

Decentralised governance of forest resources: Analysing devolution policy processes and their effects on decision making in communal forest management in Malawi.

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Abstract :

Devolution policies in Africa are a recent development and are characterised by state driven devolution where government policies frequently define the scope of local authority in forest management. The paper looks at the forest devolution policy process in Malawi. First, it describes the historical development of forest policies and shows how different actors, with different knowledge bases and power, shaped the past centralised policies and present devolution policies. Second, the paper outlines the forest devolution policy and assesses whether the devolution policy has achieved effective decision making in communal forest management. The paper provides an example of devolved forest management policies that did not take into account the realities on the ground during their formulation.

The findings show that multiple actors both internal and external have exerted their influence and power in the development process. Limited local realities were considered in the development of forest devolution policies. The less powerful villagers involved in community forest management were not engaged in either policy formulation or subsequent improvements based on their past and present implementation experiences. While institutions and structures were set up in the devolution policy to 'serve' local people on the ground, in reality they remained an extension of central government control. The reasons being that the policy process had limited consultation with end users, ignored the role of traditional leadership, superimposed new structures, and set long and slow requirements for forest management planning for local communities to attain legal authority over forests. Local people and traditional structures have been marginalised and have not benefited fully from the intended policy objectives. However the number of village forest areas has increased since the implementation of the devolution policy. The paper provides an example of how well intended development process of devolution policies has had limited success for the local people.

Key words: *Policy, institutions, devolution policy processes and decision making*

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Introduction

Many governments in many countries world wide have formulated devolution policies and legal instruments in the natural resource management sector, providing an enabling environment for devolved natural resource management. However implementation of these policies has revealed a number of challenges and problems. In the forestry sector, governments and actors involved in Community Based Forest management (CBFM) deriving from devolution policies face a number of problems, which includes the burdensome regulatory frameworks, (some inherited wholly from pre independence period), limited transfer of authority and overly specified powers to local organisations, choice of non representative local organisations to receive the powers, lack of transparency and accountability of organisations charged with forest management and usurpation of power by local elites which undermines local institutions (Ribot 2002; Shackleton et al. 2002; Hobley 2005; Ribot 2005).

The usurpation of powers by elite denies the intended beneficiaries of devolution policies to enjoy the benefits associated with decentralisation reforms. Ribot (2002) also reports that despite potential benefits of democratic decentralisation, governments and environmental ministries resist choosing appropriate local institutions and transferring appropriate and sufficient powers to local level authorities. In addition, forest services across Africa are transferring non-commercially valuable use rights and are setting up complex prescriptive forest management planning that require expert forester services before local governments and local communities can make decisions on use Ribot (2003 p6). Shackleton et al (2002 p2-3) observed that although efforts have been made to transfer some decision-making responsibility over natural resources from the state to local communities, the gesture only aims at supporting government or conservationists interests rather than ceding decision making powers. Ribot (2002) reports on arguments by environmental agencies that too much decentralisation (devolution) has caused damage or overexploitation of natural resources and a backlash is already forming against decentralising powers over natural resources and there are therefore calls to recentralise control. This indicates that there may be hidden agendas by many governments who are pursuing devolution policies and there is still a lack of true devolution in practice.

The problems related to devolution policies highlighted above might not be universal but context specific. Any legal mechanism, will encounter a range of local conditions and unique dilemmas in formulation and implementation. These conditions and dilemmas need to be identified, put into context and improved upon.

In this paper the devolution policy considered is the national forest policy in Malawi, which provides an enabling environment for people's participation in forest management. The paper is based on a PhD research project whose data was collected between August 2006 and May 2007 in Lilongwe district, Malawi. A reconnaissance survey was carried out in 33 villages which had established natural woodlands VFAs, to establish how the policy was being implemented. Five villages namely Gumbi, Sinyala, Chimdimba, Kansalu and

Mkombe were purposively selected for in depth studies. Key informant interviews were conducted with government and non government organisation staff and project staff implementing the policy. Government and other relevant documents were also analyzed.

In this article the aim is to show the historical path of policy development from pre independence era to date. The paper will also describe the devolution forest policy, especially those areas related to community forest management and will draw conclusions about how the policy has extended the arm of central control in management and use of forest resources.

Historical path of forestry policy development in Malawi

Pre independence period

Forest policies in Malawi can be traced back to the pre independence period. During this period scientific arguments were used to develop and shape policies through conservation narratives and discourses (Fairhead and Leach 2000). In pre independence Malawi, forest policies were inform of ordinances. In 1911 the first forest ordinance was passed to allow conversion of forest lands into forest reserves. Forest reserves were aimed at controlling soil erosion, deforestation and forest degradation due to shifting cultivation and bush fires. Protective forestry was perpetuated for watershed management and as a reservoir of valuable timber species. Reservation of forest resources centralised control of forests and alienated local communities from use. The forests which had been reserved had restrictions of entry and any misuse of these and other protected trees on crown land attracted prosecution, if caught (Topham 1925 p19). Despite the restrictions forest resources continued to degrade. In 1926 a forest ordinance was passed that increased the maximum penalty for a forest offence committed by local communities and gave powers to authorities to deal with offences. The offences were in connection with cutting trees in forest reserves, along river banks and starting bush fires. Carver(1926 p7) reported that the powers were proper to safeguard forest reserves and carry out policy. In addition the 1926 ordinance provided for the creation of Village forest Areas which were put under the control of village headmen. The objective of the scheme was a provision to each village of an area of forest woodland from which villagers could obtain poles and firewood. Forest degraded areas close to the village which were least suitable for agriculture were selected and the size allocated depended on the number of huts in the village (ideally two acres per hut) (Kalipeni and Zulu 2002 p120-121; Topham and Townsend 1937). The village forest area scheme marked a shift in policy towards community forestry though to a limited extent. Kowero et al (2003 p170) reported that this was the first effective decentralisation of forestry resources management to local communities in southern Africa region during that period. For the first time village headmen had powers to make decision on forest resources under their jurisdiction.

Independence period

Upon independence in 1964, the Malawi government continued with centralised policies of forest management that were adopted wholly from the pre independence period. Seidman et al (2005 p184)has observed that newly

elected government legislators failed to enact laws to change the institutions and laws were marginally altered and persisted. The new government were afraid of making mistakes and did not want to lose the gains already made or chase away investors. As such emphasis on forest policies during independence period continued to aim at controlling industrial timber exploitation for economic benefits and reservation of forests.

In pursuit of new interests which would quickly provide fast needed income, the government attention shifted to agriculture. Malawi government made a deliberate effort to expand agriculture into a commercial estate sector to the detriment of the forest cover. Agriculture became the main stay of the Malawi economy and the Malawi government was committed to fulfilling this goal in all of its policies (Moyo, O'Keefe, and Sill 1993). Today agriculture remains the economic hub for the country. However this meant that extension services had to be diverted to agriculture. As such forest extension services were neglected. The gains that were made on the VFA scheme slowly were lost as VFAs were being cleared for agriculture and settlements due to population pressure. The VFA system virtually collapsed as forest extension services were withdrawn from the forest department and given to agricultural extension services. Kalipeni and Zulu (2002 p120-121) reported that by 1963 the number of VFAs established in the villages were 5,108 covering an area of 105,496 hectares, however by 1994 there were only 1,182 left covering an estimated area of 3,159 hectares. The alarming deforestation rates continued to trigger restrictive laws. The laws extended to customary forest under the jurisdiction of village headmen. In circumstances where customary forests were converted to agricultural land and valuable tree species were standing, the individual farmer could not cut the valuable tree species without permission from forest staff. Local communities suffered a wood energy crisis due to restrictive laws of central control and deforestation exacerbated.

International support for policy changes and reviews

World wide recognition of the wood energy crisis affecting many developing countries brought international actors together for action. The need to involve rural communities in forest management became a popular paradigm among international forest actors. In 1976, FAO raised community forestry high on the agenda by recommending that forestry for community development be given a priority in its programme of work (FAO 1992). In 1978 the 8th World Forestry congress gave further support to the concept of social forestry and social forestry programmes were initiated in India (Hobley 1996). The publication of the Bruntland report in 1987 and of the Agenda 21 following Rio conference in 1992 raised the plight of local communities in forest management very high. There was a general consensus in the international arena that local communities, the youth, women, indigenous peoples living in or in proximity with forest areas needed to be involved in decision making about the forests on which they depended for their livelihoods.

Institutions which are renowned to advance ideas of biological conservation, for example, the International Union for the Conservation of Nature (IUCN) developed principles and guidelines on indigenous and traditional peoples and protected areas. The IUCN Resolution 1.53 of 1996 called for the

development of policies for protected areas that safeguard the interest of indigenous people, taking into account customary resource practices and traditional land tenure systems. The World Charter for Nature of 1982 advocated for participation in conservation of nature by stating that “all planning shall.... permit effective consultation and participation and ... all persons in accordance with their national legislation, shall have the opportunity to participate individually or with others in the formulation of decisions of direct concern to their environment, and shall have access to the demands of redress when the environment has suffered damage or degradation” (principles 16 and 23).

The international conferences and obligations created a global network of actors with shared interest. These expert actors shared knowledge to advance the scientific understanding of combating tropical deforestation and the need to involve local communities in the cause and take action through policies.

FAO made a call to a number of developing countries to assist in the formulation and implementation of the Tropical Forestry Action Programme (FAO 1992). Malawi responded to the call by making an official application for FAO assistance to formulate and implement TFAP. The chief forestry officer wrote:

...Malawi wishes to put on record its intention to participate in TFAP within the framework of policies and objectives of the plan and therefore submits herewith its application for FAO's consideration....

FAO came to Malawi's assistance and the TFAP process was initiated. FAO emphasised that the TFAP process was a partnership between tropical countries, external donors, co sponsors, technical partners, non governmental and private sector interest (FAO 1992). This is assumed was to make sure that the participating countries owned the process and involved as many actors as possible within each country. As such the TFAP became a decentralised led process. In 1990 FAO commissioned a review of the TFAP process in Malawi. Following the outcome of the review, the World Bank made a decision to provide support for a forestry sector policy review in 1992 (Government of Malawi 2001). The aim was to provide a consolidated agenda for policy decisions by Malawi government related to the protection and sustainable management of woodland and tree resources and their linkages with agriculture and other sectors. There were also aimed at developing coherent set of policy decisions which could help the forest department realise its forest policy objectives, especially those related to community involvement in forest management.

Malawi created the institutional arrangements at national level for the policy sector reviews which were undertaken under the National Forestry Action Programme, which was a by product of the TFAP at national level. The Ministry of Economic Planning and Development was the National Lead Institution. The National Coordinating Unit consisted of members from the Ministry of natural resources and forest department. However this process

was dictated by the forest department based on its report for the SADC programme of Action by the Director of forestry:

...the national coordinating unit need to be within the forestry department itself. The national coordinator is expected to be a senior officer from the forest department. It is however highly appreciated that the National Lead Institution is not the Forest Department itself since there is then the danger of the National Forestry Action Programme being too introspective. It is expected that many of the officers associated with the forestry sector policy review will be similarly involved with the National Forestry Action Programme and will form a nucleus of the National Forestry Action Programme steering committee (Government of Malawi 2001)

The Overseas Development Administration of the United Kingdom had informally indicated its interest in acting as a core donor for the National Forestry Action Programme which would have translated into forest policy for Malawi. However due to the restrictions on aid to Malawi prior to the democratisation process, no firm policy undertaking was made until mid 1994 (Government of Malawi 2001)

At the end of the National Forestry Action Programme process in 1995, a draft policy was produced and discussed at national consultative workshops with a representation from different government departments, NGOs and the donor community. However local communities were not involved in the process despite calls for local community participation in planning and decision making. The policy was developed by consultants commissioned by the international agencies and was approved by cabinet in 1996.

According to the Director of Forestry the FAO initiatives on policy development also targeted legislative reviews. Thus drafting of forest legislation to give legal force to policy 1996, was a parallel exercise to policy development. FAO commissioned a consultant in 1990 for the legislative review. The consultant produced the first draft forestry bill in 1993. From 1993 the draft bill remained in draft format until towards the end of 1995. The delay was due to the freeze of aid to Malawi, to pressure her to transform politically from one party to multi party democracy. This left little or no resources for Malawi to finalise the bill. However during the same period a number of initiatives on management of the environment following the Rio conference were under way as stated above and the UNDP on behalf of United Nations Environmental Programme (UNEP) were implementing a project on environmental law and institutions in Africa. At the same time the United States Agency for International Development (USAID) were supporting the NATURE project. According to the deputy Director of Forestry the NATURE programme came into being because Malawi asked USAID for assistance in its balance of payments and USAID promised to help on the basis that the government of Malawi showed commitment in conservation of natural resources. The aim of these programmes and projects was to harmonise environmental policy and legislative initiatives for effective and sustainable management of the environment and natural resources (Banda 2003 p2).

These were cross sector policy programmes which were meant to ensure that no government department carried out policy and legislative development and review processes in isolation. The USAID and UNDP initiatives rejuvenated the legislative review in forestry and the forestry draft bill saw light again. Apart from the UNDP and USAID initiatives, pressure to finalise the forestry legislation also came from other forestry projects which were in the pipeline. According to staff in the Department of Environmental affairs (DEA), donors funding various projects in forestry were reluctant to release cash for the projects (these were the social forestry project funded by European Union and The Lilongwe Forest Project funded by the African Development Bank) unless the forestry legislation was passed. This conditionality spurred action from the most concerned in the Ministry of Natural Resources and Environmental Affairs.

It was particularly the personal initiative of the Principal Secretary in the Ministry of Natural Resources and Environmental Affairs that re started the process of legislative law making. It has been reported by a number of Forest Department staff that the Principal Secretary played an active role in modifying and redrafting the forestry draft bill prepared by the consultant. The Principal Secretary then passed the modified bill to the Assistant Chief Parliamentary Draftsman in the Ministry of Justice. A two way communication was established between the Ministry of Natural Resources and Environmental Affairs and the Ministry of justice to finalise the bill. However throughout this preparatory phase the Forest Department was left out. The Assistant Chief Parliamentary Draftsman assumed that the Principal Secretary was in consultation with the Forest department which was the client but that was not the case, because the Forest Department expressed ignorance of the amendments that had been made to the draft bill of 1993. The Forest Department staff might have been consulted but this suggests that there was little consultation between the Ministry of justice and the Forest Department.

Public participation in policy and law formulation

Following the example of consultative workshops during the process of constitution development in Malawi, the forestry draft bill (which became the Forest Act 1997 repealing the Forest Act 1942) benefited from public scrutiny during the national forestry policy and law consultative workshops. Two workshops were organised, the first of which took place in Mangochi in 1995 and the second in Lilongwe in 1996. According to (Banda 1999 p15) these workshops considered a draft bill of 1993 which had been prepared by the FAO consultant. However finalisation of the law making process was left to the Ministry of Natural Resources and Environmental Affairs and the Ministry of Justice as stated above. The Director of Wildlife and Environmental Society of Malawi reported that NGO's participation in law enforcement was agreed upon at the national consultative workshop in Lilongwe in 1996. However the drafters did not incorporate the agreements in the legislation. This suggests that there was no mechanism for ensuring that stakeholder proposals at the consultative workshops were incorporated in the legislation.

Apart from the two national policy and law consultative workshops, three regional workshops were organised for public consultations. The regional workshops were conducted in 1996 at which traditional authorities from the three regions namely Northern, Central and Southern were invited. The theme of the workshop was community participation in forest management. The Forest department informed the traditional authorities at the policy and legislative meetings of the on going exercise of policy reform. The Forest department was seeking views from the traditional leaders on effective ways of managing forest resources on customary land, especially learning from the experiences of managing the remnant forests of the village forest area scheme. The decision to involve traditional authorities and not local communities was based on the premise that the traditional authorities are representative of the community and therefore could contribute to the interests of entire local communities in Malawi. The other reason was lack of resources to bring a sizeable number of local communities to these workshops. However the views of traditional authorities did not find their way into the law making process and the records of the regional workshops could not be retrieved. The loss of the proceedings from the workshop demonstrates the lack of importance that civil servants attached to the contributions made by traditional leaders. It also shows the lack of understanding as to the role the contributions would have played to the process of formulating the legislation. Despite knowledge of the loss of the proceedings no attempt was made by the forest department staff to assess the relevance of traditional systems of forest management or applicability of traditional or customary norms to forest management from previous experience. There is evidence in Malawi that local communities have been managing Village Forest Areas from pre independence period and graveyards remain standing to date through effective customary regulations.

The field personnel (forest extension agents and forest guards) did not directly participate in the consultative process. However the planning unit of the Forest Department relied on routine reports, (for example fire and law enforcement reports) that field personnel prepare on a regular basis to provide relevant information for legislation development process. The involvement of field personnel in this case was impromptu and it is not clear as to what extent they were involved. It can also be concluded that the process of gathering information for policy and law review within the Forest Department was neither properly organised nor structured.

Although some proposals and recommendations did not find their way in the legislation, the involvement of the public through national consultative workshops signalled a change in tradition in formulation of laws. The consultations allowed time between time of publication and presentation of the law to parliament, providing for a degree of public participation in decision making in law formulation.

In February 1996 the Assistant Chief Parliamentary Draftsman sent the draft copies to parliament for consideration by the cabinet committee on legal affairs. Although the draft bill was sent to parliament for consideration it was

not circulated to other departments apart from the Principal Secretary. The forestry bill was passed as an Act in parliament in 1997.

The forest policy process in Malawi has remained centralised and has largely been influenced by external donors and consultants. The policy did not benefit from local input and scrutiny. Although the policy formulation enjoyed much international support, the resulting content in respect of local communities was very general and non specific.

The Policy 1996 and Law 1997

The policy objectives

The national forest policy 1996 was developed to introduce the concept of participation and promote CBNRM in the forest sector. The specific objectives that relate to promotion of CBFM were stated in section 2.3.1 and 2.3.2. and read:

2.3.1 to provide an enabling framework for promoting participation of local communities and the private sector in forest conservation and management, eliminating restrictions on sustainable harvesting of forest products by local communities through the development of joint forest management plans and management agreements with Village Natural Resource Management Committees (VNRMC) (Government of Malawi 1996).

The second specific objective (section 2.3.2) brought in the concept of devolution where powers are ceded to local communities so that they have authority to make decisions over forest management. It states: *to empower rural communities to manage forest resources, fostering ownership or usufruct of trees and ensuring that use of such trees is sustainable for the benefit of both present and future generations (Government of Malawi 1996).*

The strategies for these objectives were aimed at improving devolved decision making, introducing regular local meetings to discuss and explain changes on and additions to forest policy (Government of Malawi 1996).

Although the second specific objective relates to empowerment of rural communities to manage forest resources, reference to local communities is inferred in the sentence *'introduce regular local meetings to discuss and explain changes on and additions to forest policy issues'*.

The Forest Act provisions

The forest policy is being supported by the forest act of 1997. The forest Act, 1997, provides for community based forest management principles which are in line with the forest policy. It endorses many important principles of community based forest management which promote participatory approaches such as the transfer of property rights to forest resources, provision of institutions for rule making and enforcement; regular policy reviews, transfer of management responsibilities and a provision for management plans for sustainable management of forest resources. Shackleton and Campbell (2001) described the Malawi legal instruments as

progressive and ones that provides an enabling environment for community participation in forest management. However the goals of the policy in CBFM will be achieved, if the authority to make decisions over forest management by local communities is attained depending on how the policy has been interpreted in practice.

Amendments to the Forest Policy and Forest Act

The legal instruments have received a number of amendments to guide implementation, for instance the forest policy 1996 has been clarified by a Community Based Forest Management supplement of 2003. The law has also been clarified with Forest Rules of 2001, Forest (community participation) Rules of 2001, 2003 and 2007 (proposed) and other official documents. However, the process of amending the laws have excluded local communities and forest agents on the ground, to the extent that they are not aware of the revisions or changes made to date. The amendments to the legal instruments have been largely done by foreign consultants, which have been hired by projects implementing the policy. These projects had experienced problems to achieve their objectives. For instance, COMPASS project funded by USAID run into problems because of failure of the legislation to provide for licensing of wood from Village Forest Areas for the purposes of commercialisation. The project used its financial power to pressure Forest Department to amend the laws. Amendments to the laws have allowed projects to achieve their mandated goals.

In the next section the paper will examine how the policy and law has been implemented in practice looking at specific sections of the policy and law. The focus is on those sections that are relevant to community based forest management and include establishment of Village Forest Areas, creation of organisations/structures for Village Forest Area management, processes of forest management planning and agreements for Village Forest Areas, formulation of rules and finally the harvesting authority for forest produce and their movement and use.

Implementation of forest policy and its implications on decision making

Establishment of Village Forest Areas (VFA)

The Forest Act 1997 revived the concept of Village Forest Areas which was a scheme that was introduced during the pre independence era to allow communities manage and use resources on customary Land. Section 30 of the Forest Act 1997 empowers the village headman with the advice of the Director of Forestry, to demarcate a part of unallocated customary land into a Village Forest Areas which shall be protected and managed in the prescribed manner for the benefit of that village community. The Act does not transfer discretionary powers to village headmen to demarcate VFAs, rather it gives the Director authority to advise the village headman to demarcate VFAs. The Act does not specify how the VFA will be managed because reference to management is in a phrase “prescribed manner”. The Act does not also specify who will prescribe the management. However under the Land Act village headmen can allocate customary land under their jurisdiction for agriculture or settlement to communities of their village without any advice

from the state authorities because they hold the land and its resources in trusteeship for the state.

In Lilongwe forest extension agents facilitated and encouraged village head men to demarcate VFAs on the basis that local communities will benefit from incentives through Income Generating Activities (IGA) that various NGO's and projects with an interest in forest management would provide. There were a number of projects for example Village Forestry Programme (VIFOR), which later changed to EU Public Works Programme (EU PWP) and the Lilongwe Forest Project that provided cash and forest tools for forest management. Forest extension agents used the opportunity to request village headmen to demarcate unallocated customary forests as Village Forest Areas.

At the time of research the records of the District Forest Office showed that there were 99 VFAs with natural vegetation that were established with facilitation of forest extension agents. One third (33) of the randomly selected VFAs were visited. We found that three of the VFAs were remnants of the VFA scheme that started in pre independence period. Three were established by village headmen because of the lack of firewood and the distance women had to travel to gather firewood and 27 were established recently following the policy changes. Out of the 27 VFAs that were recently established, we found out that 6 were cleared for various reasons. Some were cleared because the sizes were small to provide enough benefits to the village, some were severely degraded that it would take time to realise benefits and others were cleared because of pressure to provide firewood for brick making which has become a business in Lilongwe city as the city expands. Population pressure was also a reason given by some villages, which forced the village to clear the forest to make room for settlement or agriculture. Other villages were disappointed that they did not get the cash incentives that were promised and cleared the forest for other land uses. In other villages where the VFA arose based on firewood need, forest extension agents requested the village headmen to expand the VFA to include unallocated forest on customary land. Expansion of the VFA to unallocated customary land would allow such villages to be eligible for incentives that were on offer from projects. Local communities saw the immediate tangible benefits of demarcating VFAs and got involved because of the incentive measures that projects and NGO's provided. The cash incentives were influenced by donors or NGOs who were also fulfilling their mandates. However such initiatives have proved unsustainable beyond the project lives and where the incentive has not been fulfilled.

The role of forest staff in facilitating creation of VFAs has been problematic in the sense that incentive measures were used to obtain participation. Early gains in VFA establishment would mean large areas of unallocated customary forest would be managed with the help of local communities considering that staff numbers had just been reduced due to a retrenchment programme that was undertaken in 1992 in response to structural adjustment programmes. Therefore the local communities were seen as "friends indeed" because the Forest department was in need. With scarce human resources to enforce punitive laws on forest management, coupled with international changes in

paradigm shift to for participatory natural resource management, the forestry authorities saw an opportunity to use local communities for forest management.

Organisation for VFA Management

The authority to make decisions over forest management was given to village natural resources management committees (VNRMC) under section 31 (1) (d) of the Forest Act. The section provides for the “formation of village natural resources management committees (VNRMC) for the purposes of managing and utilising VFA’s” (Government of Malawi 1997). The Act recognises the VNRMC as legal bodies representing local communities in the village. This undermined village heads authority in decision making over forest resources on unallocated customary land. Under tradition rules, the right to resources (land and forests or trees on it) is determined by inheritance to land. The traditional authority holds the land and its resources in trust for the deceased, the living and the unborn of the village. The traditional chiefs are referred to as “Gogo Chalo” which literally means “owner of the land” and therefore traditionally the chief is the owner of the land. They delegates the powers of trusteeship of land to their subjects through group village headpersons and village headpersons, who further delegates to clan heads, maternal uncles and finally to households. Although any person can transfer land to family members, the nominal title of resources cannot be transferred to another person under customary law unless with consent from chiefs and sometimes in liaison with his “nduna” advisers or elders. Contrary to the provisions of the land policy and traditional belief above, the VNRMC received the right than village head persons. There was no attempt in the Act to transfer responsibilities to village headmen or provide an arrangement for shared responsibilities with the new structures representing communities. The Act recognised the role of village heads in demarcating the land may be based on their traditional role as trustees of the land but failed short of providing responsibilities of management and use.

The forest officers were then instructed by the Director of Forestry to “create VNRMCs in areas where natural woodlands are being cut for wood trade”(Government of Malawi 1998). This therefore meant that even where the VFAs were not demarcated, a VNRMC could be formed to check irregularities in wood trade. Therefore the authority to decide how to deal with wood traders rested with VNRMC in areas where village heads and traditional chiefs had legal jurisdiction from the Land policy. Some village heads have devised mechanisms to gain authority over VFAs by being part of the membership of the VNRMCs, hence control the activities of the VNRMC or take full responsibility of VFA. Some village heads believed that the VNRMC were undermining their authority because there were recipients of incentives provided by projects such as cash, tools and training tours, once the VFA was established. Thus economic and other benefits were accruing to the VNRMC than the village heads. In other villages, village heads make decisions over VFA use on the basis that there are custodians of customary land and all that stand on it. Although a VNRMC can be democratically elected, the village headman has the power from tradition that overrules the activities on the new

structures in practice. There is a clear hierarchical battle between the VNRMC and the village headmen.

In theory VNRMCs are democratically elected community level committees that represent local communities in VFA management. However the electoral process was in some cases engineered by forest department staff and in others by village heads since the Act did not provide guidelines for VNRMC formation and did not specify how and who should elect the VNRMC. The Forest Department staff came up with an equal representation of 50% women and 50% men in committees. However this was not tenable in most cases (table1 below).

Table 1: Composition of men and women in VNRMCs

Village Post	Msumati		Gumbi		Kansalu		Mkombe		Sinyala		Chimdima	
Chairperson	M		M		M		M		M		M	
Vice Chairperson	M			F	M			F		F		F
Secretary		F	M		M		M			F	M	
Vice secretary		F		F	M			F	M			F
Treasurer	M			F		F		F		F		F
Vice Treasurer												F
Member	M				M		M			F	M	
Member	M			F	M		M			F		F
Member		F		F	M		M		M			F
Member		F	M		M			F	M		M	
Member	M		M		M			F	M			
TOTAL	6	4	5	5	9	1	5	5	5	5	4	5

M = Male F = Female

Where elections were conducted (Kansalu and Msumati villages) men and women married in the village under uxrilocal or virilocal residence were elected as treasurer (keeper of tools and cash). This was deliberate because women or men under such residence can easily be manipulated by FD staff and traditional leadership. Some women and men under these residences have alleged that they have been threatened of expulsion from the villages if they do not cooperate. For example the treasurer of Msumati village reported that the village headman and the chairperson of the VNRMC (nephew to the village head) had used tools of the VFA for their own gardening on threats of expulsion since the wife of the treasurer died. In some cases (Msumati and Gumbi villages) elected committee members were replaced by nominated members based on kinship ties with village heads. This has left the electoral process open to abuse by village headmen who nominated or dictated who was to be elected, based on kinship. This is contrary for example to the Tanzania Forest policy where village councils are democratically elected every five years and the process is legally binding and well spelt out in the Tanzanian Act (Wily 2002).

The Act did also not specify the term of office for the elected VNRMC members. As a result the forest department staff (extension agents) came up with a five year term of office for the first year of elections based on the five

year term of presidential and parliamentary elections. Having just come out of the multi party elections in 1994, it seemed logical for forest extension personnel to prescribe the term of office in such a manner. There was no basis for the period of office and communities did not participate in deciding the term. In five of the research villages no fresh elections have been held, despite expiry of tenure of office. In one village (Gumbi) where elections were held, the reasons for the elections were not on the basis of expiry of tenure of office but on the need to separate the VNRMC from the business committee (formally a VNRMC which was running a poultry income generating activity that the village received as an incentive for demarcating a VFA, but after claims of cash mismanagement the village did not want to associate with the committee).

The VNRMC is viewed as the management authority on paper, however in practice; it is not only the VNRMC that is the management authority, but also the Village headman, Traditional Authority and the forest department staff. This view was also shared by local communities in the research area when asked who had authority over forest management. 44.3 % had the opinion that village heads had authority over VFA management and 36.5% thought it was the VNRMC and 1.8% thought it was government officials. 6% of the local communities indicated that both the villagehead and VNRMC had authority. These responses indicate that local communities are faced with duo authority from VNRMCs and village headmen, as summarized in table 2 below. N=167 from five villages.

Table 2: Perceptions of who has authority over management of VFA

Authority	Frequency	Percentage
Village Head	74	44.3
VNRMC	61	36.5
Village Community	19	11.4
Village Head and VNRMC	10	6.0
Government	3	1.8
Total	167	100

Chiumia (2003) reported that in Mchinji district most villagers thought that village headmen had the authority over VFAs because of the way village heads controlled VFA activities. These problems could be averted if the Act detailed responsibilities of the VNRMC, traditional authorities, village heads, just as the Tanzanian forest Act had done (Wily 2002).

Although in practice most community forest organisations are VNRMCs, variation has generally been allowed for in the amended laws, Forestry (Community Participation) Rules 2001 section 5 which states that: “A community may, for the proper management of its affairs, under these Rules, form such committees as the community may deem appropriate”. This has been a basis for the birth of Community Based Organisation (CBOs) and other committees, for example, bee keeping, tree nursery and business committees. The change in rule was in recognition that the Act 1997 only

recognised the VNRMCs in management of VFAs and forests on customary land. However, field practice revealed that other parallel organisations existed and competed with the VNRMCs. According to field practice a CBO may act as an umbrella body with many committees under it and in such cases a VNRMC may be a sub committee.

For a CBO to be legally recognized it has to be registered. Registration of CBO's is done by the Registrar General under the provision of the Trustees Incorporation Act, 1962. This is a fairly involving process requiring the services of legal practitioners, certified copies of constitution, minutes of meetings and statutory declarations by officials. Registration still requires approval at Ministerial level. In short it is not a process to consider lightly, it's lengthy and fairly rigid in terms of changes to bylaws and officials. It will be unwise for a VNRMC to register as a CBO because it already has a legal basis. If it does, it will change name to CBO and will be governed by a board of trustees, since it will register under the trustees Incorporation Act. In Sinyala village a CBO has been formed by a forest extension agent in the area, who has become the Director, who gets resources from NGOs on behalf of the community. The composition of the CBO draws on community members and forest guards. The CBO is not registered. It draws its trustees not only from retired officers in the village and neighbouring villages but also forest department staff in headquarters office. Although members of the CBO were elected under democratic and transparent arrangement with facilitation of the forest department staff, the Forest department staff created positions within the CBO to run the organisation. Thus the forest officials are resisting change brought by the law which has created new institutions. It has been reported that front line personnel under devolution arrangement resist change because devolution threatens their roles, and the new bodies may be given the power to take over decisions that they had been used to making (Ribot 2005 p214). Since the Act and the amendment Forest Rules did not provide details for formation, roles and responsibilities of CBOs, the provision has been misinterpreted and abused by forest staff to further their interest. Ribot (2005 p208) has commented that there is an ideological contradiction in democratic decentralization (devolution) where governments are promoting fragmentary tendencies in institutions in the name of pluralism. Under this guise governments are empowering and creating a proliferation of non state institutions-as if authorities represent the "people", in so doing there are taking the powers that would be transferred to democratic local institutions and fragmenting them among multiple organisations weakening institutions and strengthening the alternative array of private actors. He warns that pluralism without representation sets a scene of elite capture- the most powerful interest dominates. This has been the case of the villages in the research study.

The Act does not provide mechanisms for registration of either VNRMCs or CBOs and these institutions only get their mandate through the Forest Management Agreement (to be discussed later). If a CBO is not managing a VFA directly, then its legal authority only comes in when it registers. However, for VNRMCs there is no direction on how and where registration should take place. The realisation of the difficulty has made the department of forestry to

consider registration of VNRMCs. A proposal on registration of community level organisations has been sent to the minister for approval through an amendment to the Act 1997 and shall lead as Forestry (community Participation) Rules 2007 (Government of Malawi 2007).

The department of forestry believes that formal recognition of community forest organisations through registration might assist with forest law enforcement (section 9:3) and disposal of seized forest produce by VNRMC (section 11:2). Thus Forest department authorities have systematically chosen powers of decision making to be transferred to local communities. Bazaara (2002) quoted by (Ribot 2005) noted that often burdens are being transferred instead of positive powers.

Forest management plans and agreements

The community based forest management policy, section 3.2.3 and 3.2.4, provides for community ownership of customary land subject to conclusion of Forest Management Agreements. It states

The transfer of ownership will not be unconditional; neither should it be construed to mean a universal withdrawal of government responsibility and concern for customary forests. The transfer of ownership will be matched by a corresponding transfer of management responsibilities on a village-by-village basis, and will be formalised in every case by a legally binding agreement³ between the government and the community (section 3.2) (Government of Malawi 2003).

Although local communities might receive forest management responsibilities and have rights to forest resources, if the forest in question is not properly managed the forest reverts to government control.

Until such time as an agreement is in place, forest management will remain the responsibility of the government. The implementation of agreements will be monitored, and if for any reason an agreement breaks down it may be terminated by either party, in which case the responsibility for management of the community forest will revert to the government (section 3.2.4) (Government of Malawi 2003).

The forest Policy and Act clearly states the importance of the forest management plan that leads into a forest management agreement as central to the transfer of discretionary powers to management authorities for the management of VFAs. If a village community has not formulated a forest management plan for its VFA and signed an agreement with director of forestry, then the VFA is under the responsibility of government. However the VNRMC has already been given management responsibility over VFAs but a forest management agreement claims authority over VNRMCs. The interrelationship between forest management plans, forest management agreements and authority to forest management is confusing and ambiguous legally. The Act did not provide guidelines for preparation of forest

³ This refers to the Forest Management Agreement

management plans that could lead to a forest management agreement. Preparation of forest plans was left to technically trained forest personnel to handle. Forest extension workers developed management plans for VFAs based on knowledge of forest management planning for forest plantations (even or mixed) and not indigenous miombo forest. The second phase of the social forestry extension and training project funded by EU to support policy implementation in 2003 saw the development of community forest management planning processes. A Participatory Forest Management Planning manual with a guide on resource assessment was produced, which allowed community participation in resource assessments that would lead to preparation of a forest management plan. The forest extension personnel were trained to follow the PFMP process, and later trained local communities. However it is worth mentioning that most comprehensive management plans following the PFMP process have been done with the help of projects and programmes, for example, the Moyo Maun forest management plan was developed under social forestry extension and training project which has become a blue print for forest extension agents according to COMPASS. The PFMP has been viewed by projects implementing the policy as a costly exercise which a department of forestry with On Revenue Transfer funding from treasury cannot afford. However it is the forest management plan which is derived from a resource assessment of the VFA that determines a FMA with the Director of Forestry. The FMA gives legal rights and powers to forest resources and allows decisions on forest management to be made easily. That is why the policy and act directs a community managing a VFA to prepare a management plan for its VFA and enter into a forest agreement with the Director of Forestry, in order to achieve legal economic empowerment.

However, development of management plans has proved to be a lengthy process requiring significant technical support from extension staff and financial support through externally funded projects and programs. As a result, few management plans have been drafted and the management plans vary in format because the technical expertise of the forest extension staff varies across the country.

In terms of field practice, the current forest management planning process is being applied to all forest types and conditions, all sizes of forest areas, some much degraded areas, covering different land tenure and institutional arrangements. In effect this is a one-size fits all approach. In addition management plans are not being followed by communities after drafting. There are numerous reasons for this including: low quality participation and participatory processes, a rushed process followed by lengthy time delays, poor follow up support and monitoring, and limited focus on tangible economic benefits and rights as the incentive to invest in protection and management. There is time and energy invested in protection and management of VFAs and without economic benefits, one of the processes objectives is defeated.

For a local community the forest management plan requirement is in reality a technical and externally driven obstacle to legal and economical empowerment and opportunities for effective decision making. Recognizing

that the process requires significant external resources, most involved in the practice agree that the current approach is not sustainable.

Again the rules that communities make as part of the management plan require a signature of the Minister and often the rules and penalties are not in harmony with Forest department gazetted rules. As a result, it is difficult for a VNRMC to attain a Forest Management Agreement for its VFA from the Director of Forestry, if rules contradict or are not aligned with the gazetted forest rules. It is therefore impossible for a VNRMC to attain legal rights and bear the associated responsibilities, without a legally binding forest management agreement. The Forest Management Agreement is a crucial condition stated in the forest policy and legislation, without which, there is limited devolution of authority from the Central Government, and in effect the rural communities and their representatives are not involved in decision making or empowered more than they were previously. The forest management agreement stipulates the nature of the forest and other practices, use and disposition of produce from VFA, use of revenue generated from VFA, electoral process of VNRMC and responsibilities and assistance to be rendered by Forest department.

Since the shift of policy and new authority to transfer legal rights to community organisations, very few communities have received that legal mandate reflected in a Forest Management Agreement (FMA) with the Director of Forestry and few legal agreements have been signed. In Lilongwe district only one FMA for Sendwe VFA have been signed between the Director of Forestry and local communities. However this has been possible with facilitation of COMPASS project. The agreement was signed in 2007.

Rules or Bylaws: statutory law and customary law

Section 32 invites the Minister to make rules that pertain to VFAs... sections 5 declares the Director of Forestry responsible for the establishment of rules in village forest areas and section 33 requires any rules made by the VNRMCs to be approved by the Minister. In practice approval of community drafted rules or bylaws reflected in a management plan have been a major obstacle to empowerment of communities and their representatives to make decisions on forest management. This has had detrimental effect on the functioning of VNRMCs and management of VFAs since communities are aware that their bylaws have no legal basis until approved by the Minister. In many cases transparency and accountability of many of the VNRMCs formed since the change in Forest Policy in 1996 has been compromised by this reality (Kaarhus et al. 2003).

The Act does not provide for locally generated resource use rules which reflect local customs, sanctions and conflict resolution mechanisms, to be applied on a daily basis without the need for involvement of local magistrates and legal process. In cases where a Forest Management Agreement has been signed with a director of forestry, then locally formulated rules attain legal status. But few locally formulated rules have achieved this status because the Forest Management Agreement process is long and only one VFA has a Forest management Agreement in Lilongwe district. This therefore

means that offenders have to be referred to the district magistrate to be prosecuted by the Public Prosecutor under the statutory laws (forest act and forest rules). However the offences and penalties (see table 3) provided for violation of the Act 1997 are harsh. Villagers in the research sites reported that offenders in the VFA are not taken to courts because government rules are too harsh. The village headman cannot use government rules provided in the Act and their associated penalties because no one in the village will manage to pay the fines. Instead local communities have generated local rules and penalties (see table 4) that can be applied locally.

Table 3: Offences and fines under forest act 1997

Offence	Fine
Offences relating to fire	MK10,000 ⁴ and to imprisonment of five years
Offences relating to fauna, forest pests and diseases	MK10,000 and to imprisonment of five years
Offences related to possession or trafficking of forest produce	MK20,000 and to imprisonment of ten years
Offences related to obstruction of enforcement officers	MK20,000 and to imprisonment of five years

Apart from the rules provided for in the Act in relation to the offences in table 3, specific rules have been provided for under amended Forestry (community participation) Rules 2001, Part III. However these rules are only forcible with permission to the VNRMC. In the absence of a VNRMC, then specific rules need to be provided for because those under Forestry (community participation) Rules 2001, Part III do not apply.

⁴ Exchange rate at time of research £1=MK298

Table 4: Rules and penalties from Monjezi (VFA) Forest Management Plan

Rule	Fine
No one is allowed to set fire in the Village Forest Area	If he/she is found guilty, he/she will pay K1, 000.00 or he/she will screef 25m x 25m of the VFA.
Any member of the Monjezi village refuses to screef the firebreak	He/she will pay a fine of K150.00
Refusal to extinguish fire in the VFA	He/she will pay K50.00
Cutting of fresh trees is not allowed if anyone is found guilty	He/she will have his or her tools confiscated and will pay K300.00
No one is allowed to cut trees along river bank	If he/she is found, he/she will pay K200.00
No one is allowed to collect firewood without permission	If he/she is found, he/she will pay K150.00
No cattle grazing is allowed in the VFA	If he/she is found, he will pay K200.00
No one is allowed to hunt in the VFA	If he/she is found, he/she will pay K1,000.00
No honey collection in the VFA	If any one is found, he/she will pay K800.00
Debarking of trees is not allowed	If anyone is found, he/she will pay K200.00
Cultivating in the VFA is not allowed	If he/she is found, he/she will pay K3,000.00
Pit sawing is not allowed	If he/she is found, he/she will pay K2,000.00
Charcoal burning is not allowed	If he/she is found, he/she will pay K5,000.00
No Mitondo (mortars) making in the VFA	If he/she is found, he/she will pay K1,000.00
Herbalists are not allowed to collect medicine in VFA without permission	If he/she is found, he/she will pay K150.00

Disqualified person has the right to appeal to V.H. or G.V.H.

Harvesting authority and use of forest produce

The Act also gives rights to use of trees where a *resident of any village may collect forest produce from the customary land other than the village forest area for domestic use (50:1)*. The harvesting of forest produce from customary land including VFAs is guided by the law on utilization of forest produce from forest reserves and customary land. Section 83:3 gives the right to harvest and use on a sustainable basis. The word sustainable is subject to interpretation. Forest extension agents have interpreted this section by engineering formulation of rules for VFA management which does not allow harvesting of non timber forest resources. For example the forest management rules for Monjezi village (table 4) indicates that local communities cannot collect timber forest resources and certain non timber forest resources can only be collected on permission by the VNRMC. Rules from the villages under research reflect those of Monjezi village. At present the physical state of the VFAs in research sites can provide for wood products in form of firewood from thinnings but this has not been considered in formulation of rules and the VFAs are being managed as mini forest reserves. The responses of local communities in the research villages on end use of VFAs confirmed the status of VFAs as forest reserves as summarised in table 5 below

Table 5: Function/use of the VFA

Function/use	Frequency	Percent
Conservation	78	46.7
Promotion of regeneration	48	28.7
Medicine	46	27.5
Poles for emergency	44	26.3
Fruits	32	19.2
Firewood	18	10.8
Bee keeping	18	10.8
Soil erosion control	12	7.2
Firewood for village celebration	12	7.2
Grazing	10	6.0
Rainfall regulator	9	5.4
Fodder	2	1.2
Mushrooms	2	1.2
Total	331	N 167

Movement of forest produce, licensing and right to sale

Section 83:1 requires a conveyance certificate for the movement of indigenous wood. This movement in most cases refers to a trade in forest produce. In this instance, the main mechanism of regulation is the requirement for a conveyance certificate. In case of VFA management, this means that the VNRMC cannot move wood outside their area of jurisdiction for sale without obtaining a conveyance certificate. Commercial rights to forest

produce are licensed externally by the Director of Forestry. This therefore means that a VNRMC needs a licence to sale wood from a VFA. This ambiguity seemed to be resolved by an amendment to the Act under Forestry (community participation) Rules 2001 section 2, which states that “a *community shall have power to develop a reciting (licensing) system in collaboration with the Director of Forestry*” (Government of Malawi 2001). However the amended law did not provide guidelines for developing a licensing system at community level. It just indicates that a brief harvesting plan for small areas can be prepared and considered. However the Director of forestry has not delegated the powers of such a licensing system to District Officers, who are living in proximity with local communities. In addition the question is why develop a brief forest harvesting plan when a forest management plan for the VFA has already been developed, which covers harvesting operations. Although this is allowed for in the legislation, in practice, no VNRMC has been empowered to license and retain revenue from trade in forest produce. In practice, regulatory control is still covered under the movement of indigenous wood and the issuing of conveyance certificate. This raises the question about the incentive of investing in forest management when sale outside the area depends on conveyance certificate and a licence which cannot be easily obtained. Furthermore, on movement of wood there is no mechanism to differentiate forest produce from VFAs, forest reserves and other categories of land.

In practice the process of conveyance certificate is used as a means to control the illegal trafficking of all wood products including exotic species particularly in areas where there are Government plantations. Growers of wood products are encouraged to issue some form of receipt or proof of ownership of those transporting wood products as indicated in the “Technical order on regulating wood utilisation on customary land” (Government of Malawi 1998).

CONCLUSION

The state devolution policies appear to be progressive when set in a historical trajectory where punitive laws of past policies are replaced with laws that allow local people’s involvement in forest management. However development of people centred policies have been influenced by external actors, who have injected resources to enable government of Malawi achieve the current devolution policy. The Government of Malawi has attempted to institutionalise the policy. It has played a direct and crucial role in structuring roles and responsibilities for local people’s involvement in forest management. In the process it has given roles to communities but on the other hand it has taken them back. Operationalisation of the policy seems to be sending contradictory signals due to the way the policy has been framed and interpreted by the bureaucracy.

The forest agents have assumed that local people require monetary and other incentives to create village forests. Management of village forests have been passed on to new structures which have been engineered by the bureaucracy. The new structures and institutional arrangements put in place are amenable to extending state control. The forest state agents have devised ways of

being part and parcel of community institutions by joining the committees. Thus elite capture of community management has been achieved by the bureaucracy who is afraid to cede decision making powers to committees that have been elected to take over decisions that forest state agents have been used to making. Such tactics have precluded the influence of local institutions to make decisions on resource use. The dilemma lies in the fact that the bureaucracy serves a link between the state (forest department) and local communities managing forests and is central to implementation of official forest policy.

The mechanisms to transfer decision making powers as stated in the policy are prohibitive in the sense that elaborate forest management plans which in some cases are not needed are required. These management plans have to be developed with the bureaucracy expertise which varies. They have to go through a long approval process by the director of forestry in form of a forest management agreement, which can be withdrawn by the Forest department if management of the VFA is poor. The period from demarcation of a VFA by the village headman and the time that the VNRMC can make decisions on use is long and most VFAs stand as mini forest reserves.

The rules that are formulated to guide decisions on forest management and use at local level are deemed to be formulated under democratic arrangements with facilitation of Forest department staff but in reality, there are a transformation of government rules under state (FD) direction. However where new structures (VNRMCs) and traditional leadership have facilitated formulation of rules with local communities, the fines reflect local reality. The state can learn from these to improve subsequent amendment policies and laws. Ribot (2005) noted that democratic decentralization (devolution) needs to move from the discourse. They state that legal reforms should reflect the discourse in national political circles, to ensure that practice reflects the laws when they are indeed laws designed to establish real devolution.

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