁰ Reference to the term “apostles of doom” often used by the former President of the Republic, Armando Guebuza, to disqualify criticism of CSOs to his governance.

⁸¹ MMO News (11 of December 2013). *PGR Processes Nuno Castel-Branco*. More information at: <http://noticias.mmo.co.mz/2013/12/pgr-processa-nuno-castel-branco.html>.

the exercise of these liberties.

VII. PEACEFUL ASSEMBLY

The dimension of peaceful assembly covers the legal framework and perceptions on the practice of its implementation, including aspects related to the ability of CSOs to assemble and demonstrate publicly, influencing and putting pressure on public policies and political power in issues related to everyday governance and the respect for citizens' rights.

7.1 Main Findings

There exists an enabling legal framework for exercising the right to freedom of assembly and peaceful demonstration, which however is not properly implemented and respected in practice and thus inhibits citizens and CSOs to freely and openly exert this right. In practice, the environment for the exercise of the right to freedom of assembly and peaceful demonstration is not favourable to the operations of CSOs in Mozambique.

7.2 Legal Framework in Force

The CRM (2004), in its article 51, establishes that every citizen has the right to freedom of assembly and demonstration. Indeed, the current Constitution gears toward the establishment of a political-legal framework that is favourable to the exercise of freedom of assembly and demonstration by citizens, associations, or CSOs, stating in its article 48, paragraph 6, that the *"exercise of rights and freedoms... is regulated by the law based on the imperative of respect for the Constitution and the dignity of humans"*.

Thus, the exercise of the right to freedom of assembly and demonstration is regulated through Law 9/91 of 18 July⁸², as part of the rights, duties and freedoms of citizens provided for in the Constitution, and constitutes a necessary prerequisite for the rule of law and democracy. Also according to Law 9/91 in its article 2, paragraph 3, *"the purpose of a demonstration is to publicly express an opinion on political and social affairs, of public interest or others"*. Therefore, the right to expression is not only guaranteed by public assembly or demonstration, but also by an individual's participation in society, not being *"this Law applicable to private meetings which are held indoors and subject to personal invitations"* (article 1 paragraph 2).

⁸² The Law 7/2001 of 7 July, modifies articles 3, 4, 7, 8, 16 and 17 of Law 9/91.

As regards the restrictions on time, place and manner which the Law 9/91 establishes, there are limitations in the context of freedom of assembly and demonstration as provided for in articles 5 and 6.⁸³ However, despite restrictions provided for in this Law, there are no legal barriers that hinder the ability of CSOs to openly express their opinions, even on critical issues related to government policy. Under the right to freedom of assembly and demonstration, Law 9/91 establishes in its article 3, paragraph 1, that “*all citizens can, peacefully and freely, exercise their right of assembly and demonstration without depending on any authorisation in accordance with the law*”. However, Law 7/2001 establishes in its article 4 that “*the exercise of the right of assembly or demonstration cannot contravene the Constitution, the laws, morals, good customs, and the rights of individuals or legal persons.*”

From the point of view of the legal environment, it can be said that the environment for CSOs/associations to assemble peacefully is favourable under the democratic rule of law and respect for fundamental rights that the Constitution (2004) enshrines.

7.3 Perceptions on the Practice

The practical perception on this dimension shows that serious challenges remain in the exercise of this right, even when CSOs and other citizens gather to demonstrate peacefully in accordance with the provisions of the Law 9/91 and 7/2001 respectively.

The barriers to the exercise of the right to peaceful demonstration are common both at the level of the country's capital, Maputo, as well as at the local level. In Maputo, for example, groups of citizens have been blocked from demonstrating peacefully although they had previously informed the competent authorities as required by the Law. There are many cases of peaceful demonstrations that are not "authorised" by the competent authorities, in clear violation of article 3, paragraph 1, of Law 9/91. Other cases, when "authorised," are suppressed, as was the case of the demonstrations of Mozambique's Forum of Demobilised Soldiers:

“recently the FIR⁸⁴ used water cannons to suppress on March 12 another peaceful demonstration of around a hundred members of Mozambique's Forum of Demobilised Soldiers downtown in the capital of Mozambique. Four protesters

⁸³ Article 5, paragraph 1, restricts the realisation of meetings and demonstrations with abusive occupancy of public and private buildings," and in article 6 establishes that "processions and parades can only take place on Saturdays, Sundays, and holidays."

⁸⁴ Rapid Intervention Force, Elite Unit of the Police of the Republic of Mozambique (PRM).

*were arrested at the time”.*⁸⁵

More recently, in March 2015, the Police of the Republic of Mozambique (PRM) interrupted a peaceful march that renounced the murder of the Mozambican Constitutionalist, Gilles Cistac, citing the lack of a permit for the final route of the demonstration.⁸⁶ As stated above, this claim violates the provisions of the Law 9/91, since it provides that citizens who wish to demonstrate peacefully are not required to have authorisation for that purpose, and only need to inform the responsible authorities of the area where the demonstration will take place.

At the local level, where the attempt to directly control CSOs has been the strongest, the right to freedom of assembly has been, in some cases, prohibited. In Niassa province for example, a local CSO tried to hold a peaceful march to draw the attention of the Government on the poor state of the road that links the cities of Lichinga and Cuamba. The municipal council was previously informed about this march according to Law 9/91, however it was subsequently "unauthorised" by the then provincial governor, claiming that the necessary security conditions for the demonstration to take place were not met. The organisers of the demonstration, aware of their rights and their compliance with the Law, decided to hold the march, which resulted later in the notification for a payment of a fine of three hundred thousand Meticaís (close to eight thousand and eight hundred US Dollars) and the obligation to register the office of the CSO as State property, in addition to their donors being contacted by the local government to request to stop funding the CSO.⁸⁷ In a case study developed by the Support Mechanism to Civil Society (SMCS) on the participation of civil society in the monitoring of local governance in Niassa, it is stated that a local CSO promoted

“...an advocacy campaign to asphalt the Lichinga-Cuamba road, which is a vital gateway to the province of Niassa and to the city of Lichinga in particular.... which was seen by the provincial government as an affront, since organised citizens demonstrated publicly to demand their rights, something that was new to local rulers” (Francisco, 2013).

⁸⁵ A Verdade *online* (18 April 2013). Assembly and demonstration. Know your rights. Accessed via: <http://www.verdade.co.mz/tema-de-fundo/35-themadefundo/36348-reuniao-e-manifestacao-conheca-os-seus-direitos>

⁸⁶ Radio France International (07 March 2015 - updated on 8 March 2015). Police impedes march in memory of Gilles Cistac. Accessed via: <http://www.portugues.rfi.fr/africa/20150307-policia-impede-marcha-em-memoria-gilles-cistac>

⁸⁷ Interview with a member of civil society, 30 March 2015.

The examples cited above clearly reflect how the right to peaceful assembly, although guaranteed in the Constitution and in specific laws, is in some situations deliberately violated by the action of authorities. This trampling on the Law has occurred on the one hand because in many cases the openness to dialogue and the predisposition to learn the current legislation and the fundamental rights of citizens on the part of local officials is limited, and on the other hand, because the historical weight of the one-party political system (Muzzi, 2014), in which freedom of expression, assembly, and demonstration were prohibited, still prevails among some circles linked to the governing apparatus.

7.4 Main Weaknesses and Challenges

The main weaknesses and challenges identified in this dimension are linked to the practical implementation of the legislation in force, which favours the exercise of the right to assembly and peaceful demonstration. In addition to the need for a wide dissemination of information on the law, there prevails a political culture characterised by the exercise of power based on intimidation and coercion against constitutionally enshrined democratic practices. It is imperative that social and political change takes place so that the environment in this dimension can be truly enabling for CSOs.

VIII. GOVERNMENT AND CSO RELATIONS

This dimension makes an analysis of the environment related to Government and CSO relations at different levels of intervention, including the participation of CSOs in processes of political dialogue for development and in decision-making and the factors that restrict or favour CSO participation.

8.1 Main Findings

State/Government and CSO relations are operationalised based on the Constitution of the Republic (CRM, 2004), in the spirit of participation of citizens and social organisations' in the democratisation process and the politics of the country. CSO participation in public policy activities is not, however, explicitly provided for in a specific Law, but the State and Government have created and established opportunities in which CSOs can dialogue and influence decision-making processes. Some of these spaces are institutionalised, based on legislation for that purpose, while others are not.

Spaces for political participation take place at various levels: at the central level of Government sectors, and at provincial and district level. Law 7/2012 of 8 February guarantees the participation of CSOs at collegiate bodies of public administration, while at the provincial and district level Decree 11/2005 of 10 June, which regulates the Law on Local State Organs (LOLE), establishes the participation of CSOs in the process of local governance through mechanisms and fora of consultation promoted by the Government.

The participation of CSOs in the political dialogue with the State and Government, although it is not yet effective, most commonly occurs at the national and provincial levels of the Observatories of Development (OD), which by norm should take place two times a year. However this participation occurs namely at the level of Government sectors and Parliament.

Therefore, although there exists a certain openness on the part of Government so that CSOs can participate and influence the governance process and the development of policies and legislation, this space is not always given for them to participate, with the influence that is expected, in the decision-making process. Thus situations of conflict arise at times. In some cases, in the relationship between State/Government and CSOs, CSOs are seen as potential partners in the implementation of policies and programs of the Government, and in other cases, the Government itself looks at CSOs with distrust and as potential threats to their governance.

8.2 Legal Framework in Force

CSOs in Mozambique are allowed by Law to engage in political processes of the country, including the electoral process. The Constitution of the Republic (CRM, 2004) foresees in its article 78, paragraphs 1 and 2, that

“social organisations, as associations with their own affinities and interests, play a role in the promotion of democracy and in the participation of citizens in politics” and “... contribute to the realisation of rights and freedoms of citizens, as well as to raise individual and collective awareness in fulfilling civic duties”.

In the electoral process, CSOs not only participate in the civic education of the electorate through mobilisation and awareness raising actions, but also participate as members of electoral bodies, in accordance with the Law 9/2014 of 12 March which provides in its article 6 on the constitution of the Mozambique Electoral Commission (CNE), the participation of seven members coming from CSOs to make up this body.

Under the CRM (2004), article 78, CSOs are authorised to participate in public policy activities advocating and lobbying for the adoption of policies and legislation in favour of the interest groups they defend or represent. However, the participation of CSOs in these processes is not explicitly provided for in current legislation on the exercise to freedom of expression and assembly, but the Government and other State institutions have created and established opportunities for participation where CSOs can dialogue and influence decision-making processes.

In this context, although not established in an institutionalised way⁸⁸, these spaces for political participation occur at various levels, namely at the level of Government sectors, at provincial and district level. At the provincial and district levels, Decree 11/2005 of 10 June, which regulates the Law on Local State Organs (LOLE), establishes in its article 20 the participation of CSOs in the local governance process through mechanisms and fora of consultation promoted by the Government. The Observatory of Development (OD) has been the most widely used mechanism for the participation of CSOs in the decision-making process. According to Mario (Pages 25-26)⁸⁹, the OD⁹⁰

“is a consultative and participatory forum between the Government and national and international partners for the promotion of sustainable socioeconomic development, in light of the Government's planning instruments. This forum is held

⁸⁸ It should be mentioned through a Decree-Law for example.

⁸⁹ Tomás V. Mário. The Representative Function of the Assembly of the Republic. SEKELEKANI.

⁹⁰ More details on the Observatories of Development are mentioned in the following chapter.

at central and provincial levels between Government and CSOs, including associations of the private sector, as well as international partners at provincial level, mainly foreign NGOs. A civil society platform called G20 assures the coordination of CSOs' strategies. Through the OD, CSOs participate mainly in the monitoring of instruments established by the Government for poverty reduction, as is the case of the Extended Plan for the Reduction of Absolute Poverty (EPRAP) and of the respective instrument of annual implementation, the Social and Economic Plan of the Government (SEP)."

On the other hand, Law 7/2012, of 8 February, in its article 11, paragraph 3, provides that “public administration bodies organise a way to intersect and articulate with citizens and civil society”, and article 14 guarantees the participation of CSOs in the collegiate bodies of public administration. Paragraph 2 of this article clarifies that

“Representatives of associations, trade unions, non-governmental organisations, or any other forms of legitimate collective organisation, whose object is related to the duties of a determined organ or institution of public administration, are considered members of civil society”.

From the point of view of the State's recognition of the role of CSOs in the process of public administration, this Law 7/2012 more concretely strengthens the spaces for political participation so that the participation of civil society can be made in a more institutionalised manner, and therefore, becomes effective, allowing the latter to in fact influence the decision-making processes.

Therefore one cannot properly speak of the existence of a specific legal framework that regulates or institutionalises State/Government relations with CSOs in Mozambique. Existing spaces for dialogue are mostly framed through the CRM (2004) which recognises the role of social organisations in the promotion of democracy and the participation of citizens in politics, and through the legislation previously mentioned that provides for the participation of civil society in certain areas of public administration and local governance.

8.3 Perceptions on Practice

As mentioned above, although no established regulatory framework exists, Government and CSO relations are shaped through different mechanisms, some being previously established and others that function in an ad-hoc manner. The ODs are the most common and known mechanisms which, in a more official way, operate fairly regularly bringing

together Government, civil society, and development partners⁹¹ to the same dialogue table. In general, the perception is that this mechanism, despite receiving various criticisms with regards to its effectiveness, functions in its task of elevating Government and CSO relations to a level of open and critical debate between parties on the country's governance issues in different areas. However, the fact that the convening of the OD depends solely on the will and readiness of the Government results often to the postponement or cancellation of sessions, particularly in the provinces where the ultimate decision depends on the provincial governor. As the AfriMAP report states (2009:8),

“despite its potential to include citizens in political discussion, the Observatory still has not materialised if it wants a share of this potential, and studies have highlighted several limitations in its operation, arguing for example, that the purely consultative nature of debates, without channels available to link their conclusions to government decision-making processes, or its incapacity to create an effective system of checks and balances to the executive power, have transformed the process into a governmental mechanism for holding public hearings and consultations without any commitment with regards to the decisions and opinions raised at meetings.”

Box 2. To participate or to receive information?

In the World Bank's definition, *“participation is a process through which all stakeholders influence and share control over the establishment of priorities, policy formulation, resource allocation, and access to public goods and services”*. A cross-cutting point to the different analyses of civil society is the sentiment that the term **participation** still does not have its meaning defined in a consensual manner in front of the Government: the participation of civil society in development processes is still limited to a simple consultation or an openness favoring communication, not entailing an effective recognition of civil society as a credible partner in the design of policies. This seems to be the weakest point, from which derives the apparent skepticism and apathy of Mozambican civil society. A shining example of this practice is the status attributed to civil society organisations under the Joint Review: here civil society participates under the status of observer, giving opinions without binding force.

Source: T.V. Mario (Pag. 27): The Representative Function of the Assembly of the Republic. SEKELEKANI

⁹¹ Partners of the Government of Mozambique (bilateral and multilateral) that guarantee financial support to the State Budget.

But the relationship between Government and CSOs is also developed through partnerships that are established at the level of Government sectors, through the respective Ministries, in which CSOs participate in technical working groups in their areas of interest.⁹² Based on this participation, communication between both sides has been regular, and CSOs have been able to access information of interest for their work, which otherwise would be difficult to access. Through these technical working groups, CSOs attempt to influence government policies as well as draft legislation, when these come from the Government's initiative, and also push to influence other levels of decision-making. However, the participation of CSOs in these mechanisms has still been limited due to constraints related to the clarity and definition of this same participation, as discussed in Box 2 above.

As regards the sharing of information between Government and civil society, the perception indicates that the Government does not share information that it considers sensitive, even if being in the public interest, and thus greatly reduces the access to this information. For example, *“in areas such as the environment, land and forests, natural and mineral resources, and environmental impact studies, the Government does not share information, which is why CSOs have had difficulty to access this type of information”*.⁹³

Once again, in this aspect, the sharing of relevant information has been particularly critical in the management of natural resources. An example of such a scenario can once again be taken from the exploration of natural gas in the Rovuma Basin. In 2013, the peasants of the village of Quitupo – a region in which a factory of liquefied gas will be built and that, because of this, the residents from there will be evacuated and resettled in another location – learned that the Government had assigned a Right of Use and Benefit of Land (DUAT)⁹⁴ over their land to an American multinational, Anadarko. According to the Law⁹⁵, the DUAT is attributed to the investor at the culmination of consultations with the local community mediated by the Government, and the consultations are recorded in the minutes which must be signed by both parties. The community of Quitupo, who claims to have never been consulted for this DUAT, demands that the Government delivers to them the

⁹² For example, at the level of the Education Sector there are various technical working groups in which are represented: the sector itself, civil society, and development partners. It is possible to find these technical working groups at the level of other sectors such as Health, Social Welfare, or Agriculture. In some cases, the same operate only within the preparation of the OD, but in others, they have a regular base of operation in which aspects of the implementation of sectorial Social and Economic Plans (SEPs) are discussed.

⁹³ Focus group conducted on 26 March 2015.

⁹⁴ Right of Use and Benefit of Land- title of land ownership.

⁹⁵ Several legal provisions establish the obligation and process of community consultations under the DUAT, particularly: (1) Art.13 of Law n°19/97, of 1 October (Land Law); (2) the Ministerial Decree n°158/2011, of 14 June, on Rules for the Consultations with Local Communities under the DUAT; (3) Regulation on the Resettlement Process Resulting from Economic Activities, approved by Decree 31/2012, of 8 August.

respective minutes, which hasn't happened to this day. In support of the community, the Civil Society Platform on Natural Resources and Mining pursued the same issue with the Ministry of Agriculture in 2014, though without success. In accordance with Law, the Platform appealed to the Administrative Court, requesting it to oblige the Government to disclose the minutes of the alleged consultation in compliance with the law: nonetheless, the Government still has not released the alleged minutes of the community consultation in the district of Palma.

Thus, the perception of respondents is that there still exists a strong climate of mistrust on the part of the State/Government in relation to CSOs, with there being no criteria, procedures, or written guidelines on the access to certain information, and with its access being conditional to the relationship that is built with sectors/institutions so that this information can be accessible to CSOs and the public in general. In this regard, and as mentioned above, it should be noted that the Law of the Right to Information was recently approved⁹⁶, which provides citizens with the right to have access to information from State bodies and other institutions of public administration (art. 3).

In the direct dialogue with the Government, the sharing of information has happened on a recurring basis, a critical aspect that CSOs have always raised since information that comes from the Government and goes to the discussion table is never shared in time with enough advance so as to allow an adequate and appropriate preparation and participation of CSOs at the dialogue table. On the other hand, civil society itself also has its weaknesses with regards to its level of internal organisation and technical capacity to prepare adequately and on time for its dialogue with the Government, which also includes the fact that it often submits documentation at the last minute.

State/Government and CSO relations are also developed through the Parliament, in which spaces for participation tend to be more open, there being greater openness and availability of the Specialised Committees to dialogue on a regular basis with CSOs. In general, CSOs use the dialogue with the Members of Parliament to influence the decision-making process at the level of Government, in matters that must be approved by this body. A concrete example of this is the Civil Society Budget Monitoring Forum (FMO), a platform that brings together CSOs with an interest in the area of monitoring public policies with a focus on public financial management, which on a regular basis sits down with the Specialised Committee of the Parliament in this area- the Parliament Planning and Budgeting Commission (CPO), with which it discusses and influences decision-making on the

⁹⁶ Law 34/2014 of 31 December.

management of public finances in the country.

Other examples of the successful participation of civil society in influencing decision-making are the cases in which it directly influenced, through dialogue with Members of Parliament, the approval of the Land Law⁹⁷, the Family Law⁹⁸, the Domestic Violence Act⁹⁹, and more recently, the Law of the Right to Information¹⁰⁰ and the Penal Code¹⁰¹. Some of these laws were proposed through the initiative of civil society, such as for example the Family Law, the Domestic Violence Act, and the Right to Information Law, and the majority of the articles of these laws were in large part influenced by civil society.

In the Local Advisory Boards (LAB), CSOs participate in these mechanisms under Law 8/2003 and respective Regulation¹⁰², but have had little influence in the decision-making processes, mainly with regards to issues around the implementation of the District Development Fund (FDD)¹⁰³, because of the strong political influence present in the management and access to these funds. However, the main problem in this process is not the lack of civil society participation in the decision-making processes in the FDD, but the very functioning of these fora, which are reduced to management structures that fund themselves rather than being planning and local prioritization bodies.

Although there exists in general a certain openness on the part of Government for CSOs to participate and influence the development of policies and legislation, space is not always given to civil society to participate with the influence that is expected in the decision-making process. There has been situations of conflict at times such as in the case of the Pro-Savana Project¹⁰⁴, in which CSOs have the perception that the Government takes unilateral decisions without consulting or involving civil society. But on the other hand, *“there are initiatives of the Government and Parliament in which the process itself already*

⁹⁷ Law n° 19/97, of 1 October.

⁹⁸ Law n° 10/2004, of 25 August.

⁹⁹ Law n° 29/2009, of 29 September.

¹⁰⁰ Law n° 34/2014, of 31 December.

¹⁰¹ Law n° 35/2014, of 31 December.

¹⁰² Law on Local State Organs (LOLE), regulated by Decree 11/2005 of 10 June.

¹⁰³ The FDD is a fund created by the Government to fund local initiatives of poverty reduction and acts in all districts of the country; it is managed by a Local Advisory Board. It was approved by Decree n° 90/2009 which establishes in its article 1 that the FDD is a public institution with legal status and administrative autonomy”.

¹⁰⁴ ProSavana means “Tripartite Cooperation Program for the Agricultural Development of Tropical Savannah in Mozambique”, which aims to “create new models of agricultural development, taking into account environmental and socio-economic aspects, seeking rural and regional agricultural development oriented to the market and with competitive advantages”. It is a Government program under the Ministry of Agriculture and Food Security.

*provides for the participation of CSOs, and in these cases the Government itself calls for civil society to participate*¹⁰⁵, as was the case of the constitution of the National Human Rights Commission (CNDH), whose President comes from civil society, and of the Supreme Council for the Media (CSCS), whose President also comes from civil society.

With regard to the mechanisms that CSOs can use to appeal certain decisions of the Government that go against their interests or those of their constituencies, there exist several as provided in the legislation. For example, the right to demonstrate provided for in Laws 9/91 and 7/2001 respectively, the resources and petitions laid down in the CRM (2004), or other mechanisms such as the use of media to broadcast press releases or positions on certain issues. Meetings with the responsible Parliamentary Committees and Government sectors also have been used as forms of defence by CSOs¹⁰⁶. Lambda for example, which has been waiting for roughly seven years to receive the authorisation of its registration, could in accordance with Law 8/91, appeal to the Administrative Court, but instead chose to use another mechanism which is the direct dialogue with the responsible institution, the Ministry of Justice, to solve its case.¹⁰⁷

The general perception is that in some cases, within the relationship between Government and CSOs, CSOs are seen as potential partners in the implementation of policies of the Government, however, in other cases, the same Government views CSOs as potential threats to their governance project. Although there does not exist explicit limitations or non-legal barriers to the initiatives of CSOs, *“there is room for their participation, but with limited influence in decision-making processes, especially at the sector level, where the openness of these platforms depends largely on the sensitivity of those in power”*.¹⁰⁸

8.4 Main Weaknesses and Challenges

In this dimension, the main weaknesses and challenges found relate to the climate of mistrust that has characterised relations between Government and CSOs as a whole, although there are encouraging examples of advances made in the strengthening of these relations. On the other hand, the lack of institutionalisation, through its clear rules,

¹⁰⁵ Interview with a Senior Official of the Ministry of Justice, 2 April 2015.

¹⁰⁶ In general, the defence mechanisms most commonly used by CSOs are public positions diffused through the media, letters addressed to decision-makers, and meetings held with responsible institutions. The level of success in using these mechanisms is difficult to assess, however, there are success stories as is the case of the issue of the draft Law on Perks of Deputies which was returned to the Assembly of the Republic by the Head of State due to the pressure exerted by CSOs using these mechanisms of defence.

¹⁰⁷ Interview conducted with a representative of Lambda on 10 March 2015.

¹⁰⁸ Focus group conducted on 26 March 2014.

mechanisms of participation, and political dialogue with the Government, which usually takes place at the sector level and OD, is seen as a weakness that does not strengthen the effective participation of CSOs in these mechanisms, although such mechanisms are established and operate according to the interest and speed of each sector and the Government itself as a whole.

However, a major challenge found within this dimension has to do with the strengthening of the CSOs' own capacity, at all levels, to effectively participate in political dialogue with the Government and influence processes of decision-making at these levels. This is only possible if CSOs organise and capacitate themselves continuously so as to not walk behind the Government, which is what has happened in many situations. The ability of CSOs to anticipate political events so as to influence them properly is fundamental in the process of building a balanced relationship and mutual respect with the Government, thus avoiding that CSOs are only used to legitimise processes and decisions already taken by the Government itself.

In conclusion, the relationship between Government and CSOs is tense at some moments, but it is also cordial in many others, and is in a process of permanent construction. However, despite the existing weaknesses, civil society in Mozambique today is increasingly vibrant. For this relationship to become effective it is important for this vibrant civil society to become increasingly comprehensive and not limited to major urban centers, and for government leaders at different levels to stop viewing CSOs as an instrument serving the opposition or external agendas.

IX. TAXATION

The dimension of taxation discussed in this section is one of four optional dimensions of the EENA and attempts to understand the environment with regards to the taxation system to which CSOs in Mozambique are subject to, this being an area of concern for civil society due to the diversity and nature of CSOs and the taxation system of the country itself.

9.1 Main Findings

The main finding in this dimension is that CSOs in Mozambique are considered taxable entities, and therefore must pay taxes to the State. However they are framed in specific Law, which differentiates them from other for-profit legal entities.

Another important finding is that although CSOs, in their nature and mission, are eminently public service organisations– in the sense that their mission is to provide humanitarian assistance, build capacity of citizens and communities, advocate in political, economic and social issues, and even complement the actions of the State and Government – both Law 8/91 of 18 July and Law 4/94 of 13 September do not consider this fact. The consideration of all CSOs, regardless of their area of intervention, as public service organisations would be an important step towards the strengthening and sustainability of CSOs.

9.2 Legal Framework in Force

CSOs/associations, under Law 8/91, of 18 July, under article 1, are entities that do not pursue profit, and pursuant to article 10 of the Tax Code on Corporate Income Tax (CIT), approved by Law n° 34/2007, of 31 December, are exempt from this tax. This means that from a legal point of view CSOs/associations are treated differently than for-profit entities which have the obligation to pay the CIT.

Despite the CIT Code declaring that CSOs/associations are exempt from taxes on corporate income, they are under article 8 of Law n° 15/ 2002 of 26 June on the Tax System, in conjunction with article 14° of Law n° 2/2006, of 22 March¹⁰⁹, considered as subject to tax, and they assume the position of substitute taxpayer because by being a debtor entity they have the obligation to withhold money at the source and deliver this tax to the Tax Creditor (State), by completing the Payment Guide M/19, and delivering this until the 20th day of the following month in which the tax will be deducted.

Thus, pursuant to the provisions of legal instruments cited above, CSOs/associations must withhold taxes at the source whenever they make payments to taxable persons of the

¹⁰⁹ Tax Law.

Personal Income Tax (PIT)¹¹⁰, of all remunerations, even if supplementary, and revenues earned by taxable entities of the Corporate Income Tax (CIT)¹¹¹. Furthermore, CSOs/associations are also obliged to contribute to Social Security.

Regarding the Value-Added Tax (VAT), which is the consumption tax that is levied on the transfer of goods and services on national territory, CSOs/associations are not under the provisions of paragraph 3, article 2° of the VAT Code, approved by Law n° 32/2007, of 31 December, taxable from this tax when they realise operations in favour of the people without there being a direct counterpart. In short, CSOs assume in this VAT the position of the final consumer, thus not being able to settle and deduct the tax.

CSOs are also subject to the payment of other fees such as customs duties when importing goods for their use and for the use of their beneficiaries on the ground. However, it should be noted that political parties and members of the Assembly of the Republic for example, are entitled to certain tax benefits including customs exemptions on imports of goods, a privilege that would be very useful if equally applied to CSOs. Fees and other taxes, such as the council tax and fees related to the licensing of vehicles for example, are also charged by the State to CSOs/associations.

With specific regard to the tax exemptions for CSOs/associations, these are provided for in legislation related to the Patronage Law.¹¹² Therefore, this Law encompasses and provides tax exemptions to entities that work on development, as established in article 6, as well as in the Tax Law 2/2006 in its article 9 on tax benefits.¹¹³ This Law considers in article 9, paragraph 1, that

“the tax benefits are exceptional measures and tend to be temporary, which prevent or reduce the taxation of manifestations of contributive capacity and pursue extra fiscal objectives, namely of economic orientation, considered of relevant public interest, according to tax legislation.”

The Tax Law makes it clear that the tax benefits, which include exemptions, as well as being exceptional and temporary, are awarded to those actions of public interest. In this way, CSOs/associations can benefit from tax exemptions under the declaration of public utility.¹¹⁴ In turn, Decree 37/2000 which establishes the requirements and procedures for public utility specifies (art. 6):

¹¹⁰ Approved by Law n.° 33/2007, of 31 December.

¹¹¹ Approved by Law n.° 34/2007, of 31 December.

¹¹² Law 4/94, of 13 September.

¹¹³ Note however that Law 4/94 does not refer explicitly to the term “philanthropy” although in practical terms it establishes the legal provisions for its realisation.

¹¹⁴ Law 8/91, art. 11 and Decree 37/2000, of 17 October.

“Public utility associations enjoy the following tax exemptions: a) Industrial Tax; b) The Sisa Code, on the acquisition of real estate by the entities referred to in this decree, when exclusively intended to pursue the association’s objectives for the purposes intended for an association of public interest; c) A stamp duty due for the registration of an association or change in its statutes; and d) When goods are later passed to third parties. These new acquirers do not benefit from tax breaks.”

Therefore, tax exemptions are granted to CSOs/associations in this context, in accordance with legislation referenced here, meaning that all CSOs/associations that do not require a declaration of public interest are not eligible to apply for the tax exemptions.

The legal environment regarding the taxation of CSOs in Mozambique is not favourable for their operation. In the chapter on tax exemptions, the framework is even more complex for the operation of CSOs/associations, to the extent that they perform activities of public utility and their tax treatment should take into account this aspect, regardless of their request or not of the declaration of public utility. On the other hand, not all CSOs have the capacity to meet their tax obligations due to factors which will be developed in the following chapter.

9.3 Perceptions on Practice

In general, CSOs have an understanding that they must fulfill their civic duties by paying their taxes due, but at the same time, the environment for the compliance of CSOs/associations as a whole is not favourable.

Some respondents believe that *“taxes should not be collected from CSOs because these are non-profit organisations, which is why it makes no sense for the State to impose taxes to organisations that pursue a purely social purpose and not to generate profit”*¹¹⁵. Some CSOs therefore argue that the State should allocate funds from the State Budget (SB) for CSOs, mainly to those at the local level, and through this can request performance reports and collect taxes, considering important and necessary to review the current regulations that oblige CSOs to pay taxes: *“there is no tax justice for CSOs”*.¹¹⁶

Regarding tax exemptions, practice shows that in fact CSOs do not have the right to this benefit when they import, for example, goods for their work, with the exception of educational materials that are covered by Law¹¹⁷ and thus not requiring payment of customs

¹¹⁵ Interview with a member of civil society, 2 of April 2015.

¹¹⁶ Idem.

¹¹⁷ Patronage Law 4/94 of 13 September.

fees. However, CSOs consider that, because they do not gain a profit with the import of these goods, it does not make sense that the State charges taxes on goods that will be used, in many cases, for free distribution in the targeted communities of these CSOs or for the work they implement in the communities.

Although there are no favourable tax conditions for CSOs, there is also no perception that the taxes are used as a vehicle to suppress the practices of CSOs. Regarding financial sustainability, CSOs have a strong perception that the payment of taxes to which they are subject influences their financial sustainability as the amounts they are required to pay monthly in taxes end up having a direct implication on their capacity to operate.

9.4 Main Weaknesses and Challenges

The main weaknesses and challenges in this dimension were identified as:

- i) The State imposes the payment of taxes to CSOs despite them being not-for-profit entities;
- ii) CSOs are not entitled to tax exemptions on the import or acquisition of goods, only if they require a declaration of public utility;
- iii) The payment of taxes by CSOs does not help them to gain financial sustainability, so there is no tributary justice in this process;
- iv) It is important to review the tributary policy regarding CSOs/associations considering that they are organisations of an eminently social purpose that survive from donations and not from their own generation of resources with the purpose to obtain and distribute profits among their members and employees.

X. CONCLUSION

The EENA provides an analysis on the enabling environment for civil society in Mozambique. In the seven dimensions that the evaluation addressed, it was found in general that the environment for the operation of CSOs is not adequately favourable for their action.

This unfavourable environment starts with the existence of serious obstacles to the formation and registration of CSOs / associations in Mozambique. Although Law 8/91 makes room for their creation and registration, practice shows that a large part of existing CSOs face obstacles to access the registration process, at its different levels of operation.

Obstacles are also identified in terms of their operation, in which from the legal point of view Law 8/91 does not limit the ability of this operation. In practice some limitations are imposed by the Government especially at the local level, where there has been a certain degree of control regarding the interventions of CSOs, and largely constrains their ability to intervene.

On the other hand, there remain challenges in strengthening the internal capacity of CSOs themselves as regards building their knowledge of the legal framework and their rights in light of different legislation that sets the intervention of CSOs. The strengthening of their internal capacity is a key factor for CSOs to be able to stand against non-institutionalized and non- legal practices from State institutions and Government that constrain the operational capacity of CSOs.

The access to resources is a serious challenge for CSOs to intervene, become comprehensive, and establish themselves as true watchdogs of governance, demanding accountability and the provision of public accounts. Apart from complementing the work of State / Government, CSOs in Mozambique should act as promoters of democracy, participating in fact in every aspect of life in the country. For this reason, it is important that the environment related to access to resources on the part of CSOs is actually conducive to its operations, creating an appropriate legal framework to allow equitable access to public resources through the State Budget for CSOs.

Although the legislation in force does not put barriers so that CSOs cannot have access to internal and external funding, there is a need to improve transparency in the processes of access to external resources from donors, by providing timely information on the calls for tenders and also providing details about the results of the awards.

The legal environment for CSOs to express their opinions freely and assemble peacefully is favourable, under the framework of the democratic rule of law and through the respect for fundamental rights that the CRM (2004) enshrines. However, the exercise of the right to expression and peaceful assembly by citizens and CSOs has been, in some cases, constantly violated by authorities at different levels. In this sense, it is important that the institutions of the State and Government responsible for ensuring the implementation of the Law are effectively trained and encouraged to be the guardians of the Constitution and the Law, and defenders of the rights of citizens.

CSOs in Mozambique are becoming increasingly vibrant and participative, taking full advantage of the opportunities for participation that different spaces for dialogue of State and Government have to offer. Although one cannot properly speak of the existence of a regulatory legal framework for the relations between the State /Government and CSOs, there are established mechanisms through which these relationships take place. An important aspect of this dimension is that there is a recognition in the law on the role of CSOs in promoting democracy and citizen participation in political affairs. However, the existence and availability of these spaces for dialogue is still not effective and CSOs' participation in them is generally limited due to factors such as the lack of sharing of necessary information which is necessary for a proper preparation by CSOs, and also due to the absence of an adequate guiding and regulatory framework that enables and facilitates CSO participation and ensures that these spaces for dialogue indeed work.

Finally, the legal environment on the taxation of CSOs, by not being favourable for their operation, constrains their ability to be able to be financially more sustainable and therefore more interventional. Since these organisations by nature work for the public good, they should have a special tax regime that reflects that reality. In other words, the public utility of CSOs, as provided by the Law, should be fully comprehensive to all CSOs, not only limited to those that collaborate with any state entity and request that right.

In conclusion this evaluation shows, based on the analysis of the legal framework and the perception of practice, that there remain serious challenges for the operation of CSOs in Mozambique. Although in some dimensions the legal and practical environment appears to be more favourable than others, in general the environment cannot be considered favourable. The most urgent challenge for this environment to become enabling involves the revision of Law 8/91, the Law of Associations, adapting it to the current development challenges of CSOs and the country. The second challenge includes the creation of a more equitable financing architecture for CSOs to ease their dependence on external funds and progressively enhance access to internal public funds through the State Budget. The third challenge is to make the current legislation on freedom of expression and peaceful

assembly and of access to information effectively known and implemented accordingly so that the rights of citizens and CSOs in general are safeguarded and respected. The fourth challenge demands the establishment of a real political will that ensures the participation of CSOs in governance processes at different levels, eliminating the existing environment of distrust on the part of State/Government in its relationship with informed citizens and CSOs in particular. The fifth and final challenge, calls for the establishment of a fairer tax system adequate to the real context of CSOs operating in Mozambique.

BIBLIOGRAPHY

AfriMAP. *Moçambique, Sistema Jurídico e Institucional*. Accessed on 27 February 2015. Available at: <http://www.afrimap.org/english/images/report/moz-por-chapter-1.pdf>

AfriMAP (2009). *Moçambique, Democracia e Participação Política*. AfriMAP and Open Society Initiative for Southern Africa. Open Society Institute Network.

CHICHAVA, S and Pohlmann, J (2010). *Uma Breve Análise da Imprensa Moçambicana*. In Brito, L *et al.* (2010). *Desafios para Moçambique 2010*. IESE, Maputo.

FRANCISCO, Albino (2007). *Participação da Sociedade Civil Moçambicana no Processo de Governação: uma reflexão em torno do MARP*. Accessed on 26 February 2015. Available at: www.fdc.org.mz

FRANCISCO, Albino (2013). *Relatório de Estudo de Caso no Âmbito da Monitoria e Avaliação do MASC: o Caso da Estamos – Organização Comunitária*. Study for the Support Mechanism to Civil Society (SMCS), July 2013.

FRANCISCO, António *et al* (2008). *Índice da Sociedade Civil em Moçambique 2007*. Foundation for Community Development of Mozambique (FDC).

Governo da Província de Maputo (2009). *Como se Deve Organizar um Estatuto para uma Associação Juvenil*. Direcção Provincial da Juventude e Desportos. Accessed on 30 March 2015. Available at: <http://www.pmaputo.gov.mz/documentos/Portalinho.pdf>

ILAL, Abdul *et al* (2014). *Questionando a Sociedade Civil: uma Perspectiva de Moçambique*. Accessed on 4 March 2015. Available at: http://www.dsairland.org/download/pdf/questionado_a_sociedade_civil_uma_perspectiva_de_mocambique.pdf

INE (2006). “As instituições sem fins lucrativos em Moçambique: Resultado do Primeiro Censo Nacional (2004-2005)”, National Statistics Institute, Maputo.

ITAD and COWI (2012). *Joint Evaluation of Support to Civil Society Engagement in Policy Dialogue*. Mozambique National Report. Evaluation Department, Ministry of Foreign Affairs of Denmark.

MARIO, T. Vieira. *A Função Representativa da Assembleia da República: Por um Parlamento Aberto ao Cidadão*. SEKELEKANI, Maputo.

MUZZI, Mariana (2014). *Strengthening Civil Society’s Role in Demanding Fulfillment of Child Rights. Applying Lessons Learned from Brazil to Mozambique*. UNICEF-INSEAD Leadership Development Programme, Action Learning Project.

CESC, JOINT, ROSC (2014). *Acordo de Princípios de Conduta e Ética das Organizações da Sociedade Civil em Moçambique*. December 2014, Maputo.

Gouveia, Susana and Massangai, Arão (1996). *Código Civil e Legislação Complementar*. Maputo.

SHENGA, C. & Mattes, R. (2009). *Cidadania acrítica numa sociedade de baixa informação: Os Moçambicanos numa perspectiva comparativa*. In L. de Brito, C. Castel-Branco, S. Chichava e A. Francisco, eds., *Citizenship and Governance in Mozambique: Information presented at the Inaugural Conference of the Institute of Social and Economic Studies*, Maputo: IESE. Accessed on 25 March 2015. Available at: http://www.iese.ac.mz/lib/publication/livros/cidadania/IESE_Cidadania_5.CidAcr.pdf

Southern Africa Trust: “(Dis)enabling the Public Sphere: Civil Society Regulation in Africa. Volume 1”, Chapter 13: *The Legislative Environment for Civil Society in Mozambique*”. Matias Capapelo. Accessed on 4 April 2015. Available at: www.southernafricatrust.org

State of the Union (2010). *Relatório do Estado da União Africana*. Accessed on 6 April 2015. Available at: <http://www.sotu-africa.org/wp-content/uploads/2012/11/Mozambique-2010-report1.pdf>

Technical University of Lisbon (2013). *Organizações Não Governamentais e Desenvolvimento: Análise do Trabalho de Algumas ONG em Moçambique*. Giulia Mauri, School of Social and Political Sciences, Lisbon.

UNDP (2001). *The Mirror of Narcissus – Knowledge and Self-conscience for a better development of the Mozambican Civil Society. Lessons learned and recommendations from Mozambique on its experience in implementing the CIVICUS Civil Society Index*. March 2011. Accessed on 3 April 2014. Available at: http://www.mz.undp.org/content/dam/mozambique/docs/Democratic_%20Governance/P%20articipatory%20Civil%20Society%20Assessments%20Report.pdf

USAID (2007). *Quadro Legal do Cooperativismo em Moçambique*. Accessed on 23 April 2015. Available at: <http://ampcmmz.com/documentos/91391158609quadyolegaldocoopeyativismoemmocambique-estudo2007.pdf>

Legislation

Decree nº 11/2005 of 10 June – Approves the Regulation of the Law on Local State Organs. Accessed on 6 March 2015. Available at: <http://www.portaldogoverno.gov.mz/Legisla/legisSectores/adminEst/regulamento%20da%20lei%20orgaos%20locais.pdf>

Decree-Law n° 2/2006 of 3 May – Establishes the terms and procedures for the creation, recognition, and registration of agricultural and livestock associations. Accessed on 20 April 2015.

http://www.tete.gov.mz/legislacao/agro-pecuaria/Decreto_Lei_N2_2006_3_Maio.pdf

Law n° 18/91 of 10 August – Press Law. Accessed on 6 March 2015. Available at:

http://www.portaldogoverno.gov.mz/Legisla/legisSectores/imprensa/lei_de_imprensa.pdf

Law n° 8/2003 of 27 March – Law on Local State Organs. Accessed on 6 March 2015. Available at:

http://www.dno.gov.mz/docs/legislacao_interna/orgaos_locais/Lei_OrgaosLocaisEstado.pdf

Mozambique, National Press (2014). *Boletim da República, Lei n° 34/2014 de 31 de Dezembro: Lei do Direito a Informação*. Series I, Number 105, Wednesday, 31 December 2014.

Mozambique, National Press (1991). *Boletim da República, Lei n° 8/91 de 18 de Julho: Regula o Direito a Livre Associação*. Series I, Number 29, Wednesday, 18 July 1991.

Mozambique, National Press (1991). *Boletim da República, Lei n° 9/91 de 18 de Julho: Regula o Exercício a Liberdade de Reunião e de Manifestação*. Series I, Number 29, Wednesday, 18 July 1991.

Mozambique, National Press (2001). *Boletim da República, Lei n° 7/2001 de 7 de Julho – Altera os Artigos 3, 4, 7, 8, 16 e 17 da Lei n° 9/91*. Series I, Number 27, Saturday, 7 July 2001.

Mozambique, National Press (2004). *Boletim da República, Constituição da República de Moçambique 2004*. Series I, Number 51, Wednesday, 22 December 2004.

Mozambique, National Press (1994). *Boletim da República, Lei n° 4/94 de 13 de Setembro: Lei do Mecenato*. Series I, Number 37, Tuesday, 13 September 1994.

Mozambique, National Press (2011). *Boletim da República, Lei n° 7/2011 de 11 de Janeiro: Lei do Voluntariado*. Series I, Number 1, 11 January 2011.

Mozambique, National Press (2006). *Boletim da República, Lei n° 2/2006 de 22 de Março: Lei Geral Tributária*. Series I, Number 12, 22 of March 2006.

Mozambique, National Press (2000). *Boletim da República, Decreto n° 37/2000 de 17 de Outubro: Estabelece os Procedimentos para a Declaração de Utilidade Pública*. Series I, Number 41, Tuesday, 17 October 2000.

Mozambique, National Press (1998). *Boletim da República, Decreto nº 55/98 de 13 de Outubro: Cria o quadro legal que define os critérios da autorização, objectivos a atingir e mecanismos da actuação das Organizações Não-Governamentais Estrangeiras*. Series I, Number 40, Tuesday, 13 October 1998.

Mozambique, National Press (2009). *Boletim da República, Lei nº 23/2009 de 08 de Setembro: Lei Geral das Cooperativas*. Series I, Number 38, Monday, 28 September 2009.

Mozambique, National Press (2006). *Boletim da República, Decreto-Lei 3/2006, de 23 de Agosto: estabelece o regime para a constituição, alteração e dissolução de pessoas colectivas e altera os artigos 168, 185, 1143, 1232 e 1239 do Código Civil*. Series I, Number 34, Wednesday, 23 August 2006.

Mozambique, National Press (2006). *Boletim da República, Decreto nº 44/2007, de 30 de Outubro: define os procedimentos para o reconhecimento das associações juvenis, à luz da Lei n.º 8/91, de 18 de Julho*. Series I, Number 43, Wednesday, 24 October 2007.

Annex 1 – Requirements for the Registration of a CSO

Law 8/91, article 5, establishes the procedures for the specific recognition of associations in Mozambique. Although not fully detailed in the Law in question, practice shows that the requirements and procedures requested in the process of registration of a CSO/association are the following¹¹⁸:

- The existence of a minimum of ten founding members of an association, aged equal or superior to eighteen years;
- Minutes proving the realisation of a Constituent General Assembly in which all statutes of the association are approved;
- Statutes approved in the Constituent Assembly which must include the association's purpose, mission and objectives, and other internal operating procedures of the association. These should not harm what is enshrined in the legislation in force on the operation of non-profit associations;
- Based on the minutes approved in the Constituent Assembly signed by ten founding members, a public deed is requested at the Notary Public;
- Each founding member must have a certified copy of their personal identity document at the Notary Public;
- The ten founding members must then request the acquisition of Criminal Records at the National Civil Identification Directorate;
- Furthermore, applicants should head to the Registry of Legal Entities or to their province representative and request a Name or Annulment of Social Designation Reservation Certificate, which confirms the non-existence of an association of the same name and objectives contained in the draft statutes;
- Following the acquisition of the Name Reservation Certificate, applicants must submit a request duly recognised by the Notary Public, with the signature of 10 founding members who requested police clearance certificates addressed to the Ministry of Justice (in the case of an association of national scope) or to the provincial Governor (when the association is of local scope) expressing the collective and common interest of 10 applicants joining to pursue lawful purposes as stated in the statutes and requesting the constitution of the association;
- Once the Order of Legal Recognition is obtained, a respective copy is sent to the Registrar of Registries and Notary Public of the area where the association is based for the purposes of definitive nominative registration in its own book (registration). This act results in a Notarial Registration Certificate, which is joined by a copy of the order of the Minister of Justice or of the provincial Governor, the statutes of the

¹¹⁸ Government of the province of Maputo (2009).

association approved by the responsible entity and the electronic version of the same (in its original format approved by the responsible entity) and the Name Reservation Certificate;

- The documents referred to in the previous paragraph must be sent to the National Press, requesting publication in the Bulletin of the Republic of the Order of legal recognition and on its respective statutes. The publication has its costs defined in accordance with the volume of its statutes, which is supported by the entity requesting its publication in the Bulletin of the Republic;
- After the completion of all aforementioned steps, the association acquires legal status as a legal entity and becomes legally recognised in accordance with Law 8/91.

Annex 2 - Notes on the Proposal to Change the Law of Associations

Topic	Proposal	Current regime (Law n.º 8/91, of 18 July, Decree n.º 21/91 of 3 October and the Decree n.º 37/2000, of 17 October)
1. Legal status	Acquisition through registration at the Registry of Legal Entities (n.º 2 of article 10).	Acquisition through the recognition given by the Ministry of Justice and the Governor of the province (articles 5 of Law n.º 8/91, of 18 July, and 1 and 2 of Decree n.º 21/91 of 3 October).
2. Minimum number of founders	Not less than 5 people (paragraph a) of n.º 1 of article 11).	Not less than 10 people (paragraph a) of article 4 of Law n.º 8/91, of 18 July).
3. Mandatory publication of statute in the Bulletin of the Republic	Only an extract of the statute containing key information, such as name, location, purpose, organs (n.º 2 of article 10)	Of the entire statute (n.º 2 of article 5 of Law n.º 8/91, of 18 July).
4. Autonomy and independence	Provided for in article 6 that associations enjoy administrative, equity, and financial autonomy, and pursue their objectives freely, according to general principles of the law and the will of associates expressed in their statutes, without the interference of any public or private, national or foreign entity.	No explicit reference.
5. Definitions	Article 2 contains definitions of the terms economic activity, association, division, confederation, declaration of public utility, federation, non-profit, forum, merger, insolvency, social organs, legal status, network, registration, and society.	No reference.
6. Division and merger	Article 40 provides for the possibility of an association to	No reference.

	transfer portions of its assets to one or more associations, constituted for this purpose or already in existence; and the union of two or more associations to form a new association, that will succeed them in all rights and obligations.	
7. Disregard of legal status	The loss of legal status when an association is used as an instrument for fraud or aiming to harm the interests of the associate, worker, third party, State, and community where the association operates (article 39).	No reference.
8. Declaration of public utility	It is foreseen that even associations that do not cooperate with the Public Administration may possibly benefit from this statute as long as they pursue objectives of general or community interest (article 34).	It is foreseen that only associations which cooperate with the Public Administration may possibly benefit from this statute as long as they pursue objectives of general or community interest (article 11 of Law n.º 8/91, of 18 July and article 1 of Decree n.º 37/2000, of 17 October).
9. Competence for the declaration of public utility	The Council of Ministers, the Minister of Justice, and the Governor of the province, depending on whether the association is of national, regional, and local scope (article 35).	The Council of Ministers and the Minister of Justice, under delegated authority (n.º 1 of article 12 of Law n.º 8/91, of 18 July and n.º 1 of article 3 of Decree n.º 37/2000, of 17 October).
10. Tax exemptions	Extension for the tax on inheritance and donations, tax on value added, municipal property tax and customs duties (article 36).	Only foreseen for the Corporate Income Tax; Stamp Duty required for the registration of an association or change to its statutes; and Sisa, on the acquisition of real estate, when exclusively destined to achieve the purposes of a public utility association (article 6 of Decree n.º 37/2000, of 17 October).

Annex 3 - Assessment Matrix

Note:

This table serves as a guidance tool for EENA partners to conduct an assessment of their findings and evaluate the situation in terms of a green (enabling), yellow (partially enabling) or red (impeding) flag “ranking”.

EENA Assessment Matrix			
Mandatory Dimensions			
<i>Dimension #1: Formation</i>			
Factual Questions	Green Flag	Yellow Flag	Red Flag
1. What legal instruments (laws, regulations, decrees, etc.) currently govern(s) the formation of Civil Society Organizations (CSOs) ¹¹⁹ ?	Few enabling legal instruments; clear, non-overlapping regulatory regimes 	Several legal instruments; some overlap, lack of clarity in regulatory regimes	Many legal instruments; unclear, overlapping regulatory regimes
2. Who is legally permitted to serve as a CSO founder? Who is excluded from serving as a founder?	Minimal eligibility requirements (e.g., residency of founders)	Extensive eligibility requirements (e.g. residency and citizenship of founders)	Extremely burdensome eligibility requirements (e.g. citizenship and clean criminal record or license/occupation of founders) 
3. What minimum number of individuals is required to form a CSO? What are the requirements of membership?	Fewer than 5 minimum members; minimal eligibility requirements	5-10 minimum members; extensive eligibility requirements 	More than 10 minimum members; extremely burdensome eligibility requirements

¹¹⁹ A Civil Society Organization (CSO) is defined, for the purposes of this assessment, as a formalized group of individuals that are independent of government and do not function as for-profit businesses. Owing to the fact that different legal frameworks govern their formation, CSOs in this assessment do not include trade unions, political parties, or communities of worship.

<p>4. What procedures are required to register/incorporate a CSO? (A comparison can be made with registering business entities.)</p>	<p>Minimal registration procedures; comparable with registration of for-profit legal entities</p>	<p>Extensive registration procedures</p> 	<p>Extremely burdensome registration procedures</p>
<p>5. Is there a minimum capitalization requirement to register a CSO?</p>	<p>No minimum capitalization requirement (except for a reasonable requirement for foundations)</p> 	<p>Nominal minimum capitalization requirement for most CSOs and/or burdensome capitalization requirement for foundations</p>	<p>Burdensome minimum capitalization requirement for associations and/or foundations</p>
<p>6. What are the specific grounds for rejecting a CSO's application for registration/incorporation? Are such grounds sufficiently detailed?</p>	<p>Minimal, clearly defined grounds for rejecting a CSO's application</p>	<p>Numerous, somewhat unclear grounds for rejecting a CSO's application</p>	<p>Extensive, vague grounds for rejecting a CSO's application (excessive discretion accorded to registrar)</p> 
<p>7. Must CSOs adhere to certain categories of purpose before being allowed to form; or are some CSOs with certain agendas (human rights protection or democracy-promotion, for example) forbidden from forming?</p>	<p>No restrictions on CSO's purpose</p> 	<p>Requirement that CSOs adhere to purposes stated in the law</p>	<p>Restrictions on CSO's purpose; prohibition of certain purposes</p>
<p>8. Can registration decisions be appealed? If so, how frequently are registration</p>	<p>Clear, available means for unbiased appeal</p> 	<p>Somewhat unclear or unavailable means for appeal; biased review</p>	<p>No means for appeal</p>

decisions appealed? What are the results?		(appeal is to the registrar or other implicated official)	
9. What documentation is required for a CSO's incorporation/registration?	Minimal documentary requirements (such as basic contact information and bylaws)	Extensive documentary requirements (e.g., minutes of founders' meeting, ministerial certification, detailed statement of purpose/activities) 	Extremely burdensome documentary requirements (contact information for all board/members/staff/participants, workplans, statement of assets)
10. Are CSOs required to regularly renew their registration?	No renewal required 	Renewal required every few years	Renewal required annually
11. What registration fees are required?	No or nominal registration fees 	Nominal registration fees; comparable with private sector registration fees	Burdensome registration fees; excessive compared to private sector registrations fees
12. What is the approximate cost to register a CSO, and how long does the process typically take?	Nominal registration costs; clear deadlines in the law; less than 30 days	Burdensome registration costs; unclear deadlines for the registrar; 30-90 days 	Prohibitive registration costs; unclear or no deadlines for the registrar; more than 90 days
13. How many CSOs are currently registered?	Please include your own assessment of the situation based on: <ul style="list-style-type: none"> - The # of CSOs registered, - The # of CSOs/1000 people, - The % of pending applications; or another relevant indicator.		

<p>14. Are there draft laws or regulations that, if adopted, would restrict or, alternatively, ease the formation of CSOs? If so, please summarize the content of the key provisions and in what stage of the legislative process it currently stands.</p>	<p>Pending legislation/regulations that will significantly ease the formation of CSOs</p> 	<p>Pending legislation/regulations that may restrict the formation of CSOs</p>	<p>Pending legislation/regulations that will severely restrict the formation of CSOs</p>
<p>Perception Questions</p>	<p>Green Flag</p>	<p>Yellow Flag</p>	<p>Red Flag</p>
<p>1. Is the entity responsible for registering CSOs sufficiently funded and staffed?</p>	<p>Yes</p>	<p>Some lack of capacity/resources</p> 	<p>Unable to fulfill mandate</p>
<p>2. Is registration easily accessible? E.g., are there sufficient locations/centers around the state for registering CSOs, or is the process all done electronically?</p>	<p>Yes</p>	<p>Registration difficult to access for many CSOs</p> 	<p>Registration accessible to only a few CSOs</p>
<p>3. What non-legal and/or non-governmental barriers, such as slow or ineffective bureaucracies, inability to access funds, or difficulty buying/leasing property, affect the formation of CSOs?</p>	<p>No non-legal or non-governmental barriers to formation</p>	<p>Some non-legal and/or non-governmental barriers to formation, such as unreasonable bureaucratic delays that make it significantly more difficult to form a CSO</p> 	<p>Prohibitive non-legal and/or non-governmental barriers to formation, such as banks refusing to work with CSOs, that create a significant barrier to entry</p>

4. To what extent is there a perception of excessive discretion, favoritism (political, ethnic, religious, etc.), and/or corruption in the registration process?	None	Some perceived unfairness (discretion, favoritism, corruption) 	Widespread perceived unfairness (discretion, favoritism, corruption)
Dimension #2: Operation			
Factual Questions	Green Flag	Yellow Flag	Red Flag
1. What law(s) directly govern(s) the operation of CSOs? Do any other laws affect or influence the operation of CSOs?	Few enabling laws; clear, non-overlapping regulatory regimes 	Several laws; some overlap, lack of clarity in regulatory regimes	Many laws; unclear, overlapping regulatory regimes
2. Are CSOs required to notify the government of any meetings? If so, of each meeting or only key meetings? Are they required to notify the government of the list of candidates for the board of directors? Of the results of elections?	No/minimal required notification (i.e. only in case of changes in the board of directors or legal representatives of the CSO) 	Some notification requirements beyond the minimal ones	CSOs required to notify the government of all meetings, elections, election results
3. Are CSOs required to submit periodic reports to the government? What kind of reports – e.g. activity or financial reports –, and how often?	Annual reporting appropriate to CSO's size 	Multiple and/or extensive annual reports required	Extremely burdensome, frequent reporting required

4. Are CSOs required to periodically report to the government for any other reasons? What reasons and how often?	No/minimal other reporting 	Some other reporting required	Extremely burdensome, frequent other reporting required
5. Are CSOs subject to government audits or inspections? How often, and what types?	Annual audits; small CSOs exempt 	Annual audits regardless of size; risk of unwarranted inspection	Frequent and/or politically-motivated audits, unwarranted inspections
6. What types of information are CSOs required to publicly disclose?	No/minimal other disclosure required (e.g., use of public resources)	Some other disclosures required (e.g., salaries of lead officials)	Extensive other disclosures required (e.g., names of all members)
7. What administrative requirements affect the operation of CSOs?	Minimal, clear administrative requirements, such as basic documentation of the CSO and a contact person 	Several, somewhat unclear administrative requirements, such as certifications from multiple sources	Many, unclear administrative requirements making it prohibitively difficult to abide by the rules
8. Are CSOs mandated to align their activities with governmental priorities as defined in national development plans?	No alignment required 	Some alignment required (e.g. for certain types of CSOs)	Full alignment required; and/or non-alignment is penalized
9. On what grounds is the government legally permitted to terminate or dissolve a CSO? Is there an opportunity to appeal this decision?	Very limited grounds for termination/dissolution; sufficient opportunity to unbiased appeal 	Many, somewhat unclear grounds for termination/dissolution; limited availability of unbiased appeal	Extensive, vague grounds for termination/dissolution; no means for unbiased appeal

10. On what grounds can a CSO be voluntarily dissolved?	No limitation on voluntary dissolution	Some limitation on voluntary dissolution 	Voluntary dissolution prohibited
11. Are there draft laws or regulations that, if adopted, would restrict – or, alternatively, ease - the operation of CSOs? If so, please summarize the content of the key provisions and in what stage of the legislative process it currently stands.	Pending legislation/regulations that will significantly ease the operation of CSOs 	Pending legislation/regulations that may restrict the operation of CSOs	Pending legislation/regulations that will severely restrict the operation of CSOs
Perception Questions	Green Flag	Yellow Flag	Red Flag
1. What level of oversight does the government have over CSOs? Extensive, moderate, or light?	Light, e.g. required annual reporting with rare, justifiable additional oversight	Moderate, e.g. frequent reporting requirements, permits for certain activities, and/or frequent inspection or auditing 	Extensive, excessive reporting and permission requirements and near-constant oversight;
2. In practice, do the legal and administrative requirements referred to above act as impediments to the productive operation of CSOs? Are they helpful to the daily operation of CSOs?	Helpful administrative requirements (e.g., reasonable documentation related to claiming tax benefits) 	Administrative requirements somewhat impede CSO's operation (e.g., requests for additional information once the legally required reports are submitted; slow bureaucracy holds up CSO	Administrative requirements severely impede CSO's operation (e.g. detailed reports on CSO events required for the government; frequent audits on a range of regulations - labor, tax, social security etc.); and/or more

		activities etc.) and/or more than 20% of total staff time devoted to compliance.	than 50% of staff time devoted to compliance.
3. Are there non-legal grounds that, in practice, the government uses or cites to terminate or dissolve a CSO? In practice, how have such terminations been conducted: according to the law or otherwise?	No non-legal grounds for termination/dissolution 	Non-legal grounds, such as policy directives, sometimes used to terminate/dissolve CSOs	Non-legal grounds, such as action without any stated justification, frequently used to terminate/dissolve CSOs
4. Is there a history of state harassment of CSOs for allegedly not adhering to administrative and/or legal requirements? Is there a history of state harassment of CSOs for other reasons or in general?	No history of harassment 	Some history of harassment	Frequent harassment
<i>Dimension #3: Access to Resources</i>			
<i>a. General questions about the funding environment</i>			
Factual Questions	Green Flag	Yellow Flag	Red Flag
1. Which financial resources do CSOs have legal access to: State funds? Earned income? Donations? Foreign donor funding? Other?	No limitation on funding 	Some limitations on funding (e.g., legal requirements related to certain income types or volumes of income)	Burdensome limitations on funding (e.g., key funding sources of CSOs are inaccessible)

<p>2. What legal barriers hinder access to each of these potential sources of funding?</p>	<p>No legal barriers to funding</p> 	<p>Some legal barriers to funding (e.g., must register to receive foreign funding; must establish a company to generate any earned income;)</p>	<p>Burdensome legal barriers to funding (e.g. may not receive foreign funding; may not engage in economic activities)</p>
<p>3. Do laws and/or regulations prohibit CSOs from distributing profits or otherwise providing inappropriate private benefit to officers, directors, or other insiders?</p>	<p>Clear prohibition on profit distribution, private benefit</p>	<p>Somewhat unclear regulation of profit distribution, private benefit</p> 	<p>Vague regulation of profit distribution, private benefit</p>
<p>4. Upon dissolution or termination, what happens to a CSO's assets? What laws and/or regulations affect distribution of assets upon dissolution?</p>	<p>Few, clear enabling laws on CSO assets after termination/dissolution</p>	<p>Multiple or unclear laws on CSO assets after termination/dissolution; some space for governmental discretion on use of assets</p> 	<p>Nonexistent or vague laws on CSO assets after termination/dissolution; ample space for governmental discretion on use of assets</p>
<p>5. Are there draft laws or regulations that, if adopted, would restrict – or, alternatively, ease – CSOs access to resources? If so, please summarize the content of the key provisions and in what stage of the legislative process it currently stands.</p>	<p>Pending legislation/regulations that will significantly ease CSOs' access to resources</p> 	<p>Pending legislation/regulations that may restrict CSOs' access to resources</p>	<p>Pending legislation/regulations that will severely restrict CSOs' access to resources</p>

Perception Questions	Green Flag	Yellow Flag	Red Flag
1. What non-legal and/or non-governmental barriers hinder access to each of the potential sources of funding for a CSO?	No non-legal or non-governmental barriers to funding	Some non-legal and/or non-governmental barriers, such as an under-developed banking system, lack of CSO fundraising capacity 	Burdensome non-legal and/or non-governmental barriers, such as financial transaction restrictions, lack of CSO fundraising capacity
2. How reliable is a CSO's access to legally permissible funds? And how freely available are these funds?	Reliable, available funds	Unreliable, somewhat unavailable funds 	Extremely unreliable, limited availability of funds
3. How much does a CSO's financial sustainability depend on government oversight and approval?	Not at all (as long as CSO complies with reasonable regulations) 	Somewhat (e.g., government can exercise discretion in approving or influencing access to certain sources for CSOs)	Entirely (e.g., government has control over key resources of CSOs; and/or resources are prohibited)
4. How effectively does the legal and policy framework support the mobilization of local resources?	Effectively, e.g., the government takes measures to encourage local philanthropy	Somewhat effectively, e.g., the laws allow donations but do not incentivize them 	Not at all effectively, laws hinder philanthropy or it is otherwise not possible to practice philanthropy
5. Does government and donor funding support the full range of CSO programming and activities, including e.g., innovation, core funding, policy development and advocacy?	Yes, such funds are generally available	Limited availability of such funds (e.g., only from a couple of donors or for a few types of CSOs) 	Such funds do not exist or are restricted to a very small group of CSOs

6. What type of source of funding are CSOs most dependent on?	A variety of funding sources	Few/not sustainable funding sources 	One or no funding source
7. What is the perceived reliability of different sources of funding? (or what source of funding is more reliable for CSOs)	A variety of reliable funding sources	A few reliable funding sources	No reliable funding sources 
8. Are you seeing any recent changes in the funding environment at the national level? What are the impacts of any changes on CSOs?	Funding environment is improving or already enabling and likely to remain so	Funding environment deteriorating and/or at risk of significantly deteriorating 	Funding environment significantly deteriorating
b. Government funding			
Factual Questions	Green Flag	Yellow Flag	Red Flag
1. Is government funding currently available for CSOs? If so, is it available for any type of CSO or are there special types of CSOs that are supported by the government?	Government funding generally available	Government funding somewhat available (e.g., from certain departments for certain types of CSOs) 	Practically no government funding available
2. In what form and at what levels is government funding available? E.g. are grants, subsidies, institutional (core) support provided at the central level and/or at the local level? Is there a special	A variety of government funding options at both central and local levels	Limited government funding options; good practice examples exist but not widespread; either central or local level lags behind 	One or no form of government funding at any level

<p>funding mechanism (e.g. a fund) for CSO support? Are there examples of contracting with the government by CSOs?</p>			
<p>3. What are the laws, rules and policies currently governing government grants and subsidies of CSOs?</p>	<p>Few, clear enabling laws/rules/policies governing government funding, including those ensuring transparency in awarding grants or contracts to CSOs</p>	<p>Multiple, somewhat unclear laws/rules/policies governing government funding; general procurement rules applied to CSOs</p>	<p>Many and/or vague laws/policies governing government funding; too restrictive or no specific rules for awarding public funds to CSOs</p> 
<p>Perception Questions</p>	<p>Green Flag</p>	<p>Yellow Flag</p>	<p>Red Flag</p>
<p>1. To what extent is the legal framework conducive to government funding of CSOs? What are specific legal and non-legal barriers to increased, more efficient or more transparent government support?</p>	<p>Legal framework is conducive to government funding; no significant legal or non-legal barriers to transparent government support</p>	<p>Legal framework somewhat conducive to government funding; some legal and/or non-legal barriers to transparent government support (e.g., a law that allows funding of CSOs but no clear implementation mechanisms; or: calls for proposals do not respond to CSO priorities)</p> 	<p>Burdensome legal framework for government funding; prohibitive legal and non-legal barriers to transparent government support (e.g., unreasonably strict criteria for CSOs to be eligible for support; highly discretionary decision-making)</p>

2. Is the dispersal of government funds seen as predictable, transparent, easily understandable and impartial?	Generally yes	Dispersal of government funds is seen as somewhat unpredictable, opaque, confusing and/or biased 	Dispersal of government funds is seen as extremely unpredictable, opaque, confusing and/or biased
3. Has government support decreased or increased within the past years? What is expected in the following years?	Government support steady or increasing; expected to continue increasing	Government support not increased recently; not expected to increase 	Government support decreasing; expected to continue decreasing (or practically non-existent)
<i>c. International funding</i>			
Factual Questions	Green Flag	Yellow Flag	Red Flag
1. Are there different standards/requirements for accessing foreign sources of funding versus domestic sources of funding?	No additional criteria/requirements for foreign funding 	Some additional criteria/requirements for foreign funding (e.g., separate registration requirement)	Burdensome additional criteria/requirements for foreign funding (e.g., need to align activities to government plans)
2. What are legal barriers to accessing and using foreign resources by a CSO, if any? E.g. is there government notification and/or oversight required to acquire foreign funding? Are there additional reporting requirements when using foreign funding?	No legal barriers to foreign funding 	Some legal barriers to foreign funding (e.g., notification requirement)	Burdensome legal barriers to foreign funding (e.g., permission and onerous reporting requirements)

3. Are there bilateral or multilateral agreements in place that affect foreign donors' ability to donate and establish partnerships with CSOs? If yes, what kind of agreements are they (statement of medium to long-term commitment to a relationship; funding framework, etc.)	Bilateral and/or multilateral agreements facilitate access to foreign funding 	Few bilateral/multilateral agreements regarding foreign funding	No or restrictive bilateral or multilateral agreements regarding foreign funding
Perception Questions	Green Flag	Yellow Flag	Red Flag
1. What non-legal barriers to receiving foreign funds exist in practice?	No non-legal barriers to foreign funds	Some non-legal barriers to foreign funds (e.g. complex application and reporting processes)	Prohibitive non-legal barriers to foreign funds (e.g. complex application and reporting processes; dramatic decrease in donor funding) 
2. Has the overall state of governance and rule of law in the country affected donor's contribution to CSOs? If so, how?	Overall governance and rule of law encourages donors 	Overall governance and rule of law a risk for donors	Overall governance and rule of law prohibitive for donors
d. Philanthropy			
Factual Questions	Green Flag	Yellow Flag	Red Flag
1. What are the laws and/or regulations specifically addressing philanthropy?	Few, clear laws/regulations encourage philanthropy 	Multiple, somewhat unclear laws/regulations regarding philanthropy	Many and/or vague laws/regulations regarding philanthropy

2. Are tax exemptions available to those who engage in philanthropy?	Tax exemptions easily available	Limited tax exemptions available 	No tax exemptions available
3. Are CSOs permitted to be the recipients of both corporate and individual philanthropy?	Yes, under reasonable criteria (e.g., charitable purposes) 	Some unreasonable or unfavorable restrictions on CSOs as recipients of corporate and/or individual philanthropy (e.g. must provide a report to every single donor)	Burdensome restrictions on CSOs as recipients of corporate and/or individual philanthropy (e.g., annual re-registration as charity to be eligible)
Perception Questions	Green Flag	Yellow Flag	Red Flag
1. Does the legal and regulatory framework encourage philanthropy? If so, how? If not, how?	Yes – basic laws are in place to provide tax benefits for donations, options to create foundations and endowments, volunteering	Somewhat – e.g., donations and volunteering are allowed but there are no incentives or the procedures are burdensome or unclear 	No – prohibition (in law or in practice) of donations and/or volunteering (e.g., lack of legislation resulting in a de facto prohibition)
2. Is there a philanthropic tradition? What encourages it? What discourages it?	Yes	Somewhat 	No
3. Do CSOs regularly fundraise from the domestic public or corporations? Do CSOs have fundraising capacity? Or	Yes - e.g., there are established practices or well-known examples of domestic fundraising, and an increasing level of CSO	Somewhat – e.g., there is growing awareness of the importance of domestic fundraising, some “pioneering” organizations	No – e.g., the vast majority of CSOs are not allowed to conduct, or neglect to conduct domestic fundraising

capacity to diversify their funding?	income is from domestic philanthropic sources	and successful programs to build such capacity of CSOs 	
4. Do individuals regularly donate to CSOs?	Yes – e.g., people regularly donate to a variety of CSOs or there is at least a broad segment of CSOs that receive such donations (e.g. humanitarian, children’s etc.)	Somewhat – e.g., there is a growing trend in donations to CSOs, e.g., with a focus on more “popular” causes	No – regular donations are insignificant in the income of most CSOs 
5. Do corporations regularly donate to CSOs?	Yes – e.g., companies regularly donate in various forms (money, in-kind, expertise) to a variety of CSOs	Somewhat – e.g., there is at least a group of companies that introduced giving programs	No – company donations are insignificant in the income of most CSOs 
<i>Dimension #4: Expression</i>			
Factual Questions	Green Flag	Yellow Flag	Red Flag
1. What laws affect a CSO’s ability to freely express their opinions? What rights are guaranteed under the existing legal framework, including the constitution, with respect to expression, including access to the Internet?	No/minimal restrictions on CSOs’ expression, restrictions in conformity with international norms	Some restrictions on CSOs’ expression 	Stifling restrictions on CSOs’ expression; clear violation of international norms
2. Which international treaties have been ratified that affect the ability to publicly express	All relevant treaties have been ratified (UDHR,	All or most relevant treaties are or will be ratified in the near future	Few or no relevant treaties have been ratified or are likely to be ratified in the near future

oneself? What treaties have been ratified that affect the right to access the Internet?	ICCPR, regional HR treaties) 		
3. What laws and/or regulations regulate the content of expression? What restrictions are placed on this content (i.e., restrictions for national security, “fighting words”, commercial speech, obscenity)?	Few, clear laws place minimally regulate expression in conformity with international norms	Multiple and/or somewhat unclear laws regulate expression 	Many and/or vague laws stifle expression
4. Are there time, place and manner restrictions placed on expression?	No/minimal time, place and manner restrictions	Some time, place and manner restrictions 	Burdensome/stifling time place and manner restrictions
5. What legal barriers, if any, hinder a CSO’s ability to openly express its opinions, particularly on matters critical of government policies?	No/minimal legal barriers to CSOs’ expression	Some legal barriers to CSOs’ expression 	Prohibitive/stifling barriers to CSOs’ expression
6. Are there draft laws or regulations that, if adopted, would restrict – or, alternatively, ease – CSOs’ freedom of expression? If so, please summarize the content of the key provisions and in	Pending legislation/regulations that will significantly ease the expression of CSOs 	Pending legislation/regulations that may restrict the expression of CSOs	Pending legislation/regulations that will severely restrict the expression of CSOs

what stage of the legislative process it currently stands.			
Perception Questions	Green Flag	Yellow Flag	Red Flag
1. What non-legal barriers hinder a CSO's ability to openly express its opinions?	No non-legal barriers to expression	Some non-legal barriers to expression (e.g. limited number of independent media outlets that will give space to CSO voices) 	Prohibitive/stifling non-legal barriers to expression (e.g., fully government controlled news and internet media)
2. Is open criticism of government policies and practices tolerated? What, historically, has been the reaction of the government to such open criticism?	Public criticism is tolerated	Public criticism is condemned by the government and/or occasionally retaliated 	Public criticism is prohibited by the government and if it happens, it is promptly retaliated
3. Are individuals and CSOs aware of their rights with respect to expression? Does the political culture openly support these rights? Or are they actively suppressed regardless of legal protections?	Individuals and CSOs are aware of their rights; political culture supports free expression	Many individuals and CSOs are aware of their rights; political culture frowns on free expression 	Few individuals and CSOs are aware of their rights; political culture hinders free expression
<i>Dimension #5: Peaceful Assembly</i>			
Factual Questions	Green Flag	Yellow Flag	Red Flag
1. What laws address the rights to peaceful assembly, including domestic	Few, clear enabling laws governing assemblies; all	Multiple, somewhat unclear laws governing assembly;	Many, vague laws governing assembly; many relevant treaties have not been signed or ratified

legislation/regulations and international treaties to which the country is a signatory?	relevant treaties have been signed and ratified 	some relevant treaties have been signed and ratified	
2. Are there limits placed on who can assemble? Are groups with certain agendas or orientations forbidden from assembling?	No/minimal limits on who can assemble; limitations in conformity with international norms	Some limitations on who can assemble; limitations may be unreasonable, vague or allow for government discretion 	Prohibitive limitations on who can assemble (e.g. groups promoting certain issues or affiliations are not allowed to assemble); clear violation of international norms
3. Are individuals or CSOs planning a strike/protest required to seek permission or notify the government in advance of the strike/protest?	No permission or advance notice required, except reasonable advance notice to local authorities e.g., if the protest would block traffic or security is requested; however, spontaneous assemblies allowed	Advance notice always required and/or should be provided to multiple authorities; spontaneous assembly not allowed 	Permission required
4. Are there limits on the time, place and manner that individuals or groups can assemble, strike, protest or otherwise publicly (and peacefully) express their views?	No/minimal limits on time, place and manner of assembly	Some limits on time, place and manner of assembly; limitations are unreasonable, vague or allow for government discretion 	Prohibitive limits on time, place and manner of assembly
5. How are aggressive/violent demonstrators dealt with in the law and in practice?	Violence is avoided and contained; security response is proportionate	Violence is not well contained; security response is not strictly proportionate	Violence is escalated; security response is disproportionate

			
6. Are there draft laws or regulations that, if adopted, would restrict – or, alternatively, ease – individuals and/or CSOs right to peacefully assemble? If so, please summarize the content of the key provisions and in what stage of the legislative process it currently stands.	Pending legislation/regulations that will (significantly) ease the right to peaceful assembly 	Pending legislation/regulations that may restrict assemblies	Pending legislation/regulations that will severely restrict assemblies
Perception Questions	Green Flag	Yellow Flag	Red Flag
1. Is there a history of government-led violence or aggression against peaceful demonstrators, activists and/or strikers?	No history of violence or aggression	Some history of violence or aggression 	Frequent instances of violence or aggression
2. In practice, are groups who gather to openly criticize the government through protest, strike or other form of peaceful demonstration tolerated?	Criticism and protest are tolerated	Criticism and protest are condemned 	Criticism and protest are met with reprisals
Optional Dimensions			
<i>Dimension #6: Government-CSO Relations</i>			
Factual Questions	Green Flag	Yellow Flag	Red Flag
1. To what extent are CSOs permitted to engage in the	CSOs generally permitted to engage in political process;	CSOs are generally allowed to engage in the political	CSOs prohibited from engaging in the political process; or total

<p>political (electoral) process? E.g., are they permitted to nominate candidates for public office? Support or oppose political parties/candidates? Fundraise for political parties/candidates? If so, under which conditions?</p>	<p>few, clear enabling laws governing CSOs and the political process, which establish reasonable limitations (e.g., CSO may not be eligible for tax benefits if engages in the political process; must disclose funding provided to a political party)</p>	<p>process but there are multiple and/or unclear laws governing CSOs and the political process that allow for government discretion</p>	<p>lack of legislation / many, vague laws governing CSOs and the political process resulting in a de facto prohibition</p>
<p>2. To what extent are CSOs allowed to participate in public policy activities? Are they allowed to advocate (campaign) and lobby for legislation? If so, under which conditions?</p>	<p>CSOs allowed to participate in public policy activities; advocacy and lobbying are permitted with no/minimal restrictions (e.g., CSO must disclose its lobbying efforts)</p>	<p>CSOs are partially allowed to participate in public policy activities; vague laws allow for government discretion; there are some unreasonable restrictions on advocacy and lobbying activities (e.g., must obtain government permission to organize an event)</p>	<p>CSOs, or a significant segment of CSOs, are forbidden from participating in public policy activities, including advocacy and lobbying</p>
<p>3. What are legal / institutionalized opportunities for CSOs to participate in the decision-making process? E.g., are there open hearings, consultations, multi-stakeholder working groups?</p>	<p>Multiple legal/institutional opportunities for CSOs to participate in decision-making processes on a regular basis</p>	<p>Limited legal/institutional opportunities for CSOs to participate in decision-making processes (e.g. only one department organizes such forums; only CSOs with a large membership are allowed to participate in such forums etc.)</p>	<p>No or insignificant legal/institutional opportunities for CSOs to participate in decision-making processes</p>

<p>4. To what extent are there compacts, liaison officers, committees, or other similar mechanisms to promote cooperation and communication between government and civil society?</p>	<p>At least one well-functioning mechanism available to promote cooperation and communication between government and civil society</p> 	<p>At least one mechanism to promote cooperation and communication between government and civil society is being considered, or exists with some challenges in its implementation</p>	<p>No mechanisms available to promote cooperation and communication between government and civil society</p>
<p>5. Are there draft laws or regulations that, if adopted, would inhibit – or, alternatively, ease – government-CSO relations? If so, please summarize the content of the key provisions and in what stage of the legislative process it currently stands.</p>	<p>Pending legislation/regulations that will (significantly) ease the government-CSO relations</p> 	<p>Pending legislation/regulations that may restrict government-CSO relations</p>	<p>Pending legislation/regulations that will severely restrict government-CSO relations</p>
<p>Perception Questions</p>	<p>Green Flag</p>	<p>Yellow Flag</p>	<p>Red Flag</p>
<p>1. In general, what is the nature of the relationship between the Government and CSOs? Contentious? Harmonious? Somewhere in the middle?</p>	<p>Harmonious or “live and let live” relationship between government and CSOs</p>	<p>Somewhat contentious relationship between government and CSOs</p> 	<p>Antagonistic relationship between government and CSOs</p>
<p>2. Is there regular communication between CSOs and the Government? How can the quality of the</p>	<p>There is regular, productive communication between CSOs and government</p>	<p>There is limited, often ineffective communication between CSOs and government</p>	<p>There is minimal, ineffective communication between CSOs and government</p>

dialogue between the Government and CSOs be characterized?			
3. Are the opinions of CSOs taken into account when drafting legislation, or more generally, anywhere in the legislative process?	Relevant CSOs opinions are routinely taken into account	CSOs opinions are sometimes taken into account 	CSOs opinions are rarely or never taken into account
4. Are there timely consultations with civil society organisations in order for them to impact government decisions?	Yes	Sometimes 	Rarely or never
5. Is there full transparency and accountability for development priorities, strategies, plans and actions by government?	Yes, or there is a participatory process in place to develop such transparency and accountability	There is some transparency and accountability (e.g., certain departments publish data) 	There is little or no transparency and accountability
6. Do CSOs have a mechanism to dispute or appeal certain government decisions at the central or local level? Is this mechanism a reliable, genuine and effective way for CSOs to voice their dissent to particular government decisions? In practice, has this mechanism been	Yes, several such mechanisms exist and at least one has proven successful	CSOs have limited mechanisms for appeal; these mechanisms are not reliable and CSOs are usually unsuccessful 	CSOs have no mechanisms for appeal, or in practice such mechanisms have never produced any results

successfully utilized by CSOs to produce a fairer result?			
7. Does the Government view CSOs as partners and allies in their own work, or as potential threats to their agenda?	CSOs are viewed by government as partners	CSOs are sometimes viewed by government as partners and sometimes as a threat, or largely ignored	CSOs are generally viewed by government as a threat
8. Are CSOs capable of participating in a broad range of public policy initiatives and activities, or are they restricted by non-legal barriers to a narrow range of circumscribed activities?	No/minimal non-legal barriers to CSOs public policy participation (e.g., government denounces CSOs but does not prevent them from participating)	Some non-legal barriers to CSO public policy participation depending on the type of activity or policy issue involved (e.g., participation mechanisms only exist in a few “less sensitive” areas, such as humanitarian aid or child welfare; and/or CSOs are not well organized to participate)	Severe non-legal barriers to CSO public policy participation (e.g., raiding CSO premises, harassment or incarceration of CSO leaders and members; CSOs lacking basic capacity to participate)
9. Have there been any significant changes in relations between civil society and the government in your country in the last two years? If so, please describe these.	Relations between civil society and government have improved in the last two years	Relations between civil society and government have deteriorated somewhat in the last two years	Relations between civil society and government have deteriorated significantly in the last two years
10. Have any global events or processes in the past two years affected state-civil society relations at the	Global events / processes affected state-civil society relations in a positive way (e.g. government involved	Global events/processes have not affected state-civil society relationship; or have had a controversial effect	Global events or processes had an adverse effect on state-civil society relations (e.g., a restrictive law on foreign funding

national level? If so, how? (i.e. The Aid effectiveness debate, etc.)	CSOs in planning for development 	(e.g. a restrictive draft law that was successfully rebuked)	was adopted as part of an international counter-terrorism initiative)
11. What conditions do you feel need to be in place to allow for a good and effective relationship between state and civil society?			
<i>Dimension #9: Taxation</i>			
Factual Questions	Green Flag	Yellow Flag	Red Flag
1. What taxes are imposed on the income of CSOs? Do they affect their earned income, grants, investments, or purchased goods and services?	Few, clear enabling tax laws that provide exemptions on non-economic income of CSOs (e.g., grants, donations, membership fees are not taxed) 	Multiple, somewhat unclear tax laws; non-economic income may be taxed - regulations allow for government discretion in determining taxable income	Many, vague tax laws and regulations; all CSO income is taxed regardless of its source or purpose
2. Are CSOs subject to VAT and customs taxes?	No; or under clear and reasonable criteria (e.g. generally subject to customs taxes but charitable donations are exempt)	Yes; regulations are unclear, allowing for government discretion 	CSOs are subject to prohibitive taxation (e.g. must pay VAT on a grant that is not an allowable expense for the donor)
3. Are CSOs subject to local taxes, fees or charges, in addition to federal taxes? Are any other level of taxes	CSOs are generally tax exempt, or are eligible to receive tax exemptions (e.g. based on charitable activities)	CSOs face some taxation in addition to federal taxes; any criteria or procedures for exemptions are not clear and allow for discretion	CSOs face prohibitive local taxation

imposed (regional or state taxes, for example)?			
4. What are the tax and regulatory requirements on CSOs that engage in economic activities?	Few, clear tax laws/regulations enabling CSOs to engage in economic activities through partial exemptions	Multiple, somewhat unclear tax laws/regulations on CSO economic activities; economic activities are generally taxed with minimal exemption 	CSOs may not engage in economic activities; or there are many, vague tax laws/regulations on CSO economic activities
5. Are tax exemptions granted to all CSOs? Are only certain categories of CSOs granted tax exemptions?	Exemptions are available to all CSOs or to those with a public benefit (charitable) purpose; there are clear criteria and procedures for acquiring tax exemptions 	Exemptions are available on a select basis to CSOs (e.g. yes for humanitarian organizations but not for human rights CSOs); criteria and procedures for receiving exemptions are unclear / discretionary	Tax exemptions are not available or available only to a very limited number of CSOs (e.g., international organizations only); exemptions fully based on government discretion
6. Are there draft laws or regulations that, if adopted, would affect the taxation of CSOs? If so, please summarize the content of the key provisions and in what stage of the legislative process it currently stands.	Pending legislation/regulations that will significantly ease CSOs' tax burdens 	Pending legislation/regulations that may increase CSOs' tax burdens	Pending legislation/regulations that will severely increase CSOs' tax burdens
Perception Questions	Green Flag	Yellow Flag	Red Flag
1. Have taxes been used by the state as a form of repression	No	Sometimes / arguably	Yes, regularly

of CSOs practices? If yes, how so?			
2. Is CSOs financial sustainability affected by taxes, duties and/or fees? Does tax legislation facilitate or impede CSOs in achieving sustainability in their finances?	CSO financial sustainability is enhanced by tax legislation, e.g. by exempting economic activities related to the CSO's mission	Tax legislation has an ambiguous effect on CSO sustainability depending on the type of CSO or government discretion 	Tax legislation has a stifling effect on CSO sustainability, e.g., by prohibiting economic activities or levying prohibitive taxes or duties on core activities
3. To what extent are the tax laws/ regulations enforced? Are taxes regularly paid? What is the capacity of the government to enforce tax payments?	There is an affordable and accessible system to pay taxes that is enforced by the government 	Government struggles to enforce tax laws/regulations and payments; paying taxes is a cumbersome and costly process	Government has little capacity to enforce tax laws/regulations and payments; avoiding taxes is the norm