

# The Interface between Local Level Politics, Constitutionalism and State Formation in Malawi through the Lens of the Constituency Development Fund (CDF)

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## **Abstract**

*The paper explores how local level politics has influenced, shaped and nurtured the culture of constitutionalism within the framework of local governance including its effects on state formation processes. This is achieved by critically scrutinizing the operative dynamics of the Constituency Development Fund (CDF) which was introduced entirely by an administrative decision as a key component of the local governance framework. The officially stated objective of the CDF is to facilitate the spread of development to every possible corner of the country which should in turn bring the government closer to the people. However, the paradox is that this development has taken place at a time when the future of local governments, which are guaranteed by the constitution, is quite uncertain. It is, in fact, not known at all when the local governments will be reconstituted as an integral part of the evolving democratic dispensation that is a critical aspect for the renewal of vibrant state formation processes.*

## **Introduction**

The transition to democracy of previously autocratic regimes since the celebrated demise of the Berlin Wall in 1989 is billed as a historical juncture in the development of these countries and widely expected to lead to more promising trajectories of state formation and state building that had eluded most of these countries for a good part of the post independence era (Ake, 2000 and Hyden, 2005). The rather dismal progress in state formation and building is generally attributed to the disjuncture between the aspirations of the elites and the masses. The post independence elites centralized the state apparatus primarily to gratify selfish and short-term personal goals contrary to the spirit of independence struggle that sought to widen popular participation and inclusion in decision making by expanding the public sphere as the realm of citizenship in the fulfilment of national and cultural self-determination. The transition to democracy potentially offers the ordinary man and woman in the street a second chance of independence that would deliver on economic prosperity, political and civil liberties, and promote a culture of constitutionalism (Manor, 1997 and Munro, 1996).

It is for this reason that decentralization of local governance is popularized as a means of not only extending government to the lowest possible level but also as means of legitimizing governance processes. It is championed as a means to improve service delivery and promote participatory democracy and decision making (Heywood, 2000 and Cammack, et al., 2006). Decentralization facilitates development because of flexibility, accommodation, adaptability and learning which do not exist in a centralized blueprint approach. This is to say that local governments are much more effective than central governments in providing opportunities for citizens to participate in the political life of their community. More critically, decentralization protects freedom by dispersing government power and creating a network of checks and balances as peripheral bodies check central government as well as each other. Furthermore, decentralization is regarded as a potential springboard for viable state formation processes “since there is a growing appreciation

of the need to develop local governance and not just local governments but also simultaneous engagement by the former of the latter and local non-state institutions” (Olowu, 2003: 42). State formation is broadly construed as a process by which state agents secure the state as the final arbiter of rights, property rights, and community membership at the community level. It is thus about the creation of institutions that systematize practices in ways that are recognizable and manipulable by existing state authority and the creation of state sanctioned authority that is recognized as legitimate by citizens.

The success of decentralization in facilitating decentralization is critically dependent on the existence of a strong culture of constitutionalism, however. Constitutionalism is generally defined as a set of political values and aspirations that reflect the desire to protect political freedom through the establishment of internal and external checks upon government’s power. There is huge premium on the culture of constitutionalism in local governance processes as local governments are widely projected as training grounds for democracy. In this regard, therefore, the role of constitutions is not only to limit arbitrary power of the government but also to prevent public administration from being poisoned by people’s short-term interests and passions. Constitutions specify the purpose of government, the state-society relationships between various institutions and the limits of government. The success of decentralization therefore requires the creation of structures that are democratic, participatory, stable, accountable, cost effective, informative and which deliver on both the development aspirations of the people as well as the enhancement of their human and democratic rights within the framework of the rule of law (Manor, 1997 and Hyden, 2005). In short, constitutionalism embodies the institutional arrangements that make the rule of law possible.

This study was inspired by parliament’s decision to introduce the Constituency Development Fund (CDF) in the 2006/07 fiscal year as a special funding mechanism for grassroots development initiatives. The main justification for the CDF is that it would ensure equitable spread of development across the country, eliminating biases by governments in power who tend to concentrate the development cake in areas considered as their strongholds for strategic political reasons. There is no question that the cause of the CDF sounds noble but its architecture and the circumstances under which it was introduced raise more questions than answers. The tenure of local governments that were constituted following the 2000 local government elections expired four years ago yet the date for the next elections remains unknown. The architecture of the CDF risks rendering the entire decentralization project redundant especially if one considers the intense acrimonious relationships that prevailed amongst the key local power elites, namely: chiefs, councillors, and MPs within the framework of local governance between 2000 and 2005 (Chiweza, 2005 and Chinsinga, 2008). The strained relations among the key local stakeholders revolve around the two key issues: 1) who is the legitimate authority to represent the grassroots; and 2) the apparent lack of clarity of the functions and responsibilities of these key actors in local governance processes. The major question raised in this study through the lens of the CDF is therefore how does local level politics influence, shape and nurture the culture of constitutionalism within the framework of local governance and impact on constitutional debates at the national level?

This paper is based on data collected from Lilongwe and Balaka districts using qualitative methods of data collection. The main tools of data collection were key informant interviews with DA and NGO officials at the district level and opinion leaders at the community level such as traditional authorities, religious leaders and chair persons of various development committees and community level organizations. Key informant interviews were also carried out at the national level with relevant government ministries and departments, international and local NGOs and donor agencies. The view of ordinary men and women were sought through focus group discussions (FGDs). Four FGDs were carried out in each district with groups of 8-10 people

guided by a specially prepared checklist to address the main concerns of the study. The qualitative approach was deemed relevant for this study because it provides the means acquiring an in depth understanding of human behaviour as it provides the opportunity to explore issues, understand phenomena and answer questions. It also yields spoken words, opinions and expressions that are of greater value when analysing social contexts and institutions. The main reason for this is that the qualitative approach uses open-ended questions permitting unexpected but relevant issues to be followed up with either additional questions or systematic probing. Where these emerged, they became an integral part of the findings (Bryman, 2001 and Campbell, 2002).

### **State Formation, Decentralization and Constitutionalism**

The concept of the state is as contested as it is popular to the extent that it is generally defined with reference to its basic structural characteristics which are territoriality, sovereignty, law, centralization, legitimation, and class stratification. The state is therefore perceived as “the legitimate provider of specified political goods over which it has sole and universal jurisdiction on the basis of a national collectivity and for which it seeks revenue on that basis” (Munro, 1996: 118). It is thus a special kind of political association characterized by the legitimacy of its monopoly of physical violence and the resulting sovereignty within its territory. This means that the state as a central political organization within a given territory should be “the agency to set and enforce binding rules among its citizens” (Lambach, 2004: 4).

However, while the state might occupy a privileged position in the western world, its empirical reality in the large parts of the world, particularly Africa, is and will continue to be much more complex. The problem of stateness in these areas is increasingly being manifested through failed states; many states are unable to govern their respective territories in any meaningful way (Mawhood, 1989 and Lambach, 2004). This is attributed mainly to the fact that state formation on the African continent is “still almost everywhere an unfinished task for completion in future” (Mawwood, 1989: 240). According to Argawal (2001), state formation activities correspond to activities that contribute to the formalization and systematization of social action which either consolidate or complicate the division between state and society. It is thus about creation of institutions and knowledges that systematise practices in ways that are recognizable and manipulable by existing state authority and the creation of state sanctioned authority that is recognised as legitimate by citizens. Indicators of successful state formation include the following: 1) creation of new rules to define the limits of what is permissible; 2) the institutions of organizational structures to enforce such rules; and 3) the incorporation and undermining of alternative loci for the exercise of power.

State formation efforts are generally reflected in the technocratic policy rhetorics and social policy rhetorics of popular empowerment and self-empowerment. These processes essentially involve negotiations between state agents and citizens over legitimate state interventions in social life and the balance between social control and social incorporation (Migdal, 1988 and Munro, 1996). This implies that successful state formation involves “[full subordination] of people’s own inclinations of social behaviour or behaviour sought by other social organizations in favour of the behaviour prescribed by state rulers” (Lambach, 2004: 5). The most conspicuous form in which the modern state penetrates at the local level is through the provision of public services such as health care, education, agricultural extension, and maintenance of law and order. The street bureaucrats are therefore the vanguard of the state in locations that were previously not accessible to state efforts. For this reason, the sociological disposition of bureaucrats is particularly important since their backgrounds, processes of recruitment, attitudes, aspirations, communication styles, income, power bases, networks of patronage etc greatly shape the form and nature of state formation efforts (van Binsbergen, et al., undated).

The rather checkered track record of state formation across the African continent is beyond dispute. There are, nonetheless, variations in the accounts for the troubled state formation experiences on the continent.

The first account attributes Africa's experiences to the brevity of colonialism punctuated by the sudden transition to political independence. The argument is that the period was rather too short to lay a solid foundation for sustainable state formation experiences (Munro, 1996). This was further exacerbated by tendencies of postcolonial African states to centralise decision making processes contrary to the spirit and letter of the independence struggle which agitated for popular participation in decision making. The propensity toward centralization precipitated tremendous social and economic decline since "the bureaucracy fell short of the capacity needed to operate efficient centralized structures" (Mawhood, 1989: 241). The main thrust of the second account is that state formation processes have not been successful because of the uncaptured peasantry. In this narrative, the market is projected as the principal arena for direct struggle between peasants and the state. African states have been exploiting peasants through fixing prices of their produce at substantially lower prices than those obtaining world markets as a strategy to maintain urban biased policy portfolios. Consequently, the peasants reacted rationally to the state's exploitative tendencies by disengaging from production for the market to producing barely enough for subsistence or smuggling the produce to neighbouring countries. This has provided them with an exit option that the state cannot control hence Goran Hyden's concept of the uncaptured peasantry (Mawhood, 1989; Munro, 1996; Olowu, 2003).

A further complication relates to the fact that different state agencies attempt to capture peasants in different ways. For instance, agriculture ministries seek to capture them economically; administrative ministries seek to capture them politically; and socio-political ministries seek to capture them ideologically. Munro (1996) argues that this results in an incoherence of policy that rural people find confusing and appealing at the same time. State formation therefore remains very much work in progress in most African countries. For this reason, they are generally described as "decentralized collections of social units without an overarching system of symbols or values.....these weblike societies are mostly made up local organizations with local constituencies" (Lambach, 2004: 7). They are essentially underpinned by persistent struggles for social control between the state on one hand and the strongmen on the other who are usually unwilling to cede their privileged position by abandoning social control to the state (Mawhood, 1989 and Haberson, 2001). This creates a catch 22 situation for state officials entrusted with the task of implementing policies as these officials are caught in a web of pressures and demands from superiors, politicians, their bureaucratic peers and the intended clients of their programmes. This influences the shape and form of politics at the national level which in turn inhibits effective policy implementation at the local level. The extent of the influence may sometimes be "to the point where such policies might not be implemented at all" (Lambach, 2004: 12).

There is some evidence that the contemporary wave of democratization is presenting further challenges to state formation processes. The argument is that the advent of democratization has led to the reinvigoration of chieftaincies and traditional authorities both on the regional and national political stages, culminating in "the emergence of local stateless forms of power which suggest the end of the globalized statehood utopia" (Husken and Klute, undated: 1). They argue that chiefs have particularly in times of transformation often turned people's feelings of uncertainty into support for themselves by combining chieftaincy with notions of security and trust. Actually many scholars contend that local chiefs have been the main obstacle for the African states' drive for national hegemony. The paradox is that while the strongmen have become ever more dependent upon state recourses to shore up their social control, state leaders

have become dependent on them who employ those resources in a manner inimical to state rules and laws (Husken and Klute, undated and Lambach, 2004).

These challenges, among many others, led to decentralization gaining currency as a strategy for revitalizing state formation processes across the continent. Decentralization is widely characterized as the administrative and legal vehicle of state penetration by “facilitating the realization of the benefits of local participation while at the same time harmonising somewhat particularistic, localized interests at stake in such participatory initiatives with macro-level policy and institutional interests animating central government actors” (Haberson, 2001: 96). It is widely acknowledged that decentralization is nothing new on Africa’s development agenda but the current wave of decentralization policy reforms is projected to substantially revitalise state formation processes (Haberson, 2001 and Olowu, 2003). This sense of optimism is inspired by the fact that previous attempts at decentralization “were largely initiatives in public administration without any serious democratic content” (Blair, 2000: 21). The current wave is much more than establishing local governments; it is about the interactions among structures, processes and traditions that determine how power is exercised, how decisions are taken, and how citizens or other stakeholders have their say. The focus is thus on power, relationships and accountability in terms of who has influence, who decides, and how decision makers are held accountable. This is key to “[creating] an institutional framework that provides opportunities for the elite while restraining them from exploiting the system of local governance for their private interests” (Olowu, 2003: 44). Therefore decentralization lays the foundation for potentially sustainable state formation processes since “if the village is to be brought within the state, the state must be brought into the village” (Munro, 1996: 141).

However, the potential success of the current wave of decentralization is very much dependent on the prevalence of a culture of constitutionalism (Haberson, 2001 and Olowu, 2003). While this phase of decentralization takes place under new arrangements in which local government autonomy is better protected; this alone cannot guarantee the success of the reforms. By and large, local governments are safeguarded by statutes that central governments cannot change easily and unilaterally. The concern nonetheless is that the majority of the elites at the centre view democratic decentralization “as a zero sum power game in which local actors gain at the expense of the centre rather than a positive sum power game in which all players gain over time” (Olowu, 2003: 44). Existing evidence indicates that central governments often misuse their wide powers of control over local governments including using them to settle political scores or victimize councils controlled by opposition political parties. Thus legislative controls are not sufficient to ensure good governance if the culture of constitutionalism does not exist. This entails imposing limitations on the powers of government, adherence to the rule of law and protection of fundamental rights. The importance of constitutionalism rests upon the underlying fear that government is always liable to corrupting itself (Heywood, 2000). The existence of an established culture of constitutionalism is indispensable since the ability of local government to promote development let alone sustainable state formation processes relies on the relationship between local and national government and civil society, and the functioning of local government as a political and administrative unit (Galvin, 2008).

A quick audit of African government experiences with the implementation of decentralization policy reforms is less encouraging, however. Most of them are grappling with the rather crippling legacy of the previous one party or military dictatorships where constitutions did not matter at all. They were regarded as mere adornments and ornaments of the political system and not something to actually regulate governance. Constitutions were largely used to promote selfish goals and interests of the privileged ruling elite yet the state has the responsibility to advance the common good rather the good of some or a few (Olowu, 2003). This made it impossible to propagate a political, legal, social and economic order in which all segments of society have both

a voice and stake, which is the ultimate aspiration of the contemporary epoch of democratic decentralization.

### **The Constituency Development Fund (CDF) in Perspective**

The African continent has experienced a dramatic surge of CDF initiatives in recent years. This is mainly attributed to the evolving role of MPs beyond their classical triple roles of: 1) representation; 2) legislation; and 3) oversight. The functions of MPs now include the constituency service function whose prominence is linked to the increasing competitiveness of electoral contests which requires sitting parliamentarians to demonstrate tangible contributions to improvements of the livelihoods of their constituents. For most of their tenure, the MPs are therefore preoccupied with seeking out for development projects to shore up their credentials as harbingers of progress and development in their respective constituencies. An impressive portfolio of achievements in terms of tangible development projects greatly enhances the likelihood of success in the polls. To be fair, “MPs are assessed individually as development officers for their communities rather than a representative of the people” (APPG, 2008: 33).

The CDFs have been established in Kenya, Malawi, Uganda, Tanzania and Zambia within the last three years. It is argued that the pressure to deliver tangible development benefits to their constituents has forced MPs to look to the national treasury for a guaranteed stream of resources in order to deliver in their new but extremely important capacity as ‘constituency development officers’ (Ongoya and Lumallas, 2005). The official justification for the introduction of CDFs across these countries is “to tackle poverty at the grassroots through financing development at constituency level through elected MPs” (APPG, 2008: 13). The opposition political parties in most of these have further justified the introduction of CDFs as a means of ensuring a fair distribution of funds and therefore lead to more even-handed development since their constituencies remained with poor infrastructure and social services (Policy Forum, 2007).

The CDF in Malawi was introduced in the 2006/07 fiscal year following a motion in parliament moved by the MP of Nkhotakota East. The motion proposed that “parliament should consider the creation of a constituency development fund under the District Assembly vote; the fund, while controlled by the District Assembly, should be overseen by MPs”. The stated objective of the CDF in Malawi is to provide MPs and their constituent communities with the opportunity to make choices and implement projects that maximize their welfare in line with their needs and preferences. The CDF is thus there “to respond to immediate, short-term community development needs and is a means of ensuring that rural development spreads evenly throughout the country” (GoM, 2006: 1).

The incumbent MP is empowered to manage the CDF as they see fit but of course within the framework of some guidelines. The project implementation committees are required to report to the MP, and the MP is responsible for the day-to-day monitoring of CDF projects. The role of councillors in the CDF is confined to: 1) mobilising communities in project identification; 2) liaising with the MP in monitoring project implementation; and 3) informing the full Assembly on the progress of the CDF projects implemented in their wards (GoM, 2006). Councillors have clearly been relegated to the periphery of the CDF yet they are popularly expected to play a leading role in rural development programmes and efforts. The CDF guidelines unequivocally state that “the MP shall be responsible for the launch or handover of all projects under the CDF” (GoM, 2006: 4).

The existing CDF reviews are overall not very positive (Okungu, 2006 and Mapesa & Kibua, 2006). The main critique is that CDFs are heralded as a responsive and equitable grassroots development strategy when in fact they are about “solving problems that were created by MPs in desperation of grabbing parliamentary seats using taxpayers’ money” (Okungu, 2006: 3). In other words, CDFs are chided as a grassroots fund that aids MPs to run their philanthropic projects

promised during electoral campaigns. For instance, the President of Tanzania posited that “the CDF would be established in order to assist MPs in implementing development projects and reduce the daily nuisances that MPs face in their constituencies.....it is embarrassing to have constituents ask their MPs to financially contribute to development projects when they have no finances to do so” (Policy Forum, 2007: 1). The main shortfalls of CDFs include the following: 1) mechanisms for transparency and accountability are essentially absent; 2) institutions for decision making are weak; 3) there are design problems particularly with regard to insufficient technical staff with necessary skills to assist communities in preparing and implementing projects; 4) lack of adequate community participation in project selection, execution, selection of committees, and monitoring and evaluation; 5) limited awareness of the CDFs among constituents; and 6) confusion as to whether CDFs should be merged with other funds or not and controlled by the MPs or councillors (Mapesa & Kibua, 2006 and Okungu, 2006).

## **The Politics of the CDF and Local Level Politics**

### *The Political Setting and the CDF*

The introduction of District Assemblies (DAs) following the local government elections (LGEs) in November 2000 is argued to have created a new arena for competition over power and resources between local actors, namely: local councillors, MPs, chiefs and District Commissioners (DCs) and between these and the central actors (Cammack, et al., 2006 and Kaarhaus and Nyirenda, 2006). The experiences between 2000 and 2005 when elected councillors were in place attest to the fact that DAs have created a new layer of administration and politics whose dynamics have had great ramifications in terms of shaping trajectories of local politics and the interface between local and national level politics within the realm of constitutionalism.

Local councillors have had few champions because their role appropriates responsibilities previously exercised by local party leaders, MPs, chiefs and DCs. Councillors did not enjoy cordial relationships with MPs, chiefs, and DCs (Cammack, et al., 2006 and Chinsinga, 2009a). MPs considered councillors as a potential threat to their positions in subsequent general elections since they would use their position to build political capital as potential challengers in the next polls; chiefs regard councillors as an unnecessary intrusion in local level politics in a context where they consider themselves as primary institutions of leadership below the district level, a position propped up by opportunistic national level politicians who exploit chiefs for their own selfish political goals; and DCs abhorred the presence of councillors because they are used to doing business without systems of checks and balances in place. Most DCs often accused councillors of frustrating the operations of because of their ‘overzealousness’ in their capacity as policy makers (Hussein, 2003 and Chiweza, 2005).

### *CDF, Informalism and Constitutionalism*

The issue of the CDF was introduced for consideration in parliament amidst an intense between the government and the opposition on holding LGEs following the expiry of the tenure of councillors in May 2005. The LGEs were scheduled for May 2005 but have been continuously postponed to 2010. The intense debate on the holding of local polls in parliament was directly related to the political milieu at that time. The United Democratic Front (UDF) which won the May 2004 elections was pushed into opposition because President Bingu wa Mutharika resigned from the UDF and formed his own party-the Democratic Progressive Party (DPP) which automatically assumed the status of a governing party in February 2005. This party did not have any legislative representation apart from the 6 MPs who won the by-elections held in December 2005. The DPP, therefore, relied heavily on legislators from the UDF and the Malawi Congress Party (MCP), estimated at 70, who had either publicly or tacitly aligned with the DDP led government (Chinsinga, 2009b).

This situation created a persistently tense political environment between the government and opposition sides through a litany of wars that were fought in parliament. Thus instead of functioning as a platform for national dialogue, debate and compromise, the august house simply degenerated into a political turf marred by endless waged through section 65 which regulates floor crossing in the legislature, threats of impeachment of the president, deliberately orchestrated rejection of presidential nominees, pressure for the local polls among others. In these battles, the government was determined to stay in power at all cost whereas the opposition were intent to wrestle power from the government taking advantage of their dominance in parliament (Cammack, et al., 2006 and Chinsinga, 2009b).

The opposition insisted on holding of local government elections as quickly as possible in the 2006/07 fiscal year in order to be in line with the constitutional obligation which requires local governments to be in place at all times (Chinsinga, 2008). However, the government was reluctant to hold LGEs because it feared that it would not do well in these polls. At this point, the DPP was hardly an established political party compared to UDF and MCP. It did not have functioning structures in most parts of the country at the grassroots level in which case prospects of a massive defeat could not be ruled out. This could have further magnified the minority status of the DPP as the party at the helm of government. The official justification on the part of government was that the country was still reeling from the devastating hunger crisis that affected the country during the 2005/06 fiscal year and the lack of an enabling legislative framework to hold elections outside the period postulated in the constitution. This was further tied to the incomplete constitution of the Electoral Commission (EC). The EC was not in a position to undertake preparations for the LGEs full-scale because the quorum for it to make binding decisions could not be met as the contracts for five of the eight commissioners had expired (Chinsinga, 2009b).

When the president finally appointed new EC commissioners, the opposition faulted the president's appointments as being unprocedural and fought over them in court. The opposition's argument was that the president had transgressed the law that requires him or her to make appointments of EC commissioners in consultation with party leaders represented in parliament, and that he did not respect the established norm of ensuring that parties are represented on the EC proportionately to their parliamentary strength. The matter was fought in court all the way to the Supreme Court of Appeal until the opposition decided to withdraw the case before a judgement could be delivered (Chinsinga, 2008). The protracted duel over the appointment procedures of EC commissioners was realistically speaking a strategic attempt by each side to contest the LGEs under circumstances that would have at least guaranteed favourable outcomes on their part. If the EC commissioners were to be appointed using the traditional norm, then the DPP would have been under represented since it was at that time a minority party. The contestation was inevitable because the EC is a pivotal institution to gaining control of the state through elections and using its resources to build support through patronage.

#### *CDF, LGEs and Political Opportunism*

The demand by the opposition to push for LGEs fizzled out immediately the government agreed to establish the CDF during the 2006/07 budget session. The opposition MPs used the passing of the budget as a bargaining chip to force the government to bow down to the demands for a CDF. Taking advantage of their dominance in parliament, the opposition insisted that that they would only pass the budget only if the CDF was accommodated. One parliamentarian described the CDF as "a tool that we used to bargain with government to have the budget passed. So they gave us CDF and we passed the budget". The pressure by opposition political parties to force government to hold LGEs has never been so great and sustained as it were before the establishment of the CDF in the 2006/07 fiscal year. The argument of most observers is that the establishment of the

CDF has tremendously pacified the parliamentarians across the political divide because it serves their selfish political interests that are central to building a potentially successful political career without having to dig deep into their own private vaults.

The pressure to establish the CDF was so great that the government proceeded to implement it without sufficiently thinking through the requisite legal and administrative arrangements. For instance, there is as yet no legal basis to subject the CDF resources to the ensemble of public funds management laws and procedures as specified in the Public Financial Management Act (PFMA) (2003); the Public Audit Act (PAA) (2003); Public Procurement Act (PPA) (2003); and the Corruption Practices Act (CPA) (1995). It is therefore not surprising that cases of abuse of CDFs by both the MPs and DA officials have been rampant. They know that they can get away with cases of mismanagement because there is no legal basis to prosecute them.

It is therefore not surprising that parliament has not moved in to tighten the glaring shortfalls in the logistical, administrative and legal shortfalls in arrangements governing the CDF. The ensemble of the public financial management laws cannot be applied fully to the CDF because it has been merely promulgated by a parliamentary administrative decision. The inaction on the part of MPs could be attributed to the fact that they “view [the CDF] as an investment in their political careers, with returns spread out over the electoral cycle” (Chinsinga, 2009a: 290). The CDF has therefore been described as “a very good example where formal institutions are exploited to sort out informal deals outside the formal governance framework to bolster selfish political goals”

### ***Operational Constraints and Challenges of the CDF***

There are several constraints and challenges that greatly limit the efficacy of the CDF, arising out mainly from the fact that the CDF was a hurriedly put together initiative. Most of these challenges could have perhaps been avoided if the institutional set-up of the CDF and its potential ramifications could have been thoroughly thought through. The key operational constraints and challenges of the CDF include the following:

#### *CDF as a Standalone Initiative*

The CDF is championed as a standalone initiative outside the realm of the ongoing decentralization policy reforms (Chinsinga, 2009a). This is contrary to the underlying spirit of decentralization which advocates for a coordinated approach to development as a key strategy for streamlining duplications and enhancing efficiency and effectiveness. Resources to local governments are channelled through the District Development Fund (DDF) to further enhance the democratic basis for development across local governments by improving the public’s access to the locus of decision making as the fund allows local governments to play a greater role in the policy making process.

However, the CDF departs from the principle of centralizing resources at the local government level through the DDF since resources are directed to a specific holder of an office. It therefore means that the CDF resources cannot be part of the pool of resources which can be subjected to the democratic decision making processes when it comes to deciding on how the resources should be allocated among competing priorities and among different areas in a local government jurisdiction. The CDF is an exclusive domain for MPs; they are empowered to decide almost unilaterally on how the CDF resources can be utilized. The concern is that it is difficult to expect other stakeholders to channel their resources through the DDF when the government “is breaking its own policy commitments especially now that the Paris Declaration on Aid Effectiveness is gaining momentum”.

### *CDF Undermining Bottom-up Development Planning*

By design, the framework for local governance processes extends down to the grassroots through a network of Area Development Committees (ADCs) and Village Development Committees (VDCs) to facilitate democratic bottom-up development processes (Hussein, 2003 and Chiweza, 2005). These bottom-up development processes culminate in District Development Plans (DDPs) that prioritise development programmes to be implemented in each local government jurisdiction. These priorities reflect the pressing needs of constituents in different areas of a local government jurisdiction.

The CDF is undermining DDPs because MPs just implement projects at random as long as they perceive some strategic political interests in the proposed projects. In the words of one stakeholder “MPs are particularly interested in implementing those projects that are politically sensible and consolidates their power bases”. The case of Lilongwe DA is quite illustrative in this regard. The Lilongwe DDP (2006-2009) identifies thirteen development priorities, the top five being food security, low income at household level, high maternal, infant and morbidity rates, high prevalence of water borne diseases, and poor access to social services. In Lilongwe Mpenu Constituency, none of the projects implemented using the CDF resources fall within the top five priorities. The funds were spent on construction of teachers’ houses, building bridges, donation of iron sheets to a church and hosting a chieftaincy installation ceremony party.

These disparities are as a result of the fact that the CDF is practically an exclusive show for MPs even though the guidelines suggest that the MP is supposed to work with local government officials and participatory structures within the framework of local governance processes. In practice, however, the MP goes out to identify projects, sensitizes communities, and even procures services of contractors and materials for construction. The local governments just come in with technical evaluations of the feasibility of the proposed projects “which is merely intended to legitimize the choices of MPs as very little can be done to change things at this stage”. In addition to distorting DDP priorities, the CDF is also a huge financial burden on the local governments since it does not provide for overhead costs to cater for DAs’ involvement. The local governments bear the costs of managing the CDF.

### *CDF Entrenching the Constituency Service Function of MPs*

It is, as observed above, widely acknowledged that a fourth role of MPs-constituency service function-is becoming increasingly important to the extent of foreshadowing the classical triple roles of MPs of representation, legislation and oversight. According to the 2008 Afrobarometer Survey, 77% of Malawians would rather have an MP who delivers community goods and services compared to only 21% who would support an MP with a sound policy and legislative track record at the national level (Tsoka and Chinsinga, 2009). It could therefore be argued that the CDF has partly contributed to the deepening of the people’s perception of popularizing the constituency service function as the primary responsibility of parliamentarians. The following sentiments below captured in FGDs are quite illustrative:

The duties of an MP include attending to our development problems such as boreholes, schools, bridges and other important amenities on our livelihoods and finding out problems being faced by their constituents.

When we are electing an MP we want them to assist us with our problems particularly funerals. We are, however, disappointed since whenever we tell our MP about a funeral, he sends MK 500 or MK 1000. What can we do with such small amounts?

The CDF is entrenching the salience of the constituency service function role of parliamentarians because there are able to conform to community’s developmental expectations since “they are

now able to implement small-scale patronage driven developments in their respective constituencies”. Consequently MPs are primarily designated as ‘champions of development’ to the extent that the major yardstick for their performance assessment is whether they have ‘brought’ development or not as reflected in the following sentiments “.....he [our MP] has done virtually nothing to develop this constituency and people do not want him”.

#### *CDF Creating a New Brand of Politics Allocation*

This politics can be attributed to the overlaps between the planning, service delivery and political jurisdictions in the local governance processes (Chinsinga, 2009a). The MPs are exploiting the lack of harmonization of the boundaries between constituencies and Traditional Authorities (TAs). The latter defines the jurisdiction areas of the ADCs which is a key development planning framework within the local governance hierarchy. The MPs are exploiting this disjuncture especially where constituencies are spread over more than one TA. Most TAs observed that where TAs overlap constituencies both TAs lose out because “the MP takes advantage of belonging to two or more TAs to be elusive in the disbursement and administration of the CDF”. The proposal by most TAs is that the CDF should be administered through ADCs since these are the recognised development structures within the decentralization policy reforms, if not the constituencies should be redemarcated to coincide with boundaries of TAs.

In a similar vein, the modus operandi of disbursing resources from the CDF undermines one of the key principles of the decentralization policy. The decentralization policy advocates for equalization of development across the country using a specially prescribed formula (Chinsinga, 2009c). Unlike the Kenyan CDF, for instance, there are no any disbursement criteria for the funds in Malawi. The disbursement of the funds is uniform across constituencies despite wide variations in important attributes particularly population. Population levels in constituencies range from 4000 to 40,000 and the constituencies vary in terms of size, diversity, scope of economic activities, degree of urbanization, levels of poverty and education. In Kenya, 25% of the CDF resources are distributed across constituencies on the basis of poverty indicators (Okungu, 2006 and Gituto, 2007). This means that smaller constituencies benefit disproportionately compared to the very big ones which undermines the very justification for introducing the CDF which is to ensure the even spread of development across the country.

#### ***Changing Context for Local Governance?***

The amount of resources going to the local governments has progressively increased since July 2005 when District Commissioners were designated as Controlling Officers. This means that local governments have become cost centres in their own right; they are accountable for how they utilize resources assigned to them within the legal frameworks governing the management of public funds (Chinsinga, 2009c). While there are indications of improvement in the functioning of local governments particularly in the realm of infrastructure development, incidents of financial mismanagement are quite rampant. The District Commissioners and their teams are expending resources without any systems of checks and balances in place. And most media surveys have indicated that DCs prefer to operate without the elected assemblies in place describing them as “an unnecessary impediment in the smooth implementation of local government activities”.

These sentiments have been specially reinforced by the government’s position articulated by the former Minister of Local Government and Rural Development who contended “government has been able to achieve tremendous strides in rural development without councillors in place; what difference would they make?” The net effect of this discourse is that it has trivialized the importance of elected local governments as “unnecessary fiscal burdens and drains that the government can do without and yet attain development”. The flipside of this discourse, or in policy speak, narrative is that it equates development with infrastructure when in fact

development is much more than that. It is about opportunity, empowerment, accountability, transparency, responsiveness, efficiency, effectiveness and breaking the structures that generate and perpetuate inequality. Successful decentralization efforts have thus the potential to open up and redefine institutional spaces, supporting the building of voice and opportunities for choice ,and providing accountability mechanisms particularly for responsive service delivery.

Traditional leaders are reasserting themselves as a powerful force in grassroots politics with the help of national level politicians in pursuit of their own selfish political goals. As already stated above, the relationship between elected councillors and traditional leaders was quite problematic during the 2000-2005 period when councillors were in place. Traditional leaders feel that councillors have stripped them of their once expansive domain of power, influence and authority since traditional authorities are non-voting members of local governments. Decisions that matter are taken up by councillors and as such they are seen by chiefs as an “unnecessary intrusion into village level politics which has thrown the rather stable local power hierarchies into a state of disequilibrium” (Chinsinga, 2009a: 291).

The political events that led to having a minority government between 2005-2009 have worked in favour of traditional leaders. Traditional leaders wield considerable influence over their subjects and the DDP led government exploited this just as its predecessors to consolidate its rather fragile base by courting the sympathies of chiefs. The strategies employed by the government included: 1) reinstating chiefs that were deposed during the one party era; 2) appointment of new chiefs; 3) promoting chiefs to higher ranks; 4) building houses and offices for chiefs; and 5) putting all chiefs on the payroll of government. In the 2007/08 budget, for instance, the chiefs’ honorarium was hiked by about 1000%. Paramount chiefs now get MK 50,000, senior chiefs MK 30,000, chiefs MK 18,000 and village heads Mk 5,000. In stark contrast, councillors are not entitled to any of these privileges; this greatly diminishes their importance in the eyes of the public. This is further solidified by the apparent lack of any positive impact on the part of DAs to deliver on their poverty reduction and development mandates.

The future of the next LGEs hangs in limbo. The expectation was that the government would move very quickly to facilitate the holding of the LGEs following its historic landslide victory in the May 19 2009 elections. It commands more than two thirds majority in a 193 seat National Assembly. While the budget for the LGEs has been set aside in the 2009/10 budget to the tune of MK 2.5 billion, there are no firm indications that the local polls would be held in May 2010. The provision for budgetary resources in the 2009/01 budget has not been followed up by a firm political statement to enable the EC work out an electoral calendar for the polls with a sense of certainty and finality. To say the least, the May 2010 polls remain highly uncertain.

### **Concluding Reflections**

This paper has demonstrated the challenges for decentralization to properly function as a platform for revitalizing state formation processes through the prism of the CDF specifically and more generally. There is no doubt that decentralization has a huge potential to positively impact on state formation processes because by providing an institutionalized framework of participation undergirded by the constitution, decentralization brings government closer to the people, facilitate bottom-up planning and give greater attention to the needs of the local people (Munro, 1996 and Chiweza, 2005). The main challenge, however, is that the decentralization policy reforms have been implemented in an inconsistent, ad hoc, and disjointed fashion. The implementation process has been clearly weighed down by strategic political interests and calculations on the part of the various stakeholders. This is the case because “the decentralization [policy processes] has created a new set of rules for competition over scarce resources, and for the quests and negotiations over power and autonomy at all levels” (Kaarhaus and Nyirenda, 2006: 28).

The complexity of the resulting web of relationships among the different stakeholders is making it extremely difficult for the state to establish hegemony in the countryside in a way that it would be the sole arbiter of social control over its entire area of official jurisdiction. This is critical because state formation processes proceed to a greater extent by willing participation of those over whom new forms of state power come to hold sway (Argawal, 2001). This implies that state formation in community spaces is not just about the reproduction of state structures and logics; it is as much about this reproduction relying on the willingness of locally situated actors to use new laws to extend state control over themselves. It is for this reason that decentralization is seen as a key strategy for broadcasting, entrenching and legitimising state power in the peripheral areas by ensuring the presence of the state mainly through the provision of social services. Thus preconditions for viable state formation processes exist when the state manages to achieve sustained presence and the people in the periphery begin to discern its importance in their livelihoods as something that they cannot do without; the state becomes embedded in local relations (Mahwood, 1989 and Munro, 1996).

The unintegrated nature of the CDF is a great constraint to decentralization policy reforms contributing positively to processes of state formation. This is particularly the case because the CDF has been introduced in the wake of the impasse about LGEs. The absence of the elected local councillors has meant that the presence of the state below the district level has been greatly affected. This has adversely affected service delivery efforts of the DAs since there is no any form of oversight that used to be provided by councillors. In this case, equipped with the CDF resources, the MPs are emerging and entrenching themselves as the most potent face of the state, doling resources that are at least in the eyes of the grassroots positively impacting on their livelihoods. The CDF entrenches MPs as primary actors in politics both at local and national levels hence an important source of social control.

The political significance of the chiefs within the framework of local level politics is further complicating the situation. Instead of their power and influence diminishing in line with at least the theoretical imperatives of democratization, the opposite is true. The power and influence of traditional leaders is being propped up by national level politicians across the political divide for their own selfish political goals. As observed above, they are being accorded favours that are dramatically raising their profile as an important social force with the potential to frustrate concerted state formation efforts. It is therefore not surprising that there has not been any public agitation for local councillors because the majority of the people out there do not appreciate their importance and yet they are an important vehicle for state formation processes particularly in ensuring that the state establishes its presence across its official jurisdiction. There are no enthusiastic champions for local government councillors since the potential ones see councillors as an impediment in their own quest for power, influence and authority.

The combined net effect of these developments is that it has further entrenched the politics of patronage, which is one of the defining characteristic features of Malawi's politics. MPs and chiefs are establishing themselves as significant patrons in the political hierarchy with the help of resources from the treasury. The sway of neopatrimonial politics is strengthened by the intricate links that exist between local and national level politics resulting often in huge compromises with regard to strict observance of the constitution, rule of law and hence constitutionalism. This has created a situation in which political processes are marked by varying amounts of repression, inequality, dishonesty, ineffectiveness and disorder. The exigencies of political survival have superseded the obligations toward respect for human rights, rule of law, checks and balances and frequent alteration of power through free and fair periodic elections. The point is that the preoccupation with political survival privileges informal over formal institutions in shaping political practices, which is what exactly happened in the case of the CDF. The fight over the LGEs in the formal political arena was simply used to achieve the selfish goal of establishing the CDF

principally to gratify selfish political interests for the majority of the parliamentarians. Even the strategies used by both sides in the duel over LGEs were essentially driven by informal political considerations but veiled in seemingly formal pronouncements, for instance, the need to respect the constitution at all times.

The impasse in the decentralization policy reforms, reinforced to some extent by the introduction of the CDF, is more or less leading to the deinstitutionalization of the efforts that had began to give form and shape to the local governance processes with the potential to impact positively on state formation processes. As we approach almost five years since the tenure of elected local governments expired, the reintroduction of the councillors will be like starting all over again from a scratch given the complex web of developments that have taken place since May 2005. The fact is that viable local governance processes cannot simply be legislated into existence; they require to be mediated through practice in environments that are generally supportive and underpinned by at least a budding culture of constitutionalism. The prospects of decentralization serving as a viable vehicle for state formation processes are bleak because of the apparent dominance of informal institutions in shaping political practices and strategies. This is greatly undermining the prospects of democracy as well as democratic institutions such as local governments to the extent of not functioning as projected in the legislative instruments.

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