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Public-private Partnership in the Malawian Local Assemblies: A Failed Reform Package?

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Introduction

One of the key areas of public-sector reform in Malawi has been the decentralisation of local assemblies. On paper, the government of Malawi places a significant value on the role of the local assemblies, and the Constitution, Act No. 7 of 1995 clearly stipulates the creation of decentralised local assembly authorities (Government of Malawi 1995). It is not surprising, therefore, that the decentralisation of government activities through local assemblies has had considerable interest from several stakeholders. Mbeye (1998:88) observes that 'decentralisation activities have indications of a growing major public management reform programme with ramifications for all other public sector and governance reforms'. PPPs have been one of the key components of this reform package.

The term "public-private partnership" refers to a contractual agreement formed between a public institution and private-sector entity to allow for greater private-sector participation in the delivery of public services. The decentralisation framework assumes that the delivery of services will hinge upon successful partnerships; hence, PPPs take central stage in the reform packages. This paper aims at assessing the viability of PPPs in local assemblies of Malawi. It begins by briefly describing Malawi's decentralised structures and follows with an analysis of the concept of PPP as well as of the conditions necessary for the successful implementation of such partnerships. The remainder of the paper discusses the challenges towards PPP implementation in Malawi's local assemblies.

The Concept of PPP

The rationale for public sector reforms is to "attempt to raise the quality of public services delivered to citizens and enhance … capacity [in the public sector] to carry out core Government functions" (Tambulasi and Kayuni 2007a:336). There are various forms of public sector reform which include, but are not limited to, privatisation, deregulation, contracting out, downsizing and rationalisation. All fall under the realm of new public management (NPM), a managerial approach that emerged in the 1980s and 1990s to address inadequacies in the traditional model of public-sector administration (Hughes 1998:52). NPM is intended to offer a more realistic approach to public-sector management. It is sometimes described as "managerialism" or "market-based public administration" (Hughes 1998:52). The implementation of NPM-related reforms in Malawi has been at partial but incremental process.

PPP usually falls under the NPM category of contracting out. The rationale for PPPs is that "the role of the Local government [or Government proper] is not to do everything but to make sure that everything is done", which implies that "it is not government's obligation to provide services but to see to it that they are delivered" (Fourie 2000:156). The term "private sector" in PPP theory refers to 'not only … multinational and major companies but also … small businesses, local entrepreneurs, non-governmental organisations (NGOs), community-based organisations (CBOs), and other civic bodies' (Fourie 2000:157).

Conditions for a Successful PPP

According to Hlahla (2000:165-166), there are six requirements for a successful public-private partnership: predictability in the legal and regulatory environment, open and competitive procurement processes, well-researched and prepared transactions, government commitment, stakeholder support and a mature financial sector.

Predictability in the legal and regulatory environment entails that 'private sector partners need to know up-front what their risks are', since 'clarity of policy and regulations avoids lengthy and intense negotiation, especially with regard to financial closure' (Hlahla 2000:165). The assumption here is that government and the private sector 'have very different perceptions and approaches' and predictability in the legal and regulatory environment ensures that they 'speak the same language' (Hlahla 2000:165). Legislation can either promote or curb good financial management practices and outcomes in PPP (Burger and Ducharme 2004:21).

Open and competitive procurement processes are important because they 'exert considerable pressure on the private sector to provide effective services at reasonable costs' (Fourie 2000:163). Indeed, an open and competitive procurement process is 'the only way local government can ensure fairness in selecting the best outcome for the consumers' (Hlahla 2000:166). Similarly, well-researched and well-prepared transactions are necessary for an effective partnership contract. According to Fourie (2000:161), 'the contract is the key mechanism to manage an effective PPP [because] the form and application of the PPP contract are key determinants of the quality and efficiencies eventually achieved'. This is why it is important for assemblies to "undertake thorough feasibility studies before entering into any partnership (Fourie 2000:161). Hlahla (2000:166) makes the important observation that 'clear project data determine the outcome of the bidding process and therefore the contract itself'; more specifically, 'if information is not clear, it becomes difficult to be transparent and therefore to be fair' (Hlahla 2000:166).

Taking into consideration that PPPs are not only complex but 'often very political in nature' (Hlahla 2000:166), it is also important that the public sector provides leadership and publicly promotes private provision of infrastructure and commits to effective management of such partnerships (Hlahla 2000:166). Another way for the government to show commitment is to ensure that enabling policies are promoted as well as articulated. Similarly, stakeholder support is vital because reforms tend to create opposition. Some sectors of society inevitably lose out in the reform process, so it is important that, before a PPP is fully launched, all the key stakeholders (including the beneficiaries or target communities) are consulted in order to minimize risks for the private sector partners. In particular, private sector partners need to 'know whether any sector of the community is opposed to the project, and whether such opposition can bring the project to a halt' (Hlahla 2000:167).

Finally, a mature and stable financial sector is equally vital for the success of the PPP approach. Most private-sector institutions involved in PPP are heavily dependent on loans offered by the financial institutions. This means that a weak or inefficient financial sector can seriously hamper the growth and development of PPPs. This is even more applicable to small and medium enterprises, which have not yet been fully established in the market.

Malawi Public sector Reform and PPPs

PPPs in Malawi can be traced back to the public-sector reforms that have been implemented in phases since 1994. According to Malawi Public Sector Management (PSM):

> The major driving factors of the public reform initiatives have … been the need to improve efficiency and effectiveness as regards the services delivered to the public and to create an enabling environment for the implementation of the core functions of the public sector and engaging the active partnership of civil society and private sector (Kamanga 2002:4).

It is quite clear, therefore, that PPPs form a critical component of the public-sector reform package. Specifically, one of the objectives of PSM emphasises the 'critical role of partnership in addressing capacity problems' (Kamanga 2002:4). The newly launched Malawi Growth and Development Strategy (MGDS) is the major government development policy document applicable for the five-year period from the 2006/07 to the 2010/2011 fiscal years. The purpose of the MGDS is 'to serve as a single reference document for policy makers in Government, the Private Sector, Non Governmental Organisations and Cooperating Partners on Government's socio-economic growth and development priorities' (Government of Malawi 1996). The MGDS acknowledges that the 'Malawi public sector has been characterised by poor management that has generated inefficiencies in the delivery of public goods and services' but notes that 'government and its development partners are already addressing some of the challenges in the sector' through various public-sector reforms (Government of Malawi 2006:18). The MGDS also recognises the role of the private sector, stating that 'private sector development and participation is a key factor in achieving sustainable economic growth' (Government of Malawi 2006:20). Through the MGDS, the government shows its specific commitment to enhancing the role of the private sector through PPPs:

> [T]he private sector will be expected to take up opportunities from the key priority activities in the MGDS. The scope of the private sector will be widened to involve them in the provision of other public goods and services through public-private sector partnerships (Government of Malawi 2006:106).

Decentralised Local Government Structures in Malawi[1]

An 'understanding of decentralisation requires explaining why it occurs, why it takes the particular forms it does, and the relation between those forms and the outcomes they produce' (Ribot 2002:7). Conyers (in Ribot 2002:8) gives four 'broad categories' of decentralisation objectives: local empowerment (or local participation), administrative efficiency and effectiveness, national cohesion and central control. These are also some of the reasons for the creation of decentralised local-government structures in Malawi, as highlighted in the Local Government Act of 1998. The act states that the Malawi decentralisation policy objectives are as follows (Government of Malawi 1998):

- to create a democratic environment and institutions in Malawi for governance and development at the local level that will facilitate the participation of the people at the grassroots level in decision making;
- to promote accountability and good governance at the local level in order to help the government reduce poverty;
- to establish strong local institutions that embrace participatory democracy;

- to strengthen and deepen democracy by bringing services and decision making closer to the public, and to improve governance by achieving accountability and transparency.

The actual implementation of decentralisation in Malawi is intended to take place in two main phases over a ten-year period, with the first phase covering the years 2000 to 2004. This first phase focused on the following components: legal reforms, institutional development and capacity building, building a democratic culture, fiscal decentralisation, accounting and financial management, sector devolution and local-development planning and financing mechanisms. Unfortunately, due to lack of funds and related problems, the second phase was not launched immediately after the first phase as planned. The second phase is currently being worked out and is at an advanced stage of planning.

Challenges of PPP Implementation in Malawi's Local Assemblies

The implementation of PPP programmes in Malawi's local assemblies has not been smooth. In the first place, the whole idea of PPP, despite having international appeal, has not been clearly articulated in the Malawi's decentralisation programme. For example, discussions on NGOs and civil-society organisations within local government circles have mainly focused on coordinating NGO activities and making sure that NGOs operate through the assemblies rather than on how to create synergies with the private sector for improved service delivery. As a result, representation of the private sector in assembly committees remains very poor. Despite the popular rhetoric of the private sector being the engine of growth, the local authorities and private sector have not developed a clear framework of understanding on how they can operate as partners in the delivery of services. This section discusses these challenges in greater detail. Specifically, it focuses on circumvention of the decentralised planning framework, incoherent partnerships among government institutions at local level, the perception of assemblies as risky partners, inadequate supervision of partners' programmes and, finally, political interference and corruption.

Circumvention of the Decentralised Planning Framework

According to the set procedures, 'any stakeholder in grassroots development is required to operate within the ambit of the decentralised planning framework, clearly stipulating its objectives, plans and operating procedures' (Chinsinga 2005:530-531). However, as Chinsinga (2005:531) observes, 'the tendency of most stakeholders, especially non-governmental organisations (NGOs) and donors … is to circumvent the decentralised planning framework altogether, claiming that it does not have the requisite capacity to deliver'. The result is that these stakeholders or NGOs are virtually unknown at the district assembly. Their 'motive for shunning the decentralised planning framework is that they view each other and the District Assemblies not as partners but as competitors in grassroots development' (Chinsinga 2005:531). This competition is intensified when 'NGOs make use of financial inducement to target either communities or government extension workers' (Chinsinga 2005:531). The end scenario is that government extension workers neglect some core public duties and concentrate on NGO activities under the guise of partnership. In addition, certain areas tend to have a higher concentration of NGOs, while other areas have few or none at all, as is the case in certain areas of Zomba district.[2] Duplication of services is inevitable in the highly concentrated areas, but, since most of the NGOs are not known at the district assembly, it is very difficult to coordinate and implement the decentralised planning framework. In fact, NGOs implement their interventions in areas where there is a high likelihood of their projects succeeding and not necessarily on the basis of the needs of the areas.

Incoherent Partnerships among Government Institutions at Local Level

According to the Director of Planning and Development (DP&D) at Zomba District Assembly, 'the decentralised structure is sometimes confusing to all of us.'[3] The organogram provides for several directorates – the District Health Officer (DHO), District Education Manager (DEM), District Agricultural Development Officer (DADO), etc. -- that are supposed to report to the district commissioner, yet all these directors, including the district commissioner, are at the same rank (P5). The end result is that directors feel more comfortable reporting directly to their ministries rather than to the district commissioner. As a result, it is very difficult for PPPs to materialize fully, because there is no sense of partnership within the public-sector organisations themselves. More importantly, there is heightened uncertainty of what specifically has to be accomplished. Although Hussein (2004:121) observes that 'currently there is no legal framework covering sector devolution plans', the reality is that the Local Government Act clearly stipulates which sectors and functions should devolve, but this has not been followed. There is a lot of resistance to change, and this has led to a situation where 'no meaningful devolution has taken place as envisaged by the Local Government Act of 1998 and the Malawi Decentralisation Policy'. Assemblies need to define 'rules for cooperation among stakeholders at various levels of society', but this can only be done 'if there [is] … coordination and partnership among the stakeholders and a shared commitment to making the decentralised planning framework work' (Chinsinga 2005:531).

Perception that Assemblies Are Risky Partners

As Mbeye argues (1998:87), local authorities 'require powers and both financial and administrative resources to implement local decisions, projects and programmes'. However, the reality is that 'the development planning system and organisational structure is highly bureaucratic and characterised by stringent controls and delays in project funding, communication and feedback problems to local structures' (Hussein 2004:121). Such an environment is not conducive for a successful PPP, as implementation often requires substantial financial resources, especially in the initial stages. Chiweza (1998:104) observes correctly that there is 'a mistaken belief that decentralisation is a way of saving money when in fact it requires very considerable extra resources to set up properly'.

The National Local Government Finance Committee, which is provided for in section 149 of the Malawi constitution, oversees the financing of local governments. It is government policy to ensure that five per cent of net national revenue should be transferred to district assemblies as unconditional grants and that twenty-five per cent of this amount be committed to development activities (Chilungo, cited in Hussein 2004:127-8). Despite these provisions, 'most district assemblies are characterised by chronic financial problems' that, according to Kaluwa et al. (cited in Hussein 2004:128) 'is due to, among others, the narrow resource base for locally generated revenue, lengthy budgetary processes, legislative financial controls, lack of effective accounting systems, and inability to access loans'.

Currently, property tax is a major source from which the urban local authorities get their income; it is estimated that sixty to eighty per cent of local revenue is derived from the property tax on the assessed value (considered to be the market value) of properties owned by households and enterprises (Ismail et al. 1997:89). The valuation and rating law provides that assessable property includes land and all improvements situated on that land. Although property tax has great potential as a local revenue source, it has several administrative constraints that relate to poor or outdated information bases and collection problems. In the major urban centres, the process of assessment is inefficient, infrequent and often overdue.[4] For instance, although it is a legal requirement that valuations must be done every five years, most property remains under-taxed (Mwadiwa et. al., 2004:41).

Due to problems of debt collection the Zomba assembly in 2006 contracted out this responsibility to a private-sector institution, Credit Data.[5] According to the agreement, Credit Data was allocated 10 per cent of all its collections. When the contract was signed in October 2006, the total debt was K25,750,000, but by July 2007 this had gone up to K 32,088,000. Although some of the increment was due to interest charged on overdue amounts, it is clear that the private institution was not doing an effective job. However, the root of the problem is that Credit Data inherited serious administrative problems related to valuation of property. There are numerous pending court cases by property owners challenging these debts, a situation that has frustrated Credit Data made other potential private-sector partners view working with assemblies as too risky.

Inadequate Supervision of Partners' Programmes

Unlike NGOs, which are registered through the registrar general and the Council for Non-Governmental Organisations of Malawi (CONGOMA), CBOs register at the district welfare office. Before October 2006, a CBO could be registered with any government department concerned with the issues that the CBO focused on. For example, all CBOs dealing with HIV were registered at the district health office, while those dealing with orphans were registered at the district welfare office. However, due to poor coordination of government ministries at local level, it was discovered that one CBO could be registered with several government departments. Some CBOs did this in order to maximise donor funding by claiming that they were involved with the youth, orphans, HIV-positive people, etc. and seeking funding from a variety of donors. Since there were several places for registration of CBOs (before October 2006), the present scenario is that there are numerous CBOs that have identical names.

According to the district community services officer for Zomba, it is difficult to supervise CBOs 'in this complex and confusing situation'.[6] Due to inadequacy of financial resources, most assemblies are unwilling to release funds solely for monitoring of projects handled by the private sector. The assemblies mainly rely on DEC reports, which may not be accurate at all. This situation is contrary to the envisaged scenario in the MGDS, which states that 'Government will focus on public-private partnerships not only for the provision of infrastructure, but also for continuous monitoring of the private sector environment to determine solutions that will work for the benefit of Malawi' (Government of Malawi 2006:53). According to Fourie (2000:162), 'the local authority always retains its legislative responsibility regarding the delivery of services to the community'. For this reason, Fourie adds that 'the responsibility remains, even if a delivery agent other than itself is contracted to deliver the service'. Regardless of who delivers the service, supervision is still crucial, and the local authority must be able to 'demand regular information on progress and contract compliance' (Fourie 2000:162).

Political Interference and Corruption

Corruption stems directly from lack of accountability and transparency. Burger and Ducharme (2004:11) point out that accountability entails 'personal obligation' on the part of public office bearers in the sense that they are supposed to give a public account of their activities. Tambulasi and Kayuni (2007b:167) note 'personal interests, partisan politics, corruption and nepotism among others, are the main reasons for observed low accountability and transparency' and that 'more often than not, decentralisation fails to meet its promises of increased accountability and transparency'. As a result, corruption has seriously affected assemblies and resulted in poor financial management, low-quality infrastructure and loss of donor and citizen trust. A corrupt environment negatively affects PPPs, but 'a transparent process creates a better understanding of the benefits of the partnership for all' (Fourie 2000:162).

At the same time, several NGOs claimed that activities have been hampered by politicians, especially members of parliament. Some politicians have even issued commands they expect NGOs to adhere to (Kayuni 2005:47). According to the Malawi Public Procurement Act, tender proposals are supposed to be advertised through the public media, and an internal procurement committee composed of directors of various departments are then supposed to award the tender to the best competitor. However, in many cases, influential politicians put pressure on the committee to awards tenders to unsuitable applicants[7]. On the other hand, it is widely acknowledged that only an "open, transparent and competitive processes [will] ensure credibility of procurement processes … [and] accountability to all key stakeholders" (Hlahla 2000:165).

Status of the Malawi Private Sector[8]

Given their financial constraints, local assemblies cannot viably be engaged with large private-sector organisations. Consequently, most assemblies rely on small-scale business organisations as partners. Studies show that to deliver effectively and efficiently, especially when awarded large contracts, the small-business sector has to rely heavily on loans provided by a strong financial sector. However, according to the World Bank Institute for Finance and Private Sector Development (WBIFP) (2005), the Malawi finance sector cannot adequately support small and medium enterprises (SMEs) due to 'high default rates, lack of information on trade finance products and lack of managerial expertise and track record by SMEs' (WBIFP 2005:51). Moreover, 'the participation of private investors in the economy has also remained limited due to the dominance of largely a few private sector companies, poor investor confidence, and the small size of the domestic market' (WBIFP 2005:51). The Malawi National Gemini MSE Baseline Survey 2000 found that, despite 'increasing recognition of the potential role this sector can play in Malawi's economy and especially in the livelihoods of the relatively poor', Malawi's Medium and Small Enterprise sector 'remains small compared to other countries in the region'. More importantly, the report adds that 'the country still lacks a national strategy and policy that can push the sector significantly forward' (DFID 2001:1) Little has changed for SMEs since this report:

The vast majority of Malawian businesses are unable to access finance for investment. The financial sector is "constrained …, [and] this is especially true for smaller business enterprises which have difficulties accessing financing" and are unable to use assets (such as land) for collateral due to the present inadequate land rights and management (Government of Malawi 2006:52).

Against this background, it is extremely difficult for local assemblies to partner effectively with the private sector.

Conclusion

This paper has noted that the Malawi local assemblies are not fully prepared to efficiently and effectively embark on PPPs. The key components required for a successful partnership –predictability in the legal and regulatory environment, open and competitive procurement processes, well-researched and prepared transactions, government commitment, a mature financial sector and stakeholder support – are broadly lacking. Some of the specific challenges that need attention include circumvention of the decentralised planning framework, incoherent partnerships among government institutions at local level, a poor financial base for local government, inadequate supervision, political interference and, finally, corruption. PPPs are vital for sustainable local development, but the current framework of local assemblies in Malawi cannot support viable partnerships either with NGOs and CBOs or with small business. It is crucial that the local governance framework be revitalized and the problems highlighted above be addressed before embarking on any meaningful PPP activities. In other words, PPP at local level is a good idea whose appropriate time has not yet come.

Notes

1. It is not the purpose of this paper to give a detailed analysis of the development and process of decentralization in Malawi. See chapter two for a detailed discussion of these.
2. Interview with the Director of Planning and Development, Zomba District Assembly, 2 August 2007.
3. Interview with the Director of Planning and Development, Zomba District Assembly, 2 August 2007.
4. Major urban centres are Blantyre, Lilongwe and Mzuzu cities, Zomba municipality and Karonga, Kasungu, Salima, Dedza, Balaka, Liwonde and Lunchenza towns.
5. Interview with the Director of Finance, Zomba Municipality, 2 August 2007.
6. Interview with the District Community Services Officer for Zomba, 2 August 2007.
7. Interview with the Director of Finance, Zomba Municipality, 2 August 2007.
8. For the purposes of this section, the word "private sector" means the "business sector".

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