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## ANNEX

of the Commission Decision on the individual measure in favour of the Republic of Malawi to be financed from the 11<sup>th</sup> European Development Fund

### Action Document for Chilungamo Programme

#### INFORMATION FOR POTENTIAL GRANT APPLICANTS

##### WORK PROGRAMME FOR GRANTS

This document constitutes the work programme for grants in the sense of Article 128(1) of the Financial Regulation (Regulation (EU, Euratom) No 966/2012), applicable to the EDF in accordance with Article 37 of the Regulation (EU) 2015/323 in the following section concerning grants awarded directly without a call for proposals: 5.3.1

<b>1. Title/basic act/ CRIS number</b>	Chilungamo Programme CRIS number: MW/FED/038-584 financed under the 11 <sup>th</sup> European Development Fund.	
<b>2. Zone benefiting from the action/location</b>	ACP, Southern Africa, Malawi. The action shall be carried out in all districts of Malawi. The project team will be based in Lilongwe, Malawi	
<b>3. Programming document</b>	11 <sup>th</sup> EDF – National Indicative Programme 2014-2020	
<b>4. Sector of concentration/ thematic area</b>	Focal Sector 1 – Governance	DEV. Aid: YES <sup>1</sup>
<b>5. Amounts concerned</b>	Total estimated cost: EUR 48 000 000 Total amount of EDF contribution EUR 48 000 000	
<b>6. Aid modality(ies) and implementation modality(ies)</b>	Project Modality <ul style="list-style-type: none"><li>• Direct management (grants – direct awards)</li><li>• Indirect management with the Malawi Government (procurement of services and Programme Estimates)</li><li>• Indirect management with an International Organisation, the United Nations Development Programme (UNDP) and a Member State Agency (British Council)</li></ul>	

<sup>1</sup> Official Development Aid is administered with the promotion of the economic development and welfare of developing countries as its main objective.

<b>7. a) DAC code(s)</b>	150 GOVERNMENT AND CIVIL SOCIETY <b>15130</b> Legal and judicial development (28%) <b>15150</b> Democratic participation and civil society (30%) <b>15151</b> Elections (6%) <b>15152</b> Legislatures and political parties (1.5%) <b>15153</b> Media and free flow of information (1.5%) <b>15160</b> Human rights (8.5%) <b>15170</b> Women's equality organisations and institutions (7.5%) <b>15110</b> NRIS 17%			
<b>b) Main Delivery Channel</b>	<b>Recipient Government 12000</b> <b>NON-GOVERNMENTAL ORGANISATIONS (NGOs) AND CIVIL SOCIETY 20000</b> <b>United Nations Development Programme 41114</b> <b>Donor Government 11000</b>			
<b>8. Markers (from CRIS DAC form)</b>	<b>General policy objective</b>	<b>Not targeted</b>	<b>Significant objective</b>	<b>Main objective</b>
	Participation development/good governance	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
	Aid to environment	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Gender equality (including Women In Development)	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
	Trade Development	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Reproductive, Maternal, New born and child health	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<b>RIO Convention markers</b>	<b>Not targeted</b>	<b>Significant objective</b>	<b>Main objective</b>
	Biological diversity	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Combat desertification	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Climate change mitigation	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Climate change adaptation	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>9. Global Public Goods and Challenges (GPGC) thematic flagships</b>	N/A			

## SUMMARY

The Chilungamo Programme builds on decades of support by the EU to governance in Malawi. Chilungamo is a Chichewa word meaning justice, with its connotation of a sense of stewardship. It addresses the following objectives related to Governance in the National Indicative Plan (NIP) (2014 - 2020): (Specific Objective 3) Improve the institutional capacities and coordination mechanisms of oversight institutions; (Specific Objective 4) Create a fair and effective legal environment that promotes and consolidates the rule of law, equal access to justice, and respect for human rights and (SO 1, Result 1.2) Enhanced civic education, awareness and capacity building to demand transparency and accountability. Thereby, the programme addresses two core Malawi's governance challenges of (i) lack of transparency and accountability amongst duty bearers and (ii) limited access to justice for the vulnerable groups., Weak accountability institutions and the limited capacity of citizens to demand and claim their rights impact on all aspects of governance including democratic governance, domestic accountability and access to justice and the rule of law. Chilungamo recognises that all of these aspects require a focus on both the supply and demand sides of governance and thus includes support to the Malawi Electoral Commission (MEC), National Registration Bureau (NRB), Ministry of Justice and Constitutional Affairs (MoJCA), Judiciary and Prisons, as well as to the National Initiative for Civic Education (NICE), Malawi Human Rights Commission (MHRC), Legal Aid Board (LAB), civil society organisations (CSOs) and the media to play their oversight roles, increase access to justice, and to hold duty bearers to account. Support to the Democratic Governance Sector (DGS) Secretariat is also included to assist the DGS to coordinate the sector.

# 1 CONTEXT

## 1.1 Sector/Country/Regional context/Thematic area

With a population of 16 700 000 people<sup>2</sup> and a population growth rate of 2.87%, Malawi ranks at 173 (of 188) on the human development index<sup>3</sup>. The economy of Malawi is predominantly agricultural, with about 90% of the population living in rural areas. Economic growth in 2015 was around 3% and over 60% of the population were living below the income poverty line (with almost 30% living in severe poverty). Gender inequality in the country remains a big challenge with government acknowledging that the country failed to meet Millennium Development Goals 1, 2, 3 and 5, all of which have a gender component. Around 50% of women are married before the age of 18 and gender-based violence (GBV) continues to be rampant. Governance generally in Malawi is negatively impacted on by a lack of accountability amongst duty bearers at all levels – national and local – and amongst all branches of government, and scarce capacity amongst citizens to claim and enforce their rights and to participate in public life and decisions that affect them. Gaps exist in both the demand and supply side of governance that need to be addressed. Furthermore, there are bottlenecks throughout the justice chain that impede on access to timely justice especially for women and the vulnerable groups. As a result, rights of people awaiting justice are not fully enforced in pre-trial, trial and post-trial phases.

### 1.1.1 Public Policy Assessment and EU Policy Framework

Malawi's long-term development strategy, Vision 2020, envisages an environment of transparency, accountability and rule of law where all citizens participate in governing the country by 2020. Malawi's key policy document, the Malawi growth and development strategy II (MGDS II), includes governance as one of six thematic areas. MGDS II, which expires in 2016 will be extended and subsequently replaced by a new strategy based on the 2030 Agenda for sustainable development, which 'recognises the need to build peaceful, just and inclusive societies that provide equal access to justice and that are based on respect for human rights, effective rule of law and good governance at all levels and on transparent, effective and accountable institutions'.<sup>4</sup> A process to develop a democratic governance sector began in 2010 and a Democratic Governance Sector Strategy (DGSS) was approved by Government in June 2013. In line with the DGS Policy (developed with EU assistance during 2013), the DGSS identifies five key result areas (KRA): (1) Strengthened rule of law, improved access to justice, public safety and security; (2) Improved promotion and protection of human rights; (3) Free and credible elections; (4) Transparent and accountable and responsive Democratic Governance Sector institutions; and (5) More effective, independent and representative legislature.<sup>5</sup> But while technical working groups have been established for each KRA, the sector coordination committee has met only once in five years, no Development other than UNDP and the EU have contributed to the sector, and the Secretariat is yet to be established. Instead (and in line with the DGSS itself), DPs have aligned their support to the DGSS rather than funding it directly. The DGSS will be revised with funding from UNDP in the second half of 2016. More recently, coordination of the sector has received political commitment and strategic leadership from the Government at the level of the Minister.

The legal basis for bilateral cooperation between the EU and Malawi is the Cotonou Agreement, while the 2005 European Consensus on Development sets the general policy framework at EU level. The Agenda for Change (2011) identifies human rights, democracy and other elements of good governance as one of the priority areas for EU development assistance. The 11th EDF National Indicative Programme (NIP) 2014-20 for Malawi includes Governance as one of the three focal sectors of cooperation, with an allocation of EUR 120 000 000. The NIP includes specific references to institutions for accountability and oversight, the demand side of governance and a fair and effective

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<sup>2</sup> <http://data.worldbank.org/country/malawi>

<sup>3</sup> UNDP Human Development Report, 2015

<sup>4</sup> Transforming our world: the 2030 Agenda for Sustainable Development.

<sup>5</sup> A sixth KRA was included in the original DGSS (effective democratic governance institutions) but has since been removed and mainstreamed across all KRAs

legal and institutional environment. In addition, the EU Council Conclusions on Gender Action Plan 2016-2020 note that gender equality is at the core of European values while the EU Country Roadmap for Engagement with Civil Society 2014-2017 acknowledges the critical role Civil Society Organizations play in the consolidation of democracy in Malawi. The Roadmap includes nine priorities and envisages that support to these will be through the CSO fund known as Tilitonse (described in more detail below).

### **1.1.2 Stakeholder Analysis**

The **Ministry of Justice and Constitutional Affairs (MoJCA)** is the lead policy Ministry on all legal matters and obligations under international treaties. MoJCA is also the coordinating Ministry for the DGS but as with most Ministries in Malawi, lacks capacity and is faced with high levels of staff turnover making it difficult to transfer responsibility for EU programmes to it. Although elections are regularly held, Parliament is limited when it comes to its ability to hold duty bearers to account and power is clearly centred in the President and National Executive. **Political parties** are characterised by low levels of internal democracy and high levels of political patronage. The **Malawi Electoral Commission (MEC)** is established by the constitution to oversee and manage all elections. It has made some progress in this regard but needs technical support to address the logistical and organisational difficulties experienced during the 2014 tripartite elections (many of which were identified by the 2009 EU electoral observation mission and continue to persist).<sup>6</sup> At the moment the MEC is engaged (with others) in the preparation of electoral reforms, to be instituted in readiness of the 2019 tripartite elections. Although elections would benefit greatly by the provision of equipment to allow for electronic voter registration, a much better alternative approach currently presents itself. Malawi has recently embarked on a new initiative to introduce a national identification system, to be coordinated by the **National Registration Bureau (NRB)** that is mandated by the National Registration Act of 2010 to implement, manage, coordinate and maintain the National Registration and Identification System (NRIS) for Malawi. The NRIS will lead to a multi-purpose one-card biometric identification system that will improve voter registration and also crucially contribute to governance and anti-corruption efforts through provision of accurate population bio-data for socio-economic planning and development. Critically, new ID cards can be instrumental for better targeting and improved effectiveness of social protection programmes, humanitarian assistance, agricultural support programmes, etc. while also facilitating private sector development and poverty reduction through channels such as enhanced access to lending by the banks. Although previous attempts to introduce national identification cards have stalled, indications are that there is considerably more commitment support amongst government and DPs to the current process. The **Judiciary** has been a major beneficiary of EU assistance but courts remain overburdened with many cases taking years to complete. Most previous EU support has targeted the higher courts when it is the lowest level of Magistrates Courts that deal with most cases and whose lay and professional Magistrates require training. Lower courts also have limited access to critical High and Supreme Court judgments, current legislation and other resources. The **Local Courts Act** of 2011 sought to re-introduce Local Courts as the lowest level of the Judiciary. Using customary law and simplified procedures to resolve minor civil and criminal disputes, such courts have enormous potential to increase access to quick and affordable justice. Although the implementation of the Act has been stalled, there is increased political will to roll it out. The Judiciary will require significant support in this regard. The Judiciary also oversees 125 **Court User Committees (CUCs)** which will be present at every court by end 2016. CUCs are made up of representatives of all parts of the criminal justice system and meet to find practical solutions to problems, conduct prison visits, and hold camp courts in prisons. **Police prosecutors** prosecute all criminal matters in lower Courts but while a training programme is in place, it is lengthy, out of date (especially when it comes to crimes against women and children, plea bargaining and victims' rights) and is only provided when funds allow. Originally falling under the MoJCA, the **Legal Aid Bureau (LAB)** was established as an independent body under the Legal Aid Act (2010) and has the potential to play a significant role in access to justice by providing legal aid to the vulnerable and facilitating access to the formal justice system. However, it is severely underfunded and under-resourced, with

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<sup>6</sup> The 2014 EOM made 27 recommendations for improvements, 12 of which are essentially identical to those raised in 2009.

senior management only appointed in March 2015 and the Act itself may require some amendment.<sup>7</sup> Although legislation allowing for parole (that would reduce overcrowding in **Prisons**) has not yet been passed, the prison service has drafted rules and regulations and is implementing a strategy with EU support to have these adopted by Parliament. On the other hand, community service currently falls under the Judiciary, which has appointed community service officers. Ideally, community service should be moved under the Prisons where it could be overseen by the same officers responsible for parole. With EU support under the Democratic Governance Programme (DGP) a unique Village Mediation Programme (VMP) was piloted by Paralegal Advisory Services Institute (PASI) in 14 Traditional Authorities. Between September 2011 and August 2015, 1 120 trained mediators have successfully resolved 23 765 disputes out of 26 118 registered cases: a success rate of more than 90% and a clear contributor in access to affordable, accessible and speedy justice. It would be important to build on this success and extend it to other districts. The **National Initiative for Civic Education (NICE)** was first established as a project by the EU in 1999 and has been supported under various programmes since then, including the current DGP. Now a Public Trust, NICE has played a major role in civic and voter education and has an extensive and acclaimed nationwide organisational structure, often used by key players such as the Malawi Human Rights Commission (MHRC) to ensure their civic education reaches out to all parts of the country. But while it has recently embarked on resource mobilization, support is still required in the medium term. Established by the Constitution, the **MHRC** is a key player when it comes to holding government to account for its commitments under international instruments as well as holding duty bearers to account for the promotion and protection of human rights. While the MHRC has done well with EU support when it comes to human rights education and monitoring of compliance with international instruments, its capacity to investigate and deal with complaints and to hold public inquiries is severely constrained by its limited budget. **Civil society organisations (CSOs)** are key players in domestic accountability and access to justice but are hampered by limited capacity. Although government exerts some control over CSOs, they generally operate relatively freely and numerous CSOs are specifically listed as ‘partner organisations’ in the DGSS. CSOs will benefit from the EU support through a Tilitonse Foundation which is currently being established on the basis of the existing CSO Governance Fund (known as Tilitonse) established during 2011 and supported by the UK Department for International Development (DfID), Irish Aid and the Royal Norwegian Embassy. Although the EU expected to contribute to the fund under the DGP, this proved to be impossible since the fund did not comply with EU rules. Tilitonse is undergoing a period of transition that will lead to it being re-established as a not-for-profit Malawian Foundation that, it is anticipated, will allow for the EU to provide funds through it to CSOs, the media and political parties. To ensure this process runs smoothly, EU funded technical advisers will be appointed by the DGP in early 2016 to assist in the process. The **media** operates largely outside of government interference and remains a key role player in exposing corruption and maladministration but there are comparatively few newspapers and journalists lack skills in investigative journalism.

### *1.1.3 Priority areas for support/problem analysis*

After 20 years of democracy, challenges in the areas of domestic accountability and, access to justice are the Achilles heel of Malawi's governance system. While mechanisms are in place to hold duty bearers to account, their effectiveness is limited.

Respect for most human rights is stable with main challenges remaining in the areas of conditions in prisons; gender equality (violence against women, child marriages, low participation) as well as respect of economic and social rights in particular access to food and health services. The MHRC mandated to address those violations is severely under-resourced and thus cannot fully take up this role. Access to information necessary to make informed decisions and levels of education are low, especially for women, the poor and those in rural areas, increasing the need for civic and voter education. The media needs to be supported to fulfil its role as the ‘fourth estate’. Although a process of electoral reform is underway and the national registration and identification system will lead to better registration and fairer elections, Malawi still needs support in between the ballots and on the

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<sup>7</sup> For example, Section 28 of the Act empowers the LAB to enter into cooperation agreements with CSOs to provide legal aid but requires that the CSOs must cover the cost of these out of their own budgets.

elections day. Parliament is weak on oversight as reports submitted to it by national institutions are not followed through due to lack of capacity. As a result the domestic accountability sphere heavily relies on CSOs and media who also face capacity constraints.

Despite significant investment in the formal justice system over many years, challenges remain. The Judiciary requires assistance to ensure that Magistrates at the lowest level are able to understand and cope with the civil and criminal matters brought before them and to resolve these expeditiously. Police prosecutors need training to make sure that they are able to successfully prosecute cases and ensure that the rights of victims and witnesses as well as those of the accused are protected. And the Judiciary need to be supported to establish a national criminal justice coordinating committee to build on the work done by CUCs and increase coordination and cooperation at the national level, including driving the development of critical policy and legislation in the areas of diversion, plea bargaining and parole (amongst others). Legal aid is largely unavailable and the formal court system is slow, distant, complicated and expensive. As a result, the majority of Malawians, especially women, the poor and other vulnerable groups, rely on the so-called informal legal sector when needing to find solutions to conflict.

## 2 RISKS AND ASSUMPTIONS

Risks	Risk level	Mitigating measures
Given rampant corruption in the recent past, many DPs regard Malawi as high risk when it comes to financial management.	H	Although the risk is high, the programme has been designed to ensure that sufficient financial controls are in place.
There is a risk that future elections will lead to similar problems as those encountered by EOM missions in 2009 and 2014, especially since many of the recommendations from 2009 have yet to be implemented.	M	An electoral reform process is already underway and support is provided to develop an NRIS that will contribute to better voter registration and fairer elections. Malawi lacks the resources to run elections without assistance from DPs and support has to be provided. To attempt to mitigate related risks, such support is channelled through the UNDP basket fund for elections.
Previous attempts to introduce a NRIS have failed. Although there appears to be greater commitment by government and DPs to ensure it succeeds this time, UNDP have identified numerous risks and currently do not have sufficient funds available for those aspects of the project planned for 2016.	H	UNDP have developed a comprehensive risk analysis and mitigation plan but the picture will only be clearer by end 2016. The situation will be reassessed during the start-up phase of the programme
Government might be scarcely committed to the establishment of the Secretariat by end 2016.	M	To mitigate the risk that funds allocated to the DGS may not be used, an assessment to determine emerging needs will be conducted during implementation of a Start Up PE.
There is a risk that the EU will not be able to provide funds to CSOs and others through Tilitonse in case it is established as a foundation.	M	A technical assistance has been appointed under the 10 <sup>th</sup> EDF Governance Programme to ensure that the yet to be established Tilitonse foundation meets EU requirements to receive a grant. The EU Delegation is leading this process in order to minimise the risk.
There is a risk that Chilungamo priorities will not be addressed by Tilitonse.	L	As a major contributor to the fund, the EU's voice will carry significant weight and, since other contributors have similar objectives to the EU in the area of governance, risk is low.

Previous attempts to ensure NICE is fully integrated into the programme and ready to conduct activities in collaboration with other beneficiary institutions have not been as successful as planned – there is a risk that NICE will continue to act independently of the programme.	L	The underlying approach in including NICE in the DGP is now better understood by all role players. It has also been made clearer that NICE is expected to fall under and be part of the PSC and that activities need to be better coordinated.
The Legal Aid Bureau is so under-resourced and has such limited capacity that there is a risk that any attempts to support it will fail.	M	The LAB is so critical that it cannot be allowed to fail – and since no other DPs are planning to support it in any significant way, it urgently needs EU support. To alleviate risk, TA is provided and significant capacity building for senior staff is included.
The Local Courts Act has yet to be promulgated and implementation has not started. As a result, there is a risk that it will not be possible to operationalise the envisaged Local Courts.	M	The MoJCA and Judiciary are now committed to implementing the Act and establishing structures of the Local Court.
PASI's limited financial controls and management create a risk if it were to be funded directly.	L	To avoid this risk, funds will be channelled to PASI through the British Council.
<b>Assumptions</b>		
The primary assumption is that government will remain committed to improving governance in Malawi.		

### 3 LESSONS LEARNT, COMPLEMENTARITY AND CROSS-CUTTING ISSUES

#### 3.1 Lessons learnt

After two decades of support to governance in Malawi, the major lesson learned from all previous EU programmes, backed up by comments from other DPs, is that support to institutions alone will have limited results. Ministries, Parliament, the Judiciary and others require equipment, resources and capacity building that government alone is unable to provide, but DPs cannot simply continue to provide this without first determining what results they wish to assist Malawi to achieve. Many institutions have yet to identify and focus on their niche. There is a need for greater collaboration and result oriented interventions (as opposed to capacity building as an end in itself).. Monitoring and evaluation has been weak under the DGP and will need to be improved in the current programme. The Electoral Observation Mission report for the tripartite elections of 20<sup>th</sup> May 2014 recommended, inter alia, improvement of the legal framework, alignment of electoral systems to international standards such as the SADC principles and guidelines governing democratic elections and the African Charter on democracy, elections and governance. A process to reform electoral law is currently underway, but the MEC requires support to strategically plan, prepare and manage elections. At the same time, the limited support to CSOs under the DGP has had good results and additional support to these is clearly recommended. Support to NICE and CSOs that play a critical role in elections is also required to ensure wide coverage especially on civic and voter education and coordination on electoral reforms. Based on experience in various countries, programmes aimed at improving access to justice work best when they include a focus on improving coordination, collaboration and cooperation amongst role players, when there are procedures in place to allow for minor civil matters to be diverted out of the formal system, where there is greater reliance on alternative sentences (such as community service), and where parole is available to rehabilitated prisoners. Despite efforts by DGP to build the capacity of the MoJCA Project and Planning Unit to take over management of future programmes, high staff turnover in the unit means that it is not yet in a position to do so and the Ministry will require technical assistant to implement the programme. When it comes to the DGS, little progress has been made in the five years since its inception. Nonetheless, Government appear committed to the idea of a sector and the programme is mindful of this and aligned to the DGS Strategy.

#### 3.2 Complementarity, synergy and donor coordination

Working closely with the MoJCA, UNDP have been the primary DP supporting the creation of the DGS (with some support to the sector strategy and policy provided by the EU). Although UNDP

intends to create a basket fund, the strategy does not require it and no other DPs have indicated willingness to contribute to the sector this way. UNDP has also been very active in building capacity of newly elected Members of Parliament (MPs) and has recently concluded a project to enhance the understanding of MPs of their roles and responsibilities. UNDP also manages a basket fund for election support.<sup>8</sup> A programme to assist the NRB to introduce the NRIS has recently been launched, managed by UNDP and with funding from Irish Aid. Various other donors including the EU have indicated willingness to contribute to a potential basket fund, UNDP has supported the MHRC in the area of human rights education in schools and supports CSOs through its Democracy Consolidation Programme. It will also assist the Legal Aid Bureau (LAB) to develop its strategic plan during 2016. **DfID** have concentrated their support over the years on anti-corruption and particularly the ACB, the police (professional standards), elections, CSOs (recently through Tilitonse) and the informal justice system. Although all DfID programmes come to an end soon and new programmes will only be formulated during 2016, it does appear that DfID will continue to support anti-corruption efforts through technical assistance to various law enforcement agencies (including the ACB) that will be combined with support to an innovation unit to drive collective action against corruption and build a locally led anti-corruption network. DFID will most likely continue to support role players in both the formal and informal justice systems using violence against women and girls as the entry point. DfID will also continue to support CSOs through Tilitonse. In addition to their support to the NRIS, **Irish Aid** currently support access to justice through support to Irish Rule of Law International that works with paralegals to provide free legal services to awaiting trial prisoners and supports CSOs through Tilitonse. The **Royal Norwegian Embassy (RNE)** also provides support to CSOs through Tilitonse and has contributed to elections through the UNDP basket fund. It has also been the main contributor to the UN Women Gender-Based Governance Programme which complements the EU funded Gender and Women Empowerment (GEWE) programme. Support has also been provided to the MHRC and ACB as well as to enhancing the investigative skills of journalists through the Media Council of Malawi. Importantly, RNE has recently embarked on a process to develop a Parliamentary support programme and has commissioned a political economy analysis to determine the nature and form of such support that will be concluded in early 2016. Although there appears to be a fair amount of informal coordination amongst DPs, there are currently no functioning formal donor-coordination bodies.

### 3.3 Cross-cutting issues

The programme is closely aligned with the **human rights based approach** and **human rights** are mainstreamed into it - particularly those related to access to justice, transparency, voice and accountability, socio-economic rights and services, freedom of information and political rights. Support is provided to the MHRC to better protect human rights through increased capacity in the areas of investigations and public inquiries. The programme also has a specific focus on **gender** and other vulnerable groups, particularly the poor. For example, support to the Police to effectively deal with cases on violence against women and children will target the Victim Support Units, and support will be provided to the MHRC to conduct research and make recommendations regarding domestic legislation required by key international instruments including the Convention on the Elimination of all Forms of Discrimination against Women. Support will also be provided to the Judiciary to properly adjudicate cases on violence against women and children. Another critical player is NICE, that will be supported to raise awareness in communities on gender based violence from a prevention point of view. All training and capacity building interventions will be required to be as gender balanced as possible, both when it comes to participants and those providing training. The programme does not specifically focus on **HIV/AIDS**: however, support to reducing congestion in prisons may contribute to fewer infections. The programme does not focus on the **environment**.

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<sup>8</sup> The main contributors to the current fund are EU, DfID, Irish Aid and RNE, with participation from USAID, the African Union, UN Women and a range of organisations and institutions such as the National Democratic Institute.



## 4 DESCRIPTION OF THE ACTION

### 4.1 Objectives/results

This programme is relevant for the Agenda 2030. It contributes primarily to the progressive achievement of SDG target(s) 16.3 Promote the rule of law at the national and international levels and ensure equal access to justice for all and 16.6 Develop effective, accountable and transparent institutions at all levels, but also promotes progress towards Goal(s) 5 Achieve gender equality and empower all women and girls. This does not imply a commitment by the country benefiting from this programme.

The **overall objective** is to contribute to dignified life through accountable Government, informed democratic choice, and humane and effective delivery of justice.

The programme has two **specific objectives**, each with its own **key results**:

**Specific objective 1:** To strengthen democratic governance and enhance the ability of citizens, accountability institutions, and civil society to demand transparency and hold duty-bearers to account.

- **Key Result 1:** Enhanced democratic processes through support to key actors including national institutions.
- **Key Result 2:** Capacity of citizens, civil society and accountability bodies to demand transparency and accountability from duty bearers is enhanced.

**Specific objective 2:** To increase access to justice for all, especially women and the poor.

- **Key Result 3:** Coordination within the criminal justice system is improved.
- **Key Result 4:** Access to civil and criminal justice for vulnerable groups in both the formal and informal systems is increased.

### 4.2 Main activities

**Key Result 1: Democratic governance in Malawi is strengthened.**

The **main activities** to achieve this result are:

- 1.1. Provide support to **MEC** to conduct credible elections and capacity building in order to strengthen management of electoral processes in line with the recommendations of the EU Election Observation Mission
- 1.2. Support to **NICE** to conduct voter education and encourage political participation of women.
- 1.3. Support to the **NRB** to develop and roll out national identity cards to enhance voter registration and participation and to improve the fairness of elections, but also with transformative effects in other socio-economic areas
- 1.4. Support to the development of political parties to effectively participate in the democratic process by building their capacity to formulate strategies and policies as well as encouraging greater intra-party democracy and promote political participation of women (through **Tilitonse**).

**Key Result 2: Capacity of citizens, civil society and national accountability institutions to demand transparency and accountability from duty bearers is enhanced.**

The **main activities** to achieve this result are:

- 2.1 Support to **NICE** to conduct civic education, anti-corruption and accountability related activities (in line with its strategic plan).
- 2.2 Support to **CSOs** working in domestic accountability to monitor policy implementation, public service delivery and public resource management; to better engage in shaping policies, strategies and resource allocations at local and national levels as well as enabling citizens, particularly the poor, women and excluded groups to claim their rights (through **Tilitonse**).
- 2.3 Support to **media** to enhance investigative journalism and reporting in order to assist citizens to hold duty bearers to account (through **Tilitonse**).
- 2.4 Support to the **MHRC** to conduct investigations and hearings into critical human rights issues facing the country including gender based violence; to enhance its ability to deal with complaints; and to monitor, conduct research and hold inquiries into the domestication of international instruments (including the Equality Act, Domestic Violence Act, and legislation

related to children), to advocate for adoption of key instruments, and to prepare and present reports to the African Union (AU) and United Nations (UN) in collaboration with MoJCA and other stakeholders.

**Key Result 3: Coordination within the criminal justice system is improved.**

The **main activities** to achieve this result are:

- 3.1 Technical assistance and financial support to the **Judiciary** to establish a Criminal Justice Coordinating Committee (CJCC) at national level (Chaired by the Chief Justice), to meet, to conduct research and to improve practices into critical areas identified by the Committee (including but not limited to plea bargaining, diversion of minor criminal and civil matters out of the formal system for mediation, rationalisation of the parole system under Malawi Prisons), support to enhancing the capacity of Court User Committees, support to Community Service Officers (until these are brought under Prisons), and support to testing of any new rules and procedures introduced by the Committee.
- 3.2 Support to the Judiciary's **Law Reporting Department's** capacity to produce and distribute relevant legislation, case reports and related documents to lower courts and police prosecutors.
- 3.3 Support the MoJCA's **Law Revision Unit's** capacity in order to facilitate updates of the Law Revision Order (Laws of Malawi).
- 3.4 Support to **Prisons** to implement the revised parole and community service system (once agreement is reached).
- 3.5 Based on an equipment needs assessment at the start of the programme, support to the **MoJCA** to establish the **DGS Secretariat** to enhance its capacity to coordinate efforts within the sector.

**Key Result 4: Improved access to justice for vulnerable groups in both the formal and informal systems.**

The **main activities** to achieve this result are:

- 4.1 Technical assistance, capacity development and relevant equipment to the **Legal Aid Bureau** (based on learning and equipment needs assessment at the start of the programme) to enable it to play its role in providing legal aid and to enhance cooperation with CSOs.
- 4.2 Support **MoJCA** in particular the Directorate of Public Prosecution to establish and build capacity of a Forfeiture Unit as well as the Administrator General's Department in the area of protection of deceased estates for women, children and vulnerable groups.
- 4.3 Learning needs analysis and training for **Magistrates**. The programme will support training of the Magistrates based on the outcome of the learning needs analysis<sup>9</sup>.
- 4.4 Support to **Judiciary** to provide mobile courts in Malawi to clear a backlog of cases including those involving violence against women and children.
- 4.5 Support the rehabilitation of a selected number of Magistrate Courts through the Maintenance Unit of the Judiciary.
- 4.6 Support to **Judiciary** to operationalise Local Courts by among others building capacity of officers to ably preside over small cases in communities.
- 4.7 Learning needs analysis and training for **Police Prosecutors** on their prosecutorial mandate to equip them with skills to competently deal with cases in Court including cases related to violence against women, girls and children.
- 4.8 Support the Victim Support Units (VSUs) to provide assistance to victims of violence in particular women and children<sup>10</sup> (through the Police as a beneficiary of programme estimates).
- 4.9 Support to **CSOs** to provide legal advice and mediation with particular focus on cases related to gender based violence as well as roll out village-based mediation in selected traditional authorities.

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<sup>9</sup> Specialised training on violence against women and children, Gender Based Violence, Domestic Violence Act and Equality Act for those Magistrates empowered to deal with such cases) will be supported by DFID.

<sup>10</sup> This component will be implemented in collaboration with DfID's justice programme

- 4.10 Support to **NICE** to provide education on rights of victims and those in conflict with the law with particular focus on rights of women and children.

### **4.3 Intervention logic**

The proposed programme will address gaps both on the demand side and supply side of governance. Support will be provided to ensuring free and fair elections and political accountability by supporting the development of political parties and by supporting the MEC and Parliament to play their constitutionally mandated roles. At the same time, support is also included to assist CSOs and NICE to ensure that potential voters are adequately educated and motivated to participate in democratic decision-making both during and between elections, and by supporting CSOs and the media to increase the ability of citizens to demand transparency and accountability from duty bearers. Support to the development of the NRIS will also contribute to increased accuracy and fairness when it comes to voter registration and participation, but will have additional far-reaching impact by allowing citizens to better access services, by reducing levels of corruption, and by making it possible to better identify perpetrators and accurately determine the age of victims of crime and young offenders. The MHRC is supported to perform its unique functions when it comes to ensuring government complies with obligations in international human rights instruments and to provide redress for those whose rights (including socio-economic rights) are violated. And while various beneficiary institutions have a mandate to provide civic education, funds for this are channelled to NICE to provide civic education on issues linked to the programme (such as human rights and information on Local Courts) in collaboration with other institutions rather than funding each institution separately.

The programme recognises that blockages in one part of the justice system lead to problems, delays and blockages in other parts and that, to function effectively, coordination and cooperation is required at both the national and local levels. To this end, support is provided to the Judiciary to create a national coordinating committee that can identify the causes of problems and develop solutions to increase the efficiency of the entire system – including by building linkages with service providers in the informal justice system – and to improve the capacity of the Magistrates and prosecutors in the lower courts where most cases take place, then introduction of Local Courts, and support to mobile courts aimed at speeding up the resolution of cases of violence against women and children in particular. Considerable support is also provided to the Legal Aid Bureau (LAB) as the only state institution providing legal aid as required by the Constitution in criminal matters and to poorer people seeking access to civil justice in the formal system. But while such support will lead to improvements in the formal system, the fact remains that the formal system is remote, expensive, complicated and time consuming. The majority of Malawians rely on the informal justice system to resolve most civil disputes and minor criminal matters. Support is thus provided to CSOs and other players in the informal system to provide legal aid and assistance (including village based mediation) and to increasing linkages between the formal and informal systems to reduce the burden on the formal system and speed up the delivery of justice in minor civil and criminal matters. Recognising that reducing overcrowding requires a multi-pronged approach, the programme will seek to introduce a functioning parole system and increase reliance on community service as a sentence in appropriate cases while also considering other options to reduce the burden on the entire system (such as plea bargaining and diversion).

An efficient and effective justice system is crucial to the promotion of public accountability. Speedy investigations, hearing and adjudication of cases in the system acts as a deterrent.

Although the specific objectives are fairly distinct, they cover two of the three pillars of support to governance under the NIP (the remaining ‘pillar being covered by support to public finance management under a separate programme) and are thus coherent at a higher level (support to governance generally). Internal coherence has also been built across the specific objectives through support to CSOs working towards both objectives, to NICE to provide civic education in collaboration with others on human rights, access to justice, voter education and awareness on domestic accountability, and to the MHRC as both an accountability and access to justice institution. In keeping with government’s movement to a sector-based approach, support is included to the MoJCA and the DGS Secretariat to improve sector coordination and, as required by the DGS strategy, the programme

is aligned with Government's strategic priorities and approaches and compliments the support provided by other DPs including Member States. Ownership of the programme is also assured through various means: the programme is 'anchored' in the MoJCA; the Solicitor General acts as chair of the PSC; the Criminal Justice Coordinating Committee will determine what needs to be supported and done to speed up the criminal justice process (although some suggestions are made, final decisions are left to the Committee); there is strong government commitment to the NIRC process and stated commitment to the DGS and Local Courts; and all beneficiary organisations and the NAO were extensively consulted and participated in the design.

## **5 IMPLEMENTATION**

### **5.1 Financing agreement**

In order to implement this action, it is foreseen to conclude a financing agreement with the partner country, referred to in Article 17 of Annex IV to the ACP-EU Partnership Agreement.

### **5.2 Indicative implementation period**

The indicative operational implementation period of this action, during which the activities described in section 4.2 will be carried out and the corresponding contracts and agreements implemented is 72 months from the date of entry into force of the financing agreement.

Extensions of the implementation period may be agreed by the Commission's authorising officer responsible by amending this decision and the relevant contracts and agreements; such amendments to this decision constitute non-substantial amendment in the sense of Article 9(4) of the Regulation (EU) 2015/322.

### **5.3 Implementation modalities**

#### **5.3.1 Grant: direct award to Tilitonse (direct management)**

(a) Objectives of the grant, fields of intervention, priorities of the year and expected results

The objective of the grant is to increase domestic accountability and contribute to enhanced access to justice in the informal justice system through support to CSOs working in the areas of democratic governance, domestic accountability, access to justice, and support to the media and political parties. The results will be increased levels of domestic accountability, increased access to socio-economic rights and services, and increased access to justice for women and the poor.

(b) Justification of a direct grant

Under the responsibility of the Commission's authorising officer responsible, the grant may be awarded without a call for proposals to the Tilitonse fund which has been operational since 2011 giving grants to Civil Society Organizations. Its average annual budget is 2,5 Million Pound Sterling. Tilitonse will operate as a fund providing sub granting to Civil Society organizations in activities 1.4, 2.2, and 2.3.

Tilitonse is in the process of being established as a Foundation with the support of EU funded Technical Assistance. This transition from an entity funded by other development partners (DFID, Norway, Ireland) has been extensively discussed and agreed upon. Currently the entity is managed by a private company according to DIFD procedures, which are non-compatible with EU rules. Tilitonse is in the process of being constituted as a foundation under Malawian law, in order to be able to receive EU funds, and it is foreseen that the restructuring will be finalised before the end of 2016. The grant will be awarded subject to the finalisation of this process.

Under the responsibility of the Commission's authorising officer responsible, the recourse to an award of a grant without a call for proposals is justified because Tilitonse is the only entity that offers such an opportunity and, as such, it has a *de facto* monopoly when it comes to disbursing funds to CSOs working in the broad area of governance (Art 190 (1)(c)). Moreover the pooling of DP support to CSOs in a fund is cost-effective, labour efficient, reduces transaction costs, increases complementarity and ownership, and is very much in line with the spirit of the Paris Declaration on Aid Effectiveness

(2005) and the Accra Agenda for Action (2008). Tilitonse has performed admirably since its establishment and is already recognised as a trusted partner by all CSOs in Malawi. It uses a procedure that is well tailored to provide grants to both large CSOs and smaller community-based organisations. In addition, it provides extensive capacity building and M&E – critical components of any support to CSOs.

(c) Essential selection and award criteria

The essential selection criteria are the financial and operational capacity of the applicant. The essential award criteria are relevance of the proposed action to the objectives of the call; design, effectiveness, feasibility, sustainability and cost-effectiveness of the action.

(d) Maximum rate of co-financing

The maximum possible rate of co-financing for this grant is 50% of the eligible costs of the action.

In accordance with Article 192 of Regulation (EU, Euratom) No 966/2012, applicable in accordance with Article 37 of Regulation (EU) 2015/323, if full funding is essential for the action to be carried out, the maximum possible rate of co-financing may be increased up to 100 %. The essentiality of full funding will be justified by the Commission's authorising officer responsible in the award decision, in respect of the principles of equal treatment and sound financial management.

(e) Indicative trimester to conclude the grant agreement

Fourth trimester of year one.

*5.3.2 Indirect management with an international organisation (UNDP)*

A part of this action may be implemented in indirect management with UNDP in accordance with Article 58(1)(c) of Regulation (EU, Euratom) No 966/2012 applicable in accordance with Article 17 of the Regulation (EU) 2015/323. This implementation entails support to elections, the MEC and voter education via a basket fund established by UNDP for this purpose; and support to the National Registration Bureau (NRB) to implement, manage, coordinate and maintain a National Registration and Identification System (NRIS).

**MEC / Elections**

This implementation is justified because elections and between the ballot support are cornerstones of democratic governance and the Government of Malawi has limited funds and capacity to run its elections without DP assistance. UNDP has managed similar funds in the past and most, if not all, DPs supporting elections will most likely contribute to the same fund. The discussions on the amounts of the contributions are currently ongoing but the figures are not yet confirmed as the other partners are still in a programming stage. This includes a possible co-financing from UNDP, whose amount is not known at this stage. The entrusted entity would carry out the following operational implementation tasks: support to the MEC to build capacity of staff including new commissioners in order to strengthen management of electoral processes in line with the recommendations of the EU Election Observation Mission. The entrusted entity would mainly carry out the following budget-implementation tasks: recruitment of consultants and procurements.

**NRB / NRIS**

This implementation is justified because the NRIS will not only contribute to voter registration, democratic governance and criminal justice, but it has also the potential to become a game changer and improve the effectiveness of programmes for the poor on a broad range of areas like social protection, farm subsidies, humanitarian assistance, access to lending etc. UNDP is already managing the recently launched programme for the development of the NRIS, has established a basket fund that other DPs have indicated they will contribute to, and is a trusted partner of government. Other DPs and the EU have been instrumental in driving discussions between MEC and NRB on the NRIS. The entrusted entity would carry out the following operational tasks: support to the NRB to implement, manage, coordinate and maintain the NRIS in the period 2016-18 inclusive. The entrusted entity would carry out the following budget-implementation tasks recruitment of consultant and procurements.

### *5.3.3 Indirect management with a Member State Agency (British Council)*

A part of this action may be implemented in indirect management with the British Council in accordance with Article 58(1)(c) of Regulation (EU, Euratom) No 966/2012 applicable in accordance with Article 17 of the Regulation (EU) 2015/323. This implementation entails support to Village Mediation Programme (VMP) and paralegals. This implementation is justified because the British Council has core experience in the management of large, complex, sector-wide justice programmes in fragile states in Africa and beyond. In Malawi the British Council has successfully achieved the required outcomes by working across the governance sector successfully engaging with police, judiciary, prisons, civil society and the institutions of both customary and formal justice. British Council has got 15 years experience in implementing such programs in Malawi and it is considered the most suitable partner to implement this activity.

Support provided to VMP under the DGP has significantly increased access to justice, particularly for women and the poor, in those communities where committees have been established. These will continue to be supported while British Council will ensure the roll out of similar services to new districts (two traditional authorities / communities per district). Moreover this intervention will support the provision of a national paralegal aid service delivery system which offers appropriate legal advice and assistance to poor people in conflict with the law. The results are expected to be a significant number of minor civil and criminal matters are settled inexpensively and expeditiously through mediation, that the burden on the formal system in these districts will be reduced, and that access to justice is thus enhanced in both the formal and informal justice systems. The entrusted entity would carry out the following budget-implementation tasks: recruitment of consultants and procurement of services from different bodies including Civil Society Organisations while establishing village based mediation schemes in rural communities, building capacity of mediators to facilitate access to informal justice and providing legal assistance to citizens through paralegals.

### *5.3.4 Indirect management with the partner country*

A part of this action with the objective of increasing access to justice and domestic accountability (all activities related to the MoJCA, Judiciary, Police, Prisons, MHRC, NICE and LAB) may be implemented in indirect management with the Government of Malawi in accordance with Article 58(1)(c) of the Regulation (EU, Euratom) No 966/2012 applicable in accordance with Article 17 of the Regulation (EU) 2015/323 according to the following modalities:

The National Authorising Office (NAO) will act as the contracting authority for the procurement and grant procedures. The Commission will control ex ante all the procurement procedures except in cases where programme estimates are applied, under which the Commission applies ex ante control for procurement contracts above EUR 100 000 (or lower, based on a risk assessment) and may apply ex post control for procurement contracts up to that threshold. The Commission will control ex ante the grant procedures for all grant contracts.

Payments are executed by the Commission except in cases where programmes estimates are applied, under which payments are executed by the NAO for ordinary operating costs, direct labour and contracts below EUR 300 000 for procurement and up to EUR 100 000 for grants.

The financial contribution covers the ordinary operating costs incurred under the programme estimates.

In accordance with Article 190(2)(b) of Regulation (EU, Euratom) No 966/2012 and Article 262(3) of Delegated Regulation (EU) No 1268/2012 applicable in accordance with Article 36 of the Regulation (EU) 2015/323 and Article 19c(1) of Annex IV to the ACP-EU Partnership Agreement] the NAO shall apply procurement rules of Chapter 3 of Title IV of Part Two of Regulation (EU, Euratom) No 966/2012. These rules, as well as rules on grant procedures in accordance with Article 193 of Regulation (EU, Euratom) No 966/2012 applicable in accordance with Article 17 of the Regulation (EU) 2015/323, will be laid down in the financing agreement concluded with the Government of Malawi.

## 5.4 Scope of geographical eligibility for procurement and grants

The geographical eligibility in terms of place of establishment for participating in procurement and grant award procedures and in terms of origin of supplies purchased as established in the basic act and set out in the relevant contractual documents shall apply.

The Commission's authorising officer responsible may extend the geographical eligibility in accordance with Article 22(1)(b) of Annex IV to the ACP-EU Partnership Agreement on the basis of urgency or of unavailability of products and services in the markets of the countries concerned, or in other duly substantiated cases where the eligibility rules would make the realisation of this action impossible or exceedingly difficult.

## 5.5 Indicative budget

Module	EU contribution (in EUR)	Indicative third party contribution, in currency identified
5.3.1 Direct Grant to Tilitonse (CSOs, media and political parties)-direct management	5 000 000	Not known
5.3.2 Indirect management (Delegation Agreement) with UNDP (MEC / elections and NRB/NRIS)	10 500 000	Not known
5.3.3 Indirect management(Delegation Agreement) with British Council (village mediation and paralegals)	3 500 000	Nil
5.3.4 -Indirect management with partner country (PEs) Multi-annual Programme Estimate for NICE Multi-annual Programme Estimate for six public sector institutions	9 000 000 12 000 000	Nil
5.3.4 -Indirect management with the Partner Country - Service contract (Technical Assistance to the MoJCA and short term experts)	5 500 000	Nil
5.8, 5.9 Evaluation and Audit	600 000	N.A.
5.10 Communication and visibility	200 000 <sup>11</sup>	N.A.
Contingencies	1 700 000	N.A.
Totals	48 000 000	Not known

## 5.6 Organisational set-up and responsibilities

The programme will be housed within the MoJCA. The contracting authority for the programme shall be the National Authorising Officer.

Responsibility for the implementation, coordination, monitoring and evaluation of the remaining activities will vest in a **Programme Steering Committee (PSC)** made up of:

- The Solicitor General / representative of the MoJCA (Chair).
- A representative of each of the following beneficiaries: Judiciary, NICE, MHRC, Police, Prisons, LAB, MEC, NRB.
- A representative of the NAO.
- A representative of the EU Delegation as an observer.

<sup>11</sup> Costs for communication and visibility for activities implemented by UNDP and British Council are included in the overall budgets allocated for each Delegation Agreement.

Tilitonse will not fall under or be part of the PSC, but may be invited to submit their regular reports produced for its board to the PSC.

In terms of separate arrangements with UNDP, UNDP have established project steering committees for both support to elections and support to the NRIS projects and basket funds. The release of funds to these will be determined by the delegation as set out in the relevant delegation agreement with UNDP. As for an agreement with the British Council, regular monitoring meetings and visits are foreseen and the release of funds will be determined as per the rules set out by the Delegation Agreement.

Under the responsibility of the national authorising officer, a service contract related to the procurement of the **technical assistance** for the implementation of all aspects of the programme not delegated to UNDP and British Council will be contracted by the Government and paid by the Commission. The contract will focus on support to implementation of activities related to programme estimates with the exception of NICE. To increase flexibility and ensure that the programme is able to respond to an evolving environment, an expert facility is included. This facility will form part of the service contract and be available to DGS institutions based on needs.

The contractor will be responsible for establishing a secretariat that will report directly to the PSC and that will consist of at least:

- A long-term democratic governance expert.
- Finance manager.
- Relevant national support staff including procurement and M&E experts.

#### **Start-up PE phase (4 months)**

A start-up programme estimate is foreseen to ensure that the ground is laid for full implementation. While some activities can start immediately, others will require some assessment and analysis to determine how to proceed. To this end, during the first four months after their appointment, the Technical Assistance to the MoJCA will be responsible for:

- Conducting an analysis to determine possible needs emerging between design and implementation. In particular, this will include findings of the end-term review of the current DGP as well as an assessment of the progress made. Should non substantial changes be required, these will be presented to the Project Steering Committee and EU for approval.
- Producing the first annual workplan.
- Conducting a learning needs analysis for Magistrates and Police Prosecutors and a learning and equipment needs assessment for LAB.

### **5.7 Performance monitoring and reporting**

The day-to-day technical and financial monitoring of the implementation of the programme will be a continuous process and part of the implementing partners' responsibilities. To this aim, implementing partners shall establish a permanent internal, technical and financial monitoring system for the action and elaborate regular progress reports (not less than annual) and final reports. Every report shall provide an accurate account of implementation of the action, difficulties encountered, changes introduced, as well as the degree of achievement of its results (outputs and direct outcomes) as measured by corresponding indicators, using as reference the final logframe matrix. The report shall be laid out in such a way as to allow monitoring of the means envisaged and employed and of the budget details for the action. The final report, narrative and financial, will cover the entire period of the action implementation. To assist in the process, support staff under the PE has been envisaged to both develop the M&E system and reporting requirements for the programme, and to provide advice and assistance to beneficiary institutions generally and specifically on how to comply with the programme's M&E system and requirements.



The Commission will undertake additional project monitoring visits both through its own staff and through independent consultants recruited directly by the Commission for independent monitoring reviews (or recruited by the responsible agent contracted by the Commission for implementing such reviews).

## **5.8 Evaluation**

Having regard to the nature of the action, mid-term and final evaluations will be carried out for this action or its components via independent consultants contracted by the Commission. The mid-term evaluation will be carried out for problem solving and realignment of activities to address any changes that have occurred. The final evaluation will be carried out for accountability and learning purposes at various levels (including for policy revision) and to consider the possibilities of further interactions.

The Commission shall inform the implementing partner at least one month in advance of the dates foreseen for the evaluation missions. The implementing partner shall collaborate efficiently and effectively with the monitoring and/or evaluation experts, and inter alia provide them with all necessary information and documentation, as well as access to the project premises and activities. The evaluation reports shall be shared with the partner country and other key stakeholders. The implementing partner and the Commission shall analyse the conclusions and recommendations of the evaluations and, where appropriate, in agreement with the partner country, jointly decide on the follow-up actions to be taken and any adjustments necessary, including, if indicated, the reorientation of the programme. Indicatively, two contracts for evaluation services shall be concluded under a framework contract, the first one will be launched in the last quarter of 2018 for mid-term evaluation, and the second one in the third quarter of 2021 for final evaluation of the programme.

## **5.9 Audit**

Without prejudice to the obligations applicable to contracts concluded for the implementation of this action, the Commission may, on the basis of a risk assessment, contract independent audits or expenditure verification assignments for one or several contracts or agreements. Indicatively, one contract for audit services shall be concluded under a framework contract in the first year of implementation for programme estimates. As for other contracts, it will depend on the risk assessment.

## **5.10 Communication and visibility**

Communication and visibility of the EU is a legal obligation for all external actions funded by the EU. This action shall contain communication and visibility measures which shall be based on a specific Communication and Visibility Plan of the Action, to be elaborated at the start of implementation and supported with the budget indicated in section 5.5 above. In terms of legal obligations on communication and visibility, the measures shall be implemented by the Commission, the partner country, contractors, grant beneficiaries and/or entrusted entities. Appropriate contractual obligations shall be included in, respectively, the financing agreement, procurement and grant contracts, and delegation agreements. The Communication and Visibility Manual for European Union External Action shall be used to establish the Communication and Visibility Plan of the Action and the appropriate contractual obligations.

# **6 PRE-CONDITIONS**

Given that **Local Courts** require the Act to be put into effect before any activities can be conducted, the following pre-condition is included: Before end 2016:

- The Minister of Justice and Constitutional Affairs must comply with the requirement in Section 1 of the Local Courts Act to specify the date on which it will come into operation in the *Gazette*

(such date to be in advance of the intended commencement date of the project to ensure actions and decisions of the Court and officials are legal).

Should the precondition not be met, the TAs to the MoJCA will be required during the start-up programme estimate phase to prepare a proposal on whether to grant an extension or whether the funds would best be diverted to other activities. Should any extensions be granted, the mid-term review will be required to conduct a similar analysis to determine whether there is a reasonable prospect of any success or whether funds should be diverted elsewhere.

## APPENDIX - Indicative Logframe matrix (for project modality)<sup>12</sup>

The activities, the expected outputs and all the indicators, targets and baselines included in the logframe matrix are indicative and may be updated during the implementation of the action, no amendment being required to the financing decision. When it is not possible to determine the outputs of an action at formulation stage, intermediary outcomes should be presented and the outputs defined during inception of the overall programme and its components. The indicative logframe matrix will evolve during the lifetime of the action: new lines will be added for including the activities as well as new columns for intermediary targets (milestones) for the output and outcome indicators whenever it is relevant for monitoring and reporting purposes. Note also that indicators should be disaggregated by sex whenever relevant.

	Results chain	Indicators	Baselines	Targets By end of programme <sup>13</sup>	Sources and means of verification	Assumptions
Overall objective: Impact	To contribute to dignified life through accountable government, informed democratic choice, and humane and effective delivery of justice.	<p>Overall levels of governance**.</p> <p>Levels of voice and accountability.**</p> <p>Compliance with rule of law.**</p> <p>Respect for and promotion and protection of human rights. *</p>	<p>Overall Governance: Score 56.7 (Mo Ibrahim Index 2014)</p> <p>Voice and Accountability – 44.8% (World Bank World Governance Indicators 2014)</p> <p>Rule of law – 45.7% (WGI)</p> <p>Participation and human rights: Score 63 (Mo Ibrahim Index (2014))</p>	<p>Overall Governance: Score: 60</p> <p>Voice and Accountability 48%</p> <p>Rule of law – 50%</p> <p>Participation and human rights: Score 65</p>	<p>World Bank WGI</p> <p>Mo Ibrahim Index</p> <p>World Bank WGI</p> <p>World Bank WGI</p> <p>World Bank WGI</p>	Government of Malawi will continue to include governance as a priority in its development strategy when the new Malawi Growth and Development Strategy (MGDS) II is reviewed and replaced in 2016.

<sup>12</sup> Indicators aligned with the relevant programming document are marked with '\*' and indicators aligned to the EU Results Framework with '\*\*'.

<sup>13</sup> Unless otherwise stated.

Specific objective 1	To strengthen democratic governance and enhance the ability of citizens, accountability institutions, and civil society to demand transparency and hold duty-bearers to account.	<p>% of the public satisfied with Electoral Commission performance.</p> <p>Levels of corruption.*</p> <p>% of Malawians knowledgeable about human rights.*</p>	<p>73% satisfied with MEC</p> <p>0.31 score in Transparency International Corruption Perception Index (2015)</p> <p>45 % of Malawians knowledgeable</p>	<p>78% satisfied with MEC (disaggregated by gender)</p> <p>0.36 score in Transparency International Perception Index by 2020</p> <p>60 % knowledgeable about human rights</p>	<p>UNDP reports</p> <p>TI Corruption Perception Index</p> <p>MHRC Reports.</p>	<p>GoM will continue to include democratic governance and domestic accountability in the new MGDS.</p> <p>The NRIS will be in place by the time voter registration for the 2019 elections begins.</p> <p>Tilitonse will prioritise democratic governance and domestic accountability for support to CSOs.</p> <p>CSOs and the media will continue to operate largely free from government control.</p>
Specific objective 2	To increase access to justice for all, especially women and the poor	<p>Ratio of number of court cases (criminal and civil) resolved over total number of cases filed per year. *</p> <p>% of people accessing legal representation.**</p> <p>% of referred cases of gender and sexual violence against women and children that are investigated and sentenced.</p>	<p>Baseline: 65% in 2011</p> <p>18% men and 19.3% women access legal representation</p> <p>No baseline</p>	<p>Target: 70% in 2020</p> <p>25% men and 30% women</p> <p>25 % are investigated and sentenced</p>	<p>Annual Judiciary reports.</p> <p>Annual LAB reports.</p> <p>Annual reports from DPP.</p>	<p>Role players in the criminal justice system will remain amenable to coordinating efforts.</p> <p>Agreement will be reached on key issues including parole, diversion and plea-bargaining.</p> <p>LAB will be provided with sufficient funds by government to cover staff and office space.</p>

Outputs	<b>Key Result 1: Democratic governance in Malawi strengthened.</b>	<p>1.1 Status of implementation of EU EOM 2014 recommendations**</p> <p>1.2 % of null and void ballots.</p> <p>1.3 % of citizens issued with identity cards – disaggregated by gender and rural/urban coverage.</p> <p>1.4 Status of amendments to political party financing regulations</p>	<p>1.1 No recommendations implemented</p> <p>1.2 slightly above 1% (2014)</p> <p>1.3 No identity cards issued</p> <p>1.4 Amendments not submitted to Cabinet</p>	<p>1.1 4 identified recommendations implemented by next elections</p> <p>1.2 1% null and void in 2019</p> <p>1.3 90% of eligible citizens issued with ID cards</p> <p>1.4 Amendments submitted and adopted by Parliament by 2020</p>	<p>EOM Reports</p> <p>MEC Reports</p> <p>NRB Reports</p> <p>Parliament reports</p>	NRIS is in place by next election and voter registration using national identity cards not possible as a result.
	<b>Key Result 2: Capacity of citizens, civil society and national accountability institutions to demand transparency and accountability from duty bearers is enhanced.</b>	<p>2.1 # number of people reached by civic education (NICE) – disaggregated by gender and urban/rural.</p> <p>2.2 Number of people reached by CSO's domestic accountability activities – disaggregated by gender and rural/urban.</p> <p>2.3 # of media houses reached/trained by CSO on accountability.</p> <p>2.4 # of complaints received and handled by MHRC.</p> <p>2.5 # of periodic compliance reports developed in liaison with CSOs submitted to treaty bodies in a timely manner.* (** - number of CSOs)</p>	<p>2.1 19,339,749 male 11,186,149, female 8 153 600 (under 10<sup>th</sup> EDF)</p> <p>2.2 No baseline available</p> <p>2.3 No baseline available</p> <p>2.4 249 cases registered and handled</p> <p>2.5 3 periodic compliance reports</p>	<p>2.1 19 500 000 (with at least 40% female)</p> <p>2.2 3 000 000</p> <p>2.3 5 media houses reached and trained</p> <p>2.4 230 new cases registered and handled</p> <p>2.5 8 periodic compliance reports by 2020</p>	<p>NICE Annual Reports</p> <p>Annual Tilitonse Foundation Reports</p> <p>Tilitonse Reports</p> <p>Annual MHRC Reports</p> <p>Annual MoJCA Reports</p>	Tilitonse is transitioned into a local Foundation by the end of 2016.
	<b>Key Result 3: Coordination within the criminal justice system is improved.</b>	<p>3.1 Status of the Criminal Justice Coordinating Committee (CJCC)</p> <p>3.2 Status of publishing Law Reports</p> <p>3.3 # of law revision orders developed.</p> <p>3.4 # of prisoners granted parole.</p> <p>3.5 % reduction in prison overcrowding.*</p> <p>3.6 DGS Secretariat established.</p>	<p>3.1 No CJCC in place</p> <p>3.2 Reports up to 2014 published</p> <p>3.3 1 Law revision order finalised (2015)</p> <p>3.4 No prisoners granted parole</p> <p>3.5 250% overcrowding in 2013</p> <p>3.6 No DGS Secretariat in place</p>	<p>3.1 1 CJCC established by the end of the programme</p> <p>3.2 Reports up to 2018 published</p> <p>3.3 3 Law revision orders finalised</p> <p>3.4 300 prisoners granted parole</p> <p>3.5 150% overcrowding in 2020</p> <p>3.6 DGS Secretariat functional</p>	<p>Annual Judiciary Reports</p> <p>Annual MoJCA Reports</p> <p>Annual Prison Reports</p> <p>Annual MHRC Reports</p> <p>Annual MoJCA Reports</p>	<p>DGS Secretariat is established during 2016.</p> <p>Parole and community service is moved under Prisons Service.</p>

	<b>Key Result 4: Improved access to justice for vulnerable groups in both the formal and informal systems.</b>	<p>4.1 # of LAB senior management and staff trained – disaggregated by gender. (**)</p> <p>4.2 Forfeiture Unit established.</p> <p>4.3 # of Magistrates trained in judicial proceeding disaggregated by gender. (**)</p> <p>4.4 # of cases resolved through mobile courts dealing with gender based violence.</p> <p>4.5 # number of Magistrate courts rehabilitated.</p> <p>4.6 # of Local Courts established.</p> <p>4.7 # of Police Prosecutors trained in judicial proceedings disaggregated by gender. (**)</p> <p>4.8 # of criminal cases taking more than one year to be resolved.*</p> <p>4.9 # number of victims assisted by Victim Support Units. (**)</p> <p>4.10 # of cases resolved by Village Mediation Committees (**)</p> <p>4.11 % of population who use the formal and informal justice system* (**)</p> <p>4.12 # people reached with messages on rights of victims. (**)</p>	<p>4.1 No staff trained</p> <p>4.2 No Forfeiture unit in place</p> <p>4.3 No baseline</p> <p>4.4 119 cases resolved</p> <p>4.5 16 Magistrate Court rehabilitated (2010)</p> <p>4.6 No Local Court established</p> <p>4.7 26 police prosecutors trained (2015)</p> <p>4.8 44.7% of cases take more than one year</p> <p>4.9 14 470 (100%) victims assisted by 2015</p> <p>4.10 25833 cases resolved by 2015</p> <p>4.11 Formal: 10% in 2011 Informal: 85.5% in 2011</p> <p>4.12 No baseline</p>	<p>4.1 20 staff trained</p> <p>4.2 Forfeiture unit functional</p> <p>4.3 168 magistrates trained out of a total of 280 in service (60%)</p> <p>4.4 180 cases resolved by 2020</p> <p>4.5 10 new Magistrate Courts rehabilitated</p> <p>4.6 60 Local courts established</p> <p>4.7 80 police prosecutors trained by 2020</p> <p>4.8 35% of the cases taking more than one year</p> <p>4.9 12,800 new victims assisted by 2020</p> <p>4.10 50 000 cases resolved</p> <p>4.11 Formal: 20% in 2020 Informal: 80% in 2020</p> <p>4.12 70 000 people reached and aware of rights of victims</p>	<p>Annual LAB Reports</p> <p>Annual MoJCA Reports</p> <p>Annual Judiciary Reports</p> <p>Annual Police Reports</p> <p>Annual Judiciary Reports</p> <p>Access to Justice Surveys (Baseline 2011)</p> <p>Annual Police Reports</p> <p>Annual British Council Reports</p> <p>Access to Justice Surveys (Baseline 2011)</p> <p>Annual MHRC Reports</p>	<p>Government provides resources for LAB staff recruitment.</p> <p>Staff is provided for implementation of Local Courts pilot.</p>
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