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# Commonwealth Journal of Local Governance

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This issue is published on the eve of the **CLGF Research Colloquium**, hosted by Ugandan Institute of Management on 13/14 May 2013 in Kampala, to launch the *2013 Commonwealth Local Government Conference*. The theme – *Developmental Local Government: Putting local government at the heart of development* – ushers in some exciting new papers, covering issues of urban finance and development, strengthening local democracy, local economic development, and the crucial Post-2015 agenda, which will be published in the next edition of CJLG. Our thanks to Rose Namara and Sylvester Kugonzo, coordinators at UIM, Philip Amis of the University of Birmingham, who chairs the CLGF research group, and Gareth Wall who organised the Colloquium.

This issue starts with an authoritative paper by **Nicola Brakertz**, who argues compellingly for a stronger role and status for Australian local government, to address the constitutional, financial and historic constraints that affect its autonomy and performance. Perceived until the 1970s as responsible only for 'roads, rates and rubbish', she argues for constitutional or legislative change to ensure that democratically elected local councils have adequate finance and safeguards from arbitrary dismissal to secure effective local governance.

Two papers explore the shifting status of local government under authoritarian rule. In Pakistan, **Munawwar Alam** and **Mohammad Abuzar Waljidi** examine the Devolution of Power Plan introduced by General Musharraf in 2001, which held a brief promise of effective local democracy but they argue that since 2009 decentralisation has faltered and that, despite general elections in May 2013, local government elections seem a far cry. In Nigeria, **Jude Okafor** and **Ikechukwu Orjinta** illustrate how elected local councils were strengthened under military rule, but legislative loopholes mean that today 617 of the country's 774 local governments are run by caretaker committees rather than elected councils.

From Zimbabwe, **David Mandiyanike** tackles the complex problems of staffing capacity, arguing that executive turnover can have far-reaching consequences for a local authority's development and effectiveness. Based on a study of senior staff changes in rural district councils over 10 years, he asks whether CEOs and senior staff should be employed as civil servants or as locally engaged in order to achieve a virtuous rather than vicious cycle of leadership in smaller authorities.

**Sudheesh Chemmencheri** demonstrates that, even in inclusive Kerala, indigenous tribal and forest communities are marginalised in claiming land rights to protect their lifestyles. Mainstream political parties seem to have missed the case of the *adavasis*, and the *Forest Rights Act 2007* has failed to achieve effective devolution and community consultation to secure their land titles. Thus the 'claimed spaces' of decentralisation initiated under the act have failed to produce results on the ground.

Two papers look at local government financing in Ghana. **Maxwell Petio** returns to the knotty problem of effective property rating and taxation. He argues that the blame for weak internal revenue collection lies not only with District Assemblies, but also with the centrally administered Land Valuation Division which is plagued by lack of finance and limited staffing capacities. **Nana Danquah, Emmanuel Sakyi** and **Nana Appiah-Agyekum** explore the administration of the MPs' share of the District Assemblies Common Fund, the central government transfer intended to help MPs commission development projects of direct relevance to their electorates. In practice politics interferes, and Chief Executives may sometimes be at odds with local MPs on how funds should be spent.

## Political Actor or Policy Instrument? Governance Challenges in Australian Local Government

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### Abstract

*This article examines the governance challenges facing Australian local government, which include lack of constitutional standing, intergovernmental dependencies, financial constraints and weak democratic standing. The historical context has shaped the nature and place of local government in the Australian federal polity and has contributed to the tensions created by an expansion of the roles and responsibilities of local government, especially in the provision of services, which is not matched by concomitant increases in financial capacity and local autonomy. These governance challenges are discussed with a view to establishing local government's capacity for autonomous self-governance in the face of intergovernmental and fiscal dependencies, and the implications of this for local government reform trajectories.*

**Key words:** Local government, history, referendum, local government reform, local governance

### Introduction

The remit and responsibilities of Australian local government have expanded significantly since the 1970s. There is now increasing emphasis on local government as a vehicle for responsive local governance, as a sphere for local democracy and community strengthening in the face of cynicism and democratic deficit, and in the provision of an increasing number of important services. However, the capacity of councils to fulfil these many new roles has not grown to a similar degree, and access to adequate finance and democratic safeguards are key concerns, creating a number of governance challenges. Many of the difficulties facing Australian local government have been captured in numerous national and State inquiries, which include, but are not limited to the 2001 Commonwealth Grants Commission's Review of the *Operation of Local Government (Financial Assistance) Act* 1995; the House of Representatives Standing Committee on Economics, Finance and Public Administration's *Rates and Taxes: A Fair Share for Responsible Local Government*, commonly known as the Hawker Report (2003); the Australian Local Government Association (ALGA)

commissioned *National Financial Sustainability Study of Local Government* (PWC, 2006); and the Productivity Commission's *Assessing Local Government Revenue Raising Capacity* (PC, 2008). The Henry Tax review also has significant implications for local government (Henry et al 2009; Passant & McLaren, 2011). State-level inquiries have included the South Australian Local Government Association commissioned inquiry into the long-term financial sustainability of South Australian local government (FSRB, 2005a; 2005b); the *Independent Inquiry in the Financial Sustainability of NSW Local Government* (2006; Access Economics, 2006a); a *Systemic Sustainability Study of Western Australian Local Government* (Access Economics, 2006b; Craven et al, 2006; WLGA, 2008); a financial sustainability study commissioned by the Local Government of Tasmania (Access Economics, 2007); the Queensland Local Government Reform Commission's series of reports on the *Size, Shape and Sustainability of Local Government* (QTC, 2008; DLGPS&R, 2007; LGAQ, 2005; LGAQ, 2006; LGRC, 2007); and the Municipal Association of Victoria's series of reports on *Trends in Local Government Finance* (MAV, 2005; 2010).

While the titles and foci of these inquiries may lead one to believe that financial sustainability is the central defining issue facing local government in the first decade of the 21<sup>st</sup> century, functional, democratic and constitutional issues also provide governance challenges, many of which are rooted in the historical development of Australian local government.

These governance challenges will now be discussed in turn, with a view to establishing local government's capacity for autonomous self-governance in the face of intergovernmental and fiscal dependencies, and the implications of this for local government reform trajectories.

#### **Four challenges for local governance**

Australian local government differs from many of its OECD counterparts. In the Australian federal system, local government fulfils only a limited number of functions and is often considered to be a 'lesser' part of government. This is due in part to historical factors, which have resulted in four *governance challenges* for local government:

1. Intergovernmental dependencies and the changing roles and responsibilities of local government
2. Financial constraints and dependencies
3. Ideas about local government as a site of grassroots democracy and responsive governance versus expectations that it be an efficient vehicle for the delivery of many important services and act as an 'executor' of State government policies and programs
4. Limitations on its sovereignty due to lack of constitutional recognition.

### **Challenge: intergovernmental dependencies and changing LG roles**

The role of Australian local government and intergovernmental relations were established early in the twentieth century. The importance of territory as an organising principle for governing was a central cause of the existence of local government, which was seen as an administrative adjunct to colonial regimes. It acted as a mechanism to transfer to the community the administrative and financial burden for the provision of basic local services. Consequently, it performed a narrow range of functions and there was a limited view of its role by the States and the Commonwealth. This also led to local government having a restricted view of its own role and capacity to act as part of the federal system (Chapman, 1997, p. 1).

Originally local government functioned as a ratepayer democracy (Zwart, 2003) concerned primarily to meet the needs and interests of landowners and ratepayers, rather than of all citizens. Services to property were at the core of its responsibilities, with provision of roads being the most urgent. The supply of water, electricity and transport was handled by specifically constituted State government bodies, as local authorities were not large enough, nor sufficiently resourced, to provide them (McNeil, 1997, p. 20). Due to the fact that local government maintained the focus on services to property, in all states it ended up with a range of minor and essentially similar functions (Gibbins 2001; McNeil, 1997, p.19). The doctrine of *ultra vires* reinforced the limited power of local governments, as they could only do those things for which they had been given express legislative authority or which were reasonably incidental to the local government Acts (Aulich 1999, p. 14).

Following the Second World War, local government functions broadened to include town planning and a range of welfare and leisure services (Bowman and Hampton, 1983, p. 169). However, until the 1970s, local councils were still largely considered to be responsible for only a restricted range of services with an emphasis on roads, rates and rubbish. Local government was 'not considered to be part of the governing system, but rather as a limited, functional managerial system' (Chapman and Wood, 1984, p. 14).

The Whitlam Labor government of 1972–75 heralded significant changes for local authorities, by considerably broadening the funding base and allowing councils diversity in the range of services they provided, expanding their sphere of action to encompass quality of life and wellbeing issues. Whitlam's policies for local government can be grouped into broad structural development relating to its constitutional position, explicit financial initiatives and regionalisation. Local government was granted attendance at the constitutional conventions of 1973–74.

Broadening of councils' financial base was another key policy. The Whitlam government expanded the role of the Commonwealth Grants Commission to examine applications from local governments and provide to them with Section 96 Financial Assistance Grants. General revenue assistance

recognised new demands were being placed on local government in areas such as health and welfare. This strategy was intended to use grants to encourage the nationwide development of regional authorities (Lloyd and Reid, 1974, p. 286; c.f. Chapman, 1997, p. 3). In this way, the federal government used local government as a vehicle for the implementation of many policies the Commonwealth felt would have been blocked by States (Chapman, 1997, p. 1).

The *Grants Commission Act 1973* (Cth) allowed local governments to make applications for financial assistance through approved regional organisations of councils. Regional Councils for Social Development were formed under the Australian Assistance Plan; Regional Organisations of Councils were intended to deal with the Grants Commission and were also used for the Area Improvement Program. The financial assistance – \$56 million in 1974–75 and \$79 million in 1975–76 – was warmly received by local authorities, but both State and local spheres feared that this proposal was a threat and was a first step in the creation of regional government, which would cause their demise. However, as Miles (1976, p. 180) observed, ‘the regional organisation has, in relation to the Grants Commission, eventually served no purpose other than to act as a post office, or a convenient geographical location for hearing by the Commissions’ (c.f. Chapman and Wood, 1984, p. 34), and little in the way of structural change eventuated. Another initiative was the funding of local government projects such as area improvement grants, tourism and recreation, sheltered employment, home nursing, delivered meals, aged persons’ homes, childcare and preschools, regional employment development schemes and the Australian Assistance.

The Whitlam initiatives showed local government for the first time that it had some political power, although Chapman (1997) concludes that it was not ready to become a genuine partner in government due to weaknesses with the out dated organisation and legislation in all States.

After Whitlam’s dismissal in 1975, the Fraser Liberal/National government established the Advisory Council for Intergovernmental Relations and, by guaranteeing local government a share of personal income tax through the *Local Government (Personal Income Tax Sharing) Act 1976* (Cth), councils were allocated a fixed proportion of Commonwealth personal income tax revenue. Initially the percentage of these untied grants, known as PITs (personal income transfers), was set at 1.52%, rising to 1.75% in 1979–80 and to 2% in 1980–81. In 1985–86 the Commonwealth ceased the tax sharing arrangement and introduced the *Local Government Financial Assistance Act 1986* (Cth).

The Fraser government institutionalised specific purpose grants which continued to direct the services provided by local governments to broaden beyond infrastructure to increasingly provide a range of social services (McNeil, 1997, p. 26–7). This trend continues, and today, while the functions of local government still vary between the States and territories, they include: engineering; infrastructure and property services; recreation facilities; health services such as water and food inspection, immunisation services, toilet facilities, noise control, meat inspection and animal control; community

and cultural services; building services; planning and development approval; water and sewerage services (in Queensland, Tasmania and rural New South Wales); and environmental management and planning. Local government is also an advocate and leader for the community, an agent for the delivery of services for other spheres of government, coordinator of services delivered at the local level, and an information broker (Commonwealth Grants Commission, 2001; ACLEG 2011).

The work of the Advisory Council for Intergovernmental Relations helped bring local government into the intergovernmental processes. Following from a recommendation by the 1973 constitutional convention, all States now recognise local government in their constitutions, though in various forms and with varying provisions. However, this provides only limited protection and certainty, as the provisions can be changed easily by State Parliaments. Consequently the State Constitutions provide only weak protection for the democratic status of local government (see also Hartwich 2009; Saunders, 2005). Furthermore, none spell out clearly the functions and fiscal structure of local government, which has been left to ordinary acts of State Parliaments.

Since the late 1980s there have been substantial reforms to the local government Acts in all States and the Northern Territory, with a move away from the doctrine of *ultra vires*. Councils are now enabled to undertake the full range of activities necessary to fulfil the functions and powers delegated to them. The new Acts aim to improve accountability mechanisms, reduce the detailed prescriptions, and change council boundaries either by choice or by force of law, and change planning and other delegated powers. However, all states and territories have retained overrule provisions in their local government legislation, and council can be merged, abolished or put under 'administration' by State governments, for example, in Victoria in the 1990s and in Queensland in 2008.

The legislative changes provided the necessary framework for wider microeconomic reforms in local government to improve its performance orientation, accountability and relations with other spheres of government (Wensing 1997, p. 27). Further reform focused on its governance role and sought to 'clarify the roles of State and local government, increase devolution and local capacity, mandate consultation and reporting as part of the strategic management process, and enhance provisions for referendums to ensure that councils are more accountable and responsive to the communities they serve' (Aulich 1999, p. 13).

The expansion of the role of local government has been partly due to devolution of functions by other spheres of government. Other factors are market deregulation, industrial relations reform, privatisation of public utilities and competition policy. Technological advancement and changing community expectations of government have also had a profound impact, with many councils expanding service provision in response to community demands. Local government reform programs, implemented by some State governments, caused far-reaching changes to the structure and operations of councils. A change of policy focus by local governments themselves has also contributed to their

providing a wider range of services and taking a greater role in economic and social development and environmental management. The expansion in local government functions and range of services provided over recent decades, have led to a mismatch between expenditure demands and current levels of revenue, especially own-source revenues (ACELG 2011). This is felt particularly strongly by rural and regional councils and in the areas of infrastructure maintenance.

### **Challenge: financial constraints and dependencies**

The perilous financial situation of Australian local government has been extensively discussed and has been the topic of numerous state and national inquiries (Access Economics, 2006a; 2006b; 2007; Commonwealth Grants Commission, 2001; Craven et al, 2006; Dollery, Crase and Byrnes, 2006; DLGPS&R, 2007; FSRB, 2005a; 2005b; Hawker Report, 2003; Independent Inquiry in the Financial Sustainability of NSW Local Government 2006; LGAQ, 2005; 2006; LGRC, 2007PC, 2008; MAV, 2005; 2010; QTC, 2008; Tuckey, 2002; WALGA, 2008). Local government remains hamstrung by its reliance on funding from State and federal governments, as the reforms of the 1970s and 1990s did little to address the narrowness of its revenue resources. In his examination of federal-local relationships along the lines of constitutional recognition of local government, fiscal transfers between national and local governments, and intergovernmental relations between the two, Gibbins (2001) observes the Commonwealth's monopolisation of income and consumption tax results in a vertical fiscal imbalance (c.f. Chapman and Wood, 1984, p. 35–6). For example, since the abolition of PITs in 1985–86, local government's only direct source of tax income is property rates, which makes up only 3-4% of the total national tax collected, and only one third of national property taxes, the other two thirds being an integral part of State governments' revenue base (ALGA 2007).

This means that State and local authorities depend on the federal government for the bulk of their operating budgets. Gibbins (2001, p. 166) concludes that intergovernmental relations come hand in glove with fiscal entanglements, as they follow the fiscal rather than the constitutional channels.

Australian local government revenue in 2003–04 amounted to \$20.3 billion. The main sources were: taxation/rates of 37.8% (\$7.7 billion); fees and user charges 30.5% (\$6.2 billion); grants, e.g. specific purpose payments from federal government such as Roads to Recovery and financial assistance grants which are paid to State governments for distribution to local government via the State Grants Commission, 12% (\$2.4 billion). Other income derives from investment interest, dividend interest: income from public enterprise, fines and the like, about 20% (\$4 billion).

In 2000–01 the Commonwealth Grants Commission undertook a review of the operation of the *Local Government (Financial Assistance) Act 1995* which determines the amount of federal government grants to be paid. A number of its findings gave rise to concerns that the mix of Commonwealth and State funding changed over time to the detriment of local government, while the services provided by

local government changed markedly, with an increased range of social welfare services at the expense of traditional property-based and infrastructure services. This was interpreted by the Federal Minister for Regional Services, Territories and Local Government, Wilson Tuckey, as providing evidential support that the increased local government functions and responsibilities, which are largely devolved from the States, were not matched by an increase in funding or an appropriate access to additional revenue (Tuckey, 2002, p. 6).

The Commonwealth Grants Commission (2001, p. 52–3) identified five main reasons contributing to the current financial crisis of local government. *Devolution* refers to the transfer of responsibilities for new functions from higher spheres of government. *Raising the bar* describes the requirement for increased complexity or standard at which local government services must be provided and an attendant increase in the cost of service provision. *Cost shifting* occurs when a municipal council agrees to provide an essential service on behalf of another sphere of government but subsequently funding is reduced or stopped and local government has to continue to provide the service. Cost shifting can also occur when another tier of government ceases to provide an essential service and local government is left to step into the breach. *Increased community expectations and demands* have broadened the range of services provided by local government and have led to improvements in existing services. Finally, individual councils' *policy choice* has led them to expand or enhance their range of services.

The Commission's findings contributed to the establishment of a House of Representatives Standing Committee on Economics, Finance and Public Administration inquiry into local government and cost shifting. Its report, *Rates and Taxes: A Fair Share for Responsible Local Government* (the Hawker Report), 'addressed not only the matter of cost shifting but also revealed the underlying issues relating to the governance arrangements between the three spheres of government', estimating the impact of cost shifting at \$550 million to \$1.1 billion a year:

*There is no doubt that local government has, over a number of years, been on the wrong end of cost shifting largely by state governments. Cost shifting can be seen as a symptom of the current weaknesses in our system and it is the responsibility of all spheres of government to address the matter (House of Representatives Standing Committee on Economics, Finance and Public Administration 2003, vii).*

On 23 June 2005, the Commonwealth government formally responded to the report, highlighting four priority areas which resulted from its 18 recommendations (Commonwealth of Australia and Department of Transport and Regional Services, 2005). It acknowledged that cost shifting and inadequacy of available financial resources were a significant problem, and accepted the recommendation to develop an intergovernmental agreement on these matters.

The Commonwealth also accepted the recommendations for a Productivity Commission study on barriers to local government revenue, which resulted in the *Assessing Local Government Revenue*

*Raising Capacity* (2008) research report. This found that most local government revenue consisted of own-source revenues (rates, fees, and charges) and grants from other spheres of government and noted that all councils could do more to increase their own source revenues, with most urban councils being in a position to self-fund current levels of expenditure. However, the impact of this inquiry was limited, as the terms of reference excluded an assessment of the adequacy of Commonwealth financial assistance, focusing on local government own-source revenue and State government restrictions on these revenue sources. The Commonwealth also agreed to a review of interstate distribution of the identified roads component of financial assistance grants. Despite the formal acknowledgement of local government's financial situation, no comprehensive program has been put in place to address these issues. Vertical fiscal imbalances continue to limit local governments' financial autonomy and they are not fully resourced to fulfil the many roles required of them.

### **Challenge: local democracy and legitimacy**

The contemporary debate on the status of local government began in the 1970s, coinciding with the election of the Whitlam government and renewed debates around local government as a site of responsive governance, democratisation and empowerment. In the 1980s a wave of public sector reform swept through all levels of the federal system, characterised by managerialism, marketisation and the new public management. The cumulative effect was a strong emphasis on neoliberal economic and neoconservative political principles and a shift from government to governance. Discussion of local government's role in democratic practice and as a vehicle for democratic legitimation gained renewed currency, especially in the context of neoliberal ideas about efficiency in service provision under network governance.

Direct citizen participation in local democracy is often cited as a remedy for the weak democratic legitimacy and accountability deficits associated with network governance, outsourcing and marketisation (Mulgan, 2006; Considine, 2002; Klausen and Sweeting, 2005; Rhodes 1997). Local engagement in the democratic sense is also seen as a measure to counteract the democratic deficit, providing a sphere for citizens to take direct action on issues that are important to them and contributing to the re-establishment of a sustainable community culture (Cox, 2000; Cuthill, 2003). Local government is seen to be ideally placed as the locus of direct citizen involvement because of its local knowledge and existing community ties and because it is closest to the people. As a consequence, it finds itself in the curious position of being singled out as the locus where the democratic deficiencies can be most effectively countered. Perversely, the existence and democratic nature of local government is not effectively guaranteed because it is not entrenched in the federal Constitution and because State constitutions provide comparatively weaker provisions for its ongoing democratic existence.

Furthermore, while local government has a degree of legitimacy by virtue of being democratically elected, continued financial dependence on State governments means that, in the fiscal sense, it is not as accountable to its electorate as it is to the State governments (Hartwich, 2009, p. 7).

In 2003, the Hawker Report recommended the recognition of local government by both houses of federal Parliament, which was acted upon in 2006. A further amendment proposed by the Labor Party to include support for ‘a referendum to extend constitutional recognition to local government in recognition of the essential role it plays in the governance of Australia’ was rejected, indicating that while the Commonwealth Parliament recognised that local government has a legitimate place in the governance of Australia, there remained a degree of hesitation about ceding it too much power.

Nevertheless, the motion contributed to the renewed momentum to recognise local government in the federal Constitution. The status of local government in Australia’s federal structure is an important issue, especially when considered in the context the tensions between expectations that it should function as a legitimate source of responsive and democratic local governance versus its roles in efficiently providing services.

### **Challenge: lack of constitutional standing**

Prior to federation in 1901, legislation to provide legitimacy and a framework for the operations of local government had been enacted by each of the colonies. When the Australian Constitution was written, it did not include specific reference to local government. Chapman and Wood (1984, p. 30) argue that it was left out and was not discussed at the constitutional conventions because it was not considered important enough. Aulich and Pietsch (2002, p. 14) counter that this may be misleading as local government ‘does not appear to have been “excluded” in a deliberate sense – rather, there was little pressure for its inclusion’. In any case, the lack of inclusion in the constitutional process meant that local government did not take part in federation, ‘a process in which the location of sovereignty and the distribution of powers and functions were at issue’ (Chapman and Wood, 1984, p. 30). The consequences for local government autonomy and its status within the federal system were severe. It became a State statutory authority by default and was denied a place in the new national polity (Aulich and Pietsch, 2002, p. 14). State local government Acts were highly prescriptive of its roles, with councils seen as vehicles through which various statutory functions could be conducted and tasks delegated (Wensing, 1997, p. 26). It has contributed to the low status and low perceived legitimacy of local government, which is often referred to as a ‘creature of the States’ and is regarded as the ‘third tier’ or ‘bottom tier’. This has also resulted in each State developing its own distinctive style of local government with considerable variation between and within States, which makes it difficult to talk of an Australian local government *system*.

Following federation, the basic framework of Australian government remained remarkably stable until the 1970s when there was renewed discussion of local government's constitutional standing, its financial position and a broadening of the services provided by it. In Australia and internationally, ideas about local participation and democracy as a vehicle to empower local communities and facilitate responsive local governance were gaining new impetus. These ideas have not lost their currency, and indeed have gained credibility as a source of legitimacy for local decision making in the context of neoliberalism and the shift from government to governance.

Constitutional entrenchment has been proposed as a measure to enhance the legitimacy and the financial security of local governments, by eliminating the role of the States as the middlemen, thus increasing revenue and providing a broader funding base and greater access to federal tax revenues, enshrining their autonomy, and protecting them from dismissal by State governments.

Other perceived benefits are broader. Greater direct association between councils and the federal government could bring some beneficial uniformity to the regulation of local government, which differs markedly from State to State (Dollery, Crase and Byrnes, 2006; Kane, 2006, p. 25).

Constitutional recognition may also enhance local governments' abilities to coordinate their resources in strategically important areas such as water and environmental management, although this is already happening in many instances (ACELG 2011).

Achievement of these aims depends on the nature of the constitutional entrenchment sought, which could range from symbolic recognition to substantive constitutional protection, such as a guarantee of greater autonomy, clarity about tasks to be performed and access to sufficient revenue sources to undertake them.

The history of the quest for constitutional recognition shows that there are significant obstacles to be overcome, many of which are rooted in tensions about the locus of power between local government, the States and the Commonwealth, fiscal dependencies, and the stringent requirements for a referendum which require a national majority of voters *and* a majority of electors in at least four out of six States.

Section 128 of the *Commonwealth of Australia Constitution Act 1900* (Cth), sets out the requirements for changes to the Constitution. Any proposed laws must be passed by an absolute majority (the total number of representatives in the chamber) of both Houses of Parliament, before being submitted to a referendum. If the two Houses disagree, the agreement of just one House is sufficient to initiate a referendum under the condition that a proposal has passed with an absolute majority and the other House 'rejects or fails to pass it, or passes it with any amendment to which the first-mentioned House will not agree'.

Before proposals to amend the Constitution commence their passage through Parliament, they are generally preceded by debates in a range of formal (e.g. popular conventions, intergovernmental conventions such as the Australian Constitutional Convention, commissions, parliamentary committees, government, and interest groups) and informal fora (e.g. media, debates along party lines) (Williams and Hume, 2010).

In 1973 the Whitlam government introduced the Constitutional Alteration (Local Government Bodies) Bill to allow the federal government to provide funding directly to local governments. This was defeated in the Senate due to resistance from opposition parties who saw it as an affront to the States. Subsequently, a proposal to alter the Constitution to enable the Commonwealth to borrow money for, and grant financial assistance to, local government bodies rather than using States as conduits, was included in the referendum held on 18 May 1974 (Saunders, 2005).

The campaign for a 'no' vote was underpinned by suspicions about the reasons why local government was seeking constitutional recognition, and by the Whitlam government's agenda for regionalism. In essence, opponents considered local governments' constitutional aspirations as diminishing the power of the States and furthering centralist tendencies, and as a possible step towards establishing regional authorities (Kane, 2006, p. 26).

Had the referendum been successful, the new constitutional provision would have provided a symbolic recognition of local government and would have opened up new funding avenues. However, it would not have provided substantial constitutional protection for local government as a democratically elected, integral part of the federal polity.

The quest to increase the autonomy and standing of local government received new impetus at the constitutional referendum on 3 September 1988. This proposed the addition of a section 119A to the Constitution:

*Each State shall provide for the establishment and continuance of a system of government, with local government bodies elected in accordance with the laws of the State and empowered to administer, and to make by-laws for, their respective areas in accordance with the laws of the State.*

The 'no' case argued that the term 'system of local government' was vague and open to interpretation and that the proposed provision would not provide protection from arbitrary dismissal and did not provide further clarity on the structure, role and basic rights and responsibilities of local government. The argument that the proposal was a step towards strengthening the power of the Commonwealth was revived with rather dramatic statement:

*This proposal changes nothing for Australians – except for the worse. And again, it panders to the federal Government's increasing desire for more power, centred in Canberra. STOP CANBERRA'S POWER GRAB. PROTECT YOUR SYSTEM OF LOCAL GOVERNMENT. VOTE NO (Commonwealth of Australia, 1988, p 20).*

The referendum was soundly defeated, with only 33.61% of votes in favour. As in 1974, the negative outcome was the result of a sustained and successful campaign by opponents and a lack of bipartisan support. Consequently the result was due largely to political factors rather than the nature of the amendments sought.

This history of unsuccessful referendums is relevant today. It indicates that bipartisan support and backing from the States is essential to achieving constitutional recognition of local government, a fact recognised in the Expert Panel on Constitutional Recognition of Local Government's *Final Report* (2011) which assessed the parameters of the current proposal for a third referendum on the issue. Importantly, the report identified that the underlying issues affecting the success of previous campaigns have not been resolved, as reflected in the States' and Territories' varying levels of support for and opposition to the four proposed types of amendments: symbolic recognition in a preamble to the Constitution, financial recognition, democratic recognition and federal cooperation.

A key contention is about the impact of any proposed changes on the locus of power in the federal system, particularly the historic tension between local government as an instrument of national policy versus its function as a vehicle through which to implement activities and policies as seen fit by the State and territory governments – a tension which is closely tied to the financial entanglements described earlier. A contributing factor and current pressing issue is the recent High Court finding in *Pape v Commissioner of Taxation* (2009) 238 CLR 1 which has cast doubt on the constitutional validity of the Commonwealth making direct grants to local government. These factors and concerns about the financial sustainability of local governments, as outlined in the Hawker Report, contributed to the Expert Panel report indicating that a referendum around financial recognition was a preferred and potentially viable option for a referendum in 2013, as it has the highest level of support politically (at State and federal levels), is viewed favourably by 75% of the public (Expert Panel, 2011, p. 40) and is most likely to make a material difference to the financial situation of local government. At the same time the Panel advised caution, noting 'that financial recognition per se does not currently enjoy sufficient support either among stakeholders or the general community to give a referendum a high enough prospect of success in this Parliament' (Expert Panel, 2011, p. 2).

Democratic recognition – changing the Constitution to guarantee that local councils are elected bodies – is the second preference identified by the Expert Panel. However, this option does not attract the same amount of political support. Key stakeholders including the federal opposition and several State governments opposed this (Expert Panel, p. 8) on the basis that it would limit the States' and Territories' ability to supervise, oversee, manage and reform local councils, especially in the case of corrupt or dysfunctional councils. The argument is that, under existing State Acts, local governments are already elected. While democratic recognition would strengthen this provision, most States'

submissions to the Expert Panel advanced the view that ‘there is nothing to be gained by including similar provisions in the Commonwealth Constitution’ (WA submission, Submission no 572, p. 2).

Interestingly, the option of democratic recognition attracted the highest level of public support. Polling indicated that the people are sympathetic to a referendum on democratic recognition, possibly because this appeals to ‘a higher level concept than the institution of local government itself’ (Expert Panel, 2011, p. 8). This may indicate that there is a popular desire for local government to become a recognised and safeguarded part of the democratic polity. However, despite wide public support for the democratic option (85% supportive and 65% strongly supportive (Expert Panel, 2011, p. 40), previous referendums have shown that initial support for a referendum does not necessarily translate into a positive result, thus caution is advised.

The two other options investigated by the Expert Panel – symbolic recognition and recognition through federal cooperation – were seen as unlikely to succeed. While symbolic recognition, that is of the inclusion of local government in the Constitution in a way that has no real legal effect (possibly in a preamble), was the second most popular option in submissions (Expert Panel, 2011, p. 10), it received little support from stakeholders or in public consultation, largely because it was seen to have little practical effect and be largely tokenistic. The final option, changing the Constitution to explicitly encourage cooperation between the governments of the federal system, was too new for most stakeholders and members of the Expert Panel to elicit much comment or debate and was seen to involve complex technical and legal matters regarding the federal balance of power.

In summary, the submissions to and report of the Expert Panel indicate that many issues that worked against successful referendums in the past remain unresolved. It is not that the matters under consideration lack merit or support in principle, rather it is well established that political factors, uncertainty about the relative importance of the issues and conflicting views about the appropriate nature of constitutional entrenchment are ongoing challenges for the referendum process.

## **Conclusion**

Although wide-ranging reforms have strengthened local governments’ roles and status since the 1970s, their capacity to fulfil these expectations has not grown to the same degree. In part this is due to constitutional issues, in part due to financial constraints and in part due to the historical evolution of local government in Australia, which has affected the way it sees itself and the way it is perceived by other spheres of government and the public. In particular, there appears to be a persistent reluctance on the part of local government to take up its own cause and initiate change. This is evidenced, for example, by the fact that although local government peak bodies have initiated a number of inquiries, local government has been hesitant to put together and action packages of

reforms, leaving responses to the recommendations of inquires largely to state and federal governments.

Access to finance and safeguard of democratically elected councils from arbitrary dismissal remain key concerns that need to be addressed. Whether the constitutional route is the best way to deal with these issues is open to debate, as historically, structurally, legally and politically the chance of success of a referendum is slim. State and federal government opposition to democratic recognition in the Constitution demonstrates an ongoing scepticism about local government's capacity to democratically and effectively administer and govern local affairs and a perception that it is in need of ongoing 'supervision' by the States which must intervene if the situation becomes corrupt or dysfunctional (Expert Panel, 2011, p. 9). At a deeper level it demonstrates that the States, territories and federal government are wedded to the idea of local government as a functional and administrative extension of their own policy agendas. Thus, while there is much talk about local government as a site of authentic democratic governance and its attendant benefits (increased civic capacity, higher social capital, more effective and responsive provision of service), this is only supported as long as it suits the agendas set by State, territory and federal governments. This makes it akin to an experiment in democracy that can be terminated if it does not suit the political agendas of the higher levels of government, as in Victoria in the 1990s.

Alternatives to constitutional change include changes to State legislations to secure the autonomy of local government, coupled with initiatives and legislation to improve local governance and administrative reform. This would require concerted and coordinated action on behalf of local government and points to a further governance challenge, namely the need for local government to step up as a political actor in the federal system, advocating on its own behalf.

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## Pakistan's Devolution of Power Plan 2001: A brief dawn for local democracy?

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### Abstract

*Local government is not a new concept in Pakistan. Since the founding of the country in 1947 Pakistan has always had local governments as the lowest-tier political structure. However, grassroots democracy has been eclipsed at different times in the country's history. As we write this article, there is no elected local government in Pakistan. The article documents the recent history of decentralisation with special reference to the Devolution of Power Plan (DOPP) introduced by the military government of General Pervez Musharraf in 2001. The author was closely involved with the DOPP at both policy and implementation levels. The paper also looks at political economy issues relating to decentralisation in Pakistan.*

### Introduction

The public administration literature provides an enormous number of studies on decentralisation, but research focused on decentralisation in Pakistan within the context of military rule is limited. Some researchers, mostly belonging to international development agencies, have studied different aspects of the Devolution of Power Plan (DOPP) – sectoral, political etc., but these do not comprehensively cover the breadth of the local government reforms of 2001. The main thrust of this article is that the DOPP was not simply another local government system *per se*, but rather a major attempt at decentralisation accompanied by a comprehensive package of reforms that had several strands – electoral reform, local government structures and processes, and changes to the police and bureaucracy – all aimed at modernisation and social change.

Pakistan's political history has been characterised by intermittent military rule. Since independence in 1947, there have been four periods of martial law under different dispensations and three constitutions

have been enacted (1956, 1962 and 1973). Cumulatively, military governments have ruled for almost half of Pakistan's existence since 1947. The alternating pattern of political and military governments<sup>1</sup> has affected the structure and design of local government systems, and more importantly has had significant implications for the development of grassroots democracy. It has at times strengthened and at other times jeopardised the sustainability of local government in the country. In broad terms, local democracy has been nurtured by military governments whereas during civilian rule it has been replaced by non-participatory, unelected local structures that are run by government-appointed civil servants. Thus as far as local government is concerned, it may be said that the country has experienced both 'dictatorial democracy' and 'democratic dictatorship'.

According to Briscoe (2008), the formal state structure in any society may have a parallel or 'shadow' set of institutions that hold real power. This is especially true in the case of Pakistan. Every military government in Pakistan has introduced its own brand of local government. Cheema *et al* (2005) have used the term 'non-representative governments' for these military regimes. They have attempted to analyse the Pakistani experience to find answers to the question of why non-representative regimes have been willing proponents of decentralisation to the local level. In developing countries decentralisation may be either externally driven (e.g. through structural adjustment programs, donor pressure etc.) or internally motivated (e.g. by governments seeking to strengthen their legitimacy and gain popularity), though the country context is different in each case. In Pakistan's case decentralisation has always been internally driven, and Cheema *et al* (2005) conclude that the military's need to legitimise its control appears to be a prime reason behind the recurring attempts at local government reform.

Bhave and Kingston (2010) view the military in Pakistan as a separate actor with its own interests. It can, however, be argued that institutional 'interest' and institutional 'role' are two different things, and that the course taken will vary according to the institution's interpretation of the context in which it has to operate. According to Sivaramakishnan (2000) local government in South Asia often tends to be stronger during eras of authoritarian rule than in times of democratic rule. He suggests that during democratic regimes elected local government is less attractive because it provides an additional platform for citizen participation, and hence may to some degree rival the centre.

The patronage of local governments under military regimes is not unique to Pakistan. In many countries military governments have attempted to create grassroots popularity and support, and to secure their legitimacy and a better external (and internal) image by nurturing local governments. In the Commonwealth, there are at least two more instances, Ghana and The Gambia, where army rulers introduced local government reforms. In Ghana, a major change in the governance system was

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<sup>1</sup> The terms 'elected and non-elected' are not used here as military regimes also installed elected governments, albeit of a relatively controlled nature. Within the military, the army typically dominates.

introduced in 1988 by Flight Lieutenant Jerry John Rawlings, the organiser of the fourth coup in the country in 1981. Writing about Ghana, Ahwoi (2010) argues that decentralisation of national administration, particularly in unitary states, works best in the presence of a strong central government. Although Pakistan is a federation, Ahwoi's thesis seems to apply.

The remainder of this article is divided into four sections. The first looks briefly at local government models in Pakistan before 2001 – all creations of military regimes. This is necessary if one is to distinguish the DOPP from previous waves of local government reform. The following sections then explore the DOPP of 2001-09 to examine what was new compared to previous attempts at decentralisation, and analyses some of the social factors evident in the two local government elections (2001 and 2005) which were a hallmark of the DOPP. The final section reviews the experience of the DOPP, looks at the current situation and future prospects, and draws some general conclusions.

### **Local government in Pakistan until 2001**

In 1947, on the eve of independence, Pakistan inherited the local government system of colonial India. The British Administration had introduced the concept of 'local self-government' by creating a separate tier to administer civic functions, initially through appointed local administrators, and then through elected Municipal and District Boards for urban and rural areas respectively. This system was first introduced in Bengal and Madras, followed by Bombay, Punjab and other colonial states. Separate laws were enacted in each state for large cities, municipal cities and towns, and rural areas (Alam 1999). During the independence movement in India national political parties stood for greater representation at central and provincial levels rather than local government. This prompted the British government to grant autonomy at the provincial level (Cheema et al 2005), and was a major factor in the weak development of local governments in the areas that later became Pakistan (Ali 1980).

The history of local government in Pakistan from 1947 to 2001 can be broadly divided into four periods:

1947-1958

1958-1969, the 'Basic Democracy' system of General Ayub Khan

1969-1979

1979-1988, the local government system introduced by General Zia-ul-Haq.

#### **1947 – 1958**

As explained above, at the time of independence the areas that constituted Pakistan had few developed systems of local government and the local bodies were mostly run by government appointed administrators. The early years of independence were marked by limited constitutional development and the extreme pressures on limited resources brought about by partition. The partition of India in itself was phenomenal, and perhaps unique in the British Empire, as no other colony was

partitioned at the time of granting independence. In Pakistan, migration of millions of Muslims from the Indian states and their settlement was in itself enough for the newly created country to handle, with minimal infrastructure and resources, without trying to focus on other developmental issues such as establishing democratic local government.

Around 1956, some progress began towards creating an adult franchise and electing local office bearers, but this was confined mainly to the provinces of Bengal (now Bangladesh) and Punjab. In 1957-58, half the municipal councils in West Pakistan (the present Pakistan) were still managed by government appointed administrators as in most cases elections had not been held after the expiry of their terms of office. Waseem (1994) points out that even where elections were held, there was only a limited franchise and massive malpractice.

### ***1958 – 1969: the Basic Democracy System of General Ayub Khan***

This was the first period of martial law that brought with it a 'first wave' of local government reform. The 'Basic Democracy' (BD) system was the first experiment in Pakistan with local government under the auspices of a military regime. Field Marshal Ayub Khan introduced a system of 'controlled democracy' at all levels of government. Under this system, local government institutions were created in rural and urban areas through separate legislation. All urban and rural councils, as well as provincial and national assemblies, were elected indirectly through an electoral college consisting of 40,000 'Basic Democrats' popularly elected in each of East and West Pakistan.

### ***1969 – 1979***

After the imposition of the 'civilian<sup>2</sup> martial law' under Zulfikar Ali Bhutto in 1971, all local bodies were dissolved and the functions and powers of local governments were vested in official administrators. This state of affairs continued throughout the reign of Mr Bhutto and the early years of the following period of the martial law regime of General Zia-ul-Haq, which began in 1977. By this time, East Pakistan had seceded from Pakistan and West Pakistan had been divided into four separate provinces: Punjab, Sindh, Balochistan and the North West Frontier. According to the 1973 Constitution (still in place), local government is a provincial subject. Thus all four provincial governments enacted their respective local government legislation in 1979.

### ***1979 – 1988: the local government system of General Zia-ul-Haq***

This period marked the 'second wave' of local government reform under a military regime. The system of local government introduced in 1979 by General Zia-ul-Haq was the most representative in nature since independence. For the first time in the history of Pakistan, elections to all local councils in both rural and urban areas were held simultaneously on the basis of adult franchise and under the aegis of independent provincial election authorities.

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<sup>2</sup> 'Civilian' martial law because it was imposed by an elected 'political' government.

The special features of the 1979 local government system can be described as follows:

- Local government laws relating to rural and urban areas were unified and harmonized
- Representation was given to peasants, workers, women and minorities in pursuance of principles laid down under the 1973 Constitution
- Elections to local councils were held on non-party basis
- Local governments had elected officer bearers (chairmen, mayors, etc.) and there were no appointed members
- Local councils had significant autonomy e.g. could approve their own budgets and taxation proposals.

Tables 1 and 2 summarise some of the key features of the three systems of local government introduced under military rule, and the intervening 'political' (civilian) governments.

*Table 1: Local government systems under military rule*

Period	No. of years	Military Leader	Name of System	Distinguishing feature/s
1958-1969	11	General Ayub Khan	Basic Democracy	National law; local governments comprised both elected and appointed members, and served as an electoral college for the election of the national President.
1979-1988	9	General Zia-ul-Haq	No specific name	Elected local governments under provincial laws; no appointed members; 3-4 successful terms completed under this system.
1999-2008	9	General Pervez Musharraf	Devolution of Power Plan	Based on the principle of subsidiarity; radical departure from all previous systems; devolution accompanied by taxation, civil service, electoral and police reforms.

*Table 2: Local government under 'political' governments*

Period	Political Situation	Remarks
1947 - 1958	No constitution, no elected government in the country	Urban Councils and District Boards in urban and rural areas respectively continued according to laws left by the British Government.
1971 - 1976	First elected national/ provincial governments	Despite promulgation of a local government law, no elections held throughout this period and local councils were managed through official administrators.
1988 - 1999	Several elected national governments held power	All elected local governments dismissed. Local government elections never held though announced and scheduled several times; elections held in certain provinces in 1998, but elected representatives never assumed office.

### **The Devolution of Power Plan (DOPP): What was new?**

Although the coup of 1999 was the precipitating cause of devolution, movement towards local government reforms had begun earlier at the behest of international donors and lenders, particularly the World Bank. On the global scene, pressure for decentralisation, especially market-based

decentralisation, had already been brought to bear in developing countries as a result of the Structural Adjustment Program of the International Monetary Fund in the 1980s and 1990s. Based on World Bank reports of 1996 and 1998<sup>3</sup>, Cheema et al (2003) argued that although multilateral pressure for decentralisation in Pakistan had developed since the mid-nineties, no major attempts at decentralisation were initiated in Pakistan before General Musharraf took power in 1999. Therefore it can be said that the coup of 1999 was a turning point for local government reform, and that without the coup the course of decentralisation in Pakistan would have been further delayed.

In Pakistan, like many other developing countries, public service delivery was characterised by a concentration of powers in the federal and provincial governments. Most service delivery was therefore under bureaucratic control without any contribution from elected politicians at the local level. This meant that provincial and central governments did the policymaking and district authorities<sup>4</sup> acted as the implementation agency with little say in decision-making – a system of de-concentrated administration rather than decentralised authority.

To address this situation, General Musharraf established a National Reconstruction Bureau (NRB) as a 'think tank' to help transform an over-centralised and ineffective service delivery system into a decentralised and responsive one. After an extensive process of consultation his government introduced its program of devolution of power and authority under the aegis of the NRB in 2001. This began the 'third wave' of decentralisation in the country. The Devolution of Power Plan of 2001 (DOPP) was a radical departure as it was based on the concept of subsidiarity, involving transfer of power from provinces to districts and other lower levels. Before the DOPP, subsidiarity was not a commonly used term in developmental discussions and in the corridors of power in Pakistan.

The DOPP had two main elements: decentralisation and electoral reforms. Devolution was also accompanied by reforms to the civil service and police. Features introduced for the first time in the history of Pakistan are summarised in Table 3. The following sections provide further detail on some of the key features of the DOPP reforms.

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<sup>3</sup> World Bank (1996) *Supporting Fiscal Decentralisation in Pakistan* and World Bank (1998) *A Framework for Civil Service Reform in Pakistan*

<sup>4</sup> District authorities are extensions of provincial governments.

Table 3: Innovative features of the Devolution of Power Plan

<b>Electoral</b>	<ul style="list-style-type: none"> <li>▪ Voting age reduced from 21 to 18 years to bring youth into mainstream politics.</li> <li>▪ Minimum educational qualification prescribed for candidates for Nazims (mayors).</li> <li>▪ Manifesto mandatory for candidates for District and Town/Taluka Nazims (mayors).</li> <li>▪ Elections conducted by (central) Election Commission of Pakistan instead of provincial election authorities.</li> <li>▪ Local government elections held in phases for better management and coordination.</li> </ul>
<b>Gender</b>	<ul style="list-style-type: none"> <li>▪ Reserved seats for women increased to 33% in all tiers of local government.</li> </ul>
<b>General</b>	<ul style="list-style-type: none"> <li>▪ Divisional tier (between districts and provincial government) abolished.</li> <li>▪ Office of the Deputy Commissioner (a colonial legacy of de-concentrated administration) abolished and replaced by senior District Coordination Officer (DCO) reporting to Nazim (mayor); interaction of DCO with provincial government through mayor.</li> <li>▪ Magistracy abolished; in Pakistan's context this was very important, as provincial governments extended their reach through district officers who also had judicial powers that could be exploited through the district bureaucracy.</li> <li>▪ Mayor made chief executive of the respective local government with wide ranging administrative and financial powers.</li> <li>▪ Elaborate mechanism for internal and external recall of elected representatives prescribed under law; similarly, officials enabled to seek recourse against motivated or illegal orders of Nazims (mayors).</li> </ul>
<b>Finance</b>	<ul style="list-style-type: none"> <li>▪ Provincial Finance Commission constituted for allocation of resources from provinces to districts, based on population, fiscal capacity, fiscal effort and specific needs etc. of districts.</li> </ul>
<b>Police</b>	<ul style="list-style-type: none"> <li>▪ <i>Police Act 1861</i> replaced after nearly 150 years; law and order became the responsibility of Zila Nazim (District Mayor), but the District Police Chief was responsible to his own professional hierarchy in matters of crime prevention, investigation and personnel management of force – this was intended to check patronage by political leadership and high-handedness on the part of police, while facilitating dispensation of justice.</li> <li>▪ District Public Safety Commissions constituted, comprising elected and appointed members, to act as a safety valve providing recourse for both Police Chief and District Mayor in cases of conflict.</li> <li>▪ Police Complaint Authority introduced to deal with serious complaints against police.</li> </ul>
<b>Community Development</b>	<ul style="list-style-type: none"> <li>▪ A new grassroots institution developed – Citizen Community Boards – to engage local people in service delivery.</li> </ul>

### Application of subsidiarity

Although the 2001 system sought to apply the principle of subsidiarity,<sup>5</sup> Even though this was not fully implemented and many details were not resolved, especially in relation to financial decentralisation and relationships between provincial and local governments. Nevertheless, the DOPP can be said to have brought about some of the most fundamental changes in governance and local governance in Pakistan since independence in 1947.

Under the 2001 system, district governments (the upper tier) were given responsibilities in agriculture, health, education, community development, information technology, finance and planning, together with revenue previously held by the provinces, and became financially competent through transferred

<sup>5</sup> The concept of subsidiarity is that lower levels of government are closer to the citizen and can therefore make more 'intelligent' decisions about 'who does what' ie less about politics and more about principles. The Aberdeen Agenda on local democracy, adopted by the Commonwealth Local Government Forum, provides that local government should have appropriate powers in accordance with the principle of subsidiarity.

funds and local taxes. Town/taluka governments (the middle tier) were assigned most of the functions of the former municipal authorities as the main providers of essential services (e.g water, sanitation, roads and waste disposal). The union councils (lowest/third tier) were envisaged as providing monitoring and oversight of service delivery, as well as undertaking small developmental projects. Union councils received funds directly from the district and collected some local taxes.

### **Abolition of rural-urban divide**

One of the important distinguishing features of the DOPP was that it abolished the previous rural-urban divide in local government. Under the British system of administration urban local councils were established to provide essential municipal services, but the capacity of rural councils in service delivery was far less (Siddiqui 1992) as they provided only limited representation, often strengthening the local elite.

### **Reform of the bureaucracy**

The DOPP was a bold attempt to transform an over-centralised bureaucracy, especially in terms of the established elite. The District Coordination Officer (DCO) of the district government, equivalent to a chief executive officer, was placed under the elected mayor. Likewise, the Superintendent of Police of the district reported to the mayor on the overall maintenance of law and order.

### **Developmental planning**

Before the DOPP, the planning system was centralised and development funds were distributed to provincial departments through a top-down mechanism. The identification, appraisal, and approval of development projects had no relationship to local priorities. The element of community participation was missing from the process, which was non-transparent and inequitable. Politicians, mainly parliamentarians of national and provincial assemblies, were provided development funds to be spent according to their wishes.

The DOPP provided for Citizen Community Boards (CCBs) to mobilise the community in the development and improvement of service delivery through voluntary and self-help initiatives. CCBs played a major role in the transformation of development planning by creating a sense of ownership. They were given the legal right to enable citizens to participate actively in development activities, plus an earmarked budget that could be carried over from year to year. This also introduced transparency and accountability to the development process as communities became active participants in projects instead of being passive beneficiaries.

## **Organised local government– a new phenomenon in Pakistan**

Before and during the greater part of the DOPP period, local government associations (in the commonly understood sense) did not exist in Pakistan. However, under the DOPP there was a growing awareness and empowerment of local government that promoted a greater sense of unity and common purpose amongst its elected representatives. The first initiative came from Punjab province with the creation of the Local Councils Association of the Punjab (LCAP) in 2007. Since its inception, LCAP has become a leading national organisation not only in its lobbying of provincial and national governments, but also in paving the way for a louder voice for local democracy across the whole country. Following LCAP, new local government associations were created in the other three provinces in Pakistan – Sindh, Balochistan and the North-West Frontier (Khyber-Pakhtunkhawa). Later, in November 2009, a national local government association was launched.

In the immediate post-Musharraf period the local government associations established under the DOPP sought to mobilise public support from across civil society, business and the political spectrum to call for the protection of local democracy in Pakistan and for further local government elections. The international community expressed concern about the future of local democracy in Pakistan, and the associations' efforts were supported by local government leaders, including the Commonwealth Local Government Forum (Local Government Alliance 2009) – but at this point to no avail.

### **Social dimensions**

One of the significant features of DOPP was the attempt to make social change part of the reforms. According to Randall and Strasser (1981) 'social changes' are those that mark the transition from one stage or phase of a construed cycle of development to another. They designate as 'significant' those changes that evolutionary theorists associate with the movement of social forms or a whole society from a 'less advanced' state towards a durable 'advanced' state, or from one level or epoch to another. The definition of 'significant' will depend on the aspect of society or the segment of social reality that is seen to be of strategic importance. For example, reforms in local government institutions may be significant both as a process of strengthening local democracy and as a way of providing better and more efficient services for economic, social and cultural development. Montiel (1988) argued that the institutional development of local government is politically and culturally bounded, therefore its context and process need to be considered accordingly.

Against that background, this section examines some of the social factors and trends exhibited in the two local government elections – 2001 and 2005 – held under the DOPP. For this purpose reliance has been placed on secondary data and published sources. PATTAN<sup>6</sup> carried out substantial work in

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<sup>6</sup> PATTAN: Pattan Development Organisation. [www.pattan.org](http://www.pattan.org)

collecting data from the two elections and here we rely on their data (PATTAN 2006), plus other sources where available (see also Bari 2001).

As shown in Table 3, the DOPP incorporated significant electoral reforms. First and foremost, the voting age was reduced from 21 to 18 years in order to increase the involvement of young people. Secondly, minimum educational qualifications were established, including having reached matriculation in order to take the position of District Mayor (Nazim). PATTAN's analysis shows that in the 2005 elections most of the candidates indicated they had first or higher degrees. Approximately 46% claimed to be graduates while 30% said that they had higher or professional degrees. About 15% had completed their FA/FSc – equivalent to 12 years of schooling – while only 10% were educated below that level (Table 4).

*Table 4: Education level of District and Tehsil Nazims*

Education	Number	Percentage
Less than FA	48	9.7
FA / FSc	72	14.6
BA / BSc	225	45.5
Higher than BA / BSc	150	30.5
Total	495	100.0

*Table 5: Qualifications of mayors elected in Sindh province in 2001*

Qualification	District Mayors (N = 16)		Town/Taluka Mayors (N = 102)	
	No	%	No	%
Matriculation	3	18.8	24	23.5
Intermediate	2	12.5	10	9.8
Graduate	5	31.3	33	32.4
Masters	3	18.8	10	9.8
MBBS (Medical)	1	6.35	5	4.9
LLB (Law)	1	6.3	7	6.9
BBA	1	6.3	2	-
Diploma	-	-	3	2.9
B.Engineering	-	-	3	2.9
M.Sc	-	-	3	2.9
MBA	-	-	2	2.0

Source: Alam (2004)

Alam's study (2004) also indicated that a younger leadership came through in the 2001 elections. In 2001, amongst Town/Taluka Nazims (with a role similar to mayor) the largest number were 46-50 years of age (about 25%), followed those aged 41-45 years (19%). The numbers aged 56-60, 66-70 and 71-75 years were very low – less than 5% combined. PATTAN data shows a similar picture for 2005. Nationwide, approximately 15% of the successful District and Town/Taluka candidates were in the age group 25-30 years while 35% were 31-40 years. Some 30% of candidates were aged 41-50 years, and approximately 20% were older than 50 years.

PATTAN data also suggests that the DOPP reforms encouraged new entrants to local government. In 2001 57% of candidates for Nazims and 75% for Naib Nazims (Deputy Mayor) contested elections for the first time. In 2005 similar trends continued: approximately 70% of those elected as Union councillors were new faces, and very few of these had previously been members of Town/Taluka or District councils.

Alam's study (2004) of the 2001 elections in Sindh province again provides supporting evidence. Out of 16 district mayors elected in Sindh province none had any past experience in local government, but 12 out of 16 had been a member of a provincial or the national parliament. This in itself may be seen as a reflection of empowerment at the local government level attracting national/provincial or mainstream politicians to contest local government elections. In the category of Town/Taluka mayors only 3% had previous experience in local government, while one mayor had been a senator. Overall only 14 out of 102 Town/Taluka mayors (13.7%) had previous political experience. This suggests the emergence of a new leadership as envisioned in the devolution plan.

In Pakistan, women have been contesting elections for national and provincial assemblies as well as local governments since independence. However, their representation remained very low due to socio-religious factors. In order to bring women into politics, the DOPP increased the number of reserved seats to 33% at all levels. Previously only 5% of seats were reserved for women in local councils. Thus the DOPP created about 24,000 seats for women in local governments across the country. In some parts of NWFP and Balochistan, due to social conservatism, women were not allowed to take part in the elections. However, such cases were few. Election figures showed that on the whole the provision of reserved seats had encouraged women to participate in the political affairs of the country, with nearly 22,000 women elected (including those returned unopposed).

Between 2001 and 2005 there was a 100% increase in women candidates elected as Nazims and Naib Nazims, from 16 to 32. Similarly, in Sindh province in 2005 four women became District Nazims as compared to only two in 2001. It should be noted, however, that Sindh's literacy rate and educational standards are better than those in less advanced provinces like Balochistan and NWFP. Nationally, the

candidature for District and Town/Taluka Nazims was almost totally a male affair, with only 1.4% of women candidates.

Determining whether or not social change actually occurred as a result of the DOPP is a complex matter. It requires study not only of the institutions of local government but also diverse aspects of Pakistani society including trends in the economy, demography, culture, history, law, politics, education and religion. Two terms of local governments under DOPP, cumulatively eight years, are not sufficient to gauge any definite trends in the political milieu of the country. However, based on the limited data presented above it is possible to identify some early signs of change and to suggest that the direction of the reforms did indeed have the potential to initiate modernisation of the political and administrative system in Pakistan as envisaged by the military government.

### **Recent developments, prospects and conclusions**

In a study of five fragile countries Anten et al (2012) conclude that Pakistan offers the most detailed example of a process of decentralisation that has only partially achieved its objectives. This article echoes their concern that decentralisation cannot proceed effectively in a governance system that suffers from a number of dysfunctional factors.

A central characteristic of the polity of Pakistan has been alternating civilian and military rule, with each period of military rule patronising and introducing its own brand of grassroots democracy. Within that context, the Devolution of Power Plan (DOPP) introduced by General Musharraf in 2001 was a radical departure, as it comprised a package of changes to the public sector including decentralisation, electoral, public service and police reforms. In effect, it was an attempt to change the governance paradigm. Although the data is patchy, available evidence suggests that over the period 2001-2009 substantial progress was made towards effective decentralisation, in particular a sound system of democratic local government.

However, since 2009 the decentralisation agenda has faltered, at least as far as local government is concerned. After the general elections of 2008, a new civilian government came into power and General Pervez Musharraf stepped down. Based on past experience in Pakistan, there was apprehension that the civilian government would not maintain local government institutions, especially the DOPP system. This is exactly what happened and at the time of writing the local government elections originally due in 2009 have yet to be held and local governments are being managed by non-elected administrators. As of writing this article, the General Elections have been announced for 11 May, 2013, but local government elections still seem a far cry. Though most of the political parties have mentioned local government elections in their manifestos, but time will tell if these will be held in the near future. At the same time, during the election process, the media is putting a lot of pressure and is highlighting the importance of grassroots democracy.

While the nation goes to general elections this month (May 2013), the situation in all four provinces is different. Until 2009 the local governments operated in the country under provincial local government ordinances promulgated in 2001 popularly known as the Devolution Plan. However, after the expiry of constitutional protection (17<sup>th</sup> Amendment) each province adopted different variant of the 2001 Ordinance and 1979 Local Government Ordinance introduced by General Ziaul Haq, including hybrid versions of both these laws. From 2009 until 2013 provinces experimented with different forms of these laws according to prevailing political expediency. As of today, KPK province (Khyber Pakhtunkhwa) has a law

predominantly based on the 1979 LG Ordinance. Similarly, Balochistan province also reverted to a pre-devolution 1979 law but because of a court decision the 2001 law is operative legally. Punjab province introduced its own local government law but in essence this is largely based on 2001 Ordinance. The situation in Sindh province was quite peculiar, primarily due to coalition government and strong stance of the parties – the Peoples Local Government Ordinance 2012 was promulgated after a prolonged negotiation between coalition partners spanning several years but this was short lived as it was annulled before announcement of the general elections giving effect to the erstwhile 1979 Ordinance. Also, in 2012 the Government promulgated the FATA Local Government Regulation, 2012, to regulate and establish municipal bodies in the federally administered tribal areas. However, again, no elections have been announced so far.

It appears that the DOPP, although home-grown, had the tag of a military regime and therefore suffered from negative perceptions, even though decentralisation is still seen as a necessary part of broader governance and public sector reform. The DOPP had also included a component of devolution from federal to provincial governments, named 'Higher-Level Restructuring'. Despite pressure from the provinces this did not take place under the Musharraf government, but in 2010 it was implemented through the 18th Constitutional Amendment. As a result, *inter alia*, the Ministry of Local Government at the federal level has been abolished. Also, at around the same time, the federal government disbanded the National Reconstruction Bureau and replaced it with a Policy Analysis Unit (PAU) headed by an adviser to the President. The PAU operated for only a brief period until it was in turn abolished. Thus from 2008, when a civilian ('political') government returned to power, most of the features of DOPP have been steadily eroded.

Achieving complete devolution of power in Pakistan is clearly a huge undertaking. Such institutional reforms are complex, time consuming and inevitably opposed by those interest groups which benefit from the existing system. For example, the effective diffusion of economic power is an essential pre-requisite of meaningful devolution, and one that has perhaps received insufficient attention. Economic power notably that derived from ownership of land, gets parlayed into political power which, in

collusion with other entrenched interest groups such as the bureaucracy, restricts the empowerment of citizens.

Decentralisation is inherently neither good nor bad. It is a means to an end. Successful decentralisation can improve the efficiency and responsiveness of the public sector, and also contribute to significant social change, which cannot occur without supportive institutional development. At the local level, the DOPP brought about substantially enhanced participation of women in government, involvement of a broader cross-section of society in political life, and more educated, responsive and democratic leadership.

According to Anten et al (2012), institutional reforms that do not align with the interests and incentives of power-holders are unlikely to lead to robust new arrangements. They argue that the World Bank's recent emphasis on an 'experimental best-fit' route to reform of the state is a sensible acknowledgement of these difficulties. Political factors are therefore crucial in determining the possibilities for reform and development especially in a fragile state environment. Strong political will and leadership are needed to create and maintain conducive conditions for a steady process of institutional change and development. In the case of DOPP, once the main architect of reform had departed the scene, progress came to a grinding halt, and the current political environment is uncertain.

We conclude that decentralisation cannot be approached as a stand-alone activity but must draw on and form part of a country's broader democratic and political culture. Parallel institutional development needs to be ongoing, and for this to occur supportive elements have to be designed and introduced in the constitutional framework and political system. Specifically, local government should not be regarded just as the lowest tier of the government, but as a distinct sphere that is closest to the citizens, with sufficient administrative and financial autonomy to serve its constituents. Unless these elements are institutionalized, the sustainability of decentralisation programs remains at risk. In Pakistan, it would seem that for various reasons military governments have been more willing to accept this challenge: if civilian governments are shy of nurturing grassroots democracy, it raises significant questions about their democratic values and commitment to empowering citizens. The recently concluded term of elected democratic political government (2008-13) strongly endorses this argument.

Note: This article is largely based on: Alam, M (2013), 'Pakistan's Devolution of Power Plan 2001: A Brief Dawn for Local Democracy?' in Sansom G and P McKinlay (eds.), *New Century Local Government: Commonwealth Perspectives*, Commonwealth Secretariat, London, in press.

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## Nebulous Labour Relations in Zimbabwe's Rural Local Authorities

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### Abstract

*Executive turnover can have far-reaching consequences on a local authority's development policies, programs and commitments. This paper examines nebulous labour-related problems in Zimbabwe's Rural District Councils (RDCs). The article chronicles the origins of the problems and how the RDCs have fallen prey to historical pitfalls. This paper critically reflects on the recruitment and dismissal of senior Rural District Council officers. The article analyses the longevity of CEOs in eight RDCs over a ten year period. The results demonstrate the sensitivity and vulnerability of such offices, and unpack the blurry boundaries that lie between policies and practice and the resultant impact on the labour relationships with RDC staff.*

**Key words:** Labour relations, Rural District Council, Capacity building, Zimbabwe

### Introduction

The effective management of human resources is a *sine qua non* condition for any organisation aiming for a mature and mutually respectful labour relationship with its staff. Effective human resource management is vital for the local state as it grapples with monumental development challenges, and whilst the exit of staff may create space for new blood, the old adage 'old broom knows all the corners' holds true. McCabe *et al* (2008) argue that executive turnover can have far-reaching consequences on a local authority's development policies, programs and commitments. They analysed turnover patterns of council executives in large American councils to distinguish 'push' and 'pull' factors that induce council managers to leave their jobs, and concluded that political conflict and economic development can influence the likelihood that a council manager will leave. Grindle (1997) examined how staff were educated and attracted to public sector careers, and the utilisation and retention of individuals in the public sector, focussing on managerial, professional and technical staff and the extent to which career trajectories affect overall performance. This paper adopts a similar

approach, examining managerial employees in Zimbabwe's Rural District Councils (RDCs) as key actors responsible for development in rural constituencies.

### **Why are these described as nebulous labour relations?**

To set the context, we need to unpack the concepts – 'nebulous' and 'labour relations'. The Concise Oxford Dictionary (2000) describes 'nebulous' as hazy, vague, indistinct, confused, cloudy or cloudlike. Trebilcock (1998) defines the term 'labour relations' (also known as industrial relations) as the system in which employers, workers and their representatives and the government, interact to set the ground rules for the governance of work relationships. The concept also describes a field of study dedicated to examining such relationships. Trebilcock (1998) further contends that the phrase 'labour relations' can also encompass individual employment relationships between an employer and a worker under a written or implied contract of employment.

Based on the author's twelve years of experience in Rural District Councils (RDCs) and the intense research and ensuing analysis, this paper argues that labour relations in Zimbabwe's RDCs were nebulous. As the winds of change blow over Zimbabwe in the post-crisis era (2009), it is our fervent hope that lessons learnt will be useful as the country embraces change and the much-sought administrative effectiveness.

The paper does not claim to be exhaustive on labour relations but is a modest contribution to the gaps and growing literature on labour relations in local government, public administration and cognate disciplines. This paper will provide institutional memory and add to knowledge or change prior beliefs. Indeed, there is a possibility of making a contribution that solidifies knowledge as Zimbabwe finds its feet in the post-crisis era.

McCabe *et al* (2008) argue that turnover in top administrative positions has been linked to management difficulties in public, private, and non-profit organisations, and that in the private sector, a great deal of research indicates that turnover has critical effects on an organisation's performance and remaining personnel. It is thus axiomatic that executive turnover should also prove important in the public sector. At the local government level, turnover disrupts the relationship structures on which local governance depends. Council manager turnover is especially important because leaders play increasingly complex and interrelated roles in both the substance and the process of local governance.

McCabe *et al* (2008) further posit that turnover among managers is often attributed to 'push' or 'pull' factors. Push factors prompt managers to leave their current positions because of political conflict or differences in style, orientation, or policy between the managers and their councils. Pull factors entice managers to leave their current positions for professional, financial, or personal advancement. McCabe *et al* (2008) strongly suggest that change from one council manager to another has significant policy implications if different managers bring different preferences, skills, and backgrounds to the

job. Among other things, turnover affects a council's implementation of local innovations such as experimentation with new service delivery approaches.

Zimbabwe's Rural District Councils (RDCs) depend on salaried executives for the day-to-operations of their activities and implementation of their development policies. This article sketches an overview of the development of labour relations in Zimbabwe. To illustrate nebulosity, the paper examines eight selected<sup>7</sup> RDCs from eight Provinces and shows how they have been entangled in the cobweb of labour relations. With passage of time, labour relations regulations in RDCs have been streamlined, but what remains is the inability of the actors to encompass the lessons learnt and engage in meaningful dialogue. The study finds that in the case of Zimbabwe's RDCs, push factors were more dominant than pull factors, which is highly symptomatic of the volatile political climate under which RDCs operate.

## Methodology

There are sixty RDCs in Zimbabwe, and to study the whole population was impractical, so the study sampled eight RDCs from four (of the eight) provinces: Mashonaland Central, Manicaland, Midlands and Matebeleland South for a good geographical representation. The study examined one suspended council, or so-called 'laggard', in each province and one of those said to be doing well ('progressive').<sup>8</sup> It also considered the amalgamation mix in 1993 (ie: how many Rural Councils and District Councils had amalgamated to make up the RDC) and political history and affiliation (pro- or anti- Zimbabwe African National Union Patriotic Front – ZANU PF) (Mandiyanike 2009b). The research included semi-structured interviews with key informants, and examination of official records and documentation. Primary data included field study observations and reflections on personal experiences of key informants. (See Mandiyanike 2006 and 2009b for a detailed methodological justification).

## Historical Overview

Zimbabwe has been through a very rough political and economic patch in what has been dubbed the 'Zimbabwe crisis' 1999 to 2009. The Zimbabwean political landscape has considerably shifted from a one-party system to a plural one, where the Movement for Democratic Change is part of the government machinery. The Minister of Local Government has acknowledged this plurality for the benefit of all. Mutizwa-Mangiza (1991) and Mandiyanike (2006) contend that until independence in

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<sup>7</sup> This paper draws from my doctoral research that examined critically the performance of rural local authorities in Zimbabwe over a period of ten years (from 1993 to 2003). The performance of local authorities had been progressively declining. Money, equipment and other resources were made available through the Rural District Council Capacity Building Program (RDCCBP) and other donor-funded programs to salvage the RDCs, but the downward trend still persisted. I was thus questioning whether there was any 'capacity building' or 'capacity erosion'? Was there a willingness to build lasting capacity or it was being driven by donor conditionality?

<sup>8</sup> The councils were suspended from office by the Ministry of Local Government. The 'progressive' ones were also appraised by the same ministry.

1980, local government in Zimbabwe was divided racially, based on the principle of 'separate development', a Rhodesian<sup>9</sup> formulation of apartheid. Rural Councils catered for white settlers in commercial farming areas and District Councils covered the villages where the black majority lived. This arrangement existed for almost five decades and in 1993, these Local Government Units (LGUs) were amalgamated to form Rural District Councils (Mandiyanike 2009a). Amalgamation was a political decision meant to remove one of the last vestiges of colonial rule – the de-racialisation of local government (Mandiyanike 2009a) – which took place under *the Rural District Councils Act* No.8, passed in 1988 but not implemented until July 1993 (Mandiyanike 2006; Matyszak, 2010). The transition to the new dispensation was fraught with resistance from the respective contenders and haggling among members of staff. The five-year delay in effecting the provisions of the *RDC Act* was, among other explanations, testimony to the complexity of the exercise that sought to unify two very different institutions at different levels of sophistication that were intended from inception for different purposes (Mandiyanike 2006; 2009a). The paper will set in context by examining pre-independence labour relations and the scene after 1990.<sup>10</sup> The paper will also explore the first RDC labour test case, whose interpretation had far-reaching implications for all RDCs as they dealt with labour issues.

### **Pre-independence and Pre-ESAP Labour Relations**

In pre-independent Zimbabwe, *the Industrial Conciliation Act* 1934 guided labour relations from the 1930s. Lloyd (1993) argued that soon after independence in 1980, the government brought about several changes to the law, among them, the *Employment Act* 1980 which took away an employer's right to dismiss employees at will.

However shortly afterwards, the government turned its attention to providing an entirely new Act to govern labour relations and in December 1985, the *Labour Relations Act* 1985 (now *Labour Act* Chapter 28:01) came into operation. Lloyd (1993) argued that the *Labour Relations Act* caused quite a stir, especially among employers, who saw it being weighted in favour of the employee. The government's position (then) can be explained in terms of its Marxist-Leninist leanings. In the period 1980–1989 central government assumed control of the termination of employment, for disciplinary reasons<sup>11</sup> and ensured that this could be affected through the Ministry of Labour. However, with the global political-economic trends, the government's position changed. Lloyd (1993) conceded that in 1989 the government began to loosen its grip on labour relations and promulgated regulations that encouraged more employer-employee interaction.

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<sup>9</sup> Rhodesia – colonial name for Zimbabwe

<sup>10</sup> When Zimbabwe adopted an Economic Structural Adjustment Program.

<sup>11</sup> Statutory Instrument 371 of 1985 (Termination of Employment) Regulations was the primary instrument for such cases.

## Personnel Systems in General

Nabaho (2012) proposes three types of personnel systems for managing providers of decentralized services: an integrated personnel system, a unified personnel system and a separate personnel system.

In an *integrated personnel system*, local government is composed of central government civil servants, with central and local government personnel forming part of the same service, with transfers possible between both tiers. The system implies 'deconcentration' rather than 'devolution' of the civil service. Nabaho (2012) argues that one of the noticeable features of the integrated personnel system is that a dichotomy between central and local government cadres is non-existent. Central government appoints and posts officers to local authorities to meet service delivery needs from the central pool.

In a *separate personnel system*, each local government acts as a completely autonomous employer (Mawhood 1993; Nabaho 2012). In principle, each local government appoints and administers personnel who are not transferable to another jurisdiction. Nabaho (2012) asserts that the separate personnel framework is preferred under decentralisation by devolution because:

- (a) It keeps the employees' loyalty unidirectional, ie: to the local government that has the right to hire and fire;
- (b) Staff appointed locally gives quicker feedback since they are appointed to meet their employer's developmental needs, and proximity makes them more accountable to constituents through the elected local leadership. This is unlikely in integrated personnel systems where dual allegiance is common especially for senior officials.

In some cases, a separate personnel system does not always mean that terms and conditions of service of central and local government employees are different. For example in Uganda Section 61(1) of the *Local Government Act (Cap 243)* states that: '*The terms and conditions of service of local government staff shall conform to those prescribed by the Public Service Commission for the public service generally*', while in Kenya, prior to the promulgation of the 2010 Constitution, the terms and conditions of local government civil servants were different from those of central government and were negotiated between local governments and trade unions (Nabaho 2012).

Nabaho 2012 follows Olowu's 2001 argument that the *unified personnel approach* is a midway house between the extremes of integrated and separate personnel arrangements and is a personnel model in which some or all categories of local government staff constitute follow a national career service (Nabaho 2012; Olowu 2001). In unified personnel arrangements, local government staff are employed locally but organised nationwide into a single civil service parallel to the central one (Mawhood 1993). In a typical unified system, all local government civil servants are members of a national 'local government civil service' but are only transferable between local governments.

In the case of Zimbabwe's RDCs, the separate personnel system is used. With a highly centralised government structure, the next section will discuss the involvement of government operatives within the RDCs' labour relations.

### **Post-1990<sup>12</sup> Labour Relations in RDCS**

Until amalgamation in 1993, District Administrators (DAs) had been *de jure* CEOs for District Councils (Mandiyanike 2006; Hammar 2003). The office of the DA falls directly under the Ministry of Local Government, and is totally separate from the RDC and increasingly plays a supervisory role. After 1 July 1993, the nascent RDCs were expected to recruit their own CEOs and DAs would revert to their usual roles as representatives for central government policies representing the authority of Government within any given District.

Thus, in the pre-1989 era (as described above), RDC employees were generally taken to be employees of the state (civil servants). The District Administrator (DA) was the *de jure* Chief Executive Officer (CEO), and so conditions of service for RDC staff were almost equated to those of the staff at the DA's office. RDC employees were treated differently, and they were given lesser status than those working in the DA's office. Before amalgamation, councils received salary grants from the Ministry of Local Government and National Housing (MLGNH). Thus, the conditions of service were not debatable or subject to collective bargaining (a cardinal factor in labour relations), and recruitment and dismissal were subject to the approval of the Minister of Local Government. Because of their daily involvement, the DA<sup>13</sup> and his/her staff were able to exercise immense power, and councillors could not stand their ground against 'the minister's representative' (the DA who was also better educated and earned a high salary). The colonial imprint of the DA also had a bearing on this deference.

In this scenario, labour relations were very lopsided. However, many DAs had limited knowledge of labour relations and their advice to councils hinged very much on their (mis)application of Public Service Regulations to council staff. Council workers were considered as 'government employees' (civil servants) and could be fired willy-nilly or could become frustrated leading to resignation. During day-to-day discussions, one could often hear reference to some unstated 'public service regulations', while in most cases there was very little contestation from employees because of the authoritarian nature of the regime.

Following amalgamation in 1993, DAs were no longer mandatory CEOs, salary grants had been significantly reduced, and RDCs could set their own salaries (although they tended to align them with

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<sup>12</sup> See footnote 4.

<sup>13</sup> Mandiyanike (2006) argued that Zimbabwe inherited from the Rhodesian era powerful, centralised state bureaucracies staffed by Rhodesian personnel, 'including the mighty District Administrators (DA).' The DA was feared. When local people visited the DA's office, they had to remove their hats from quite a distance and other unduly officious etiquette.

civil service rates). Labour relationships continued to be heavy-handed. With the diversity of staff taken over at amalgamation and the emotive manner in which RDC decisions were made cracks began to emerge and disciplinary cases were on the rise. In an article to an ARDC Newsletter (2000; p5) I argued that:

*The manner in which RDC decisions are made to fire or retain staff is a sobering thought. In the council chamber, if one member shouts 'ngaaende!' (she/he must go) it becomes a chorus – ngaaende! If the culprit has a fair share of sympathisers (personal, religious, totem and other patronage whims indubitably take precedence), the decision takes a new twist and can be subject to voting.*

In the above scenario, decision-makers tended to be guided by emotions rather than facts.

### **RDC Test Case**

1992 saw the test case that radically changed the labour relations landscape. *The Labour Relations Act No. 16 of 1985*, in Section 3, provides that *'This Act shall apply to all employers and all employees except those whose conditions of employment are otherwise provided for by or under the Constitution'*. In the case of *Gumbo v Norton-Selous Rural Council 1992 (2)*, the Zimbabwe Law Report (ZLR) 403 (S) stated that the Norton-Selous Rural Council dismissed Mr. Gumbo (an engineer) in 1991. Lloyd (1994) noted that the council did not obtain the prior written approval of the Minister of Labour, Manpower Planning and Social Welfare. It was contended, in light of Statutory Instrument (S.I) 371 of 1985,<sup>14</sup> that the dismissal was unlawful and void. The Judge sought first to answer the question whether an officer of Norton-Selous Rural Council was an employee *'whose conditions of employment were provided for by or under the constitution'*, for him to decide whether the Minister of Labour's approval was necessary.

Lloyd (1994) contends that the judge went on to look at the categories of people covered by the phrase *'except those whose conditions of employment are otherwise provided for by or under the Constitution'* These were members of the Public Service, the Zimbabwe Republic Police, the Defence Forces of Zimbabwe, the Prison Services, Judges, Ombudsman, Attorney General, Comptroller and Auditor-General, the President, Ministers and the Speaker of the House. What then was the position of Mr. Gumbo, an officer of a Rural Council, whose tenure of office was not regulated by the Constitution but by the *Rural Councils Act*?<sup>15</sup> The Judge cited instances where other Acts explicitly excluded their employees from the ambit of the *Labour Relations Act*, for example, the *Parastatals Commission Act 1987* and the *Urban Councils Act* (chapter 214) as amended in 1986 (consent of the Minister of Local Government to fire an Urban Council employee was made acceptable as an

<sup>14</sup> In terms of subsection 2 and 3 of Statutory Instrument 375 of 1985: "No employer shall, summarily or otherwise, terminate a contract of employment with an employee unless – a) he has obtained the prior written approval of the Minister (of Labour) to do so ... the contract of employment is terminated in terms of section 3 (which provides for suspension pending a ruling by a Labour Relations Officer.

<sup>15</sup> The *Rural Councils Act* (Chapter 211), though repealed by the *Rural District Councils Act No.8 of 1988* continues to exist for the purposes of this case.

alternative to the Minister of Labour). Apparently no change had been brought about in respect of RDCs (Lloyd, 1994). Thus, the case concluded by upholding that the prior written approval of the Minister of Labour, Manpower Planning and Social Welfare was necessary before Mr. Gumbo could be lawfully dismissed.

### **Implications of the Gumbo Case for RDCS**

The Gumbo case had far reaching implications for RDCs, District Administrators (DAs), the Minister of Local Government and other politicians. RDCs have continued to disregard the due processes of law, making haphazard decisions in the hiring and firing of RDC employees, flouting procedures and pandering to the dictates of politicians, as illustrated in the selected RDCs. RDCs have continued to lose cases at the labour offices for simply not following provisions of the law and tenets of natural justice.

In the liberalised economy, Statutory Instrument 379, 1990, provided for the establishment of Employment Codes of Conduct. These form the rules of engagement between employer and employees, who have to agree in writing to the code. If endorsed by the Minister of Labour, there will be no need for disciplinary cases to be referred to the Labour Officer. Very few RDCs managed to register their codes of conduct.

At amalgamation, Statutory Instrument (SI) 170, 1993, stipulated that no officer or employee was to lose his/her job because of amalgamation. Everyone had to be accommodated and vacancies had to be offered to members of staff<sup>16</sup> already working in the amalgamated RDC(s). Some DAs and/or their officers applied for the CEO positions with differing results. In some RDCs, for example, Guruve, Mazowe and Umzingwane, DAs were offered the CEO positions because they were suitably qualified, or possibly because of councils' fear of a backlash from the Minister of Local Government, however they turned down the job offers because the salaries were lower than their current earnings.<sup>17</sup> This stance saw Senior Executive Officers (SEOs) (from the District Council) or Council Secretaries (from the Rural Council) being appointed to CEO positions, even though some of them were not appropriately qualified for the added responsibilities. The jostling for key council positions exacerbated the hitherto tense relationship between and among DAs, and aspiring District Council and Rural Council candidates. This was characteristic of a Hobbesian state of war of all against all.

Following the erratic appointment of CEOs and other council heads of department after amalgamation and the wave of scandals that hit many RDCs in 1997/98, in September 1999 the Secretary for Local

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<sup>16</sup> There was also a skewed interpretation in some RDCs that the DAs were to be considered if they applied, particularly in RDCs that rich with a strong resource base.

<sup>17</sup> For example, Umzingwane RDC special Full Council meeting No.12 (24/11/94) made a conditional offer to Gumbo who was DA-Esigodini (colonial name for Umzingwane) and was also the Acting CEO. Guruve RDC offered the CEO position to Felix Mhishi, a local indigene who was then DA of Gutu District.

Government and National Housing issued Local Authority Circular No. 205 of 1999 outlining entry qualifications for CEOs and Finance departmental heads. The circular read:

*The Ministry, having carefully assessed and evaluated the overall performance of RDCs since amalgamation, has found it imperative to prescribe a new recruitment policy with respect to the post of CEO and Finance Head. While statutory instrument 170 of 1993 did not precisely stipulate any academic or professional entry qualifications to any office at council, this status quo is no longer sustainable in light of the civic complexities and intricacies resultant of today's global demands. Thus, with immediate effect, all offices of the CEO and finance head falling vacant shall be offered only to persons in possession of one or a combination of the following plus a minimum of three years of relevant experience ... a degree or higher national diploma ... failure to comply with the foregoing minimum stipulations on the part of Council shall invariably result in the Minister disapproving the recommended appointment.*

This scenario resonates with the comments by Oyugi (1993; p.129) on Kenyan local government in the 1960s, where he observed that the Minister of Local Government had the power to approve the appointment of senior officers, as their salaries and benefits and dismissals had to be endorsed by the Minister. In Zimbabwe, RDC employees, though under the tutelage of the Minister of Local Government, can only be dismissed with the blessing of the Minister of Labour unless they are working to a Code of Conduct approved by the Minister of Labour. This aspect that the Zimbabwean powers-that-be have to think about seriously.

Oyugi (1993; p.129) argued that the power of an organisation to choose its own staff was an essential ingredient for decentralisation. It is unfortunate that through this 'veto power' that the Ministry of Local Government may exercise unfettered power that may create divided loyalties among staff. Mawhood (1993) observed that this 'divided loyalty' was rife in councils that did not get on well with the Ministry of Local Government. In my view, the senior officers often found themselves in awkward situations as they trod finely between the ministry and their council. This element of cronyism and victimisation inevitably led to job insecurity.<sup>18</sup>

Amidst this controversy, the following section attempts to explore what happened to CEOs a decade after amalgamation – to establish the rate of turnover. From the literature surveyed and cases examined, the paper concludes by arguing that labour relations in Zimbabwe's RDCs have been highly politicised and that Ministers of Local Government have fuelled the confusion and propagated unfair labour practices in the RDCs. This was further compounded by a murky legal framework. The next section will examine the recruitment and retention of the first CEOs after amalgamation and the controversy surrounding their employment.

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<sup>18</sup> Oyugi (1993; p.130) brought out very illuminating cases from Kenya on the abuse of the employing power. He argued that "a chairman would disagree with an officer (say the officer opposes illegality or malpractice). At once, he [chairman] begins to mobilise other councillors against that officer, thus, preparing him for dismissal. They may bring in their own cronies who may suffer the same fate when the chairman vacates office."

## First CEOs after Amalgamation

The first CEOs appointed for Mazowe, Bindura and Chirumhanzu were from the amalgamating Rural Councils. Whilst educational qualifications were considered (in any case they were not better educated than their District Council counterparts), this study established through interviews with council staff that the decision on whom to appoint showed the dominant nature of the amalgamating Rural Councils and the appeasing nature of the amalgamating District Councils, having satisfied themselves that these candidates were relatively acceptable. All the first CEOs in the cases studied, except for Umzingwane and Makoni, were middle-aged males who had attended the Domboshawa Council Secretary Course in the early 1970s. Umzingwane<sup>19</sup> and Makoni appointed recent graduates who were rising in the organisation.

RDCs were keen to take on their own members of staff for continuity. In any case the councillors of the former Rural or District Councils wanted one of their own to safeguard their interests. Because of the many uncertainties at amalgamation, RDCs wanted to deal with the 'devil they knew'. Moreover, they could pay the new CEOs low salaries as they set their own salary scales.

## Ten Years Later, What Happened to the CEO's?

Having identified the contentious nature of the recruitment process for the first CEOs in the fledgling RDCs, the research established the longevity of the CEOs in their respective RDCs (Table 1). A 'substantive CEO' refers to a new permanent appointment; an 'acting CEO' - entails temporary appointment from within either the RDC or the DA's office. The third column in Table 1, the Acting CEO from DA's offices, shows the number of DAs appointed to act as CEOs where for some reason the Minister of Local Government directed that the DA be a CEO whilst a problematic situation was being taken care of. The table does not consider the pre-amalgamation scenario where the DAs were *de jure* CEOs.

Table 1: Profile of CEO longevity: number of CEOs by the RDCs 1993 - 2003:

RDC	No. of Substantive CEOs	No. of acting CEOs (from RDC)	No. of acting CEOs (from DA's office)	Total No. CEOs
Mazowe	3	3	3	9
Bindura	1	0	0	1
Mutasa	2	1	3	6
Makoni	1	0	0	1
Gwanda	1	0	0	1
Umzingwane	2	0	0	2
Chirumhanzi	2	3	2	7
Gokwe South	2	3	2	7
<b>TOTAL</b>	<b>14</b>	<b>10</b>	<b>10</b>	<b>34</b>

Source: Mandiyanike 2006 (excludes acting replacements during vacation, sick leave or short courses)

<sup>19</sup> Many insults were traded when the DA, who was also the Acting CEO, tried to preside over the consideration of CEO applications when he had also applied. The young CEO cried foul and called for the DA to recuse himself and his office from the selection. The process was started afresh and the chairman handled the applications.

As reflected in the table above, three RDCs, Bindura, Makoni and Gwanda,<sup>20</sup> managed to retain the first CEOs. The Umzingwane CEO sought greener pastures and resigned after three years, whilst the first Mazowe CEO died in 1998.

In the latter part of 1997, the CEOs for Mutasa, Chirumhanzu and Gokwe South RDCs were embroiled in corruption scandals, with the collusion of their chairmen, which rocked their councils to the brink of collapse. The CEOs were fired and the respective chairmen sidelined. From the minutes analysed, the disciplinary cases for these CEOs created many fissures in the already fragile RDCs recovering from the post-partum amalgamation pains. These CEOs had strong connections with the political leadership, including some councillors, and an *'unholy alliance with the council chairmen'*.<sup>21</sup>

The RDCs were sharply divided on proper disciplinary measures. For example, in Mutasa, after an adverse audit report in 1997 implicated the CEO and Treasurer, the RDC held a Finance Committee meeting to debate the issue. The Full Council then convened a special meeting (10 February 1998) to discuss the audit report and resolved that the CEO and Treasurer should continue working as normal. Two days later (12 February 1998), another second special Full Council meeting was held where *'a committee was set up to investigate issues raised in the audit report and have all details ready in a week'* (18 February 1998). Meanwhile the Council resolved that the officers were *'to continue as normal'*. The decision to dismiss them was made on 6 March 1998. Thereafter legal battles ensued, whereby the officers were challenging the dismissal. In a Council meeting (FC number 3/98) on 30 April 1998 *'the chairman appealed to all councillors and the executive not to divulge any information on the issue of suspended officers'*.<sup>22</sup> By December 1999, the issue of the suspended CEO was still unresolved. It was on that day (23 December 1999) that Council decided to appoint another substantive CEO and that the suspended CEO *'be dismissed whether he won the case or not'*<sup>23</sup> pending approval by the courts.

The same scenario was witnessed in Gokwe South RDC, where the Special Full Council minutes of 15 January 1998 (p.2) indicated that the CEO, Mr. Tazvinga,<sup>24</sup> was suspended from duty after being arrested on allegations of theft and fraud. The Council's application to dismiss continued for some time, and the Gokwe South RDC Full Council minutes of 19 November 1998 reported that he was still on suspension. However, 58<sup>th</sup> Full Council of 27 April 2000 indicated that the Tazvinga case was concluded and that he had been dismissed from the date of suspension. It is noteworthy that from

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<sup>20</sup> The CEO was a war veteran together with his chairman. The work of McGregor (2002) may help explain his longevity.

<sup>21</sup> A ministry official during an interview gave this description.

<sup>22</sup> From my experience throughout my service at Guruve RDC (1987 to 1999), I also witnessed a situation where some sympathisers would inform the officers concerned on the issues discussed immediately after the meeting.

<sup>23</sup> Mutasa Full Council Minutes FC 5/99 held on 23 December 1999.

<sup>24</sup> He has since died.

the sampled RDCs, those RDCs with contentious dismissals of their CEOs were also in line for suspension by the Minister.

### **CEO Retention: Virtuous or Vicious Leadership Circulation?**

Whilst it is generally expected that employees should remain at one workplace for a long time, *'the concept of a 'job for life' has gone ... employees now have a more sophisticated and self-determined view of the world of work and their relationship with their employer ... people expect greater freedom, flexibility and co-operation from the employer'* (KPMG case study 6 January 2005; Rainnie 1997). As indicated in Table 1, there has been remarkable turnover of the CEO within RDCs. Summit Consultants<sup>25</sup> (2005) argued that it was vital to see staff turnover for what it was, as an important part of any business. It provided the continual renewal of skills and experience, which acts as a motor for innovation, longevity and sustainability. It is only when this turnover reaches a scale where it begins to have a detrimental effect on the organisation that it becomes a problem. So what is the scale of turnover that creates a detrimental effect? Summit Consultants (2005) argued that the answer was different for each organisation, even for different grades of staff within organisations, and suggested that it was often better to look at staff turnover in relation to industry averages.

From the individual profiles obtained from the RDCs, the fourteen Substantive CEOs (Column 1 in Table 1) had served a total of 63.5 years during the first decade of amalgamation. The study deliberately excluded their service period before amalgamation in to focus primarily in their tenure as CEOs. The CEOs have served an average of 4.54 years each. The shortest period was six months, while the three longest serving CEOs were in post for ten years. Where RDCs were not able to retain their CEOs Council operations were adversely affected by the time taken to recruit another substantive CEO and the in-fighting and jostling for the position. Thus, the stop-start scenario stalls the momentum for development.

In Mazowe RDC, the first CEO died in March 1998, and a new CEO had been lined up for appointment during 1999. The Mashonaland Central Provincial Administrator's Report (Monitoring visit of Districts December 1999 to February 2000; p.27) noted that:

*Council had made plans (a resolution after the recruitment process) to appoint one of their officers who had just graduated from University. At this juncture, the officer looked like a natural choice for Council, having grown within the ranks and persevered to improve himself in line with changing times. As fate would have it, Council plans were interrupted by the publication of audit results for the period soon after amalgamation, implicating a number of officers to varying degrees. In the ensuing procedures requiring responses, explanations and so on, the Minister intervened and appointed the then DA to Acting CEO position.*

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<sup>25</sup> Article "How to use Training As A Retraining Tool", [www.summitconsultants.co.uk/news-details.asp?fldNewsArticles\\_ID=109](http://www.summitconsultants.co.uk/news-details.asp?fldNewsArticles_ID=109)

In a separate discussion with an official from the DA's office, this officer who was to be appointed had been aligned with the controversial chairman who was subsequently dismissed. The Provincial Administrator's office recommended that the Minister should not approve the appointment. In the meantime, two Acting CEOs held office before the next substantive CEO was eventually appointed in July 2001. This new CEO served for six months and resigned for greener pastures. The next appointment was made in April 2002 when a substantive CEO was confirmed.<sup>26</sup>

In Mutasa, the council had a series of legal battles with the CEO from early 1998 until 2001 when another CEO was appointed. In the process, there had been two Acting CEOs appointed from the DA's office and one from the Executive Officers.

Following the dismissal of the Substantive CEO at Chirumhanzi in late 1997, the next substantive CEO was appointed only in 2001. Sometime in 1999, the Council had resolved to appoint the Acting CEO (the then Executive Officer). However, the Minister did not approve this appointment because the recommended candidate did not meet the conditions stipulated in Circular 205, 1999. The candidate took the Minister to court but lost the case. Another Acting CEO was appointed and served the whole of 2000. Early in 2001, a substantive CEO from among the Executive Officers was approved and appointed.

From 1998, when the first Substantive CEO was suspended pending dismissal, to 2002 when another Substantive CEO was appointed, Gokwe South RDC had four Acting CEOs (three from among the EOs and one DA). Gokwe South was also held up in legal battles with the suspended CEO. The Acting CEO who had been appointed (immediately after a CEO suspension) resigned after ten months<sup>27</sup>. The next Acting CEO served for a few months before he fell out of favour with some councillors and was implicated in a scandal involving a cattle sales register.<sup>28</sup> The next appointed Acting CEO served for a few months again before being implicated in a scam involving getting unauthorised fuel and money from a council for his own use and was subsequently involved in a road accident with a council vehicle on an unauthorised journey. The DA was appointed in 2000 to finalise the cases and pave the way for a new CEO.<sup>29</sup>

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<sup>26</sup> This new substantive CEO was the same person who had been caught up in the previous political fiasco involving the dismissed chairman and had his appointment turned down. At the time of the fieldwork, I was told that the political gladiators had left the scene, whereby the chairman had been dismissed, the ego-bruised provincial governor had died and the PA had been promoted to another portfolio at Head office. Thus, no-one vetoed his appointment.

<sup>27</sup> She had been with the council for more than ten years.

<sup>28</sup> The register where impounded stray cattle were recorded was suspected to have been meddled with.

<sup>29</sup> It is noteworthy that Gokwe South RDC administrative offices were closed by war veterans on 5<sup>th</sup> February 2001. The war veterans alleged massive maladministration and corruption. A task force was set up and the DA continued to Act as CEO and another DA was seconded to be a commissioner to oversee the transfer of Gokwe Urban wards to town status. There were also cases of in-fighting between councillors, especially after a council employee who was suspended pending dismissal contested council elections and came back as a councillor to become the council chairman.

There was an equally shaky retention scheme for departmental heads (managerial employees) below the CEO level in the RDCs. Hayhurst (2004) rightly observed that recruitment difficulties do not just happen at the Chief Executive level. She added that in a tightened job market with skills shortage and high vacancy rates, retaining high performing managers at all levels is an increasingly important issue for organisations. In all the RDCs sampled for this research, Heads of Departments (HoDs) were quite mobile within and outside the respective RDCs. Internally, the HoDs were shuffled and reshuffled amongst various departments and were treated as generalists. In other instances, the RDCs made efforts to recruit externally.

Hyder and Thomas (2003) observed that changes in leadership necessitate the re-negotiation of work boundaries and established practices with a new leader whilst coming to terms with the loss of the dismissed/deceased leader. Nevertheless the politicised and inconsistent manner in which the retention has occurred erodes all the gains that could have been realised. Bindura, Makoni and Gwanda RDCs showed some consistence and stability. It was also unfortunate that the majority of the purges in the affected RDCs occurred at the inception or in the middle of the Rural District Councils' Capacity Building program (RD-CBP), with the result that the program lacked strategic leadership and continuity. More fire-fighting and crisis management than meaningful learning took place. In a study of the international experience in capacity building (CB) and its relevance for Ethiopia, Davidson and Pennink (2001; p.65) also dealt with this phenomenon. They observed that:

*Fire fighting is what most local governments are doing – the focus is on current short-term problems and with limited political will and ability to think of long-term investment in managing the necessary change in the system. Fire fighting is in the sense of leadership, inspiration, energy, enthusiasm and spreading knowledge. Changing culture is what is severely lacking but is badly needed.*

In terms of CEO retention, the cases studied (excluding Makoni, Bindura and Gwanda RDCs) exhibited what Davidson and Pennink (2001) aptly described as 'negative capacity'. This is the unproductive absorption of energies and motivation of individuals, but ending up with little as tangible output.

Hayhurst (2004) argued that restructuring, mergers and organisational changes have all contributed to the erosion of staff loyalty. She advised that retention did not always have to be expensive because rewards could be non-financial, but also some staff turnover is inevitable and could in fact be healthy for the organisation, as new employees bring new skills and ideas with them. Low staff turnover could also contribute to a lack of promotion opportunities, a static workforce and a lack of innovative thinking as bureaucratic inertia sets in. Generally, public sector salaries in Zimbabwe were low and the RDC scenario was even worse. There was a very high staff turnover in all the RDCs, especially in professional job categories such as engineers and accounts personnel, who had very good chances of finding alternative employment. The volatile political environment had compounded staff turnover. With trade unions becoming vocal, this was readily associated with the opposition party. The 'war

veterans' and vigilantes of the ruling ZANU PF party would be handy to 'purge any malcontents'. The work of McGregor (2002) and Hammar (2005) amply demonstrated this point. As a result, fear had reached alarming levels.

Watson (2005) observed that the link between staff development, employee satisfaction and staff retention had been established for some time but that many organisations missed out by not treating the issue of staff retention strategically. Watson (2005) thus advised that the first step was the development of an employee retention strategy that identified the pinch points for the organisation, the areas where the organisation regularly suffers high staff turnover, the particular concerns and the problems of the targeted staff groups.

## Conclusion

While RDC employees are not civil servants in terms of the Public Service Commission regulations, they may appropriately be called public servants as they serve in the public domain. Thus, the label of being a council employee has lesser prestige than a civil servant, though in essence, there is nothing qualitatively different between the two.

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## Decentralisation, Participation and Boundaries of Transformation: Forest Rights Act, Wayanad, India

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### Abstract

*Participation and decentralisation have been shown to yield democratic outcomes in terms of efficiency, accountability and transparency through citizen engagement and devolution of powers. It has been a matter of debate whether they also benefit marginalised communities like the indigenous peoples. This paper analyses the implications of decentralised governance in a tribal zone in India using the case of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006 – the Forest Rights Act. The effects of the Act are studied in the district of Wayanad, Kerala, through the theoretical framework of transformative decentralisation and spatial politics of participation. The key objectives of the Act – securing tenure and access to Minor Forest Produce – have achieved limited success in Wayanad as a result of a narrowly construed ideas of people’s participation. While the process prescribed by the Forest Rights Act has the potential to create new spaces for participation, most of these spaces remain closed in Wayanad. The absence of a larger vision and a radical motive to engage with the underlying patterns of domination and subordination in society has confined the process of decentralisation to its technocratic essentials, raising questions on the extent to which the Act can pave the way for transformation.*

**Keywords:** Decentralisation, participation, indigenous communities, forest rights

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## Introduction

Participation and decentralisation became popular themes with governments, civil society organisations and rights groups invoking the malleable meanings of these terms to demand better governance, based on the assumption that devolution of power and people's involvement in decision-making are yardsticks of good governance (Goulet 1989, Maro 1990). This good governance agenda was supported by the World Bank, which advocated decentralisation and participation as requisite for the success of both urban and rural development projects (World Bank 2000).

Evidence also emerged of the impact of participatory governance, especially in the fields of fiscal decentralisation (Smoke 2000), natural resource management (Gibson et. al. 2005) and urban governance (Bagchi and Chattopadhyay 2004). Communities were shown to be good managers of local resources by virtue of their local knowledge and their ease of rule-enforcement (Fizbein 1997). In the long term, local management was expected to promote a feeling of ownership of resources amongst the community (Ostrom 1990). Meanwhile, disparate colours of the politics of decentralisation have also emerged. For instance, Agrawal and Gupta (2005), based on their field-notes on the government-created user groups in Nepal's Terai protected areas, observe that the likelihood of participation was higher among the economically and socially well-off. In contrast, Krishna (2006) and Mattes (2008) reported from eastern India and South Africa respectively that spaces for participation are increasingly being taken up by the poor. Critiquing the transfer of responsibility of participation to the poor, Kothari (2001) highlights that it reifies the powerlessness of such people in the name of giving voice. Further, Williams *et al.* (2003) note that the overemphasis on participation at the lower strata of devolution of power occludes the simultaneous need for reform at the top.

The indigenous or tribal populations in India, also called *adivasis* (first inhabitants) or formally, Scheduled Tribes, have been economically, socially and politically marginalised during the pre-colonial, colonial and postcolonial times (Rao 1996). Any program to decentralise power in tribal areas, therefore, mandates careful scrutiny of its participatory effects that takes cognizance of the history of *adivasi* marginalisation. This study looks at a specific project of decentralisation, taking the instance of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (hereafter, the *Forest Rights Act* or the Act or the FRA), which seeks to devolve powers to elected institutions at the lowest level to facilitate the process of recognizing individual and community rights of the *adivasis* over forests.

## Good Governance and Transformation

Ribot *et al.* (2006, p. 1865) define decentralisation as ‘any political act in which a central government formally cedes powers to actors and institutions at the lower levels in a political-administrative and territorial hierarchy.’ When the process is confined to the setting up of new structures, it can be called deconcentration or administrative decentralisation. In contrast, political decentralisation involves downward accountability and is often legitimised through local elections (Ribot *et al.* 2006).

## Technocratic versus transformative decentralisation

Hickey and Mohan (2005, p.243) define technocratic decentralisation as ‘reducing or smartening the central state, rather than as a political project aimed at transforming state legitimacy and forging a new contract between the citizens and the local state.’ While technocratic governance is, of course, an essential feature of the bureaucratic model of administration, it does not go beyond its confines to engage deeply with society. In contrast, *transformative decentralisation* occurs where the governance model directly confronts oppressive social orders to spur change (Hickey and Mohan, 2004).

Participatory approaches in this framework are more likely to achieve successful outcomes where: (a) they are pursued as part of a wider radical political project confronting the existing structural arrangements and not just ‘working around them’; (b) they are aimed specifically at securing citizenship and participation for marginal and subordinate groups; (c) the effort is not just to bring people to participate in the political process but to transform and democratise the political process itself so that the exclusionary tendencies of the process are allayed, and (d) they seek to engage with development as an underlying process of social change (Hickey and Mohan, 2004, p.168). The hope is that these efforts would help decentralisation move beyond its technocratic essentials.

## Participation as spatial practice

Participation can be ‘located’ if it is looked at as a spatial practice (Cornwall 2004). Elaborating on how this could be developed into a useful framework, Cornwall writes:

*Talking in terms of spaces for participation conveys ‘the situated nature of participation’, the bounded yet permeable arenas in which participation is invited, and the domains from within which new intermediary institutions and new opportunities for citizen involvement can be fashioned. It also allows us to think about the ways in which particular sites come to be populated, appropriated or designated by particular actors for particular kinds of purposes; its metaphorical qualities allow attention to be paid to issues of discursive closure, to the animation or domestication of sites for engagement, to the absence of opportunity as well as to the dynamism of political agency in forging new possibilities for voice. ‘By illuminating the dynamics of power, voice and agency’, thinking spatially can help towards building strategies for more genuinely transformative social action (p.75).*

Thus, the attempt in a successful participatory model should be to create new spaces that call for citizen engagement. Such spaces can take different forms depending on the complexity of interactions and the stakeholders involved. Cornwall (2004, p.80) derives from Lefebvre (1974) the understanding of space as ‘a social product [that] is not simply there, a neutral container waiting to be filled, but is a

dynamic, humanly constructed means of control and hence of domination, of power.’ Cornwall suggests that spaces are defined by those who are invited into them as well as by those who do the inviting. These interactions form the germs of different forms of hierarchies and power relations.

Gaventa (2004) develops this concept further in formulating transformative participation as not just the right to participate in a given space but also the right to shape that space. An analysis of this would depend on ‘how spaces are created, the places and levels of engagement, and the degree of visibility of power within them’ (p.34). Gaventa suggests that there is a continuum of spaces which includes *closed spaces* (where decisions are made by a few behind closed doors), *invited spaces* (where citizen participation is invited with the explicit aim of widening consultations) and *claimed or created spaces* (that are won by the people from formal power structures). The different participatory spaces in a process exist ‘in a dynamic relationship to one another, and are constantly opening and closing through struggles for legitimacy and resistance, co-optation and transformation’ (p.35). This can lead to disparate outcomes. As the case-study would hint, two such possibilities are the inclusion of certain sections of the society while excluding the others, or the marginalised sections internalizing the dominant views and speaking the language of the dominant. In the case of postcolonial societies, these negotiations are complicated by the problem of institutional inertia. Heller (2001) discusses this problem in terms of the extent to which the bureaucracies have opened up to participation by subordinate groups. Decentralisation, in his framework, can be either *technocratic*, as discussed above, or *anarcho-communitarian*, which involves rejecting the authority of hierarchical structures and emphasizing the role of grassroots social movements in bringing about transformation. The trend towards a radical shift in the literature in an effort to salvage participation from becoming a mere chore is evident here.

## **The Forest Rights Act**

### **Decentralisation in tribal India**

The 73<sup>rd</sup> and 74<sup>th</sup> Constitutional Amendments inaugurated a new era of participatory governance in India in 1992 through the decentralisation of power. Part IX of the Indian Constitution titled ‘Panchayats’ was extended to the Scheduled Areas<sup>30</sup> through the *Panchayat (Extension to Scheduled Areas) Act* (PESA), 1995, allowing for the creation of elected Panchayats (village councils) in tribal areas. Efforts were also made to decentralise forest management through Community Forest Management Programs and the much-discussed Joint Forest Management Program. But these programs were criticised for the limited participation of communities, persistent control by Forest Department (FD, the state machinery for forest governance) and entrenched local patriarchies (Agarwal 2001).

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<sup>30</sup> Areas declared through Presidential declaration defined on the basis of population of tribal communities and economic standard of the people.

The limitations of these programs cast doubt on the empowerment of tribal communities that the state sought to achieve. The tribals had been traditionally disadvantaged and marginalised by colonial as well as postcolonial forest policies (Guha 1983, Rao and Sankaran 2003, Bhatia 2005). On the one hand they had been subjected; on the other, they had internalised their identities as a classified, ‘scheduled’ community (Bose et. al. 2012).

In response to widespread campaigning by civil society organisations and tribal rights groups, the *Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Bill* was introduced in Parliament on 15 December 2005. The Bill, drafted by the Ministry of Tribal Affairs, was passed on 18 December 2006. The Act was published in the Gazette of India only a year later on 31 December 2007.

### **The FRA process**

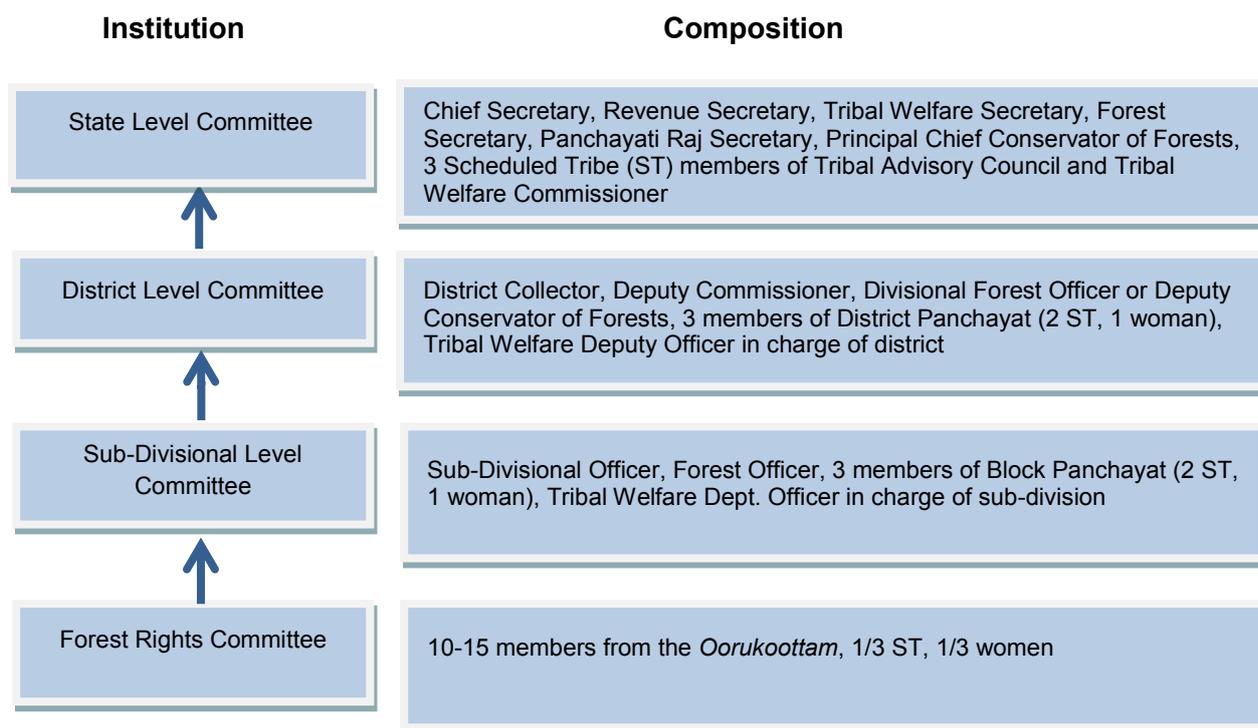
The Act guarantees the tribal and other forest dwelling communities the rights to live, fish, extract Minor Forest Produce, graze animals, conserve forests and secure tenure including the right to convert *patta* (lease) from the government to titles. The Joint Parliamentary Committee, which considered the draft Bill for revision, emphasised the significance of the Bill stating that it was directly intended to fulfil the constitutional mandate under the Directive Principle of State Policy<sup>31</sup> stated in Article 39(a), 39(b) and 46 of the Constitution. The structure of the FRA implementation authorities is pictured in Figure 1 below:

The FRA process starts with the most significant step of constituting the Forest Rights Committee (FRC) through elections by a neighbourhood group or Oorukoottam, which may contain people from the same tribe or different tribes. The FRC is thus constituted at a level lower to that mentioned in the Act, the level of the Grama Sabha (‘village assembly’, in which all adults in a Panchayat participate). The FRC facilitates the filing of claims by tribes for titles. A joint survey is then conducted by the Panchayat Forest Department and Revenue Department, and claims are finalised. These are then passed on to the Sub-Divisional Level Committee (SDLC) and then the District Level Committee (DLC) for approval and issuance of Records of Rights. Petitions against the decision of the FRC can be filed to the SDLC and those against the SDLC to the DLC. The DLC is the final authority on the Record of Rights.

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<sup>31</sup> Directive Principles are strong recommendations from the Constitution that the State should aim to achieve, although they are non-binding. Article 39 (a) directs the State to secure livelihoods for men and women equally, Article 39 (b) directs the State to distribute the ownership and control of the material resources of the community such that it ensures common good and Article 46 directs the State to secure the educational and economic interests of the Scheduled Castes and Scheduled Tribes.

Figure 1. Organisational structure of the FRA Institutions



The SDLC, the DLC and the State Level Monitoring Committee are composed of officials from the State Government's departments of Revenue, Forest and Tribal Affairs and three members of the decentralised institutions under the 73<sup>rd</sup> Amendment, of whom two are ST members and at least one is a woman.

## Research Setting

The experiences of the state of Kerala in decentralised governance have been commended around the world (e.g. Parayil 1996, Sen 1999, Véron 2000)<sup>32</sup>. Heller (2001) presents Kerala as one of the exemplars of successful decentralisation, substantiating it with the case of the campaign for decentralised governance initiated by the State Planning Board and widely supported by the Communist Party of India (Marxist) or CPI(M) and the *Kerala Shaastra Sahitya Parishad* (Kerala Science Literature Movement). However, the marginalised communities have failed to benefit from these efforts or the reforms that the grassroots movements related to agrarian reforms and land distribution brought in (Steur 2009).

<sup>32</sup> Sen does not use the term 'model'. Véron distinguishes between an 'old' and a 'new' Kerala Model, the new one thrusting on participatory governance. The Kerala Model has, since then, been acerbically criticized. See for example Raman (2010).

### Tribal land legislation in Kerala

A number of land-related laws have been passed in Kerala, many of them having implications for the tribals (Table 1). The Kerala Land Reform Act, 1963, the pioneer legislation for land redistribution in the state, has been criticised for benefitting the non-tribals at the expense of tribals. Bijoy and Raman (2003) report incidents in which the non-tribal communities took tribal lands on short-term lease for cultivation and registered themselves as ‘tenants’ with the authorities. Later on, they claimed and obtained titles to the lands, dispossessing the tribal owner who had then become the ‘landlord’.

Table 1: Tribal land-related legislation in Kerala

1963	Kerala <i>Land Reform Act</i> 1963
1972	Kerala Private Forest (Vesting and Assignment) Act
1975	the Kerala Scheduled Tribes (Restriction on Transfer of Lands and Restoration of Alienated Lands) Act
1999	The Kerala Restriction on Transfer by and Restoration of Lands to Scheduled Tribes Act
2006	<i>Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Rights) Act</i> of India

Most other laws brought out by the state government were also implemented with limited efficiency. In 1972, around 23,000 hectares of land was identified as part of the enactment of the Kerala Private Forest (Vesting and Assignment) Act, but the process was not completed. To reinstate the lands that *adivasis* lost to the others, the Kerala Scheduled Tribes (Restriction on Transfer of Lands and Restoration of Alienated Lands) Act, 1975 was passed with retrospective effect, holding all transactions of land during 1960-1982 as invalid and ordering the restoration of lands to the original owners. The Rules under the Act, which were published only a decade later, also prohibited transfer of lands from tribals to non-tribals. However, the *adivasis* had to pay compensation equivalent to the original sum received while selling the land, which could be paid by taking a loan from the government (to be repaid in 20 years, as allowed by the Act). This condition proved to be a disincentive for *adivasis* to reclaim their lands (Bijoy 1999). The Kerala Restriction on Transfer by and Restoration of Lands to Scheduled Tribes Act, 1999, on the other hand, held that encroachments of up to two hectares of land be condoned, jettisoning the need to restore alienated lands. For claims below two hectares, alternate land was to be given elsewhere. The new law was supported by all the major political fronts of Kerala who argued that the 1975 Act was unjust to the non-*adivasi* settlers (Bijoy 1999).

### Adivasi land struggles in Wayanad

The *adivasi* struggles in Wayanad can be traced back to colonial times when some tribes like the Kurichyas formed armies to ward off the British invaders. More recent *adivasi* struggles were led by various political parties. The Karshaka Sangham (Farmers’ Association) of the Naxalites protested against the policies of the state government in the late 1960s. In the 1980s and 90s other groups emerged such as the Adivasi Vikasana Pravarthaka Samiti (Tribal Development Work Forum),

Adivasi Federation, Adivasi Aikya Samiti (Tribal Unity Forum), the Adivasi Kshema Samiti (Tribal Welfare Forum) etc.

The number of landless families in Wayanad region increased from 3,549 in 1976 to 22,491 in 2001, a seven-fold increase (Bijoy and Raman 2003). In July 2001, the Adivasi Dalit Samara Samiti (Tribal Protest Forum), led by C.K Janu and Geethanandan launched an intense struggle for adivasi rights. In August 2001, the Adivasi Gothra Mahasabha (AGMS, Tribal Grand Assembly) was formed by the same leaders, trying to reach an agreement with the state government. The agreement called for completing the process of land distribution between January 1 and December 31, 2002. The agreement included the promise of five acres of land to all *adivasis* having less than one hectare of land, and a tribal mission headed by officers of the Indian Administrative Service to oversee implementation of the agreement. The AGMS was spurred to react when it became evident that the government had diluted efforts to identify land and replaced the head of the tribal mission with a forestry official. In January 2003, *adivasis* led by the AGMS entered the Muthanga Wildlife Sanctuary in Wayanad to occupy land, following the government's failure to meet the deadline. In February 2003, the police clashed with the *adivasis* without prior warning, leading to the death of an *adivasi* and a policeman (Bijoy and Raman 2003). It is interesting to note that while land struggles in Wayanad have a rich history, there have been no separate struggles specifically for the Forest Rights Bill, unlike in the northern parts of the country where a strong tribal rights movement led the negotiations for enactment of the law.

### Research questions

This study sought to answer three research questions:

1. To what extent has the inclusion and participation of tribes in decentralised governance fructified in Kerala, with a focus on securing of land titles?
2. How have the Forest Rights Committees used the powers under the Act?
3. What technocratic/transformational elements characterise the decentralisation process?

The contextual relevance of these questions becomes obvious when it is noted that the *Forest Rights Act* has shifted the game of tribal land politics by vesting decision-making powers in the Forest Rights Committees constituted at the grassroots level. This stands in stark contrast to previous laws in the state, which were implemented in a top-down manner, positioning the tribals at the receiving end with little power to participate in the making or implementation of such laws. From a theoretical angle, the research questions explore what kind of spaces of participation – closed, invited or claimed – have been created following the FRA, and what limitations constrain the engagement of marginalised communities with a legal tool to transform the very process of participation.

## Methodology

This work is a qualitative study based largely on interviews conducted in Bathery and Mananthavady taluks (revenue divisions) of Wayanad District, Kerala, during March-April 2012. The research setting was chosen for its significance to the history of *adivasi* land struggles in Kerala. Wayanad district is located at the heart of the Western Ghats – 17% of its population is tribal. The main *adivasi* communities are Paniya, Adiya, Kuruma, Kurichya, Kattunaaykka and Ooraali<sup>33</sup>. Wayanadan Chetty is an Other Traditional Forest Dweller community, not classified as a Scheduled Tribe, which lives mostly in the Manantavady Taluk. The respondents were chosen from a spectrum that represented the most important stakeholders in the implementation of the *Forest Rights Act* and included tribal leaders, Oorukoottam members and officials from the Tribal Development as well as Forest departments (Table 2). Of the 33 respondents, 27 belonged to tribal communities, while the others were government servants not from the Scheduled Tribes. Of these 27, nine were women, two of whom were activists for tribal rights issues.

Table 2: Profile of respondents<sup>34</sup>

	Number	Tribe	Gender
Adivasi Aikya Samiti activists	2	Kuruma, Kurichya	1 Female, 1 Male
Adivasi Gothra Mahasabha activist	1	Adiya	Female
FRC Chairman	1	Paniya	Male
Oorukoottam Members	5	Paniya	2 Female, 3 Male
Oorukoottam Members (FGD)	15	Kaattunaaykka	5 Female, 10 Male
FRA Awareness Class Instructor	1	Kuruma	Male
Tribal Extension Officer	1	Adiya	Male
Forest Watcher	1	Paniya	Male
Tribal Development Officers, Bathery and Mananthavady	2	N/A	Male
Deputy Conservator of Forests (Civil Service Position)	1	N/A	Male
Forest Management Officer	1	N/A	Male
Former Representative to the state Legislative Assembly	1	N/A	Male
Founder-Activist of a local NGO	1	N/A	Male

The semi-structured conversations were conducted with an interview guide that asked questions in four categories: participation of all primary stakeholders; securing tenure; access to Minor Forest

<sup>33</sup> The Paniya is the largest tribal community. Paniyas and Adiyas had been bonded laborers in the past. Kurumas and Kurichyas have traditionally owned some land and have cultivated on their own. Probably for the same reason, they have been relatively better off than the other tribes. The Ooraalis are largely farm laborers, potters or basket weavers. Kaattunaaykka is a community that still lives in close proximity to the forests, foraging.

<sup>34</sup> Under the Dept. of ST Welfare of the Govt. of Kerala, three Tribal Development Offices have been established in each of the three taluks of Wayanad district. The Tribal Development Officers chair these offices. Under each Tribal Development Office, multiple Tribal Extension Offices are also established to work in close proximity with the tribal communities. The Deputy Conservator of Forests and the Forest Management Officer belong to the Forest Department. The forest watcher is a person selected from the community by the Forest Department to keep surveillance of the forests.

Produce and the role of the Forest Rights Committee and Panchayat. A focus group discussion was also conducted with around ten men and five women in a Kaattunaaykka settlement at Ponkuzhi located in Noolpuzha Panchayat in the Muthanga Wildlife Sanctuary. All conversations were conducted in Malayalam, audio-recorded with the informants' consent and transcribed. Secondary data were also collected from the Tribal Development Offices that included the Socio-Economic Survey of Scheduled Tribes in Wayanad 2008, the complete list of beneficiaries and titles secured under the FRA in Wayanad, and minutes of the Sub-Divisional Level Committee meetings. The names of the respondents quoted in this paper have been altered to protect their identity.

## Observations and Results

The voices collected from the field bring out how the Act *per se* and its implementation are perceived by the different stakeholders. In general, all the interviewees agree that the *Forest Rights Act* is unprecedented in its content, but opinions do not always converge when it comes to the relevance of the Act in Wayanad, or the utility of the legislation in promoting participatory governance.

### Securing tenure

Securing land titles is a key provision of the Act. There are no deadlines set for the FRA process to be completed, but the steps relating to making claims and surveying have been completed in Wayanad. The FRCs were thus constituted end in 2009. Table 3 shows the number of claims filed in Bathery Taluk:

*Table 3: Number of claims for titles filed in Bathery Taluk*

Titles	Claims filed	Passed by FRC	Passed by SDLC	Passed by DLC	Granted
Individual	3537	2973 (84% of 3537)	2406 (68% of 3537)	2328 (65% of 3537)	2212 (62% of 3537)
Community	201	0	0	0	0

*Source: Tribal Development Office, Bathery, 2012*

Of the 3,537 individual claims filed, only 62% have been finally granted. From Table 3, it can also be seen that although 201 community claims were filed before the FRCs, none has been given out. The Tribal Development Officers say that the surveys for community rights have yet to happen, but no timeline, not even a deadline, has been set to complete the process. This is in spite of the fact that community rights are a central provision of the FRA pertaining to the rights to graze, fish, collect forest products, protect traditional knowledge, maintain shrines and clear trees up to a maximum of 75 trees per hectare for development purposes (s.3 of the Act).

Acknowledgement of community rights has been one of the breakthroughs of the Act. In fact, what are labelled as 'community rights' have always been the very base of *adivasi* life:

*Adivasis have never had the need to call the rights over commons by any particular term like community rights. I struggle to translate the English word to Malayalam while holding classes and convince them that there is a defined concept like this.*

A C Radhakrishnan, FRA awareness class instructor

In a random sample of 1,000 from the official list of beneficiaries from Bathery Taluk, the average land received by beneficiaries was found to be 0.115 hectares. The maximum size in the sample is 1.27 hectares, in spite of the FRA allowing the grant of land up to 4 hectares to each claimant family.

*Only few people have actually got land. The land that has been given as part of the FRA equals nothing. This is a mockery of the Act.*

Kannan, Adivasi Aikya Samiti

Withholding community rights and distributing paltry amounts of land hints at a level of hesitation amongst the bureaucracy in recognising *adivasis* as the rightful owners of their lands. The forests are still governed largely by the Forest Department. The designation of the Tribal Development Office as the nodal agency for implementing the Act – imposed under the assumption that tribals cannot get just treatment under the Forest Department – has not really been fruitful here.

The way that land titles have been distributed also hints at the existence of fractures within the tribal community. While the major political parties have their own *adivasi* members, the major one being the Communist Party of India (Marxist) backed Adivasi Kshema Samiti, there are some groups who oscillate between the power camps. Some others, like Adivasi Gothra Mahasabha, have chosen to stay away from political influences. Then there are the isolated tribal forums and NGOs mostly working on social welfare aspects of tribal life. One such organisation, the Adivasi Aikya Samiti, has been involved in spreading awareness on the Act:

*We have been speaking for adivasi rights. The CPI(M)-led struggles for land titles have benefitted only their followers.*

Amala, Adivasi Aikya Samiti

This leads to the question of representation – who speaks for the *adivasis* and how. Although there are leaders from within the *adivasi* communities, many of them lose their independent position and get co-opted into the mainstream political parties. Political mainstreaming in itself cannot be judged as either good or bad, but where the mainstreaming of marginalised communities is involved, the discussion warrants a closer look at the history of the mainstream parties' engagement with communities.

*Even if new leaders emerge from the adivasi community, they are immediately taken by the political parties into their fold. Given the background of poverty that most of these young leaders come from, they are forced to be taken in, expecting some benefits in future. Even those who come up to better positions develop a mainstream outlook and do not look back or think of doing anything for their community.*

Janani, Adivasi Gothra Mahasabha

These trends have constrained the efforts to spread awareness about the FRA, allowing them limited success. A few classes were held on the basic procedures of the Act by educated volunteers and NGOs, though a large part of the community remains unaware of the provisions of the Act:

*It's mostly a feeling of helplessness that they display in the awareness classes. They eagerly ask where to file a claim and how to go about it, but say that they won't be able to fight for it. Poverty occupies their time. They can fight an elephant in the forest, but not the shrewdness of officials.*

A C Radhakrishnan, awareness class instructor

The implementation of the *Forest Rights Act* could have been an opportunity to unite all the fragmented *adivasi* groups and trigger a new movement for land rights. But participation of the *adivasis* even in the technocratic process has been severely undermined by several constraints, including poverty, migration and cultural beliefs:

*Many adivasis are migrant laborers in Kodagu. In many places, surveys were conducted when they were not at home. Adivasis who live deep inside the forests get no benefits at all.*

Amala, Adivasi Aikya Samiti

*There are some communities who are nomadic and do not understand the concept of settling down with titles.*

Tribal Extension Officer, Bathery

### **Access to Minor Forest Produce**

Access to Minor Forest Produce (MFP) is another significant provision of the Act. Clause 3 (1) (a) of Chapter II of the Act grants 'the right of ownership, access to collect, use, and disposal of minor forest produce which has been traditionally collected within or outside the village boundaries'. Clause 2(1)(d) of the Rules under the Act delineate that the disposal of minor forest produce shall include local level processing, value addition, transportation in forest area through head-loads, bicycle and handcarts for use of such produce or sale by the gatherer or the community for livelihood.

However, *adivasis* continue to be denied permission to access products from their own forests. Products like gooseberries, medicinal plants, honey etc., which have been collected by the *adivasis* traditionally, have formed a major part of the FD's revenue, leading to a lack of willingness on their part towards relinquishing those rights:

*The Forest Department still controls the forest. The societies for the sale of forest products also have the presence of a Forest Department officer. Earlier they could even brew their own liquor. Now, that's also prohibited*

Tribal Development Officer, Mananthavady taluk

While the involvement of *adivasis* in forest monitoring is put forth as a progressive step by the Forest Department, the Department has been widely criticised for controlling the sale of MFPs through agencies called 'societies' created by the Department to carry out the sale of MFPs collected by the tribals. The lack of any wide movement, unlike in many other parts of the country, further constrains the 'liberation' of MFPs from state control:

*The minimum wages for procured MFPs is only around 75 rupees in place of an expected 125 rupees. That too, only those who are members in the societies set up by the FD can sell it to them.*

Amala, Adivasi Aikya Samiti

The voices from the field also clearly record the powerlessness that the tribals feel towards the FD in spite of the latter being bureaucratic machinery that so closely interacts with their lives:

*It's not like earlier. The foresters shoo us away now. It's not like earlier.*

Ramakrishnan, Kaattunaaykka community, Panavally

*No one goes for work these days. The Foresters do not let us in much.*

Maathan, Kaattunaaykka community, FGD, Ponkuzhi

*The foresters say there will be a forest fire. So we are not let in.*

Maaran, Kaattunaaykka community, FGD, Ponkuzhi

## **The role of the Forest Rights Committee**

In Wayanad, the Forest Rights Committees are constituted at the level of the *Oorukoottams* (hamlets), which are smaller than the Grama Sabhas. Ideally, an Oorukoottam should be the assembly of all adult men and women in a neighbourhood, discussing issues relating to their lives and enabling interaction with the Panchayat. There are both Oorukoottams that are uniformly encompassed of the same tribal community as well as those that have a mix of different tribal and/or non-tribal communities. While the concept of the Oorukoottam is old, the current ones were recently created:

*The whole tradition of Oorukoottams has been subverted in Wayanad. The new ones and the FRCs are formed by whichever political party is in power in the Panchayat. Persons favored by the party are planted as FRC members.*

Janani, Adivasi Gothra Mahasabha

To elect an FRC, the Panchayat and the Scheduled Tribe Promoters (frontline officers from the Tribal Extension Officers catering to the daily needs of *adivasis* like distribution of welfare benefits, transportation to hospitals etc.) seek representation from the neighbourhood, one-third of whom are supposed to be women. This assurance itself does not prove the level of participation that happens at the FRC meetings. As per the FRA procedure, in an Oorukoottam assembly, the *adivasis* raise their claim over a piece of land that they consider belongs to them before the FRC. The FRC records the claims and then listens to the claimants on how they were the traditional dwellers on the land before the cut-off date of 13 December 2005 (as mentioned in the Act), based on various factors such as presence of a shrine or revered tree or any relevant official document. The FRC then grants the verified claims and sends them to the higher committees for revision. The requirement that *adivasis* have to *claim* the land and *prove* that they have been the traditional dwellers necessitates that the *adivasis* take the onus of establishing ownership. While forums like the Adivasi Aikya Samiti have guided the *adivasis* through the FRA process, this is an isolated instance. The very structure of the FRA hierarchy is done in such a way that the Panchayat has only cursory role in the FRA process, making the FRA hierarchy almost a parallel structure. While the benefit of this arrangement is non-interference in the FRC's decisions, the downside is the absence of any institutional support to awareness building.

*The FRA process and the Grama Panchayat have no major connections. The Panchayat Secretary is supposed to oversee the proceedings of the Forest Rights Committee, that's all.*

Tribal Extension Officer, Sultan Bathery

While the original intention of this arrangement can be proffered as autonomy for the Forest Rights committee, there is no check to make sure that an actual participatory assembly of all the men and women in the neighbourhood is held. The risk of participation becoming symbolic is, therefore, high.

*As for the tribals, they just understand the Panchayat as a place to ask for schemes. Usually the general Grama Sabha is held in the morning, and the ST topics are discussed in the afternoon. Naturally attendance drops.*

Tribal Development Officer, Mananthavady

### **The process of decentralisation**

Table 3 showed that while the number of individual claims filed before the FRC in Bathery Taluk is 3,357, the number of claims granted have been chopped down at successive levels in the FRA hierarchy, i.e. the Sub-Division Level Committee, the Block Level Committee and the District Level Committee. No explanations have been accorded for the denial of titles. Participation, as has been shown in the previous section, occurs minimally. The Oorukoottams are not held regularly, and draw only a token number of people. Participation does not go beyond attending a few FRC meetings and filing claims. The contrast between the following two voices is noteworthy:

*The survey to verify the claim for land titles is done jointly by the Panchayat, Revenue Department and Forest Department. The Forest Department does GPS mapping and the information is stored in a database.*

Forest Management Officer, Sultan Bathery

*The adivasis never get to participate in the survey process, or know what the officials have done.*

Janani, Adivasi Aikya Samiti

The result is that a veil is created between the technical process and the adivasis. Surveying, which forms the most important step in recognizing and granting the Record of Rights, thus becomes an essentially technocratic activity. What is generally lacking is a will to use FRA as a tool for societal transformation:

*The general attitude of the Forest Department is not to give an inch of land to the adivasis. With the coming of the FRA, the FD is under immense pressure to grant land.*

Tribal Development Officer, Mananthavady

The comment by the Tribal Development Officer sheds light on how the different departments perceive each other. The Tribal Development Office, in fact, is closer to the adivasis in that they implement various schemes related to tribal welfare. But the one aspect of adivasi life that they do not have jurisdiction on is the forests. Also, the Panchayat, Forest Department, Revenue Department and the Tribal Development Offices continue to work in their own closed circles.

These results, while juxtaposed with the long history of *adivasi* land struggles that the district has seen, raise some disquieting questions. The FRA appears not to have 'sunk into' the minds of the *adivasis* and the officials alike as they have failed to see the immense transformative potential of the Act. Adivasi communities in Kerala, unlike their counterparts in the north and central regions of

India,<sup>35</sup> were not involved in any separate struggle asking for the Act or demanding its implementation. As a consequence, the FRA became just another piece of legislation sent out to the state administration from New Delhi to be executed with a new set of bureaucratic machinery.

The FRA was envisaged to be a larger project reversing the historic injustice to *adivasis* and ushering in an era of justice through recognition of rights. It is to be underlined that this is not merely a one-time scheme or project for distribution of land titles but constitutionally recognised legislation that recognises ownership of land and resources as a right. However, progress on the implementation of the Act in Wayanad shows a performance that is diluted and weak.

*The FRA has been thoroughly subverted. From 'forest rights', it has been shrunk to mere 'title rights'. If all adivasis get land and start farming, they would rise above poverty by themselves. Everyone needs food. Thus, everyone is a part of this struggle. But the moment adivasis fight for forests, it is branded as an "adivasi struggle" repelling others away from it.*

Janani, Adivasi Gothra Mahasabha

## Theoretical Understanding – Boundaries of Transformation

### Technocracy or transformation?

It could be inferred from the field notes that there is no larger vision associated with the FRA process as far as its implementation in Wayanad is concerned. It has not even been recognised as a part of the land reforms movement for which Kerala is known, the benefits of such reforms confined only to non-tribal communities. The state is also generally known for the degree to which issues are politicised and fought out through democratic discourse. In the Wayanad case, however, the mainstream political parties seem to have missed the case of *adivasis*, although attempts to give symbolic positions to *adivasi* members are still ongoing. Regardless of the political background of the government, the *adivasi* cause was repeatedly sidelined through exclusionary legislation on land reforms, although the parties have always used the *adivasis* as an electoral group.

The FRA process in Wayanad has not yet been a tool to confront fragmentations within the *adivasi* society or a method to create a level playing field for the *adivasis* to interact with the Forest Department and other state machineries. The existing hierarchies, therefore, continue to exist. In the absence of an express willingness to deal with the underlying social dynamics and stratifications, the spirit of transformative decentralisation remains undermined. The institutions created as part of the decentralisation process under the FRA depend in part on the same forest bureaucracy that has failed to secure land rights for the *adivasis*. This impedes any effort in transforming the very process of decentralisation. In the absence of NGOs or *adivasi* forums actively fighting for the FRA or monitoring its implementation, there are no checks in place to ensure the due process. There is no explicit emphasis on deepening citizenship and social inclusion under a comprehensive agenda of

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<sup>35</sup> Many of these NGOs came together to form the forum called Campaign for Survival and Dignity in New Delhi. There are 150 organisations affiliated to the Campaign currently.

empowerment, except for granting a paper document that proves the possession of a few cents of land in the hands of the few adivasis who got land. Such an agenda should commence with the acknowledgement that the adivasi's relationship with the forest, forest management and ensuring social justice can all be made part of the same project.

### **Spatial politics of the FRA**

The Wayanad story demonstrates how political negotiations and governance, technocratic or transformative, play out in the specialised context of forests. The *Forest Rights Act* can thus easily be 'located', to use Cornwall's (2004) terminology. The adivasi voices clearly reverberate with the centrality of the forests in their lives and how their histories are tied with the history of colonisation and post-colonial state control over forests. However, it also emerges that the agency of the adivasis to engage with, and own, the space is limited to filing claims and cursory FRC meetings thereby depriving them of their right to shape the space. The surveys undertaken as part of the FRA process, on the other hand, create robust databases on adivasi lands using the latest technology. This risks the FRA being just another machinery of state control indicating a tendency towards recentralisation through decentralisation. The examination of the roles of the different stakeholders showed how the physical space came to be appropriated by particular actors for specific purposes. The adivasis, the key stakeholder in the process have received little role in this space.

Considering the situated nature of participation under the FRA, although the provision for the creation of FRCs was supposed to create an 'invited space' for citizen consultation, these spaces still remain closed on the ground. All adult members of the community were supposed to come together to register their claims, discuss community rights and make their demands at the FRC. However, the functioning of the FRCs has mostly remained slapdash. The spaces for participating in the survey processes and understanding how the distribution of land is done have also remained closed. The different episodes of the adivasi struggles in the past did create 'claimed spaces' for negotiations with the state. However, the fact that the FRA has not figured in such negotiations limits the viability of such claimed spaces in facilitating a discussion on forest rights. The forest space has thus been co-opted thoroughly into the technocratic machinery. The result is that the adivasis choose to stay away from any of these intersecting spaces and retire to their usual lives, relinquishing their rights to change the way the space with which their existence is bound is shaped. In the absence of a larger movement from the adivasi community to demand the implementation of the FRA, the question of representation remains problematic. The fragmented adivasi community is represented by a few voluntary organisations that have not yet taken up the FRA as a key project.

## Conclusion

Understanding forest rights in its complexity can only be facilitated if there is an inherent project of respecting indigenous rights and recognising diversity. The *Forest Rights Act*, in its formulation, has given abundant opportunities to bring in such a project to fruition while simultaneously creating a meaningful structure for devolution of powers. Lack of a wider political project, absence of a unified campaign by the *adivasi* forums, fragmentation within the community, devolution of powers in the design of the decentralisation program to authorities with a history of indifference towards the tribals and lack of awareness regarding the potential of the legislation emerge as the main constraints from this case study. Transformation cannot occur as a part of the structure itself, it must be brought in through actual (and not symbolic) participation by creating open and invited spaces, the onus of which has to be taken by the state and the community concurrently.

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## Role of the Land Valuation Division in Property Rating by District Assemblies in Ghana's Upper East Region

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### Abstract

*District Assemblies in Ghana are charged with the responsibility of developing their areas of jurisdiction mainly through internally mobilised revenue. As a consequence, the assemblies are empowered by various pieces of legislation to impose local taxes within their jurisdiction. The local taxes include property rates which are a form of tax that only the District Assemblies may levy. The study therefore looked at the levying of property rates in the Upper East Region and assessed the role and institutional capacity of the Land Valuation Division of the Lands Commission in the tax administration..*

*Findings included limited coverage of the tax, use of flat rates due to absence of up-to-date property values, inadequate technical personnel and logistics for the Land Valuation Division (LVD) and lack of political will to levy the rates fully. Relevant suggestions are made, such as the need to introduce mass valuation, widen the tax coverage, establish a fund for revaluation and revive the Valuation Training School, as well as provide requisite logistics for efficient performance of the LVD.*

**Keywords:** Property rating, Property taxation, District Assemblies, Land Valuation Division, Decentralisation

### Introduction

#### ***Decentralisation and local finance***

The concentration of power and direction of development by central government has proved ineffective in terms of its grassroots impact. The needs of people are best assessed locally, and so policies and development projects fashioned at central level for the grassroots mostly fail to achieve their purpose. As sub-national governments are closer to the people and know the needs or preferences of their people (Obeng-Odoom, 2010), decentralised governments will generally be more accountable and responsive to citizens' needs and preferences (Bahl and Martinez-Vazquez, 2006).

Central authorities have thus started to cede some power to lower levels of administration, at least to determine their own development needs, while at the same time supporting central government in implementing national policies. Such decentralisation is taking place in many countries, particularly to the Local Government or District Assemblies in Ghana.

However it is argued that the expected benefits of decentralisation can only be realised when sub-national governments have strong institutional capacity (Bird and Vaillancourt, 1998), with adequate autonomy and discretion in raising their own revenues (Bahl and Martinez-Vazquez, 2006). Fiscal decentralisation is critical to making sub-national governments autonomous and, as Davey (2003) suggests, it involves two interrelated issues: i) the division of spending responsibilities and revenue sources between national, regional and local governments and ii) the amount of discretion given to regional and local governments to determine their revenue and expenditure. If effective fiscal decentralisation requires meaningful revenue autonomy in regional and local governments, then the question is which taxes should be allocated at these levels – i.e. the tax assignment problem (Bahl and Martinez-Vazquez, 2006). The borrowing capacity of sub-national governments is equally important in the ensuring autonomy of the local governments (Yemek, 2005).

Many countries have established diverse funding avenues to provide a sound financial base for sub-national or local governments. These funding sources and the financial relationship between national and sub-national governments are usually defined and authorised in legislation, such as the Constitution and the *Local Government Act 1993 (Act 462)* in Ghana.

In the literature on fiscal decentralisation, two main sources of revenue to sub-national governments are acknowledged: *internally generated revenues* mobilised by sub-national governments within their areas of jurisdiction, and intergovernmental or *external fiscal transfers*. According to Chitembo (2009), revenue sources to local governments in Zambia, included 59% from local taxes, 18% from fees and charges, 20% from other receipts, and 3% from national support. In contrast, intergovernmental transfers to local governments in other countries were higher: in Lesotho 90%, Uganda 88%, Ghana 69% and Malawi 60% (Chitembo 2009).

It is observed that countries where national fiscal transfers constitute the greater portion of local government revenue, local governments tend to lose autonomy and become inefficient in implementing developmental projects, since national fiscal transfers may be erratic and often come as tied grants.

In Ghana, the **District Assemblies Common Fund (DACF)** is the main form of national fiscal transfer to District Assemblies. The assemblies are also empowered to mobilise internal revenue to support development, and to undertake community projects to meet local needs. Under the

*Constitution* and the *Local Government Act 1993* (Act 462), assemblies can generate their own revenue through levying fees and fines, basic rates, and property rates within their jurisdictions, and may also undertake investments.

Property tax is generally considered one of the best revenue sources to facilitate revenue autonomy at the sub-national or local level (Bahl and Martinez-Vazquez, 2006). Property tax is often a greater component of local government revenue in developed countries than in developing countries where property tax revenues form an insignificant element of local government revenue (Bird and Slack, 2003). Statistically, it has been assessed that the contribution of property tax to GDP in OECD countries averages 3% as against an equivalent of 0.7% in developing countries; pathetically however, the contribution of property taxes to GDP in Ghana is 0.03% (2011 Budget Statement of Ghana).

The poor performance of property tax in developing countries is therefore disturbing, highlighting the need for an examination of the institutions and procedures involved in its administration. It is thus suggested that a single organisation or agency should undertake the assessment process, to ensure uniform assessment methodologies, which should be independent of the tax spending authority to avoid conflict of interest. The organisation should have adequate staff and technical resources coupled with capacity building, staff training and development (Plimmer and McCluskey 2010).

The proposal for a single assessing organisation for property tax valuations fits well in the context of Ghana where the national **Land Valuation Division (LVD)** is statutorily mandated – through the preparation of valuation lists for the districts – to support property rates administration. The LVD needs to be well resourced, both in personnel and logistics, if it is to be efficient and successful in supporting District Assemblies in administering the rating system to support development programs .

In this research, the author examines the role of the LVD, as mandated by law, in preparing valuation lists for districts in Ghana to levy property rates. The study focuses on the institutional capacity of the LVD in the administration of property rates in Ghana's Upper East Region and its impact on property tax revenue.

### ***A critical problem***

District Assemblies in Ghana have been given extensive powers and functions. For instance, the *Constitution* and the *Local Government Act 1993* require assemblies to give political and administrative guidance and supervise all other administrative authorities in the district, as well as taking responsibility for the overall development of their areas of jurisdiction. As a result, the *Constitution* stipulates that assemblies should have sound financial bases with adequate and reliable sources of revenue (Art. 240(2)), and established the District Assemblies Common Fund (DACF) to receive not less than 5% of the total annual revenues in the country (Art. 252(2)) to be distributed to

assemblies. To boost the DACF, the percentage was increased to 7.5% of total national revenues by a 2007 legislative instrument. The assemblies are also mandated to generate internally raised revenue to supplement central government allocations.

Despite these revenue streams, the districts are still grappling with serious financial problems as the funds are woefully inadequate to meet development needs, they are unable to mobilise internally raised revenue effectively. The *Growth and Poverty Reduction Strategy* report (GPRS II) (2006-2009) notes that the assemblies are weak in mobilising internal revenue and over-dependent on the DACF and external grants.

A number of studies have been conducted on the assemblies' revenue mobilisation and, for example, Farvarque-Vitkovic et al (2008) lamented the inability of district assemblies to generate sufficient revenue from property rates. The use of the *replacement-cost method*<sup>36</sup> as the basis of assessment was considered subjective due to the wide range of properties in a particular rating area, and a change of the tax base from buildings - only to land value - only was recommended to promote the use of mass valuation (Farvarque-Vitkovic *et al*, 2008). Similarly, Martey and Tagoe (2012) attributed the ineffectiveness of property tax mobilising to lack of a Geo-Property Information System. Pogane (1998) also undertook a similar study on property rating in the Bolga District. Although these studies explored property rating in various parts of Ghana, they did not focus on assessing the institutional capacity of the LVD as the state agency charged with providing technical expertise on property rates' administration.

This study therefore focuses on the role of the LVD in the administration of property rates, and investigates whether in the Upper East Region has the capacity to execute this statutory mandate.

### **Objectives**

The objectives of this research are as follows;

- To assess whether District Assemblies in the Upper East Region of Ghana levy property rates;
- To evaluate the performance of the assemblies in levying the property rates;
- To investigate the role of the Land Valuation Division in the administration of property rates;
- To explore challenges in the role played by the LVD and opportunities available, and
- To suggest practical measures that could help inform policy decisions.

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<sup>36</sup> *Replacement cost* is defined, with respect to buildings, structures and other developments, as the amount it would cost to provide the buildings, structures and other developments as if they were new on an undeveloped land or site at the time the premises are being valued.

### ***Choice of study area***

Between 1994-2004, the share of revenues accruing from property rates in the internally generated funds of the Western, Upper West and Upper East Regions were 21%, 15% and 9% respectively (Mogues, Benin and Cudjoe, 2009), which clearly shows that the Upper East Region is performing poorly in mobilising revenue through property rates. In the other regions, it is common to find newspapers requesting property owners to inspect valuation lists at the assemblies' offices and to submit appeals before the valuation lists take effect, but this is less evident in the Upper East Region. Furthermore, the Upper East Region has many infrastructure shortages, including the lack of basic local services. The Upper East Region is thus chosen for the study, in order to examine the factors militating against effective property rating and to contribute to policy decisions that enhance local revenue mobilisation.

### ***Methodology***

Quantitative and qualitative data are used in the study. Thus, both quantitative and qualitative methods of data collection were employed in the collection of primary and secondary data.

The primary data is obtained from three different sets of questionnaires administered to the six District Assemblies in the region, the regional Land Valuation Division Office, and with property owners in each of the five districts, 10 in each district selected through random sampling .. The remaining district was omitted because the assembly did not levy property rates. A total of 58 respondents were interviewed, using three sets of questionnaires as follows: District Assemblies (6), Land Valuation Division (2) and property owners (50). The data collected was analysed through descriptive statistical methods, including percentages and frequencies.

## **Financing District Assemblies and property rating in Ghana**

### ***Decentralisation in Ghana***

Ghana's decentralisation program began in 1988 with an objective to promote effective and accountable local government. District Assemblies (DAs) - the local government units - have been designated the:

- The highest political and administrative authority
- Planning authorities
- Development authorities
- Budgeting authorities
- Rating authorities (Crawford 2004).

The assemblies are given several additional functions under the Section 10 of the *Local Government Act 1993 (Act 462)* viz to:

- Provide guidance, give direction to, and supervise all other administrative authorities in the district;
- Exercise deliberative, legislative and executive functions;
- Be responsible for the overall development of the district, ensure preparation of development plans of the district and their corresponding budget for approval;
- Formulate and execute plans, for the effective mobilisation of the resources necessary for the overall development of the district;
- Promote and support productive activity and social development
- Initiate programs for the development of basic infrastructure and provide municipal works and services among others.

### ***Financing District Assemblies***

District Assemblies in Ghana are authorized to raise revenue from a number of sources – internal and external – under Articles 245 and 252 of the 1992 Constitution and section 34, part vii, part viii, part ix and part x of the *Local Government Act 1993 (Act 462)*. These revenues may be classified as:

- **Locally generated (traditional) revenues:** Locally raised revenues are derived from the following sources:

*Fees/Fines:* These include, court fines, market tolls, lorry park fees, slaughterhouse charges, cemetery charges et cetera;

*Licenses:* For motel/rest houses, palm wine/pito sellers, chop bars/restaurants, kiosks, commercial vehicles, district lottery, etc;

*Investment on income:* Trading services, interest on savings and treasury Bills;

*Rates:* These include Basic Rates – which are a direct development tax on every adult above 18 years – and Property Rates.

- **Central government transfers:** The major revenues include:

*Recurrent expenditure transfers:* Central government has, since, 1995 assumed full responsibility for salaries and other remunerations, including pensions for assembly staff..

The government also bears responsibility for the operational and administrative expenses of the Civil Service at the district level.

*Ceded Revenue:* This is derived from selected revenue sources, such as entertainment duty, casino revenue, betting tax, gambling tax, income tax payable by specific categories of self-employed persons in the informal sector, hitherto paid centrally to the Internal Revenue Service, but now paid to the District Assemblies, in pursuit of decentralisation.

Ceded revenue is centrally collected by the Internal Revenue Service, and the total collected for a year is transferred to the Ministry of Local Government which shares it among the Assemblies using a formula approved annually by Cabinet.

- **District Assemblies Common Fund (DACF):** Article 252 of the *Constitution* (1992) provides for this Fund, of not less than 5% of total revenues of Ghana, to be allocated annually by Parliament and be distributed among the assemblies on the basis of a formula approved by Parliament. The DACF was reviewed upwards to 7.5% of total annual revenues in 2007.
- **Stool Lands Revenue:** Stool lands are community lands vested in traditional chiefs and the revenue comprises all rents, dues, royalties or other payments from such lands. Under the *Constitution*, these monies are collected by the Office of the Administrator of Stool Lands; after the retention of 10% of the total revenue collected by the office as administrative charges, 55%, of the rest is given to the District Assembly where the stools lands are situated.

Several assessments – including the *Growth and Poverty Reduction Strategy II* (2006-2009), the *Ghana Shared Growth and Development Agenda* (GSGDA) (2010-2013), the *Municipal Finance* report by Commonwealth Local Government Forum (CLGF) and ComHabitat (Dirie, 2004), and the *Budget and Economic Policy Statement of Ghana*, 2011, have pointed to the inability of the assemblies to mobilise adequate local revenue and hence they remain over-dependent on central government transfers especially the DACF. According to Kayuza (2006) citing Aluko (2005), Konyimbih (2000) and Max (1991), such dependence encourages a ‘‘beggar attitude’’ and erodes the accountability and autonomy of local government authorities.

The over-dependence of local government on central government transfers is a long-standing problem. In 1997 CLGF found that the aggregate revenue for the assemblies was Cedis<sup>37</sup> 140.375 billion (GH¢14.0 million in the new denomination), of which central government transfers provided 69%, own taxes 22%, and user fees and charges 9%. In 2004, Farvacque-Vitkovic *et al* (2008) found that the total revenue to the District Assemblies including the municipalities and the metropolis was Cedis 1,423 billion ( GH¢ 142.3 million or US\$74.89 million), of which 84% was transfers from

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<sup>37</sup> Ghana redenominated her currency in 2007 to among others, bring it at par with the US dollar as the major currency for international transactions and to also enhance its portability. Per the redenomination, ₵10,000 is now equal to Gh¢1.. On November 16, 2012, US \$ 1 = Gh¢1.90 (Ghana Cedi)

central government or donors, with only 16% of internally generated funds from rates, fees and lands revenues.

These statistics do not point to an autonomous local government system in Ghana. Bahl and Martinez (2006), however, think that the options for local taxes in developing countries are limited without any local income tax. Likewise, Sharma (2010) blames central government in Ghana for the over-dependence of local government on central government transfers, as it collects the elastic and easily paid taxes like customs and excise duties, income and value-added taxes, leaving the more difficult and regressive taxes such as property rates, basic rates and market tolls for local governments to administer.

### ***An overview of property taxation***

Property taxation is used worldwide as a source of revenue to sub-national or local governments, and the extent to which local governments can make autonomous expenditure decisions often depends on their extent of control over property taxes (Bird and Slack, 2003). Property taxes or property rates are considered an appropriate source of revenue for local governments because of the connection between many of local services, including the provision of potable water, electricity, or roads and the benefit to property values (Bird and Slack, 2003). Property tax is thus described as a 'benefit tax'.

In the early 2000s in OECD countries, property tax revenues constituted 2.12% of GDP, while in developing and transition countries they contributed 0.6% and 0.68% respectively of GDP (Bahl and Martinez-Vazquez, 2006). This trend is worrying and there is need to take a second look at the system of property tax administration in developing countries.

The tax base for property taxation differs among countries, and can relate to: the land only (eg: Kenya and Jamaica); the buildings and improvements on land (eg: Kosovo and Tanzania), or to both as practiced in many countries (Canada, Germany, Japan, some parts of Australia, the United Kingdom, Indonesia, Thailand, Guinea, Tunisia etc) (Bahl and Martinez 2006; Bird and Slack 2003).

It is argued here that tax administration is critical to property taxation, and a well administered land and property tax can positively impact on revenue and ensure equity and efficiency (Bird and Slack 2003), suggesting the need for a review property rates/tax administration in Ghana and elsewhere. Local authorities however sometimes lack the capacity to administer the property tax and its administrative functions are often performed manually instead of being computerized (Bird and Slack 2003). Problems include the low revenue base due to limited recording of taxable properties and low collection rates (Bird and Slack, 2003). Bahl and Martinez (2006) suggest that four factors may enhance property tax collection in developing countries: decentralisation; the efficacy of shortcuts to property valuation; technology catch-up, and the willingness of central governments to give local

government's access to productive tax bases. The use of computerized appraisal and satellite-aided mapping can also help cut the cost and time delays of valuations (Bird and Slack, 2003).

Other inherent problems in the tax administration system also emerge. Kelly (2000) in a study of in East Africa (Kenya, Uganda and Tanzania) found that the rate of property tax collection was extremely low and enforcement for non-compliance was virtually non-existent. Fiscal cadastre information was incomplete and out of date, and there was an over-reliance on individual parcel valuation without any use of simple mass valuation techniques, challenges common to many countries in Sub-Saharan Africa.

Kelly (2000) suggests that four critical lessons have been drawn from reforms in East Africa:

1. *Property tax reform must be comprehensive – linking property information, valuation, assessment, collection and enforcement:* reforms should be holistic and recognize the links between policy and administration and between administrative components, ie: property identification, valuation, assessment, enforcement, and taxpayer services. Narrow concentration on a single aspect will not yield positive results.
2. *Stakeholder education linked to customer service:* successful property tax reform involves mobilising widespread support from stakeholders within central and local government and the private sector. Educational programs for taxpayers to understand the rationale and procedures for property tax are essential, and customer service should be improved through more efficient and equitable tax administration and more effective and accountable delivery of local public services. Tax collection in the absence of service delivery is very difficult.
3. *Need for mass valuation:* in East Africa, as elsewhere in sub-Saharan Africa, valuers visit each property to assess its value. This approach may produce accurate valuations, but is labour and time intensive, thus resulting in a backlog of out-of-date and incomplete valuation rolls. Thus, mass valuations techniques are recommended to provide more up-to-date values in a cost effective and timely manner.
4. *Need for sustainable revenue mobilisation:* the main objective of property tax reform should be to ensure sustainable production of local level revenues. Thus the institutional capacity of local governments needs to be developed alongside strategies to enhance property tax revenues. Effective administrative procedures, combined with a strong local capacity and political will, are essential for sustainable property tax mobilisation.

### **Property rating in Ghana**

Rating as a tax has a distinguishing feature that the amount of revenue required from rates is decided and the liability then distributed among the ratepayers (Emeny and Wilks 1984). As noted above, the

tax base for rating in Ghana is the buildings / improvements only, and the rating system is manual, based on individual parcel valuation which is laborious, time consuming and administratively expensive.

District Assemblies are the sole rating authorities empowered to make or levy rates in their areas of jurisdiction (Act 462 of Section 94). The Act identifies two (2) kinds of rates – **general rates** and **special rates**. In section 96(2) of the Act, a general rate is referred to as a rate made and levied over the whole district for the general purpose of the district, while section 96(3)(a) defines *general rate* as a rate payable by the owner of premises in the district on the rateable value of the premises; or (b) a rate assessed on the possessions, or any category of possessions of persons who reside in the district. Under ss96(2), a *special rate* means a rate levied over a specified area in the district for a specified project approved by the District Assembly for that area, while s.96(4) defines the *special rate* as the basic amount payable by everyone of 18 years or above who resides in the area, or owners of movable or immovable property in the area.

For the purpose of this study, the definition of rate in section 96(3) (a) is the most appropriate. A *rate* could thus be said to be a local tax imposed by a District Assembly on the rateable values of immovable properties to generate revenue to provide local services.

### **Replacement cost, rateable values and rate impost**

The statutory basis of rating practice in Ghana is the **replacement cost approach**.

- *Replacement cost* is defined as the amount it would cost to provide buildings, structures and other developments as if they were new on an undeveloped land or site at the time the premises are being valued (*Local Government Act, 1993 Act 462, Section 96(10)(a)*).
- *Rateable value of premises* under section 96(9) of Act 462 is the replacement cost of the buildings, structures and other developments comprising the premises after deducting the amount which it would cost at the time of valuation to restore the premises to a condition that would be serviceable as new. The Act adds that rateable value should be no more than 50% of replacement cost for owner-occupied premises and no less than 75% of the replacement cost in other cases. Thus, rateable value in Ghana is simply the replacement cost of premises less depreciation.
- *Depreciation*, according to Essel (1991) (in Pogane, 1998) is the loss of value of a property relative to its replacement cost, i.e. the difference between the replacement cost when the property is new and the market value of the property at the date of valuation. Depreciation thus measures the extent to which the old building is not as good as the new one. The lower limit of depreciation, as per Act 462, is 50% for owner-occupier premises, with an upper limit of 25% in all other cases.

- *Rate impost* is defined as a specified rate per Cedi on the rateable value of the property. This is computed by deducting expected non-property rate revenue from the total estimated expenditure of the assembly divided by the total value (rateable value) of all properties within the rating area, as follows:

$$\text{Rate Impost} = \frac{\text{Total Expenditure} - \text{Total Non-rate Revenue}}{\text{Total Rateable Value}}$$

For example, if the total estimated expenditure of the District Assembly is GhC 13,500, and all other revenue from non-rate sources is GhC 8,100, with the total rateable value being GhC 18,000,000, then the:

$$\text{Rate Impost} = \frac{13,500 - 8,100}{18,000,000} = \frac{\text{GhC } 5,400}{\text{G hC } 18,000,000} = 0.0003$$

### **Preparing the valuation list**

The *valuation list* is derived from the valuation of rateable properties within the rateable area. In rating valuation, the details of the property are first recorded in the Property Record Sheet. The details include name and address of the owner, the property number, and date of inspection, construction details, dimensions and valuation of the property. Once floor areas are determined, an appropriate rate/m<sup>2</sup> for construction is applied to arrive at the replacement cost, and an applicable rate of depreciation is applied to give the rateable value. The rateable values are then recorded in a standard format, and the form containing all the rateable properties with their corresponding rateable values is called the valuation list.

On approval, the valuation list is deposited at the District Assembly and publicised, and property owners are given 28 working days to inspect and register any concerns. The list is normally advertised in local newspapers and, after the 28-day consultation period has elapsed, the valuation list takes effect immediately, and property owners become legally bound to pay the rates calculated following application of the rate impost.

### **Exemptions**

Although all immovable properties or hereditaments are rateable, there are some tenements that are statutorily exempt under the *Local Government Act, 1993, (Act 462)* from assessment and rating, ie:

- a) Premises used exclusively for public worship and registered with the District Assembly;
- b) Cemeteries and burial grounds registered by the District Assembly;
- c) Charitable or public educational institutions registered with the District Assembly;
- d) Premises used as public hospital and clinics; and
- e) Premises owned by diplomatic missions as may be approved by the Minister for Foreign Affairs.

### ***The Land Valuation Division (LVD)***

Before 1986, the Valuation Division of the Ministry of Local Government was responsible for carrying out rating valuations in the country. Then in 1986 under the Provisional National Defence Council (Supplementary and Consequential Provisions) Law, 1982(section 43), the Valuation Division was transformed into the Land Valuation Board (LVB) and charged with preparing valuation lists for property rating, and determining compensation for land acquired by government or any public corporation (Kasanga and Kotey 2001). However, a number of constraints faced the LVB, including a severe shortage of qualified staff, lack of logistical support and vehicles, poor staff remuneration, and delays in compensation payments by government (Kasanga and Kotey 2001). Under the recent *Lands Commission Act 2008 (Act 767)*, the LVB was changed to the Land Valuation Division (LVD) of the Lands Commission.

The *Local Government Act 1993 (Act 462)* allows private valuers and firms to undertake rating valuations. The Act (462) mandates the LVD to supervise such private valuers, and the LVD operates under guidelines set out in the *Immovable Property Rate Regulations 1975 (L.I. 1059)* and Act 462.

Furthermore, under section 22 of the new *Lands Commission Act 2008 (767)*, the functions of the Land Valuation Division are outlined as follows:

- (a) Assessing the compensation payable following government land acquisition
- (b) Assessing stamp duty
- (c) Determining the values of properties rented, purchased, sold or leased by or to Government
- (d) Reparation and maintenance of valuation list for rating purposes
- (e) Valuation of interest in land or land related interests for the general public at a fee
- (f) Valuation of interests in land for the administration of estate duty
- (g) Other functions determined by the Commission

### **Data Analysis and Presentation of Findings**

Of the nine districts in the region, questionnaires were administered in six districts, namely, Builsa, Kasena-Nankana East, Kasena-Nankana West, and Bongo Districts, and the Bolgatanga and Bawku Municipalities. Information on the remaining three – Bawku West, Talensi-Nabdam and Garu-Tempene districts – was provided by Municipal Valuation Offices and focused on whether or not they levied property rates.

The Municipal Valuation Offices<sup>38</sup> are directly responsible for rating valuations in the region while the regional office of the Land Valuation Division (LVD) plays a supervisory role. The District or

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<sup>38</sup> These are the same as the District Valuation Offices. The term ‘Municipal’ is used here because the assemblies in the Upper East Region where these offices are sited have municipal statuses.

Municipal Valuation Offices are the decentralized units of the LVD charged with preparing valuation lists for the districts, which report to the Regional Valuer of the LVD. Indeed, the District or Municipal Valuation Offices are controlled by the Regional Office of the LVD and not the District Assemblies that they are serving. It is worth noting that the District or Municipal Valuation Offices are established mainly in the more urbanized districts, but with the responsibility of serving the other less urbanized ones.

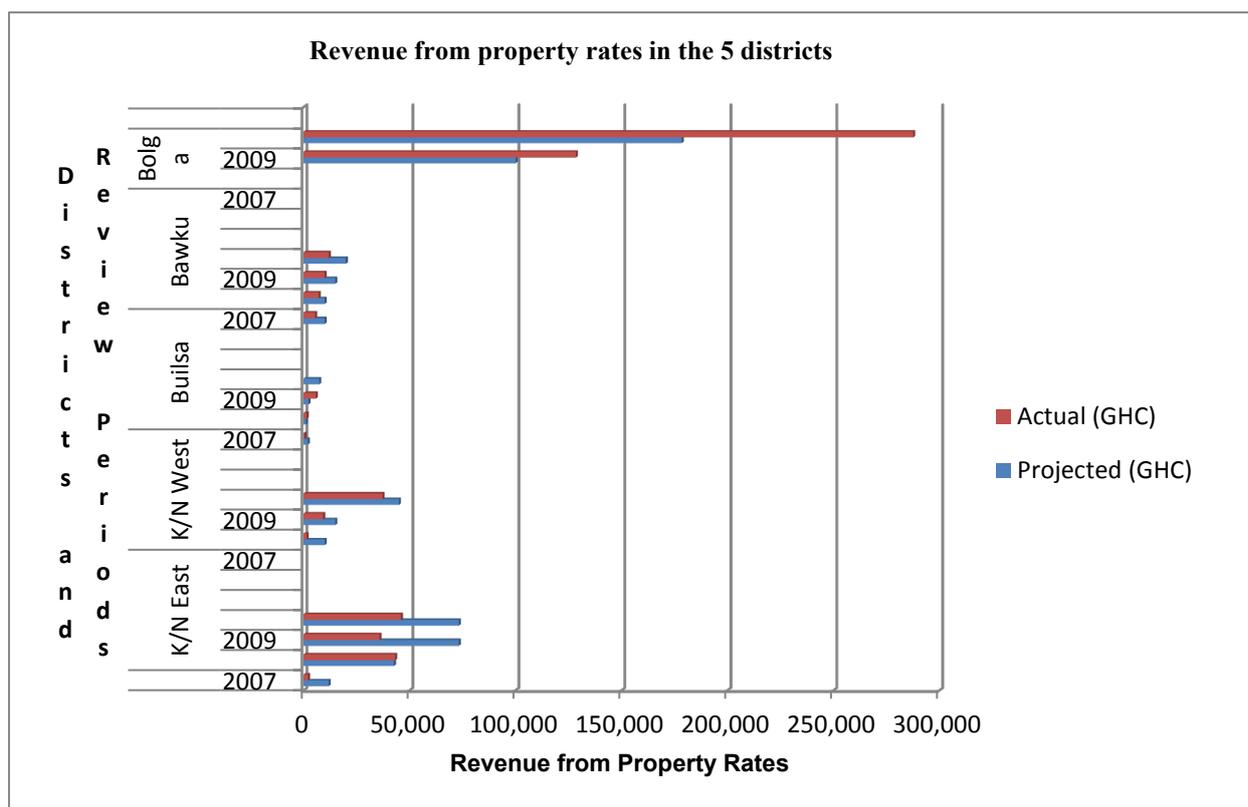
### ***Low rate coverage and minimal property revenue***

Out of the nine districts in the region, Builsa, Kasena-Nankana East, Kasena-Nankana West, Bawku West and Garu Tempane Districts, and the Bolgatanga and Bawku Municipalities levy property rates. Bongo and Talensi Nabdam districts were the only two districts not levying property rates in the region. Bongo District blamed their inability to levy property rates on non-availability of property data.

With the exception of Bolgatanga and Bawku Municipalities, the other five districts levying property rates used flat rates (i.e. rates neither based on rateable values nor rate impost). Rating by the districts was also selective because the districts levied rates only on commercial properties and a few modern or concrete-built residential premises – contrary to the stipulation of Act 462 which makes every property liable (except for specified exemptions).

Thus, the coverage of rateable properties and the quantum of revenue realised from rating were low (Figure 1), because most of the districts, especially Kasena-Nankana East and Nankana-Nakana West, levied rates on only a few properties, contrary to the wide tax liability given by Act 462.

Figure 1: Revenue from property rates in the 5 assemblies: 2007 - 2010



Source: Author's Field Survey, 2011

Due to the selective nature of the rating exercise, most property owners, even in the district capitals had no knowledge of property rating in their districts (Table 1). Imposition of flat rates, other than applying a rate impost on the depreciated replacement cost of the rateable properties, was also found out to be rampant in most of the districts. The imposition of flat rates by the districts does not conform to the requirements outlined in the law (Act 462). Among other determinants, the law requires that property rates are determined from rateable values through the rate impost.

Table 1 Knowledge of property owners about rating in their districts

Districts	Are you aware of property rate levies in your district			
	Yes (%)		No (%)	
Bolga Municipality	10	100	-	-
Bawku Municipality	10	100	-	-
Kasena-Nankana East	3	30	7	70
Kasena-Nankana West	4	50	6	60
Builsa	6	60	4	40

Source: Author's Field Survey, 2011

***LVD: challenges in preparing valuation lists***

The role of the Land Valuation Division (LVD) as gathered from the study is to carry out valuations of all rateable properties in the districts, and to prepare valuation lists for the purposes of levying property rates. This is consistent with the position of Plimmer and McCluskey (2010) who argue that the valuation organisation should be different from the tax-spending authority to avoid conflict of interest. However, the LVD has not been able to carry out valuations in the newly created districts, and is unable to undertake regular revaluations of properties to reflect current market values.

***Lack of experts and specialist units***

In all the five districts studied, none had professionals or personnel with technical background in rating, such as valuers, land economists or graduates in HND Estate Management, or in handling the administration of property rates. In response to questioning, it transpired that the districts did not have the financial capacity to engage such professionals.

Most of the districts, except for Bolgatanga and Bawku Municipalities, had no rating units as part of their administrative set-up. In the majority of cases, it was the Budget Offices which had additional responsibility of levying property rates in the districts. None of the Budget Offices in the various districts had staff with relevant academic or professional backgrounds relating to property rating. Thus, there were no technically trained rating personnel in the districts to support the LVD.

***Non-Engagement of Private Valuation Firms by District Assemblies***

All the five districts interviewed knew that they are permitted by law (Act 462) to engage the services of private valuers to prepare valuation lists, for the purpose of levying property rates. However, none of the districts had ever hired private valuers for such services, mainly on cost grounds or because the districts had faith in the LVD, and saw no need for private valuers.

***Challenges in collecting property rates***

In addition to very old valuation lists, the districts were also confronted with other challenges. High illiteracy among their populations is a serious problem, and most inhabitants did not understand why they should pay rates on houses they toiled to build.

Another more serious factor is lack of political will. According to most of the respondents, any time their district wanted to collect the rates according to the rules, a political tag or colour was given to it and as no administration wants to incur the wrath of the electorate; thus staff at the assemblies were often forced to relax in their efforts to levy rates. The assemblies were also understaffed and thus found it difficult to accomplish their mandate.

### **Lack of finance**

The Valuation Offices do not charge the assemblies for the valuation lists prepared, but considered that the District Assemblies and central government should provide funding to cater for expenses such as fuel, stationery, and lunch for the rating personnel during valuations or revaluations. The Valuation Offices were unable to publish the valuation lists regularly due to lack of funding for these expenses, but staff mentioned that they usually undertake ‘new and altered’ or supplementary valuations annually. Meanwhile, as provided for by Act 462, revaluation in the various districts needs to be undertaken every five years by the Valuation Offices.

### **Personnel shortages at municipal valuation offices**

For rating valuation to be successful, the Municipal Valuation Offices indicated need for the following staff:

- Technical Officers, who have responsibility for referencing, sketching of building plans in the field and assessing the rateable values of the properties;
- Technical Assistants, who assist Technical Officers in the functions above;
- Valuation Assistants, mainly responsible for filing and indexing the records;
- Draughtsmen, who refine the sketches done by the Technical Officers, and
- Support staff eg: typists for typing the valuation roll.

The table below therefore gives the current number of personnel with their age brackets in the two Municipal Valuation Offices which are responsible for carrying out rating valuations for all the nine districts in the region.

*Table 2: Current Personnel at the District Valuation Offices*

Personnel Required	Bolgatanga Mun Valuation Office			Bawku Mun. Valuation Office		
	No. & Age Bracket			No. & Age Bracket		
	Below 40 yrs	40-50 yrs	Over 50 yrs	Below 40 yrs	40-50 yrs	Over 50 yrs
Technical Officer		1	2		3	1
Technical Assistant			1	None		
Valuation Assistant	None			None		
Draughtsman	None			None		
Other support staff						
Typist/Stenographer	1			None		

*Source: Author's Field Survey, 2011*

Age of staff is also a problem. From the table above, the Bolgatanga Municipal Valuation Office has a total of just four technical personnel, comprising three Technical Officers, of which two are over 50 years, with the remaining one being between 40-50 years. The Technical Assistant is also over 50 years of age, and there is only one typist aged below 40 years. The Bawku Municipal Valuation

Office also had four Technical Officers, with three being between 40-50 years in age and other one aged over 50.

Thus, it is clear that the Municipal Valuation Offices are severely understaffed and without new recruitment, the offices would be closed down in a few years' time. It is remarkable that, with so few personnel, the offices can still undertake 'new and altered' or supplementary valuations as mentioned earlier. Indeed, it is disturbing that the LVD of the Land Commission is still beset with problems of personnel especially when such problems were identified and publicised over ten years ago by Kasanga and Kotey (2001), among others.

Both the Bolgatanga and Bawku Municipal Valuation Offices mentioned that each required the following personnel: ten Technical Officers, ten Technical Assistants, five Valuation Assistants and one typist. Respondents said that staffing problems were compounded by the closure of the Valuation Training School in Accra, about a decade ago, due mainly to funding challenges. The school was established to train the requisite technical personnel for rating valuations in the country.

### ***Lack of equipment***

The Municipal Valuation Offices also lack logistics support, such as vehicles, motor cycles, computers and accessories, measuring tapes and property record sheets. The Bolgatanga Municipal Valuation Office had no vehicles or computers, and only had two measuring tapes and property record sheets. The office however indicated the need for one pick-up vehicle, ten motor cycles, two computers and printers and twelve measuring tapes.

The situation with the Bawku Municipal Valuation Office was similar as it had just one motor cycle, two measuring tapes and enough property record sheets. However, the Bawku Office needs one pick-up vehicle, ten motor cycles, two computers and printers, and ten measuring tapes.

Thus, the logistical support such as vehicles, motor bikes, computers and printers etc, required by the Municipal Valuation Offices was virtually non-existent. Even measuring tapes which do not cost much were also in short supply.

## **Recommendations and Conclusions**

### ***Education***

With the high illiteracy rate in the region, there is need for an intensive public education program through radio stations and community centres on the need to pay property rates. This would enhance property owners' understanding of the need to honour their rate obligations. However, District Assemblies must note that, as indicated by Bird and Slack (2003) and Kelly (2000), property tax is a benefit tax and revenues must therefore be used to provide visible local services. It is also important

for the districts authorities to be transparent and accountable in the use of revenues raised from property rates.

### ***Elimination of political interference***

Political interference is also a serious problem affecting District Assemblies' efforts to levy property rates. It is therefore appropriate that politicians allow civil servants to levy property rates without hampering their efforts because of political interests.

If property rating is delinked from politics, the districts could enhance their rating revenues to complement the DACF for local development. It will be necessary for the politicians to help inform the electorates that it is impossible for central government alone to fully finance local development without the support of the local people who are the direct beneficiaries such developments. When such concerted efforts are made by the politicians, it would not be sustainable for any taxpayer to link payment of property rates to any political party or regime. Political interference would then be eliminated since no government would be able to pressurize District Assemblies to stop levying rates in order to gain votes at the next election.

### ***Provision of logistics support***

Rating valuation in Ghana still involves the movement of technical personnel and equipment around an entire district, covering large distances over often poorly developed roads. There is thus an urgent need for Municipal Valuation Offices to be provided with relevant equipment such as pick-up vehicles, motor bikes, computers and printers etc.

There is also need for central government to debate with the assemblies the potential of withholding a percentage of the District Assemblies Common Fund (DACF) to support revaluations. Once such investment goes into revaluations, up-to-date property values would widen the rating coverage rate and take more revenues from property rates. This can only be achieved through commitment by the assemblies. Staff may also need ICT training to enable them create databases on property for the various districts.

Furthermore, since rating practice in Ghana involves valuation of individual properties, which is very laborious, just as identified in the case of East Africa and several other Sub-Saharan African countries, mass appraisal techniques should be piloted to gradually replace the individual parcel valuations. Even though mass valuation employs the same principles as in individual parcel valuations, mass valuation does not involve regular visits to collect individual property data for valuation, and would also reduce the access difficulties that valuation officials encounter due to the poor road network in many parts of the country. Mass valuation would provide more equitable, up-to-date values in a cost effective and timely manner.

### ***Valuation training***

Valuation Offices are woefully understaffed a situation that is compounded by the closure of the Valuation Training School in Accra. It is recommended that government as a matter of urgency should provide the necessary funding for the revival of the only school in the country accredited to train technical personnel for rating valuation.

As a stopgap measure, government should contract the Ghana Institution of Surveyors (specifically the Valuation and Estate Surveying Division) to provide short training on rating to graduates in the fields of Land Economy and Estate Management for secondment to Valuation Offices in the Upper East Region and other regions. The reopening of the Valuation Training School would ensure regular training of such technical personnel for the Districts and the Valuation Offices to sustain property rating valuations.

It is also imperative for rating units to be created as part of the administrative structure of the District Assemblies so that every district, as a matter of policy, would have a valuer and other trained personnel to complement the efforts of the LVD in administering the property rate. This would ensure more focus on levying property rates than currently provided under the Budget Offices.

### **Conclusions**

The administration of the property tax is a major challenge facing developing countries in their efforts to boost property tax revenues. Ghana is no exception. Surprisingly, many recent studies and government assessments in Ghana have blamed District Assemblies alone for their inability to generate enough revenue from property rates, resulting in an overdependence on the DACF. Yet, the updating of valuation lists as the basis for levying property rates is rare because the state agency responsible (the LVD and its Municipal Valuation Offices) is woefully understaffed and lacks logistics capacity. The Valuation Training School which is supposed to train the technical personnel to man the Municipal Valuation Offices had been closed down for over a decade. It thus appears that Ghana's central government is partly to blame for low internal revenue collection from property rates, and as a matter of necessity, the state should pilot a mass appraisal model for property valuation as a gradual means to change the replacement cost method as the basis of assessment in the country.

For the districts, there is significant potential to harness maximum revenue from property rates through education of their people on the need to pay rates. It is also incumbent on District Assemblies to broaden the coverage of the properties liable to rates. Since property rate is a benefit tax, district authorities should provide local services from the proceeds of the tax to encourage ratepayers to pay the rates.

Generally, there is still need for further studies in the region to assess collection and enforcement capacity for property rates, as this study focused mainly on valuation and assessment through the investigation of the role and institutional capacity of the Land Valuation Division.

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## Local Government Finance in Ghana: Disbursement and Utilisation of the MPs share of the District Assemblies Common Fund

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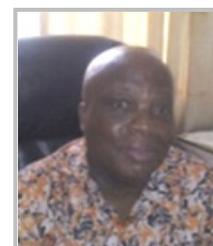
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### Abstract

*The establishment of the District Assembly Common Fund (DACF) in 1993 and concomitant percentage set aside for Members of Parliament (MPs) in 2004 aims to support local governments and legislators in pro-poor development activities in their communities and constituencies. In spite of the importance of the MPs' share of the District Assemblies Common Fund (MPsCF) in financing local level development in Ghana, very little is known about monitoring systems and procedures on the disbursement and utilization of the funds. The study therefore assessed qualitative data derived from interviews with officials from selected Local Government Authorities (LGAs) as well as other key stakeholders in the disbursement and utilization of the fund. The study findings point to the absence of legislative instrument on the management of the MPsCF. Further, monitoring of the fund was a responsibility shared by the LGAs and other external stakeholders. Finally, the effectiveness of monitoring the disbursement and utilization of the MPsCF was strongly influenced by the relationship between the Chief Executive of the Local Government Authority (LGCE) and MPs in the local government area.*

**Key Words:** Disbursement, Utilization, Members of Parliament, District Assemblies Common Fund, Ghana

## Introduction

Ghana has a multiparty Parliament which has a deliberative, legislative, resource allocation, monitoring and lobbying role. Constitutionally, Parliament has the role to scrutinize public policy especially executive poverty-related policies to ensure equity in program distribution and accountability, and to exert oversight over the proper and judicious administration of development programs.

Parliament is required to ratify executive decisions and choices when it comes to bilateral and multilateral donor loans earmarked for socio-economic development and poverty reduction activities. Whilst there are competing values and interests among the parties in Parliament, there appears to be broad bipartisan consensus over pro-poor policymaking and implementation. This notwithstanding, different parties in parliament have different policy options and strategies in the fight against poverty. Essentially as politicians, they pursue policies that meet popular demands. With the majority of Ghanaians being poor, parliamentarians tend to be sensitive to popular sentiments and often articulate pro-poor messages from the grassroots. Thus, in their bid to win votes, one may say that parliamentarians are a lightning rod for poverty-related problems that affect their constituents.

Whilst Parliament has been articulating pro-poor policy positions, the quality of Parliament's involvement in pro-poor policy-making and implementation over the years has been very low. First, the Ghanaian Parliament has not been particularly good at initiating policies. It has yet to demonstrate any capacity to drive the legislative agenda or exert its independence from the Executive in policy legislation. In addition, Parliament is constrained by a number of factors: constitutional, legal, procedural, organisational and material. The partial fusion of the Legislature and the Executive in the 1992 Constitution undermines institutional separation of powers and parliamentary independence while reinforcing executive manipulation and dominance.

Constitutional provisions giving the Executive the exclusive right to initiate bills with financial implications and limiting Parliament to reducing proposed budget appropriations severely limits Parliament's control over the public purse. Parliament as a political and policy institution lacks offices, logistics and the capacity to research, monitor and audit Executive-driven pro-poor policies, and the quality of parliamentary policymaking is severely impaired by weaknesses in information gathering and analysis. Moreover, Parliament has a poor record of proactively soliciting information from independent sources and experts to challenge executive and bureaucratic information, and the role of Parliament in the budget-making process has been sidelined. The involvement of Parliament and its Finance and sector committees in the preparation and review of the annual budget is marginal, Parliamentary debates over the estimates are rushed, and approval done largely on a partisan and predictable basis.

The historical and institutional role of MPs in poverty reduction activities is also significant.. Traditionally, the institutional role of MPs has been viewed largely as that of attracting development projects and programs to constituents, thereby helping to reduce poverty. However the passage of time and the evolution of constitutional developments in Ghana have rendered this institutional role anachronistic. Currently, MPs are expected to play largely legislative roles, leaving the District Assemblies to take care of local development. But the historical legacy of a “pork barrel” institutional role of MPs continues to linger. Constituents still expect parliamentarians to bring development to their doorsteps and MPs into lobby for development projects for their constituents. To meet this expectation, the MPs in 2004 lobbied and got control over the disbursement of a portion of the DACF for development projects in their constituencies. Under the terms of the current arrangements, MPs are allocated up to 5% of the DACF for poverty-reduction projects in their constituencies.

Parliamentarians also tend to play both advocacy and partisan roles. MPs are ex-officio members of the District Assemblies. Invariably they have a representational role in matters affecting poverty reduction as well as the responsibility to articulate poverty concerns in Parliament.

Since the introduction and disbursement of the MPsCF, there has been very little empirical inquiry into the internal control mechanisms for ensuring effective management and utilization of the fund. Neither the DACF secretariat nor Parliament has ever initiated a review of the fund management system and the challenges confronting its utilisation after six years of its introduction. Public governance institutions such as the Serious Fraud Office, Commission for Human Rights and Administrative, Public Accounts Committee and the Auditor General have not undertaken any rigorous audit into procedures for disbursement of the fund and its implications for accountability, good governance and poverty reduction. Civil society organisations including the vociferous media have been quiet on problems confronting the management and utilization of the MPsCF.

This current silence has left many Ghanaian researchers and accountability activists conjecturing about the actual status of the MPsCF and the responsiveness of local governments to the use of scarce public resources. This study focuses on the extent to which internal control systems within LGAs have impacted the management and utilization of the MPsCF.

### **Study objectives**

The overall objective of this project is to undertake a comprehensive review and assessment of the systems, processes and management of the disbursement and utilization of the MP’s 5% share of the DACF.

The specific objectives of the study are to:

- Determine the key stakeholders and their respective roles in monitoring the disbursement and utilization of the MPsCF

- Review the efficacy of the monitoring of the disbursement and utilization of the MPsCF
- Find out the key issues hindering the utilization and disbursement of the MPsCF

## Overview of local government finance in Ghana

### **Source of local government finance**

Finance is the ‘lifeblood’ of decentralisation. However, it has remained a major problem for decentralisation in Ghana (Ayee 2006). In practical terms, Prud'homme (1989) argues that sub-national governments generate about 20% of total government revenues while they spend about 30%. The difference of 10% is made up of Central Government transfers. Thus, revenues to local governments consist of internally-generated revenues and Central Government transfers.

As noted earlier, the 1992 Constitution requires that 7.5% of the total revenue of Ghana be transferred to local governments based on an annually agreed formula by the legislature. The Internally Generated Funds (IGFs) include rates and fees, rents, fines and licences, investments and income from commercial activities (Table 1). However, local governments in Ghana still rely heavily on Central Government transfers mainly because of capacity challenges in internal revenue mobilisation, mismanagement and corruption.

*Table 1: Composition of Metropolitan, Municipal and District Assemblies' funding sources*

Sources	Percentage	(%)
Internally Generated Funds (IGF)	18	
Rates		4
Lands (e.g. Royalties)		2
Fees and fines		6
Licenses		3
Rent		1
Investment income		1
Miscellaneous		1
Total grants given by the central government	82	
Salaries/Highly Indebted Poor Country (HIPC)/Donor Support/Other Transfers		45
DACF		37
Total revenues	100	

**Source:** Decentralisation Secretariat, MoLG, Rural Development and Environment, 2006

### **Financial accountability in LGAs**

Financial accountability at the local level has two dimensions, internal and external (Ayee 2006). Internal accountability refers to accountability within local governments, for example the function and activities within District Assemblies. External accountability refers to local government accountability to a higher level of government, whether state, federal or central government. External accountability in Ghana is manifest in Central government control over local government activities.

Central Government controls local government financial activities in Ghana through the approval of all financial estimates, except where unforeseen expenditure becomes necessary or costs have increased during the year. Even under such circumstances, the local authority may submit a supplementary estimate to the Minister for his approval. In addition, all loans and rates raised by a local authority must also be approved by the central government. Central government also has the power to control the award of contracts by local authorities.

Above all, at the end of the financial year Annual Accounts are prepared, showing actual revenue and expenditure, and are subject to audit. If the auditor detects any improper, unauthorised or unlawful expenditure, he may impose a surcharge on the person or persons responsible. This means that the person on whom the surcharge is imposed must refund to the local authority out of his or their own pocket the sum of money surcharged.

Local governments are also required to be accountable to the community, Parliament and government for their activities through Assembly members and The Auditor-General e.g. on health, water and sanitation among others. In particular, Article 187(2) of the 1992 Constitution enjoins the Auditor-General to audit and report on all the public accounts of Ghana and of all public agencies, including local government administrations.

### ***Internal control mechanisms in managing the DACF***

In addition, the internal control mechanism includes constitutional, legal and administrative procedures designed to ensure that expenses incurred are authorised and in line with regulations that guide spending revenue collection and proper reporting on revenue and expenditure, in order to promote accountability in managing scarce funds.

In Ghana, the District Chief Executive (LGCE) acts as a link between the officials, MPs, and the local communities and is supposed to be the driver of internal accountability in the District Assembly. Each District Assembly is expected to have a financial committee and the LGCE is generally accountable to the government, Assembly Members and the local communities. Article 120 (1) of Act 462, stipulates that ‘Every District Assembly shall have an Internal Audit Unit’ with its head being ‘responsible to the Assembly in the performance of his duties’.

Similarly, Article 90 of the *Local Government Act*, 1993 (462) also provides that a District Assembly shall

*Keep proper accounts and records, and shall prepare immediately after the end of each financial year a statement of its accounts in such a form as the Auditor-General may direct.*

The *Local Government Financial Administration Act* 2003 (Act 564) also provides an internal mechanism which checks the district revenue and expenditure, alongside the central government treasury of the Controller and Accountant General's Department.

Both the Financial Memorandum (FM) and Act 462 provide the framework within which local governments are to operate. While Act 462 seeks to provide general direction in terms of policy, the Financial Memorandum provides the control mechanisms of revenue and expenditure.

The Financial Memoranda (FM) for District Assemblies, 2004 spells out the monthly, quarterly and annual duties of the Finance and Administration Sub-committee of the Assembly which among other duties is to ensure that account books are up to date, and that cash and bank balances are not excessive in relation to investment. A key strength of the FM is that it ensures that Assemblies operate with a balanced budget and the District Finance Officer has powers to ensure that all payments authorized are within budget.

In addition to all these, the passage in 2003 of the Internal Audit Act, 658, and the Procurement Act, Act 663 are important legislative instruments at promoting financial accountability within the DAs. These internal and external mechanisms provide quite a good framework for promoting accountability and sound financial management in the District Assemblies.

### **Key issues in DACF administration in Ghana**

Also important and closely related to the political control of the DACF, is the nature and quantum of mandatory deductions made on the DACF before disbursements are made to LGAs. As explained by Arthur (2012), even though the economic regulation of LGAs was intended to operate in a positive way, to prevent the local authorities from balance of payment problems, and from creating national inflation, regulatory power has been abused by the centre. Mawhood, (1993) also confirms that economic control of fiscal decentralisation by the Central government enables it to set high mandatory deductions from the DACF. In Ghana's case, as much as 49% of the allocated DACF is deducted for government priority activities even before the fund is disbursed to LGAs (see DACF Annual Guidelines 2003 - 2007 from the Ministry of Local Government and Rural Development). Consequently, LGAs have no control on almost half of their DACFs.

### ***Tensions between MPs and LGCEs***

Utilization of the DACF in Ghana has been plagued by several challenges including delays in disbursement of the fund (Owusu 2008) and political tensions between traditional authorities, government appointees and elected officials in the LGA. Arthur (2012) reports strong tensions between LGCEs (appointed by the president to represent his interests), the MPs (the popular elected representatives) and the traditional rulers (the custodian of the customs and sovereignty of the local

people). All three groups draw on various sections of the 1992 Constitution and on other subsidiary legislation to support their claim to partake in deciding how the DACF is used. Specifically, Article 267 of the 1992 Constitution and section 5 of the *Local Government Act 462* supports the legitimacy of traditional rulers in LGA activities, while Article 243 of the 1992 Constitution and Section 20 of the *Local Government Act 1993, Act 462* support the role of both elected and appointed officers in the LGA.

Azeem (2003) and Boachie-Danquah (2004) suggest that the tensions especially between MPs and LGCEs have been the greatest challenge to transparency, efficiency and accountability in use of the DACF in Ghana. Though tensions may arise between LGCEs and MPs over spending from the DACF Ayee (1999), Ahwoi (2010), and Antwi-Boasiako (2010) believe that such tensions are mostly motivated by the self-interests of LGCEs and MPs rather than by the needs of the local people. Studies by Ahwoi (2006), Asibuo (2000), Arthur (2012), Ayee and Amponsah (2003) have illustrated cases where LGCEs with aspirations of contesting as MPs have siphoned off parts of the DACF to fund their campaigns. Debrah (2009) reports of deliberate delays, misappropriation, misapplication and under-spending of the DACF by LGCEs in order to stagnate development and discredit the MPs before an election. Ahwoi (2010) avers that such conflicts are rife when the LGCEs and MPs are from different political parties, while Arthur (2012) shares that conflicts revolving round the use of the DACF are also common even if both LGCE and MP come from the same political party.

### **MPs share of the DACF**

It is recognized across literature that the underlying reason for the creation of the MPSCF was to enable MPs undertake development projects to win favour from electorates as a way of securing their seats in Parliament (Boachie Danquah, 2001; Ahwoi 2012; Arthur, 2012, Debrah 2009). Nyendu (2012) argues that the MPSCF was created by MPs as a way of addressing the political threats to their seats by LGCEs confirmed by Ahwoi, the then Minister for Local Government in Ghana. According to Ahwoi (2012), the decision to allocate part of the DACF to MPs was as a result of demands from MPs for some form of financial assistance to undertake development projects:

*The leaders of both the majority and minority in parliament came to us and told us bluntly that considering the way the LGCEs were bluffing with the DACF, if we don't give MPs their share, they won't approve the formula (for the sharing of the fund) when it comes before parliament.*

Kunbour (2012) suggests that the creation of the MPSCF was based on the increasing realisation in Ghana that, even though MPs are legislators, they are expected to provide public goods and services to constituents and such expectations require funding which must come from the state rather than the MPs personal funds. Similarly, Osei-Akoto et al (2007) argues that the success or otherwise of an MP in Ghana is assessed by the amount of projects during their tenure rather than by their legislative roles.

However, deriving from the *Local Government Act* of 1993, funding for projects within the LGA (mainly the DACF) is controlled by the LGCE which puts LGCEs in the limelight as the ones who are overtly seen as providing goods such as KVIP toilets, roads, renovating schools etc., Thus, MPs are forced to undertake development projects from their personal funds for fear of being unseated because they were not seen undertaking any project, or honouring the promises of development made during election campaigns. Even when MPs have advocated and lobbied for particular projects in their constituencies, their efforts are not visible and credit for the project claimed by the LGCEs Thomi (2000). The issue is further exacerbated in instances where the LGCE intends to contest as an MP in subsequent elections when DACF projects are claimed as personal success stories, thereby Arthur (2012) and Nyendu (2012) concludes that the MPsCF was born because of the conduct of some LGCEs who were believed to be undermining the 'authority' of MPs through the 'personalization' of the projects completed with the DACF.

Although the practice has continued till date, Ahwoi (2010), CDD (2005) and others have maintained the illegitimacy of the MPsCF because it was based an agreement between parliamentarians rather than legislation. Indeed the lack of legislative support has been the major basis for the call to abolish the MPsCF. Quite apart from that, Mensah and Kendie (2008) argues that the MPsCF has led to duplication and politicisation of projects and programs in the LGA. Nyendu (2012) asserts that instead of carrying out development projects, some MPs hoard their share of the DACF for use in campaigning for subsequent elections. Further, Debrah (2009) believes that the MPsCF also introduces a new twist in the power struggle between MPs and LGCEs with strong disagreements by both parties on the timing, schedule, use and accountability of the MPsCF and the DACF.

## Methods

The study was funded by the University of Ghana's Business School and was aimed at unearthing relevant information on the utilization and disbursement of the DACF which could be used by postgraduate students of Public Administration and local government in the University of Ghana, the Institute of Local Government Studies (ILGS), and by Local Government Officers.

The study relied in on qualitative methods used here for purposes of adopting an interpretive approach for an in depth analysis and understanding of the key issues under study. This technique was very useful because of its substantial flexibility in allowing the study to take place within the ordinary places of work of the persons involved in the study.

The main technique for data collection was key informant interviews using semi-structured questions. The interviews targeted key informants from selected LGAs in Ghana, MPs, the Audit Service, and the DACF. The instrument used for data collection was anonymous and solicited data on disbursement, utilization, accountability and internal control mechanisms of the MPs' share of the

DACF. In order to get respondents who were abreast with the key issues being studied, only respondents who were regular participants of the training programs on local governance organised by the ILGS were considered. With appropriate permissions, the ILGS gave the research team a list of 38 persons who they considered regular participants in their training programs. Though initial contacts were made with all 38 persons on the list, only 25 were willing and available to participate in the study.

Interviews were conducted at the place of work of respondents between November 2011 and February 2012. In all, the 25 interviewees were from the Ghana Audit service, the Office of the Administrator of DACF, the Parliamentary Committee on Local Government and Rural Development, and 14 Metropolitan, Municipal and District Assemblies in Ghana. Officials of the Ministry of Local Government and Rural Development (MLGRD) declined to participate in the study because they were not directly involved in administering and monitoring the DACF but rather played an oversight role on Local Government and local level development initiatives. All respondents were key officials in their respective institutions with direct exposure to the disbursement, utilization, accountability and control of the DACF. Details of the interviewees are provided in Table 2.

*Table 2: Background of respondents*

Institution		Position	Number of years at post
Ghana Audit Service		Principal Auditor	Four years
		Examiner of Accounts	Four years
		Acting Deputy Auditor General/EIDA	18 months
		Director	2 months
Office of the DACF Administrator		Principal Operating Officer	10 years
		Principal Operating Officer	30 years
		Principal Operating Officer	10 years
		Head of Internal Audit	8 years
LGAs	Tema Metropolitan	Finance Officer	20 months
	Offinso Municipal	Planning Officer	13 years
	Dangme West	Assistant Director	4 years
	Hohoe Municipal	Coordinating Director	10 years
	Akwapem North	Coordinating Director	4 years
	Offinso Municipal	Finance Officer	4 years
	Pru District	Accountant	2 years
	Sekondi – Takoradi Metropolitan	Accounts Officer	7 years
	Ga East Municipal	Finance Officer	6 years
	Akwapim North	Finance Officer	10 years
	Ga East Municipal	Coordinating Director	3 years
	West Akim	Coordinating Director	4 years
	Adentan Municipal	Coordinating Director	4 years
South Dayi	Coordinating Director	3 years	
The Committee on Local Government and Rural Development, Parliament of Ghana		Chairman	3 years
		Member	3 years
		Deputy Ranking Member	7 years

### ***Monitoring the MPsCF***

In explaining the essence of giving MPs a share of the District Assemblies Common Fund (DACF), respondents explained that the DACF derived its source from Article 252 of the 1992 Constitution which provides for the establishment of the fund. The same Article also provides for the allocation of not less than 5% of total national tax revenue into the fund. The rationale for the creation of the fund, in their view, was to strengthen the financial base of the LGAs in order to ensure effective discharge of their statutory functions. The fund was also to serve as a development endowment to be used for the benefit of all Ghanaians. In line with Article 252, the DACF was established under Act 455, 1993.

However, all respondents pointed out that there was no clearly defined legislative instrument or constitutional provision backing the disbursement of a portion of the DACF to MPs. Respondents from the OACF explained that, even though the current formula for disbursement of the DACF sets the MPsCF at 4% for development projects in their constituencies, there is no provision in the 1992 Constitution to support this decision. This confirms the claims of illegitimacy of the MPsCF by Ahwoi (2010) and CDD (2005).

Other respondents also traced the MPsCF to demands made by MPs for some form of financial assistance under their control to undertake development projects. This was to enable the MPs satisfy some of the demands for development made on them by the members of their respective constituency in line with Kunbour (2012). It also allowed the MPs to implement their local level initiatives independently and without financial tussles with the LGCE as identified by Arthur (2012), Azeem (2003) and Boachie-Danquah (2004). Respondents also acknowledged that several years on, no legislative backing has been given to support the MPs' share of the DACF, even though the President of Ghana's announcement in his 2009 session address that a new MP's Constituency Development Fund would be set up.

Thus, there was no clearly defined instrument supporting the MPsCF. Rather, the MPsCF was practiced as a convention that began in the Mid-1990s. By extension, this implies that non-existence of legislative guidelines for the disbursement, utilization, accountability and management of the MPs' funds.

### ***Monitoring disbursement of the MPsCF***

Evidence from respondents indicates that there are two levels of disbursement for the MPsCF. First-level disbursements are made by the OACF to the various LGAs and second-level disbursements by the LGAs to their mandatory and local-priority funds. For instance, LGAs are supposed to disburse 3% of their DACF allocation to enhance the economic activities of 'persons living with disabilities'.

To monitor the first level disbursements, Section (9) of Act 455 (that establishes the DACF) requires the MLGRD in consultation with the Ministry of Finance and Economic Planning (MoFEP) to determine expenditure under the DACF (Guidelines to the LGAs). This provision enables the MLGRD to supervise LGAs expenditure. The actual disbursement of the fund is by the OACF, under Section (7) of Act 455 which mandates the Administrator to distribute the DACF monies among the LGAs in accordance with the approved formula.

Respondents identified several actors who were, in their view, responsible for monitoring the disbursement of the MPsCF (Table 3). All respondents also acknowledged that even though the disbursement was done by the OACF, MPs accessed their share of the common fund through their LGAs.

*Table 3: Responsibility for monitoring disbursement of the MPs' share of the DACF*

<b>Responsibility for monitoring the MPs' share of the DACF</b>	<b>Respondents</b>
LGA officials = LGCE, District Coordinating Director (DCD), District Finance Officer (DFO), District Budget Officer (DBO), District Planning and Construction Unit (DPCU)	11
OACF, MLGRD, Auditor General's Department	8
MP – self monitoring	3
Not clearly defined / No monitoring is done	3
<b>TOTAL</b>	<b>25</b>

Some respondents argued that in practice monitoring is done by officials of the LGAs. Respondents in this group believed that the LGAs were ultimately responsible for monitoring the disbursement of the MPsCF, to ensure the accuracy of the amounts paid to MPs, when the payment was made, and any problems arising from the disbursement. The monitoring also ensured that the disbursement process was done judiciously and to provide accurate records to reconcile the books. Additionally, the LGAs monitored the disbursement of the MPsCF because all financial inflows and outflows of the LGAs, including the MPs' funds, were subject to internal and external audit. Some respondents also explained that because the account into which the MPsCF is disbursed is strictly managed by the LGAs without the MPs being signatories, the LGAs were ultimately responsible for the disbursement of the funds. Specific officials in the LGAs involved in monitoring the disbursement of the MPs' funds were the LGCE, District Coordinating Director (DCD), District Finance Officer (DFO), District Budget Officer (DBO), and the District Planning and Construction Unit (DPCU).

A second group of respondents believed that monitoring the disbursement of the MPsCF was done by the OACF, the MLGRD and the Auditor Generals Department. In explaining their answer, they cited section 7 of Act 455 that mandates the ACF to report in writing to the Minister in charge of the MLGRD on how allocations made to LGAs (including the MPs' funds) have been utilized. Other respondents in this group thought that monitoring of the disbursement was done by MLGRD through periodic visits and assessments reports of LGAs. Respondents in this group also pointed out that the

Auditor General's Office played an important role in the monitoring of the disbursement of the MPsCF. Through the quarterly reports and annual audits, the Auditor General's department ensured that disbursement of the MPs' funds was done in accordance with prescribed guidelines. Respondents made particular reference to the Consolidated Report of the Auditor-general on special audits into the operations of district assemblies for the period 2001–2004 which was a result of extensive monitoring utilization of the DACF and stressed on the disbursement and utilization of the MPs common fund.

A third group of respondents, all of whom were MPs, said that monitoring of the MPsCF had to be done by MPs themselves, to ensure that they received what was due, that the funds were not unnecessarily delayed, and that the funds went to the right person, etc. In line with Debrah (2009), Ahwoi (2006), Asibuo (2000), Arthur (2012), and Ayee and Amponsah (2003), the MPs believed that they had to monitor the disbursements because some LGCEs tried deliberately to delay, or underpay their share of the DACF, and to make sure the funds were not allocated to the general LGAs budget. Respondents mentioned instances where particular LGCEs 'borrowed' or used part or all the MPs' funds for other LGA activities, when the MPs could not access the funds until the LGCEs paid back the monies 'borrowed'. The MPs also monitored the disbursements to ensure any problems in the disbursements were quickly addressed, for example one respondent could not access his share of the fund because of an inconsistency between the amount due in figures and the amount in words. Some MPs claimed that they received significantly less than they were supposed to receive, and the general consensus of these respondents was that since MPs were not signatories to the accounts into which their share of the DACF is paid, they had to oversee the disbursement.

A fourth group of respondents could not clearly pinpoint any office/official charged with the disbursement of the MPsCF. These included respondents who believed that no monitoring was undertaken on the disbursements or that no officials were clearly mandated to monitor the disbursements.

The study also solicited opinions on the policies, guidelines and processes for disbursing the MPsCF. In all, respondents put across that the policies and guidelines covering the MPsCF were found in the general policies and guidelines for the DACF. They explained that the MLGRD issued yearly guidelines to LGAs on the disbursement and utilisation of the DACF (including the MPs' funds) based on conferred powers in Section 91(1) and 10(3) of Act 462. These guidelines are based on a formula for distributing the DACF proposed annually for approval by Parliament by the ACF in accordance with Section 7a of Act 455.

Respondents from the OACF explained that according to Act 462 and Act 455, the disbursement process for the MPsCF involved transfers through two funds – the DACF and the Reserve Fund. The Reserve fund is a part of the DACF set aside for funding MPs Constituency Projects as well as meeting any emergency expenditure. It is also used by the OACF and the Regional Coordinating

Councils (RCC) in their monitoring and supervision roles. Contrary to public perception therefore, the DACF and the MPs' funds were not distinctly separate funds. Rather, the MPsCF was part of the reserve fund component of the DACF.

Respondents explained that the reserve fund and the MPsCF were not a fixed percentage of the DACF but varied from year to year. This is in contrast to the DACF which, as per Article 252 of the 1992 Constitution, is a pool of resources (not less than 5%) of the nationally generated revenue that has been set aside to be shared among all the LGAs. Rather, the Reserve Fund is a percentage (determined annually) of the DACF which is deducted before the formula for sharing the DACF (designed by the ACF and approved by Parliament) is applied to the remainder. Likewise, the MPsCF was determined annually and varied from year to year (Table 4).

*Table 4: Components of Reserve Fund for 2009 and 2011*

	2009	2010	2011
<b>Reserve Fund</b> (percentage of DACF)	<b>15%</b>	<b>10%</b>	<b>11.8%</b>
MPs' share of the DACF for constituency projects	6%	7%	4%
Regional Coordinating Councils	1.5%	1.5%	1.5%
Office of the Administrator of DACF	0.5%	0.5%	0.3%
Discretionary/emergency reserves held by MLGRD	2%		3%
District Development facility and sanitation programs	5%	0.5%	-
Constituency monitoring and evaluation by MPs	-	-	4%
Cured lepers		0.5%	

Respondents also explained that certain requirements must be met by all LGAs in disbursing the MPsCF, including the creation and maintenance of accounts for all MPs in the LGA, and the submission of monthly fund reports - including cash analysis report, bank statements and reconciliation statements. In disbursing the MPsCF, LGAs are supposed to adhere strictly to the *Internal Audit Agency Act* of 2003 (Act 658), *The Public Procurement Act* of 2003 (Act 663), the *Financial Administration Act* of 2003 (Act 654), the *Financial Administration Regulation instrument* (LI 1802), the *Financial Memorandum for District Assemblies* and other relevant legislations.

Respondents generally agreed that the disbursement was monitored to ensure that projects being undertaken by the MP(s) were in the line with the Medium Term Development Plan of their respective LGAs. Thus, even though the funds are intended for projects of the MPs' choice, projects must fall within the LGAs priority areas based on its Medium Term Development Plan.

### **Monitoring use of the MPsCF**

The study also sought information on how the *use* of the MPsCF was monitored, as summarised in Table 5.

*Table 5: Responsibility for monitoring use of the MPs' share of the DACF*

<b>Responses</b>	<b>No</b>
LGA - LGCE, DCD, DFO, DBO, District Assembly, Internal Audit Unit (IAU), Heads of Department, DPCU, District Procurement Board	10
Office of the Administrator of DACF, MLGRD, GAS, RCC, MoF, CAGD	6
MP – self monitoring	3
All Stakeholders - Community, LGAs, CAGD, GAS, RCC, Internal and external Auditors, MLGRD, Office of the Administrator of DACF, etc	6
<b>TOTAL</b>	<b>25</b>

As shown in Table 5, 10 respondents believed that the monitoring of the use of the MPsCF was done internally by the LGAs. Respondents in this group thought that since the fund was paid into and disbursed from an account managed by officials of the LGAs, the officials of the LGAs had the duty of monitoring use of the funds, or thought that officials of the LGAs were accountable to the Office of the DACF and auditors for all funds including the MPs' funds.

Respondents in this group also explained that LGAs were responsible for monitoring use of the MPsCF based on the MLGRDs Operational Manual for the Implementation and Administration of the District Development Facility (DDF), which requires all LGAs to use disbursements in accordance with Government of Ghana (GoG) procedures. The manual also required LGAs to plan, implement and account for funds in accordance with both the GoG's planning, budgeting and financial management systems and with the Financial Administration Act. Another reason given for LGAs involvement in monitoring was to ensure that the MPsCF were being used in line with the Medium Term Development Plan of the LGA.

These respondents also suggested that monitoring the use of the MPs' funds was done by all those persons and departments in the LGAs who played a role handling the DACF. They mentioned the LGCE, DCD, DFO, DBO, the PM and the Assembly members, the Internal Audit Unit, the DPCU, and the District Procurement Board as key actors in the monitoring.

A second group of six respondents thought that monitoring the utilization of the DACF was done by external institutions, identifying the OACF, the MLGRD, the Ghana Audit Service and the RCC as being the main actors. One respondent in this group explained that, based on Section 9 of Act 455, guidelines for using the funds were provided by the MLGRD in consultation with the MoFEP. Quite apart from providing a guide to disbursing the funds, that section of the Act is also aimed at equipping the MLGRD to exercise its supervisory responsibility over the LGAs expenditure.

One respondent in this group explained that monitoring the use of the MPsCF was done also by OACF, to help the ACF prepare audited Accounts and an Operational Report for Parliament in accordance with Act 455; this was also confirmed by a respondent from the OACF. As the Administrator relied on the monthly expenditure returns of the LGAs to prepare his reports, he had to monitor the use of the DACF and the MPsCF.

Also of importance were opinions that monitoring was done by the RCCs. Respondents explained that the guidelines for the use of the DACF clearly suggested that the RCC was supposed to do monitoring, coordinating and evaluation of activities of LGAs. One respondent further claimed that:

*The RCC is even given part of the reserve fund every year to do monitoring and evaluation of the DACF and its related funds.*

A crosscheck with the DACF utilization guidelines for 2009, 2010, and 2011 confirmed this, and showed that for the relevant years the RCCs were given 1.5% of the Reserve Fund a year to fulfil their statutory monitoring role.

The Ghana Audit Service (GAS) and the Controller and Accountant General's Department (CAGD) were other key external institution involved in monitoring the use of the MPsCF. According to respondents, these institutions received quarterly and annual reports from LGAs on how funds in the LGAs were used. They also came round periodically to conduct audits and do on-site monitoring of fund management and reporting in the LGAs. Respondents also explained that GAS and CAGD monitored the utilization of the MPs' funds as a requirement of the DDF Operational Manual of 2010. According to the manual, the GAS must perform annual operational audits of all LGA and other beneficiary agencies and also perform special audits to address problems identified through regular monitoring. The CAGD per the same document is to produce an annual consolidated financial performance report of LGAs funds, receipts and utilisation to MLGRD.

A third group of three respondents argued that the monitoring was done by MPs themselves rather than by the LGAs or any other external institution. Respondents in this group (two of whom are MPs) explained that even though the fund was for their projects in line with the LGAs' Medium Term Development Plans, they were not directly involved in the management of the fund. As one respondent said:

*The funds are decided by the Administrator of common funds, then they bring it to us in parliament for approval. Afterwards, the administrator transfers the funds into an account created and managed by the LGAs. They make payments for the projects on our behalf and merely ask for a memo authorising the payments*

It was therefore, in their view, imperative that the MP, in whose name and for whose project the funds were allocated, should monitor the utilization of the funds to ensure that the right payments are being made. Additionally, they believed that the MPs' function should be to ensure that the service or assignments concerned were being properly executed. The other member of this group, who was from

the Audit Service, also said that MPs should do monitoring and supervision of the projects. This assertion was confirmed by the 2011 guidelines for disbursing and utilising the DACF which included 4% of the Reserve Fund for constituency project monitoring and evaluation by MPs.

The final group presented a case for a holistic approach to monitoring the utilization of the MPsCF. Respondents in this group explained that monitoring was done not by internal or external institutions together but involved all stakeholders of the MPs' funds. Thus each and every stakeholder had a role to play in the monitoring process. The key stakeholders they identified include all the internal and external institutions identified above. It also included the Steering Committee of the DDF and the community members.

### **Policies and guidelines**

Respondents were also asked about policies and guidelines for the use of the MPsCF (Table 6)

*Table 6: Policies and Guidelines for Using MPs' share of the DACF*

<b>Responses</b>	<b>No</b>
The project selected and approved must be one that meets a critical need of the community	10
The project must meet the approval of the LGCE	6
The project must fall within the MTDP of the LGA	6
Not sure / no guiding policy or process	3
<b>TOTAL</b>	<b>25</b>

Even though respondents were unable to identify any policy document, 10 thought that the projects selected and funded by the MPs in their LGAs were guided by the needs of the community. As one respondent explained:

*Once the money has been put under the directive of the MP no one can dictate to him what project to undertake with the money. The only issue is that he must ensure that the project addresses a need in the constituency*

Thus, the only guide available to the MP in using his or her share of the DACF was making sure the project met a need in the community.

Six other respondents were also of the view that it did not matter whether the project met a need or not, but the project should meet the approval of the LGCE. They explained that usually, the account into which the MPs' funds were paid was not managed by the MP. Rather, it was managed by the LGA and payment was made out of the account only on the approval of the LGCE. So even if the project meets a need but does not meet the approval of the LGCE, it will not be funded and *vice versa*. Thus, MPs had to ensure that their met the approval of the LGCE. This situation, according to a respondent from the Audit Service, has been the cause of conflicts between many MPs and LGCEs, especially when they are from different political parties. As she explained

*In one District we worked, an MP (who was from the opposition) chose a project that met a need of the District but did not meet the approval of the LGCE (who was from the ruling Government). The LGCE said he would not approve the project because there were other projects being undertaken by the government and he expected the MP to channel his share of the common fund to complete those projects. The MP on the other*

*hand claimed that the LGCE was just being petty was afraid that the MPs project would attract recognition which would translate to votes for the opposition. Also, the LGCE wanted people to think that he (the MP) had done nothing for the constituency but the ruling government through the LGCE were the ones that were developing the constituency.*

As a result, MPs' main criterion had to be to ensure that their projects met the LGCEs' approval. Other respondents in this group also explained that the LGCEs approval was paramount in guiding use of the DACF. However, most LGCEs were frustrated by the MPs with regards to their choice of projects because they (LGCEs) had aspirations of contesting the seat of the MP. Thus by denying the MP his or her funds for development, the MP would become unpopular and lose support in the constituency. Currently, MPs are advocating that they be given direct access to their share of the DACF, rather than through the LGAs, because of these problems.

Another key determinant of the utilization of the MPs' funds was the fact that it had to be in line with the priority areas raised by the MTDP of the LGA. The six respondents who shared this opinion explained that the choice of project was determined more by the MTDP than by the MP or LGCE. The MTDP encapsulates the strategic development initiatives needed by the LGAs to achieve the local level goals of the National Development Policies (NDPs) and the Millennium Development Goals (MDGs). This was confirmed by the guidelines for the utilization and disbursement of the DACF between 2009 and 2011 which points out that projects selected to be funded by the MPs using their share of the common fund must be based on the LGAs MTDP.

### **Key findings**

The key findings of the study indicate that there is no specific legislative instrument on the nature, management and accountability of the MPs' share of the DACF. However, the procedures and principles in governing the DACF in general were applied to the MPs' funds. Inferences and processes for monitoring the MPs' funds were drawn from the:

- *Internal Audit Agency Act* of 2003 (Act 658)
- *Public Procurement Act* of 2003 (Act 663)
- *Financial Administration Act* of 2003 (Act 654)
- Financial Administration Regulation instrument (LI 1802)
- Financial Memorandum for District Assemblies of 2004
- *Local Government Act* of 1993 (Act 462), the *Local Government Service Act* of 2003 (Act 656)
- *District Assemblies Common Fund Act* of 1993 (Act 455), and the 1992 constitution of the Republic of Ghana.

However, the most authoritative documents guiding the disbursement and use of the funds were the annual DACF guidelines issued by the Office of the Administrator of the DACF and the MLGRD.

Clearly monitoring of both the disbursement and use of the MPs' share of the DACF was shared between internal and external stakeholders. The internal actors included the Chief Executive, the coordinating Director, the Finance Officer, the Budget Officer, the Presiding Member, the Assembly Members, the Internal Audit Unit, the Planning and Construction Unit, and the Procurement Board of the LGAs. The External stakeholders included the District Development Fund's Steering Committee, community members, MPs, the MLGRD, the CAGD, the Ghana Audit Service, the RCC, the Administrator of the DACF, and Parliament's Public Accounts and Local Government and Rural Development Committees

The study also found that there were issues with regards to the disbursement and use of the funds arising from the relationship between the LGCEs and MPs. In instances where the MP and the LGCE had a good working relationship there were few hindrances. However, where there was a rift between the MPs and the LGCE, there were likely to be challenges in the funding mechanisms. Also of importance was the politicisation of the disbursement and utilization of the MPs' share of the DACF. Though this was common where the MP and the LGCE belonged to different political parties, problems also existed between LGCE and MPs of the same political party, particularly where the LGCE aspired to stand as MP in the next General Election. Sitting MPs sometimes alleged that the LGCEs were frustrating the disbursement and use of the funds to deprive them the ability to undertake development projects in their constituency, letting them fall out of favour with the electorates.

Other key issues uncovered by the study were the delays in the disbursement of the MPs' share of the DACF, the inadequacy of the fund, capacity issues of those involved in disbursing and utilizing the MPs' funds and the restrictions imposed on the MPs by the MTDP of the LGAs.

## **Conclusions**

The MPs' share of the DACF plays an important role in local economic development in LGAs in Ghana. Despite its importance, the management of the MPs' funds is still under debate with key issues bordering on disbursement, utilization and accountability of the funds. To maximise the benefits derived from the use of the MPs' funds immediate attention must be paid to enacting legislation to govern the management of the MPs' funds and give it the needed legitimacy. Such a step will resolve the debate on the essence and quantum of deductions made on the DACF before disbursement and also spell out the respective roles, likely conditions and applicable sanctions for all parties involved in the Management of the MPsCF

Quite apart from that, serious attention must be paid to addressing the paucity of capacity within the institutions in charge of monitoring the utilization and disbursement of the fund. Other issues that need immediate attention include resolving the ensuing turf wars between LGCEs and MPs, addressing the delays in the disbursement of the Fund, and as a long term measure, enhancing the

internal revenue generation of LGAs to reduce their continuous dependence on the DACF and in effect the Central Government.

Even though the study was limited by the sample selected, it still holds broad implications for management of the DACF and the broader subject of Local Government Finance in Ghana. The study also confirms earlier studies that point strongly to political influences in the allocation, disbursement, utilization and accountability of Local Government Funds. Further, the study lays a foundation for further exploration on the application of the Public choice theory in explaining the motivations of all key stakeholders involved in the management of the DACF and other local government resources in general

### Abbreviations

ACF	Administrator of Common Fund
CAGD	Controller and Accountant General's Department
DACF	District Assembly Common Fund
DBO	District Budget Officer
DCD	District Coordinating Director
DDF	District Development Facility
DFO	District Finance Officer
DPCU	District Planning and Construction Unit
GAS	Ghana Audit Service
ILGS	Institute of Local Government Studies
LGA	Local Government Authority
LGCE	Local Government Chief Executive
MDGs	Millennium Development Goals
MLGRD	Ministry of Local Government and Rural Development
MoFEP	Ministry of Finance and Economic Planning
MPsCF	Members of Parliament share of the Common Fund
MPs	Members of Parliament
MTDP	Medium Term Development Plan
NDP	National Development Policy
OACF	Office of the Administrator of Common Fund
PM	Presiding Member
RCC	Regional Coordinating Council

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## Constitutional Democracy and Caretaker Committee in Nigeria Local Government System: An Assessment

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### Abstract

*The 1976 Local Government Reform among other landmark changes unified the local government system in Nigeria, and the 1979 constitution made local governments the third tier of government and provided for a system of local government by democratically elected councils. More recently, elected local government councils have been dissolved and replaced with Transition Committees or Caretaker Committees appointed by the Governors' of their respective states. This paper therefore, examines the impact of the caretaker committees in Nigerian Local Government on the practice of constitutional democracy. The discussion is framed by the theoretical perspectives and Nigerian literature on local government and constitutional democracy, and by the recent phenomenal wave of dissolving elected local government councils and subsequent replacement with caretaker committees. Contrary to popular belief, that local government as the third tier of government has failed to achieve the objective for which it was created, this paper observes that party politics has been the bane of Nigerian local government since its inception, and that democratically elected local councils with political and financial autonomy are the major conditions for an effective and efficient multi-purpose local government system in Nigeria.*

**Key Words:** Constitutional democracy, local government, caretaker committee, party politics, development

## Introduction

In recent years, local government in Nigeria has been described as a failure, non-performing, and corrupt. This paper attempts to encapsulate the many challenges of socio-political and economic development that have confronted local government. It is against this backdrop that the governors of the various states decided to dissolve elected local councils and set up in their place, caretaker or transition committees to oversee the affairs of the local governments, contrary to the constitutional provision that established local governments as democratic entities.

The questions now are: how has the caretaker-committee system that has supplanted legal local government affected Nigeria's democratic experiment; how has party politics impacted on grassroots democracy, and how has the caretaker committee system impacted on the lives of local people? While some authors emphasize corruption and bad leadership as the cause of the failure of local government, others accuse state governments of truncating grassroots democracy and looting local government accounts but, with the exception of a few newspaper and magazine commentaries, there are few empirical studies that examine either how party politics hinders grassroots democracy in local government and hinders local development, or the impacts of the caretaker-committee system of local government on local residents.

An efficient and effective local government system is the foundation of any nation. Quoting Tocqueville, Nwachukwu (2000) wrote:

*Municipal institutions (local governments) constitute the strength of a free nation.... A nation may establish a free government, but without municipal institutions it cannot have the spirit of liberty.... Man creates kingdoms but townships seem to spring from the hand of God (p.15).*

In the same vein, Sir Arthur Creech Jones in his confidential dispatch to the Governors of British African territories as quoted by Rowland and Humes (1969) wrote:

*I believe that the key to success lies in the development of an efficient and democratic system of local government. I wish to emphasize the words efficient, democratic and local. I do so not because they import any new concept into African administrations; indeed, they have been the aims of our policy for many years. I use the words because the system of Government must be close to the common people and their problems, [provide] local services in a way which will help raise the standard of living; and be democratic because it must not only find a place for the growing class of educated men, but at the same time command the respect and support of the masses of the people.... (vol III, No. 3)*

Nigerians have continuously aspired for democracy in the belief that only leaders who are democratically elected can be responsible and responsive to their needs (Abonyi, 2011).

The first part of this paper provides a brief overview of the democratic local government system in Nigeria, briefly analysing the caretaker-committee system of local government in Nigeria and its impact on constitutional democracy and grassroots' development, and impact of party politics on grassroots democracy. The second part examines case studies of local governments in different states

of the federation. The case studies are based on 275 interviews with local government officials, members of caretaker committees, and residents, in seven local authority areas in four different states of Nigeria, and observations of the functioning of the caretaker committees in different states.

### **Democratisation of the Local Government System in Nigeria**

The search for an effective and efficient local government system based on democratic principles has been a long one in Nigeria. This paper starts from 1950, when the first mainly elected local government councils based on the British Whitehall model took place in Lagos and the former Eastern and Western regions. The legal framework for local government was then provided by the Eastern Regional Local Government Ordinance, 1950, the Western Regional Local Government Law, 1952 and, the Native Authority Law of Northern Nigeria, 1954. The councils were granted wide-ranging functions which included primary education; health, police, judiciary etc., and enjoyed some autonomy in the areas of finance, personnel and general administration (Otiye, n.d.).

The 1976 local government reform was a landmark achievement in the democratization of local government in Nigeria. The reform unified local governments as the third tier of government in Nigeria. This was enshrined in the 1979 Constitution, which guaranteed the system of local government through democratically elected councils (Ogunna, 1996; Nwachukwu, (2000).

In an attempt to return Nigeria to a democratic order, the military Babangida administration reintroduced elected local government councils in December 1987. The election had a low turnout but was relatively peaceful and orderly. The military Abacha regime in March 1997 organised local government elections on a non-party basis.

Nigeria finally returned to democratic rule in May, 1999, and the 1999 Constitution, under which the present government operates, guarantees the existence of local government by democratically elected council (Adejo, 2004). The tenure of local governments was not provided in the Constitution, but Decree No. 36 of 1998 provided for a three year term for elected local government officers. The three year tenure was later vitiated by Section 7(1) of the 1999 Constitution of Nigeria as amended, which empowers every state government, subject to Section 8 of the Constitution, to legislate for the existence, establishment, composition, structure, finance and functions of their local councils (Federal Government of Nigeria 1999). This constitutional provision places the local councils under the blanket control of state governments.

As a result of this provision, most local governments are run by non-elected officers appointed by state governors to serve in 'transition' or 'caretaker' committees, contrary to provision in the 1999 Constitution (s.7:1). Against this backdrop this section reviews existing literature on the democratization of local governments in Nigeria. Hence, Abbas and Ahmad (2012) suggest that the creation of local governments in Nigeria was a deliberate attempt to ensure maximum participation of

citizens in the development process and to make local government more responsive to aspirations of local communities:

*This was therefore a deliberate attempt to inject a decentralized approach towards national integration, efficient and effective governance, creating a sense of belonging at the grassroots. Thus, the local government system was designed to be a means for ensuring effective democracy at the grassroots level because it is the level of government closest to the people and by implication it is the most critical in engendering good democratic cultures and values, effective participation in the process of development at the grassroots with the possibility of filtering up to the national level (Abbas & Ahmad, 2012, p. 98).*

Thus local government is seen as both a nursery for democracy and a place for grooming national leaders,

Musa (2001) observes that the requirement for democratically elected councils is clear in the 1999 Constitution but has been turned into something else by state government:

*The democratically elected local council is clearly what is envisaged by Section 7 of the Constitution. Yet, the local government council has practically turned into a caretaker council imposed by state governments.... In many cases, caretaker ship is perpetuated through promise of elections which are invariably postponed.... If the outright denial of democratically elected local councils through caretaker committees demonstrates the increasing authoritarian holds of the councils by state governors, the case of those where elections manage to hold does not give cause for cheers. (pp. 9-10)*

Senator Uche Chukwumerije, who was elected as Senator in 2003, observes, ‘*of all the motives, primarily economic development, planting democracy at the grassroots is a consistent theme*’. He argues that efforts from 1970 to 1979 focused on freeing local administrations from anti-democratic hurdles and establishing a uniform national pattern of administration, and maintains that ‘*the local government system is and should be the founding blocks of an enduring democracy*’ (Chukwumerije, n.d.)

Abbas (2011) sees local government as a critical factor or structure for the realisation of grassroots democracy in Nigeria. For him;

*The system of local government is considered as a lynchpin for the realisation of grassroots democratic politics and rural transformation. Reforms on local government in Nigeria have featured since formal political independence. But the current situation in local government throughout the country is characteristically chaotic as the envisaged primary activities to be performed by them have almost melted away, thus leaving majority of the people completely disillusioned.*

The above reflects the dismay expressed by some respondents in this study, particularly in Anambra State where they thought that the Governor, Mr. Peter Obi who resorted to legal battle to claim his mandate, would have conducted a local government election in the state but to no avail. For Yusuf (2008):

*Local government councils are expected to play a critical role in the democratization of their administrations and communities.*

He attributes the failure of local governments to provide fertile grounds for democracy to state and national governments.

## Caretaker Committees and Constitutional Democracy

Although, the caretaker committee system of local government is not mentioned in the Constitution, the system has remained common in the history and evolution of local government in Nigeria. Despite provisions for democratically elected councils in the 1979 Constitution, during the Second Republic in all the states of the federation local governments were run by caretaker committees consisting of party loyalists appointed by state governors. This caretaker model of the Second Republic gave way to the sole Administrator model when the military took power in 1983 (Ogunna, 1996, p. 116).

Section 7(1) of the 1999 Constitution states thus:

*the system of local government by democratically elected local government council is under this constitution guaranteed; and accordingly, the government of every state shall subject to Section 8 of this Constitution ensure their existence under a law which provides for the establishment, structure, composition, finance and functions of such councils.*

However, the Governors of some states of the Federation exploited the loopholes created in Sections 7 and 8 of the 1999 Constitution, and the failure of the Constitution, the electoral laws or even the National Assembly to state the tenure of elected council officials, thus inhibited the development of grassroots democracy. At the time of writing, 25 out of the 36 states of the Federation have local governments run by caretaker committees appointed by the relevant Governors. Hence, 617 out of the 774 local governments in Nigeria are run by caretaker committees, while only the remaining 157 have elected councils.

In addition to Section 7 of the 1999 Constitution, Section 1(2) of the Constitution also states:

*The Federal Republic of Nigeria shall not be governed, nor shall any person or group of persons take control of the government of Nigeria or any part thereof except in accordance with the provisions of this Constitution.*

Sub-section 3 of the Constitution states that:

*If any other law is inconsistent with the provisions of this Constitution, this Constitution shall prevail, and that other law shall to the extent of the inconsistency be void.*

Despite the provisions of the Constitution which the Governors swore to uphold as contained in the seventh schedule to the 1999 Constitution, they have violated Sections 1(1), (2) and (3), and Section 7 of the Constitution. This amounts to acts of gross misconduct. The question is why the state Governors and Houses of Assembly have failed to obey the law? Why have they refused to conduct local government elections? In a democracy, leadership succession is expected to follow some clear process of democracy. Leaders should normally emerge freely through party congresses and general elections but the reverse is the case in selecting local leadership in Nigeria. Even where elections have been conducted, Governors may deliberately force the tenure of local government chairmen to lapse early, to pave way for the Governors to appoint loyalists as caretaker committee chairmen to deliver their local government votes to the ruling party (Abbas & Ahmad, 2012, P. 103).

Quoting Orewa, Aluko (2010) argues that:

*A serious point against nominated committees of management particularly in a civilian regime is that the Government party may misuse the system to keep its supporters indefinitely in control of local government. This is to frustrate the opposition parties and use the interregnum to strength its party organisations at the grassroots through patronage which is provided by local governments in the form of contracts, job orders, junior staff appointments and promotions and such appointments touch sensitive positions ...*

The point here is that state Governors can do anything to ensure that their party hangs onto power without leaving any chance to the opposition party.

Senator Uche Chukwumerije points out that:

*In the business of election of representatives – government by the people – the most casual observations suggest that the people, the electorates, make no input into local government elections. Recruitment of representatives follows a general pattern nationwide: selection of favourites by a godfather/godmother or a little conclave which exercises proprietary control over a ruling party; next the executive governor which exercises proprietary control over the government machinery (including the electoral regulatory body) gives his final anointing....*

*In elections, governing state regimes expect their captive local governments to DELIVER their local government constituencies for the ruling state party. In turn the ruling party in the Federal centre expects its installed state governments to DELIVER their state constituencies for the ruling Federal Party. Thus, the chain of mafia-like inter connections in a national network of electoral rigging is rooted in local government cartels which control the grassroots.*

The above exposes the nature of party politics in Nigeria and the reason for the lack of constitutional democracy at the grassroots.

Discussing party politics and Democratic Governance in Nigerian Local Government Administration

Nyewusira and Kennet (2012) wrote that:

*Participatory democracy and political responsibility promoted by the 1976 Local Government Reforms can only be achieved within the realm of party politics. The control of local government apparatus was now seen as crucial for electoral success of a political party because it provides the necessary grassroots base for effective control of the state and federal government machineries (pp. 164 – 165).*

They maintained that the influence of party politics undermines rather than enhances the political functions of local government.

Baadam (2004) further maintains that:

*Threats to democracy in the local government system have not come from members of the armed forces who have nothing but contempt for democracy, but rather from professional politicians and groups in the various political parties, who engage in criminal manipulation of the electoral process in order to win elections of the local levels, take power and then manipulate the mechanism of democracy to destroy democracy at the grassroots (p. 16).*

Thus explains how politicians who are supposed to be democrats behave undemocratically in an attempt to maintain their hold onto power.

## Case Studies of Local Government Caretaker Committees

Nigeria has 36 states, a Federal Capital Territory and 774 local government councils. The 25 states with caretaker committees for local government include: Abia, Adamawa, Akwa-Ibom, Anambra, Bauchi, Benue, Borno, Delta, Edo, Ekiti, Gombe, Imo, Kano, Kaduna, Katsina, Kebbi, Kogi, Nasarawa, Ogun, Ondo, Osun, Oyo, Plateau, Yobe and Zamfara. The 157 local governments led by an elected chairmen, represent just 20% of the local governments in Nigeria. Following the House of Representatives' order in 2012/13 that State Governors should conduct council elections, Ogun State conducted council elections, and other states have indicated their readiness to follow suit.

The case study focuses on seven local governments in Anambra, Imo, Edo, and Gombe States, selected to represent different political parties and different geographical areas. Due to the paucity of other research and analysis of the caretaker committees, the analysis is based on responses gathered from interviews conducted and personal observations. Questions explored how the caretaker committee system affected the practice of constitutional democracy and the lives of the local people, and how party politics affected grassroots democracy.

### Anambra State: Onitsha North Local Government Council

Onitsha North, Anambra State, is an urban local government with sizeable internally generated revenue (IGR). In Onitsha North 40 people were interviewed, including: 15 local government staff; 5 members of the caretaker committee, and 20 residents in the local government area, including businessmen and public and private sector workers. 37 respondents representing 93% of council and resident respondents (excluding caretaker committee members), expressed their disbelief over the manner in which the Governor Mr. Peter Obi has handled local government elections.

Some of the respondents argued that there is no effective Constitution in Nigeria, and that the Constitution is made for the poor to obey, one arguing that: *“If we have Constitution, why are the Governors not being impeached for violating the Constitution”*. Some 32 respondents representing 80% of the respondents (excluding caretaker committee members) maintained that democracy cannot grow because the people at the grassroots are excluded, and that if you want to be a politician, you have to go to state or federal level because there is no democratic structure at the grassroots.

Most of the respondents do not understand what party politics means, and only saw what is happening as fear of losing grassroots structure. They cited the loss of seats at the Senate and House of Representatives by the All Progressive Grand Alliance (APGA) to illustrate their points. They maintained that if a local government election is conducted that APGA will lose Anambra State.

The respondents were almost unanimous on the lack of impact of caretaker committees on improving living conditions in the area: 38 respondents representing 96% of the respondents said that nothing

was moving in the local governments, neither business activity, nor development projects. A local government officer said that:

*We are only here to receive our salary at the end of the month which is paid only when the Governor approves of it.*

On the way forward, 38 people (96% of respondents) maintained that things can only improve when local government is freed from state control, and its financial transfer comes directly from the federal government. They argued that local governments cannot execute projects because there is no money for capital development, only for recurrent expenditure and payment of salaries.

### **Anambra State: Idemili South Local Government Council**

In Idemili South, the story was not much different. Unlike Onitsha North, Idemili South is a rural local government with limited internally generated revenue (IGR). 40 people were interviewed including: 15 council staff; 5 members of the caretaker committee and 20 residents. Most of the respondents thought that “*nothing is happening here*”; as one said:

*Do you see the politicians here now? You can't see them unless it is during month end when they come to share the little money that comes in.*

On constitutional democracy, 32 respondents representing 80% of those interviewed were sceptical, and one said that if this is what is called democracy that it should 'go to hell'. On party politics, 34 respondents representing 85% were critical - typical quotes were as follows:

*If this is what is called party politics, it doesn't go well with the type of democracy we know.*

*Must one party occupy every position?*

On the way forward, they thought that states should leave local governments to their own activities, and that the federal government should stop paying local government allocation into the joint account. However, the Governor, officials and the spokesman of the state House of Assembly and caretaker committee members attributed the persistent failure of the state government to conduct local government elections to the destructive activities of opposition parties and several cases on local government affairs pending in courts of competent jurisdiction. They confirmed that as soon as the litigants withdrew their law suits the local government election would be conducted.

### **Imo State: Ideato North Local Government Council**

There is a general feeling of disappointment among the local government staff. Some 35 persons were interviewed including: 5 members of the caretaker committee, 15 local government staff and 15 residents. The respondents at Ideato North LGA maintained that nothing is happening in the area, because there is no fund with which to do anything.

Speaking on constitutional democracy, 28 out of the 35 respondents (80% of the Ideato sample) maintained that what is happening in Imo State is not democracy, as in a democracy leaders are elected by the people.

On party politics, 31 people (90% of respondents) believe that what is happening in Imo is that Governor Rochas Okorocha, elected in 2011, wants to secure grassroots support because his party, APGA lost woefully in the 2007 local government election conducted under Governor Ikedi Ohakim of the People's Democratic Party (PDP). So to ensure of a second term in office, he has to capture the local governments by hook or crook. One of the respondents said that:

*All this propaganda he is spreading is nothing. Let him conduct a local government election if he is doing well.*

On the impact of the caretaker committee on the living conditions in the area, 30 people (87%) said that the caretaker committees have no impact because they are not doing anything. As one said:

*They are not elected by the people. They are not responsible and accountable to the people and they have no money to do anything except to pay salaries of workers.*

Most of the respondents in Ideato North maintained that the only way forward is to allow local governments' adequate freedom to initiate and execute projects of their choice based on the need of the localities.

### **Imo State: Owerri Municipal Local Government Council**

There was a different reaction in Owerri Municipal Council, and it was mainly council staff that did not like what was happening. Of the 50 respondents selected for interview: 20 were local government staff; 10 were members of the caretaker committee, while 20 were other residents. Residents were full of praise over what the Governor was doing, and 25 of the 50 respondents (50% in Owerri Municipal Council) believed that local governments could not do what the Governor is presently doing in Imo State, although 80% still expressed reservation about the level of democracy achieved.

In the words of one respondent:

*Yes we are in a democracy and things should be done according to the Constitution. The time of the military has gone. We don't have to do something that will bring them back. We have to do things according to law.*

On party politics, even though the PDP (People's Democratic Party) government under Ikedi Ohakim, conducted local government elections, there was a general loss of confidence and respondents wanted APGA to continue. In the words of one respondent:

*We like it like that, Rochas will continue. From 1999 to 2011, PDP could not achieve what Rochas has achieved within one year.*

### **Edo State: Egor Local Government Council**

There is generally different reaction in Edo State, where 40 people were interviewed including: 15 council staff; 5 members of the caretaker committee and; 20 residents. Some 36 (90% of respondents in Egor council) are in support and full of praises for Governor Oshiomhole and his Action Congress of Nigeria (ACN).

On constitutional democracy, 36 (90%) argued that it is not only in Edo state that caretaker committees exist. In the words of one respondent:

*It is not only in Edo that they have caretakers. Go to Anambra, Abia, Ogun State, even in the North. It is everywhere.*

On party politics, the respondents seemed comfortable with the dissolution of the local governments. Some 35 (87%) maintained that instead of PDP coming to power again in the state, caretakers should continue. If it were possible and easy for them to remove the PDP members in the state House of Assembly, they would do that to ensure that the last remnants of PDP in power in the state are totally eliminated. Speaking on the impact of the caretaker committee, one of our respondents said:

*They are doing well because our comrade Governor is doing well?.*

### **Edo State: Orhionmwon Local Government Council**

In Orhionmwon council area, 30 people were interviewed including: 5 members of the caretaker committee, 10 local government staff, and 15 residents. The responses from respondents in Orhionmwon were similar to Egor. Out of the 30 respondents, 90% expressed confidence in the system irrespective of its constitutionality, as a result of their loss of confidence in the former PDP-led government in the state. Some 87% of respondents also argued that Edo is not the first place that had caretaker committees and will not be the last. However, because Orhionmwon is a rural local government, the few on-going projects are being executed by the state government.

### **Gombe State: Gombe Local Government Council**

In Northern Nigeria there is a general problem of insecurity, and this is one reason given by people in the area for the failure of Governors to conduct local government elections; Gombe State is not an exception. Of the 40 people selected for interview, 10 were members of the caretaker committee, 10 were local government staff, while the other 20 were residents.

However, the research suggests that in Gombe Local Government, people would be willing to exercise their franchise in spite of the security challenges. Some 38 people (96% of Gombe respondents) are totally against the caretaker committees. One of our respondents said:

*It doesn't help us at all. We elected them but they don't want us to elect others. It is not good at all.*

Another respondent said:

*Our democracy is going down because there is no democracy at the base.*

On party politics, 34 people (86%) are against the manner in which the chairmen of committees are appointed. They complained that the Governors appoint only their relations, friends and party members as caretaker chairmen and that because one party controls the key machinery of government, checking corruption is difficult. A respondent said that:

*If an election is conducted, other parties will win some chairmanship seats and councillorship seats and this will bring competition and there will be development.*

Some 28 people (70%) believed that caretaker committees could not have a significant impact on the lives of the local populace because they do not have power and finance to do any significant development projects; 36 people (90%) respondents maintained that nothing short of a competitive election could help in consolidating democracy and institutionalizing democratic culture in the country.

### **Differences of opinion**

The research shows that a majority of the interviewees, mostly career council officials and local residents, thought that the caretaker committee system violates the Constitution, and destroys grassroots democracy. The 45 caretaker committees members interviewed saw the system as legitimate, because the legal framework is provided by the State Houses of Assembly in accordance with section 7(1) of the 1999 Constitution (as amended), and hence the system contributes positively to the consolidation of democracy at grassroots. Responding to the question on how party politics affects grassroots' democracy, 200 respondents maintained that fear of losing an election can make a council boss to work hard, but where there is no competitive election, the chairman is free to do as he likes. Furthermore, the caretaker committee system has become a conduit for corruption by state governors to siphon off council funds.

Seventy-five respondents, who were from Edo and Imo States where people have lost confidence in the PDP, saw nothing wrong with the nature of party politics at the grassroots. All the caretaker committee members who were beneficiaries of the system supported the nature of party politics. Some 205 respondents (mainly council officials and residents) thought that the caretaker committee system did not impact positively on the lives of the local populace, while 70 respondents (mainly caretaker committee members) thought that the system was positive for residents.

### **Conclusion**

The continued existence of local governments as the third tier of government in Nigeria has remained a controversial issue in political debates. The antagonists have accused the local governments of corruption, inefficiency, and ineffective development agendas. In this context the paper views the

caretaker committee as an experiment towards the scrapping local governments as the third tier of government in Nigeria.

The paper first examines the existing literature on democratization of local governments in Nigeria; caretaker committees and constitutional democracy; party politics and; the impact of the caretaker administrations on the lives of the local populace. Based on the existing literature and interviews with 275 people –100 council career officials, 45 members of caretaker committees and 130 residents – across seven local councils in four states, the findings of this paper indicate that there is a general desire of the people at the local government areas for genuine democratic governance. This paper also found that the image of non-performance on the part of local governments created by the state is a mirage and not a reality. The local governments, if allowed and with adequate resources, may be a better driver of grassroots development in Nigeria.

The findings of the paper also show that the caretaker committee system of local government endangers the base of local democracy in Nigeria and cannot impact positively on the lives of the local populace.

Our finding also shows that the nature of party politics pursued by state governors is a major contributing factor to the failure of local governments. Governors use strategies such as dissolution of elected councils to maintain dominance over other parties, thereby creating the needed opportunity for looting local government funds by the states. It is therefore the position of this paper that party politics is at the centre of the failure of local governments to provide for democratic consolidation.

This paper also found that there is a growing political desire for democratic consolidation, which requires democratic structures at the grassroots, and that the overall development of Nigeria is a function of grassroots democracy. The caretaker committee system is unconstitutional, undemocratic and therefore antithetical to any imagined or real development of the grassroots in Nigeria.

Therefore, to make local governments efficient and effective in the discharge of their functions, this paper recommends as follows;

1. That local governments as the third tier of government should be strengthened constitutionally by removing the clause in the Constitution which places local governments under the blanket control of the state governments;
2. The legal provisions for the state / local government joint account should either be abrogated or alternatively, the Constitution should prohibit state governments from making any deductions from the account. This has been a major contentious issue in state–local government relations. According to Uzundu (2011): *‘under the state/local government joint account, only salaries and overhead costs of between three to five million naira are released to local government councils, while the bulk of the funds are retained by the state’*. The

present joint account regime makes local governments orphans and appendages of the state government and subject to all forms of abuses by the governors of various states;

3. Electoral contests at the local level should be made competitive between and or among political parties; chairpersons and members of State Independent Electoral Commission should be appointed from the representatives of registered political parties, civil societies and labour, and funding of the Commission should be placed on the first line charge in order to ensure its independence and financial autonomy.
4. Institutional mechanisms to promote transparency and accountability at the local government level should be put in place;
5. There should be no immunity for a sitting local government chairman.

In conclusion, therefore, the nature of party politics played by the state governors at the local government level in order to maintain power violates democratic principles. It hinders local governments from performing their functions, thereby destroying democracy and development from its base. Competitive elections, political and financial autonomy commensurate with its status as the third tier of government are the essential prerequisites for effective and efficient multi-purpose local government system in Nigeria.

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