Does CDF have a place under devolved government? by *Wanjiru Gikonyo*

Introduced in Kenya in 2003, the Constituency Development Fund has been one Kenya's most popular development initiatives. Adopted from India, the Kenyan model served to further popularise the fund and a 2010 International Budget Partnership report cites Southern Sudan, Philippines, Honduras, Nepal, Pakistan, Jamaica, Solomon Islands, Tanzania, Malawi, Namibia, Zambia, Uganda, Ghana, Malaysia, as countries implementing one form of CDF or other.

In his 2009 book ***An MP's Diary,*** the architect of the fund Muriuki Karue offers an entertaining and anecdotal account of his life as a Member of Parliament**,** and ably justifies the establishment of the Constituency Development Fund by the 9th Parliament in 2004. Directed at local infrastructure development projects CDF meant that MP's would no longer have to beg government to fund the construction of local schools, community water projects, local dispensaries, local roads to access markets, milk dairies, local processing plants and so forth.

So popular has the CDF been that Graca Machel leading the NEPAD African Peer Review Mechanism (APRM) praised it as one of Africa's best development initiatives and urged other African counties to take it up, and several did. Since its inception in Kenya the CDF has provided 115billion shillings for development and just over 48,000 projects had been funded in all corners of the country.

Civil society groups were critical of the CDF from the outset due to its breech of the doctrine of separation of powers. As early as 2004 a local civil society organisation the Youth Agenda filed a lawsuit challenging the legality of the fund. In 2009 MUHURI filed a similar suit- without success.

Despite its international acclaim all has not been well with the CDF and civil society initiative such as the National Tax Payers Association and The Institute for Social Accountability have published numerous reports demonstrating widespread abuse of the fund emanating from its undemocratic structure. Challenges in funds' use have also been well documented by diverse institutions including government bodies such as Kippra and the National Anti Corruption Steering Campaign. The findings of a 2009 CDF review undertaken by the Ministry of Planning were not made available until late 2012, a few months before parliament secretly passed the CDFAct2013.

The passage of the constitution in 2010 heralds a new paradigm in Kenya's governance. Did Parliament respond to the requirements of the constitution in revised act ?

Article 202(2) of the Constitution provides ***that County governments may be given additional allocations from the national government's share of the revenue, either conditionally or unconditionally***. Thus the establishment of a CDF is perfectly constitutional.

However, whereas the revised act seeks to minimise the MP's role in the implementation of the fund at constituency level by providing that local committees be constituted by citizens themselves and the MP serve only as patron, the CDF Board remains captive to parliament's whims due to the failure to safeguard its independence and accountability to the public.

The act also establishes planning and coordination committees which are likely to duplicate those established under the ***County Government Act2012*** and so is not sufficiently integrated into the imminent county structures.

The act also contains no accountability provisions and appears drawn from the dark ages of the Moi era and unlike the devolution laws which provide explicit accountability provisions in bid to inculcate a culture of public officer answerability and transparency (Article 232).

Lastly and perhaps most significantly, CDF is only one of many national government funds that will be transferred to the county level to augment county development. CDF is the largest of all transfers and in 2009 comprised over 10% of the development budget. The World Bank report ***Devolution without Disruption*** observes that devolution will occur in a tight fiscal environment, and it is therefore critical that intergovernmental transfers be well planned and costed together rather than in the present piecemeal manner, to enable them have an impact on government's ability to deliver essential services.

Recommendations on the sharing of revenue by the Commission on Revenue Allocation urges the 'urgent harmonization of both the institutional and regulatory frameworks of all grants due in part to the lack of synchronization of activities being undertaken by various funds and hence, duplication of roles across funds and line ministries, leading to wastage.'

Among several other challenges, the CRA report recognises that present funds are poorly integrated into the National Integrated Monitoring and Evaluation System (NIMES) and are therefore not monitored. The duplication of administrative structures is also wasteful as it increases the cost of administrating these funds contrary to the provisions of Article 201 on prudent use of public resources.

So whereas a constituency development fund is entirely constitutional, and indeed necessary to augment County government development revenues, the problem with the CDFAct2013 is that it is coloured by parliament's myopic preoccupation with an MP's fund, is entirely out of step with the development needs of the time and ignores vital policy imperatives. Its enactment was ill informed and should be rescinded prior to the coming in of the County governments.

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