

Constitutionalising Corruption: Malawi MPs' Bid to Control CDF

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Introduction

The Constitution (Amendment) Private Member's Bill, No. 2 of 2025 introduced by Hon. Emmanuel Chambulanyina Jere, MP for Mzimba South Constituency, seeks to insert a new Chapter XIVA into Malawi's 1994 Constitution. This chapter would constitutionally entrench the Constituency Development Fund (CDF), defining its establishment, sources, purposes, governance, and guiding principles. The CDF, introduced in 2006 as a mechanism to channel central government resources directly to constituencies for local infrastructure and community projects, has long operated under ministerial guidelines rather than constitutional or statutory backing. The Bill's explicit provision in Section 151C, assigning responsibility for CDF governance to Members of Parliament (MPs) arrives amid significant judicial, Constitutional, and statutory tensions.

Historical and Legal Context of the CDF

The CDF emerged in 2006/2007 as a fiscal transfer tool to address uneven rural development and empower MPs to respond to constituency needs, starting with an initial allocation of MK1 million per constituency. By 2024/2025, allocations had risen to MK220 million (with proposals for MK5 billion in 2026/2027), reflecting its growth into a significant devolution instrument. However, its administration, largely under 2022 guidelines, has faced persistent criticism for weak accountability, MP favoritism in contractor selection, and substandard projects, as documented in audit reports and Afrobarometer surveys (e.g., 72% of Malawians perceive CDF as benefiting politicians over communities).

Legally, the CDF lacks a dedicated statute, relying on guidelines that the landmark 2025 Constitutional Court ruling in *MALGA v Attorney General* invalidated for enabling MPs to select, implement, and monitor projects. The court emphasized that such roles compromise MPs' legislative oversight under Section 66 of the Constitution and violate Section 5(1) of the Local Government Act, which previously granted MPs ex-officio voting rights in councils, a provision now struck down. The Attorney General's appeal to the Supreme Court underscores ongoing contention, but the High Court's decision remains binding pending resolution. This backdrop renders the Bill's timing politically charged: as MPs have conspired to reclaim CDF control via legislation, potentially circumventing judicial intent.

Key Provisions of the Bill include section 151C which assigns governance to MPs "notwithstanding any provision under Chapter XIV," as prescribed by Act of Parliament; and, section 151D which claims citizens democratic empowerment through governance principles of transparency, accountability, efficiency, community ownership, and empowerment.

The proposed Constitutional amendment presupposes a gap in constitutional law, promoting subsidiarity (decisions at the lowest effective level), and enhancing community agency. Proponents argue that it harmonizes CDF with the Constitution by elevating it from guidelines to entrenched rights, potentially drawing from models in other countries where CDFs are statutorily regulated.

Inconsistencies with the Constitution

Malawi's Constitution under Chapter XIV embeds decentralization as a foundational principle, with clear declarations in terms of establishment, devolution and provision of enough resources for effective and efficient service delivery under their jurisdictions, underscoring fiscal autonomy. The Bill's insertion of Chapter XIVA creates structural dissonance, undermining decentralization. By vesting CDF governance in MPs, the Bill contradicts the devolution imperative. CDF funds, derived from national appropriations are inherently "devolved" resources for local use. Assigning control to MPs bypasses local councils who are primary duty bearers. This is fragmenting governance and diluting councils' constitutional mandate to formulate and execute district development plans. This risks a "parallel structure" of development, where constituencies overlap with but supersede local councils, eroding the territorial integrity of local government. Section 12 of the Constitution promotes accountability and transparency principles echoed in Section 151D of the proposed amendment but hollowed by MP-centric governance. Empirical evidence from Afrobarometer (2025) shows 43% of Malawians favor village/area committees over MPs (25%) for fund management, aligning with constitutional participatory ideals but clashing with the Bill's top-down approach.

Section 5 of the Constitution states that any law inconsistent with the Constitution is invalid. The Bill's "notwithstanding" clause in Section 151C explicitly overrides Chapter XIV, inviting invalidation unless it demonstrably advances devolution, a threshold unmet, as MP control centralizes rather than disperses power.

Inconsistencies with the Local Government Act and Decentralization Policy

The Local Government Act (1998) operationalizes constitutional decentralization, establishing local councils as corporate bodies with enumerated powers under Section 6 and the Second Schedule. Key functions include, promoting infrastructural/economic development via district plans, mobilizing resources for governance/development and Making by-laws for local good governance. Councils receive transfers via the National Local Government Finance Committee, ensuring composite budgeting for devolved functions like health, education, and infrastructure, precisely CDF's domain. The 1998 Decentralization Policy reinforces this, aiming to "devolve powers... to elected Local Government Units" for subsidiarity and citizen participation.

The Bill's inconsistencies are stark

Bypassing local council authority, Section 151C empowers MPs to govern CDF "as prescribed by an Act," potentially via future legislation that sidelines councils. This contravenes (council functions and risks double-dipping: councils already oversee analogous funds (e.g., District Development Fund). Post MALGA ruling, ministerial directives shifted CDF to district commissioners and chief executive officers, aligning with the Act; the Bill reverses this, politicizing administration.

While councils must submit budgets for audit as provided under the policy, MP-led CDF could evade unified oversight, exacerbating revenue constraints. This violates the Policy's fiscal devolution goals, fostering inefficiency and elite capture.

Previously, the law allowed MP ex-officio membership, the Bill implicitly reinstates MP dominance, marginalizing elected councillors and contradicting democratic empowerment of local structures which the Bill claims to promote.

Contravention of the 2025 Constitutional Court Ruling

The MALGA v Attorney General ruling directly repudiates MP involvement in CDF, declaring 2022 guidelines unconstitutional for compromising oversight and breaching separation of powers. Justices ruled: "The role of MPs in managing the CDF... compromises their oversight function," ordering removal from selection, implementation, and monitoring. MPs' ex-officio voting rights were invalidated as distorting grassroots governance.

The Bill flagrantly defies

Direct Reversal: Section 151C mandates MP governance, reintroducing the very roles the court proscribed. Proponents claim the ruling only barred voting, not "participation" a strained interpretation rejected by MALGA and analysts as "self-serving." This risks contempt, as constitutional amendments cannot override judicial interpretations of existing provisions without addressing the underlying vices such as conflict of interest.

Public Policy Ramifications: The court's emphasis on non-partisan structures (e.g., administrative councils) aligns with Afrobarometer's call for multi-stakeholder committees; MP control perpetuates abuse allegations, undermining the Bill's Section 151D principles.

Broader Implications and Recommendations

This amendment exemplifies a short-term electoral gain that preoccupy politicians at the expense of institutional integrity and meaningful development. If enacted, it could entrench patronage, stifle council capacity (already hampered by fiscal centralism), and provoke Supreme Court invalidation, eroding public trust (only 38% of Malawians know CDF, per Afrobarometer). Positively, constitutional entrenchment could standardize funding, but only if governance shifts to councils.

Recommendations:

1. **Reject or Amend:** Withdraw Section 151C; vest governance in local councils per Chapter XIV of the Constitution.
2. **Statutory Harmonization:** Develop a CDF Act integrating councils, with safeguards like independent audits and community vetoes.
3. **Judicial Deference:** Engage the Court before enactment to clarify boundaries.
4. **Empirical Oversight:** Commission an independent audit of CDF (2006–2025) to inform evidence-based reforms.

In conclusion, while addressing a legal lacuna, the Bill's MP-centric model perpetuates inconsistencies, defies judicial supremacy, and regresses decentralization, a cornerstone of Malawi's post-authoritarian governance. It is important that our Honourable MPs should proceed with every care and conscious to avoid constitutionalizing corruption risk.

End Note: *Later, President Author Peter Mutharika withheld his consent to sign the Bill into Law. He instructed Minister of Justice to draft guidelines for governing and managing CDF.*