

BRIEF REPORT ON THE 7:30 BREAKFAST DEBATE – AUGUST 28TH 2009

"Is CDCF Bill Unconstitutional"? An analysis of CDCF Bill in Tanzania.

The Constituency Development Catalyst Fund (CDCF) Bill passed by the National Assembly on July 31, 2009, provides additional resources for development at the local level by channeling money to constituencies. The CDCF would thus supplement the existing funding mechanisms for local government and be allocated in the budget of every financial year and after parliamentary approval, the funds are disbursed to the constituencies to be spent on development projects as identified and prioritised by local citizens.

Policy Forum on this month's Debate dedicated to the issue of CDCF Bill. The presentations debate was done by Advocate Harold Sungusia, from Legal and Human Rights Centre and Mr. Naville Meena, Chief Sub-Editor Kulikoni Newspaper. Mr. Albanie Marcossy facilitated the debate.

The first presentation was done by Advocate Harold Sungusia; He started by giving the background for the establishment of the bill. The bill purports to address six major issues, those are to provide for criteria and the procedure for allocation of funds; as means for promoting development in electoral constituencies; as an avenue for availability of emergency assistance for development; as a vehicle for close participation of communities through their MP; to encourage the community based development projects and to promote equal distribution of national resources.

This is one of laws with retrospective application/operation. Retrospectives dispenses with the principles of rule of law. It needs to be noted that the Bill was *gazeted* on 3rd July, tabled for first reading 28th July, second reading on 30th July and passed on 31st July this quick and fast-tracking of the Bill by the Parliament leaves more doubts of citizens on the true intention of the Parliament – if it were enacting a law for the poor, then how were the poor persons involved in the process? How can one justify the pace and pressure the MPs shown in enacting this law? Why not in the same pace ratify human rights covenants, or domesticate them or at least repeal the 40 bad laws mentioned by Nyalali commission?

Local government is among the non-union matters how will the management by non union organs in Zanzibar? The Union matters ministry will not work in vacuum but shall necessarily work with non-union ministries in Zanzibar more over it has coordination of CDCF by two ministries – ministry of local government to coordinate Tanzania mainland and Union Matters Ministry to Coordinate Zanzibar CDCF. Also in the event of cancellation of the project – not mentioned the status of withdrawn funds - This is a loop hole for squandering CDCF money , grounds for cancellation of the project are not mentioned, forum for such cancellation not mentioned, right to appeal for such cancellation not provided, the fate of the money involved is also not explained! Duty to explain the reasons not explained either.

Composition of CDCC is also controversial, Para (c) is blank and the number required is six but when you count you find that mentioned titles of the members of the committee is seven more worse S. 15(1) puts a requirement of adhering to the provisions of the *Public Procurement Act, Cap. 410*. However, it does not state who is responsible for procurement processes. It is CDCF Committee or the Director of Council and why?

On his conclusion remark he commented that anomaly generally the law has created its own procurement process of goods and services contrary to the provisions of the *Public Procurement Act, 2004*. The law has not shown any *catalyst* phenomenon; rather, it creates unjustifiable parallel and superfluous systems of initiating and implementing development projects without taking into account existing initiatives such as TASAF, PADEP and other long and short term projects. And the Act does not propose viable measure to identify projects' needs and more practical ways of resolving people's problems.

The second presentation was done by Neville Meena. He said that all MPs from the both ruling party and the opposition is for these funds in the following grounds: The initiative would enable the people enjoy more devolved power and have opportunity to chose and implement their own projects. (The question of ensuring equitable distribution of the national cake) and some small projects which needs small amount of money have remained stagnant for so long. Therefore CDCF will assist in accomplishing such projects. However civil societies in Tanzania are strongly opposing this move in the grounds that, CDCF will seriously undermine the ability of Parliament to perform its oversight function independently and at the end of day they will not hold the executive to account. Also there is a fear that, the funds might be misused like what has been happening in central and local government's financial channels.

CDCF – what it mean to Tanzania? It is additional resources for development at the local level, democratic means of empowering communities at the grassroots level to take an active role in their own development. The law requires that the public must be involved in approving projects that will also not be inclined to political or religious interests. Since MPs have been overwhelmed in their constituencies as 'wananchi' assume that they have the resources to solve many of their problems. So CDCF will relieve them of this burden because citizens expect a lot from their MPs. Finally CDCF will create a centre of discussion between MP and mere citizens. Some of MPs has never visited their constituents as any appearance will attract more money demand from the public.

He commented that the fund use would be audited by the controller and auditor general while the Finance Act, the Procurement Act and the Local Government Act would apply in the implementation of the projects. The Bill sets tough measures for those who will be found to have misused the funds, including a fine of 15 million or a five year jail term or both of the penalties. With this law, the kitty will be run transparently and the letter it would be impossible to steal from the fund.

He concluded that in Zambia, the idea behind the CDF is to empower local communities by providing a pot of funding for health, education and other initiatives. Some great projects have actually been accomplished through it. So as in Tanzania Parliament as an institution will never touch the money. So its power will never be robbed. MPs have personal responsibilities of observing regulations while utilizing these funds.

The discussant Mr. Bubelwa Kaiza commented on the two presentations, generally commented that, we need to think either money is the fundamental tool for development. We need appropriate structure and good governance system. On his side the CDCF compromise and undermine the parliamentary power since it shift the role of MP from oversight to implementation.

Tanzania is different from other African countries like Zambia and Nigeria since most of them don't have LGA's which is well structured and still have chieftdom playing the role of LGA's so they are not the good example for success of CDCF. MP's needs more to oversee the government activities and budget planning.

Comments and Questions from Plenary Discussion:

1. If it is unconstitutional and what steps are taken to take government to court?
2. Pennant amount is very small to discourage the misuse of fund
3. Why not the communities to elect the members of the committee of the fund
4. if we say LGA's to implement most of the development project due to corruption and delaying of disbursement, why then CDCF is using the same channel of disbursement used by LGA's
5. No qualification to elect the committee members.
6. To a large extent the government have not taken measures to make awareness of the fund

7. 2nd presentation did not mention Kenya as one of the example of CDCF improvement but in reality Kenya was a disaster so why should we adopt such kind of fund knowingly it is going to fail
8. The issue of separation of power is still a problem not only as CDCF it concern but you might find a MP is also a board member in a private or parastatal organisation
9. Since the bill is already passed CSO's have no option rather to prepare themselves to track the money
10. There is inconsistence of the content of the bill especially in article ten on total number of members of the committee may be this was caused by rushing on passing it
11. Why this timing of CDCF? Come just before general election- does it mean a new takrima?

Respond to the Comments:

1. Example cited by the second presentation those countries have the chieftom system which save the purpose of the ruling class and those chief are not traditional leaders as they are used to but rather businessman and academicians there is no the issue of accountability.
2. Since there is a lot of problem resulting from inadequate of fund at the local level-so CDCF will be addressing those entire small projects.
3. Those money will be not channeled to MP's pockets there is clearly mechanism and sanction whoever will misuse it.
4. CSO's are expecting to challenge the CDCF act its legality in court, we can just give up and wait to track the money how it will be spent
5. Actually this is a new chieftom which are coming since MP's are permanent chairperson of the CDCF committee
6. There is violation of separation of power which is in the Tanzania constitution article 4 of the constitution.

Mr. Albanie Marcossy from policy forum closed the discussion and welcomed the participants to the other next month breakfast debate.



policy forum