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ROLE AND OBLIGATION OF MPs TOWARDS THEIR ELECTORATE:**A FOCUS ON CDF FUNDS UTILIZATION****INTRODUCTION**

Constituency Development Fund (CDF) is one of the ways that the Kenyan government attempts to devolve resources and development responsibility to the grassroots levels. CDF is a fund established by Parliament and issued by the Exchequer to each of the 210 constituencies in Kenya so that they are used to assist in development projects that are particularly needed in each of the constituencies. These funds are put in charge of Members of Parliament who in turn constitute committees that are in charge of the fund administration and disbursement.

Some of the constituencies have made commendable progress due to proper utilization of the funds while others have continued to lag behind and are still plagued by the same challenges that existed prior to the introduction of the fund. It is quite embarrassing that media reports also indicate that there are some constituencies whose funds are left unutilized at the end of the year while the constituents of these areas still have many needs left unfulfilled.

It is also quite common for the electorate to complain that the funds have not been utilized in the proper way to benefit the society in its entirety. This sometimes results from the segregation of the society with some factions being characterised as the 'favoured' while others being the less favoured. This is especially so in cosmopolitan constituencies.

This paper analyses the problems in ethics and governance surrounding the disbursement of the CDF funds and proposes the ideal principles that should be employed while handling the CDF funds for the greater good of the society.

PROBLEM STATEMENT

The CDF Fund was established close to a decade ago to reduce poverty levels but it faces a myriad of challenges in its administration and disbursement. Of course, some constituencies have better utilized the fund for their development and have devised ways to better address these problems. Many others, however, have lagged behind in their utilization of the funds.

In general, the primary objective of the fund is not being achieved at the rate it was envisaged. Governance and Ethics problems are forever haunting the fund in many constituencies. These problems need to be articulated and ways sought to deal with them for the sustainability of the fund and for the greater good of the common ‘mwananchi’.

PRESENTATION OF THE CASE

The constituency development fund was created under the Constituency Development Fund Act of 2003. The Act establishes a fund known as the Constituency Development Fund (CDF) where an amount of money equal to and not less than 2.5% of all ordinary government revenue collected every year is paid into. The rationale behind creation of CDF is to ensure that a specific portion of the annual national budget is allocated

to the constituencies for the purposes of development and in particular in the fight against poverty at this level. The core values expected to be upheld while implementing the fund are accountability, transparency, equity in resource allocation and participatory approaches by all stake holders.

The CDF Act has other guidelines specifying the criterion on how funds are allocated to each of the constituency based on equality and poverty index of each constituency. The fund is to be administered at the Constituency level by the Constituency Development Committee (CDC) which comes up with projects' priority list from the projects identified from each of the constituency divisions and oversees the implementation of the projects together with the Project Management Committee for each project. The Act also specifies how the projects to be undertaken are identified and prioritized, the operational procedures of managing the projects and the jurisdiction and level of authority for each of the management committees.

At inception, (Okungu, 2008), a Kenya political activist notes that the CDF Act was passed with overwhelming support because "...the main reason why MPs overwhelmingly supported its bill in parliament way back in 2003 was not because they loved their constituents and hated themselves less. It was sheer selfishness and self preservation that made them support the bill". With this bill, MPs saw a chance to eliminate the burden that was placed by their constituents to contribute to fundraising functions.

Today, the CDF fund disbursement by the CDC is normally done without following proper procedures since enforcement of regulations in the CDF Act is normally not done except when there is blatant compromise to these procedures and is highlighted in the media. In fact, some of these regulations may also not be easily enforce-able due to difficulty in proving culpability into the alleged abuses. For example, hiking of costs with a vendor supplying materials for a project may not be easily provable.

Frequently, the public, who are the principal stakeholders, are not involved in the decisions in selection of projects despite being aware of the existence of the funds (Awiti, 2009). The process for selection and implementation of projects is clouded with mystery and no proper documentation is maintained. This provides fertile ground for misappropriation of funds and sometimes the funds are misdirected to less priority projects that do not achieve maximum benefit to the public but may provide exploitable loopholes for siphoning funds.

This behavior could be attributed to the selection of political cronies, family, friends, and relatives to the Constituency Development Committee by the MPs. This committee provides an avenue for the MPs to reward their confidantes who probably have contributed to their election victory. These selected members know that they have a 'godfather' and hence it is difficult to remove them from the committee. They also owe their loyalty to the appointing authority and not to the general public.

Besides the funds misappropriation, there are also cases where the MPs are complacent and visionless and do not identify projects that are needed by their constituents leading to the withholding of the funds by the government since no projects have been identified. For example, according to Disbursement report (Constituency development Fund, n.d.), a constituency like North Horr had been allocated Kshs. 39,905,326 as total CDF Funds for financial year 2008/2009. By May 2009, close to the end of the financial year, only Kshs. 19,952,813 had been disbursed. This is besides the fact that North Horr is regarded as the third poorest constituency at that time with 95% population being poor.(Omanga, 2010). Would you say that this constituency had no needs?

Another revelation by the local dailies (Wahome, 2008) is that some MPs have been known to put pressure on Kenya National Bureau of Statistics to falsify information on their constituency's poverty ranking based on the base line survey so that their constituencies receive additional funds from the CDF kitty. It is common to see MPs debating in Parliament on poverty reports that seek to portray their constituencies as the poorest. (Omanga, 2010).

MPs have also been against the notion of hiring professionally qualified personnel especially auditors to audit the CDF kitty. In order to introduce accountability, CDF Managers have been introduced at the district level

but have found it difficult to execute their duties due to the influence of CDF patrons (MPs). In 2008, a CDF manager in Mount Elgon District was murdered for questioning the disappearance of CDF money to the tune of 100,000,000 shillings. (Awiti, 2009).

Some MPs have also used the funds to alienate the areas where they encounter challenge to their leadership. If some section of the constituency did not support their candidacy to the seat, then they are marginalized and CDF projects in these areas are not supported. This is especially so in cosmopolitan constituencies where tribalism plays a key role in the election of the MP and the 'losing' tribe is usually at the receiving end in terms of development.

CDF has also given an undue advantage to the incumbent MP during the elections either due to their financial supremacy from siphoned funds and also through proclaiming their development record derived from the funds, even for the few projects realized. The challengers to the MP may not have the funds at the incumbent's disposal and therefore may not be able to offer competition to the incumbent.

Besides all the problems, it may also be good to note that some of the constituencies have proactive Members of Parliament who have contributed immensely to the Constituency through proper utilization of the funds. According to CDF Board Report, Butere, Gatanga and

Kaloleni are the top ranking constituencies that utilize the CDF funds well (Leftie, 2011).

GOVERNANCE AND ETHICAL ISSUES

From the case above, the Constituency development can be said to be plagued by the following governance and ethical issues.

i). Poor Management Structure.

The members of the Constituency Development Committee (CDC) are constituted by the Members of Parliament. This allows the MPs to nominate political cronies, friends, family and relatives to these positions. As such, these committee members may not have the relevant expertise to administer the fund. They also owe their loyalty to the appointing authority, the MP.

Moreover, the term of office for the members of the CDC is 3 years renewable and comes to an end when a new committee is appointed. With the hope of being re-appointed to the board, it would be difficult for any of the board members to resist the machinations of a Member of Parliament. This makes the committee as independent as the MP want to it to be and therefore cannot make its own independent decisions.

ii). Gross management, and Corruption

Nearly 70% of all constituencies would attest to cases of gross mismanagement, theft, fraud and sheer shameless misuse and misappropriation of this public fund (Okungu, 2008). Some of the

committee members inflate costs in on-going projects and later on, there are a high number of projects whose status are not clear, are poorly or partly done and some have not even started whereas funds have been consumed for these projects. (Awiti, 2009)

This makes the constituency to lag behind in development as compared to the rest of the constituencies whose funds are better utilized to the benefit of the public.

iii). Political and economic alienation

More painfully, myopic and resentful MPs have sought to punish constituency areas perceived to be opposed to their leadership. Such areas have been out of favour with the MPs and punished for their lack of support in the last elections. Due to this, they have been excluded from all development projects as punishment for their political leanings. Health centers, schools, bursary funds, roads, and any form of funding from the CDF funds have been diverted to areas more amenable to the sitting MP.

iv). Complacency

In other constituencies, area MPs are so incompetent that after election, they have barely managed to secure the release of funds from the treasury due to their inability to identify viable projects and write business proposals for funds to be released!

ANALYSIS OF THE PROBLEM

The CDF Fund was created in order to reduce the poverty levels at the grassroots level by identifying and developing community specific projects. This was as a result of the clamour of devolution of resources so as to empower the local communities with resources that they most need. The general public regard this as part of the sharing of the national ‘cake’ and to some extent, contributes to the feeling of belonging to the entire population.

CDF Fund is based on distributive justice i.e. the total amount allocated to each of the constituencies is varied according to the specific needs of the constituencies. If a constituency has a high poverty level relative to the others, then more funds are allocated and vice versa. It is therefore wrong and unjustified for MPs to use their machinations, either within Parliament or without, to try to influence the amount of funds that each of the constituencies is allocated. The cases of MPs trying to influence the National Bureau of Statistics to falsify the information regarding the poverty levels in their constituencies is unjust. It would be defeatist to the purpose of CDF to have *status quo* maintained where some constituencies are very much developed while others are crippled by poverty and illiteracy.

This behavior by MPs can probably be explained by the analysis of morality of the MPs in passing the CDF Act. It has been noted that Act was overwhelming passed because the MPs saw it as their savior from the burden of frequent fundraisings they had been accustomed to getting

invited. Whereas the reason behind the passing of the bill may not have been overly moral, the implication is moral and leads to the greater good of the society. At present, most of the MPs that passed the bill are no longer in Parliament but the challenges and the reasons faced by the MPs remain largely unchanged.

This selfish behavior by MPs seems not to be limited to the supporting the CDF Act, which eventually we have concluded had good implications, but it has been extended to the implementation of the Act with disastrous results. The cases of mismanagement of the funds either by misuse of funds, using cronyism in appointment of CDC members who will only rubberstamp MPs' decisions, and alienating the opposition areas leads to the benefit of a particular section of the society and defeats the common good.

The Fund is meant to be utilized at the constituency level for projects that lead to the betterment of the entire society. When these funds are channeled to projects that are selected not based on the guidelines in the CDF Act and lead to benefitting some sections of the society say, the MP, the CDC Members, the area that supports the MP and/or other favoured section of the community, then the interest of the common good is lost.

The laws that govern the CDF Funds disbursement and administration seem to be based on Stewardship theory. They give so much responsibility to the MP trusting that he/she will act in the best interests of his/her constituents. The appointment of the CDC committee, which is

a major institution in CDF administration, is left to the hands of the MP. In reality, this has brought about mismanagement of the funds as noted by the high degree in cases of misused funds.

To counter these problems of mismanagement, the laws governing the CDF Act should be based on Agency theory where the MP and his/her CDC Committee is monitored by other organs of government to ensure that they are accountable. Recent amendments to the CDF Act have tried to introduce these institutions but they are still at their infant stages and lack the needed 'teeth'. If enacted, these new laws will also ensure that the common good is guaranteed through following of proper procedures as stipulated in the CDF Act.

It is also good to note that, while these new laws may reduce the cases of mismanagement and ensure that interest of the common good is maintained, some of the problems can only be annihilated by the goodwill of the MPs and the members involved in the CDF Administration. Firstly, the onus falls on general public to elect MPs who uphold virtues of prudence and justice. When these MPs are elected, they can then use these virtues to select the right people in CDF Administration and/or use Ethical Role Modelling (FeldHeim, 2002) to impart some of the standards and ethics that the MP wants the members to uphold.

All in all, the spirit and objective with which CDF Act was established cannot be entirely captured in laws and regulations. For example, it would be difficult to eliminate complacency in law. Other times,

discretion of the officers involved is used in administering and disbursement. As such, it behooves of any officer involved in the CDF fund administration to uphold their fiduciary responsibility towards the citizenry and act in the spirit in which the fund was established.

CONCLUSION

After Kenya's Independence in 1963, the first government identified poverty as one the major challenges to tackle. This challenge, however, still remains very much existent today, close to half a century later. While there has been some few factors beyond Kenyans' control that have hampered the realization of a poverty-free society, by and large, it remains that Kenyans are to blame for the current situation in their role of active or passive participants to this effort.

Many initiatives have been devised with the aim to reduce the poverty levels but they have faced the same challenges the CDF Fund is facing: mismanagement and corruption, ostracizing parts of the community, complacency and sheer negligence. Reports indicate that Kenya is one of the most corrupt countries in the world ranking number 154 out of the 178 listed countries. (Transparency International, 2010).

The new Kenyan Constitution has provided for remarkable changes in the management of public funds. It has provided structures where the officers administering public funds have institutions monitoring them. This may provide part of the solution but for the part which the laws cannot enforce, it remains mainly the willingness of the involved officers

to act in the best interests of the public. As such, the values of prudence and justice need to be more emphasized in the social fabric and form the basis against which leaders are elected and exercise their duties.

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