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Support for human rights-based development: reflections on the Malawian experience

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The urgency of reducing world poverty requires innovative thinking and the human rights-based approach to development (HRBA) is considered by some to be a viable alternative to conventional (needs-based) development. Despite many potential advantages, the discourse on HRBA has unfortunately been one of rhetorical appeal rather than an emphasis on practical implementation and integration with existing development initiatives. The paper therefore provides a critical overview of the major conceptual foundations of a HRBA and identifies a set of challenges in operationalising a global theory to national and local practice in poor countries. Based on empirical evidence from Malawi, the major focus is on political culture and the extent of participation of the poor in the political discourse, the monitoring and review roles of institutions of oversight and the role and accountability of civil society organisations and donors in formulating and implementing anti-poverty policies that on paper claim to be based on human rights principles and standards.

Keywords: Human rights-based approach to development (HRBA); poverty reduction; policy implementation; legislature; judiciary; civil society; Malawi

Introduction

Rising poverty in many parts of the developing world and the suffering it causes has given rise to the development of innovative approaches that address the urgency of efforts to promote economic development and reduce (and eventually eliminate) poverty and deprivation. Starting with the capability and human development approaches – with important contributions from Amartya Sen, Mahbub ul Haq, Martha Nussbaum and others – the tendency since the mid-1990s, at least among a section of UN and bilateral agencies and international civil society organisations, has been to prioritise what has been termed as human rights-based approaches to development (hereafter HRBA). The potential advantages of strongly connecting human rights to development are indeed substantial; a human right is quintessentially general and thus ‘universal’ in character – implying that all human beings enjoy it – and consequently it is a ‘fundamental’ right. Human rights principles also establish claims against individuals and organisations that obstruct the realisation and enjoyment of such rights. This, in turn can result not only in greater commitment to development, taking into consideration the genuine interests of the poor (articulated by the poor themselves), but can lead to greater accountability and scrutiny of actions that...
profess to promote development and reduce poverty. Thus, Urban Jonsson identifies several ‘significant advantages’ of a HRBA in relation to conventional basic needs and human development approaches. In addition to ‘increased accountability as a result of explicitly defined claim/duty relationships’, a HRBA ‘offers better protection of people who are poor by ruling out trade-offs that are harmful to them’ and consequently ‘makes good programming practice obligatory’ on the part of development actors. Moreover, a HRBA ‘gives more attention to exclusion, discrimination, disparities and injustice’ and by doing so emphasises ‘legal and institutional reform’ including the promotion of the rule of law and access to justice. Most importantly, a HRBA ‘protects people better from power exertion and can be used to challenge power’ and consequently facilitates development as a matter of obligations (national and international) and not simply based on motives of charity and solidarity.

Despite such potential advantages, the discourse on HRBA has unfortunately been one of rhetorical appeal than an emphasis on practical implementation and integration with existing development initiatives. Indeed, the traditional blindness of development policy towards questions related to power, conflict, exclusion and discrimination leave development bureaucracies and experts poorly prepared to implement a HRBA. Another important hindrance is the apparent lack of common concerns between human rights activists and organisations and development practitioners at the country level. As a result, the continuation of poverty and violations of rights are often seen as separate issues and there is a risk that poverty will take second place to other more pressing concerns of powerful world players, such as terrorism. In short, although ‘a human rights-based development is desirable and possible...doubts persist whether it is probable.’

The challenge, as Mary Robinson puts it, is to make ‘the language and approach of human rights accessible to wider audiences’ and ‘problems of precision in how human rights standards can be applied in different policy making situations remain’. And while ‘the work continues and is deepening...there is still a long way to go’. In Part I of this paper, I provide a critical overview of a HRBA, identifying potential advantages and challenges, and argue that it will not live up to expectations unless the process of operationalisation of global theory to national and local practice is urgently and comprehensively addressed. In Part II of this paper, I will concentrate primarily on the challenges associated with implementing a HRBA at the national and local levels. The empirical focus is Malawi, which is an interesting case for several reasons. Despite being home to large groups of people living in extreme poverty – and faced with immense challenges related to food insecurity, environmental degradation, unemployment and HIV/AIDS – the country has enjoyed relative political stability in recent years and has attempted to implement several programmes targeted at the poorest of the poor, albeit with limited success. There is also a considerable amount of ‘rights-based talk’ in the country, mainly due to the large and influential presence of UN organisations, international non-governmental organisations (NGOs) and bilateral foreign donors. Indeed, the dependence of Malawi’s economy on foreign aid has also made the country a hotbed for experimenting with a human rights-based approach to development and poverty reduction. I will therefore try to outline the potential impact and implications of adopting a HRBA in a Malawian context by focusing on the following set of interrelated issues: national and local political culture and the extent of participation of the poor in the political discourse; the monitoring and review roles of parliament, the courts, the national Human Rights Commission and civil society organisations; state capacity to formulate and implement development programmes; and finally the role of international agencies and the accountability of donors. Among the questions I will address are the following: To what extent is there a local and/or national
knowledge and interest in the human rights-based approach to development? How have international organisations (including bilateral donors) supported and encouraged the authorities to adopt a HRBA in policymaking? And finally, what has been the role of legislative, judicial and oversight institutions on the one hand and media and civil society organisations on the other in monitoring, reviewing and applying HRBA-related activity in Malawi?

The purpose of this paper is to nuance the discourse on HRBA by highlighting concrete implementation and programming challenges that the human rights rhetoric often does not adequately provide for. In addition, there must be greater focus on issues related to accountability (particularly in relation to donors, multilateral institutions and civil society organisations), unfair transnational practices, and unequal power relations that negatively affect the poor. Most importantly, and particularly if the above two issues remain unaddressed, is the danger that a HRBA, like other approaches before it, will be drained of political power and prove to be difficult to implement at the national and local levels.

Part 1: the human rights-based approach to development (HRBA): a critical overview

While a HRBA was generally neglected until the end of the 1990s, it has, in the past decade received an astonishing amount of attention particularly from UN agencies, international civil society organisations and donor agencies. With growing criticism of the relative failure of so-called ‘conventional’ development strategies pursued by national and international agencies to eradicate poverty, a number of international organisations and agencies (e.g. UNICEF, UNDP, CARE, OXFAM and several bilateral aid agencies) have thrown their weight behind this approach. There also appears to be general consensus regarding the interdependence of human development and human rights approaches as illustrated by the UNDP in its *Human Development Report* 2000. Human development is seen to share a common vision with human rights in that the final goal is human freedom. Indeed, human development and human rights are mutually reinforcing in the sense that they help to promote and maintain the well-being and dignity of all people, building self-respect and the respect of others.8

A HRBA is in essence ‘a conceptual framework for the process of human development that is normatively based on international human rights standards and operationally directed to promoting and protecting human rights’.9 Its main focus areas include analysing inequalities, discriminatory practices and imbalance in power relations that often are the main obstacles to development. In the process of formulating poverty reduction policies, the approach recommends the inclusion of the following elements and principles:

- identifying and prioritizing action to improve the situation of the poorest; analyzing the underlying power relations and the root causes of discrimination; ensuring that both the process and the concrete poverty reduction targets are consistent with international human rights standards;
- ensuring close links between macroeconomic design, sectoral initiatives, and ‘governance’ components and principles such as transparency and accountability; ensuring a basic standard of civil and political rights guarantees for active, free and meaningful participation, including freedom of information and freedom of association; identifying indicators and setting benchmarks so that the progressive realization of economic and social rights can clearly be monitored.10

A HRBA is said to enjoy several advantages over traditional development strategies including the ability to ensure genuine participation of the poor and to better ensure
accountability of policymakers and implementers. It is an important tool not only for poverty reduction but also in efforts to combat poverty production since it entails a comprehensive re-definition of the aims and approaches to development. The human rights framework introduces the important idea that certain actors have duties to facilitate and foster development. Of particular importance is that a HRBA creates ‘claims’ and ‘duties’ as opposed to ‘philanthropy’ and ‘charity’ that characterises traditional development. In doing so, the approach changes the final product of a developmental process and ‘consequently the whole process of thinking about it, of defining the nature of the problem, changes as well – a new vision emerges’. Moreover, a HRBA greatly influences the implementation of development programmes in that ‘the means, the processes, are different, even if many of the goals remain the same’.

While there is considerable agreement in international human rights law in recognising the obligations of the state, a HRBA importantly entails an extension of the ‘claim-duty relationships to include all relevant subjects and objects at sub-national, community, and household levels’. Moreover, a focus on human rights can guarantee ‘a protected space where the elite cannot monopolise development processes, policies and programmes’. Linking human rights to development actually forces development practitioners to confront the tough questions of their work: matters of power and politics, exclusion and discrimination, structure and policy. And as Arjun Sengupta puts it, ‘if poverty is considered as a violation of human rights it could mobilize public action which itself may significantly contribute to the adoption of appropriate policies, especially by Governments in democratic countries’.

At this stage it is important to distinguish between ‘rights-based development’ and ‘human rights-based development’, since these terms result in some confusion when used interchangeably by various international organisations and aid agencies. Asbjørn Eide argues, for instance, that a rights-based approach can ‘cover any kind of rights and is locally determined as a result of power relations’ and can include ‘established property rights irrespective of whether their origin, use or inheritance principles are “just”’. By comparison, a human rights-based approach ‘builds on the international normative system of rights and the obligations undertaken by (most) states, which makes possible a growing international consensus on the content of the rights and the corresponding responsibility of the duty-holders’.

In terms of specific impact on development and poverty reduction, Darrow and Tomas identify the following five distinctive features of a HRBA: (1) ‘a solid normative basis for values and policy choices that otherwise are more readily negotiable’; (2) ‘a predictable framework for action, with the advantage of objectivity, determinacy, and the definition of appropriate legal limits’; (3) ‘a quintessentially empowering strategy for the achievement of human-centred development goals’; (4) ‘a ready legal means to secure redress for violations’; and (5) ‘a secure basis for accountability, not only for the state party concerned, but also for a significantly wider range of actors in international development cooperation’. Moreover, a HRBA encourages development policies to be more ‘preventive’ instead of ‘reactive’. Darrow and Tomas also argue that a HRBA ‘should be seen as strengthening rather than necessarily replacing good development practice’.

Urban Jonsson, one of the chief architects of UNICEF’s sustained interest in a HRBA for almost two decades, persuasively argues that one the main contributions of the approach is to draw ‘equal attention to outcome and process’. He writes, ‘While monitoring of the achievement of human development outcomes has improved considerably during the past ten years, far less progress has been achieved in monitoring the quality of processes – largely because “good process” has seldom been defined.’
Jonsson further highlights the distinction (not always clear even to those actively engaged in HRBA-related work) between human rights standards and human rights principles. Accordingly, a human rights standard ‘defines the minimum acceptable level of an outcome or result’ in contrast to human rights principles which specify ‘the criteria for an acceptable process to achieve an outcome (minimum level of conduct, values’.

And the main principles in this context are: universality and inalienability (the very foundation of human rights); indivisibility (all human rights are of equal worth, validity and linked); interdependence and inter-relatedness (no category of rights can be arbitrarily prioritised and no human rights can be fulfilled in isolation); non-discrimination and attention to vulnerable groups (explicit focus on individuals and groups suffering from and/or vulnerable to discrimination and suffering); participation and inclusion (including access to information, institutions and complaint mechanisms); accountability and rule of law (with a focus on empowerment of the poor, strengthening of oversight institutions and mechanisms for redress, etc.); progressive realisation (certain types of economic, social and cultural rights may be realised to the maximum extent of available resources) and non-retrogression (no human right should suffer an absolute decline in realisation).

Finally, Darrow and Tomas remind us that there is a two-fold purpose and value in integrating human rights principles in development. First, applying human rights principles is valuable in that their application will increase the potential of enjoying human rights in the development process. Secondly, human rights principles provide ‘clear and effective’ guidance to those implementing development. In short, a HRBA is a ‘framework for understanding and managing the negative impacts of discrimination and disempowerment, not a one-dimensional and static formula’.

Operationalisation from global theory to national practice

A HRBA as an operational tool has in practice been used in four main ways. First, they are used as a set of normative tools by organisations like Britain’s DFID, Sweden’s SIDA and the international NGOs Action Aid and CARE in their developmental work which emphasise solidarity with poor and marginalised groups. Secondly, a HRBA is used as a set of instruments which help guide assessments and based on which checklists and indicators are developed that in turn are useful in assessing the quality and effectiveness of development programmes. UNICEF, in particular, has used this approach rather successfully. Thirdly, HRBA principles are integrated into programming and good examples of this are UNICEF’s efforts in integrating human rights into its Community Capacity Development Approach and CARE’s Household Livelihood Security Approach. Finally, the consolidation and strengthening of existing programmes are undertaken using a HRBA. Notable examples here are the UNDP’s attempts at creating and strengthening governance issues related to accountability and Action Aid’s programmes aimed at helping organisations representing the poor to develop so-called advocacy skills.

In 2003, various UN agencies (with UNDP and UNICEF at the forefront) agreed on a ‘Common Understanding’ in order to coordinate the work of various UN agencies in relation to a HRBA. The agreement consisted of three main principles. First, ‘All programmes of development cooperation, policies and technical assistance should further the realization of human rights as laid down in the Universal Declaration of Human Rights and other international human rights instruments.’ Secondly, ‘Human rights standards contained in, and principles derived from, the Universal Declaration of Human Rights and other international human rights instruments guide all development cooperation and programming in all sectors and in all phases of the programming process.’ Thirdly,
‘Development cooperation contributes to the development of the capacities of “duty bearers” to meet their obligations and of “rights-holders” to claim their rights.’ While reflecting on the impact of the above ‘Common Understanding’ for purposes of programming, Jonsson concludes that ‘each of the three conditions is necessary, but not sufficient in isolation’. Indeed, for him, sufficiency would require that ‘all three conditions are met at the same time’.

Although some UN agencies – most notably UNICEF – have arrived at their own understanding of employing a HRBA in programming (often referred to as HRBAP), an excessive amount of attention on HRBA is currently directed at the rhetorical level rather than on the practical implementation of development policies. As de Gaay Fortmann puts it, ‘the basic weakness of human rights is that they are mainly proclaimed rather than implemented’. Indeed, in spite its theoretical underpinnings, a HRBA has proved difficult to operationalise in practice. Not only have public administrations in poor developing countries not been poorly prepared to implement a HRBA – particularly when one considers issues of power, conflict, exclusion and discrimination – but there has also been the absence of support from national and local political leaders to initiate such drastic changes in development thinking.

An important hindrance is the lack of common concerns between human rights activists and organisations and development practitioners at the country level. The importance attached to human rights in key policy documents related to development, and in particular those addressing poverty, varies significantly depending on the ideological or organisational culture of the institution: ranging from human rights being viewed as central and of intrinsic value, to merely instrumental means to other ends. And Uvin argues that:

> The risk always exists that taking up a rights-based approach amounts to little more than making nice statements of intent regarding things that it would be nice to achieve, or duties we would like the world to assume one day, without setting out either the concrete procedures for actually achieving those rights or methods of avoiding the slow and dirty enterprise of politics.

Another set of criticisms relate to a HRBA’s lack of conceptual rigour. As Darrow and Tomas observe, ‘continued credibility of rights-based approaches demands a higher degree of conceptual rigor and clarity than has prevailed in the past, along with a frank appraisal of their relative strengths and limitations’. Similarly, Philip Alston argues that HRBA criteria are much too often ‘expressed at a level of abstraction and generality that is not uncharacteristic of some human rights discourse but that is likely to seem abstract, untargeted, and untested to the community of development economists’. He goes on to write that ‘For all their conceptual sophistication and undoubted importance, these frameworks and checklists appear to the latter to offer little guidance in concrete situations and to gloss over many of the complexities of real world decision making and trade-offs.’ Alston further criticises documents such as the UN Common Understanding Statement which ‘do little more than restate the fundamental dilemma and do not actually offer a lot of guidance as to how to resolve it’. In general, advocates of conventional (basic-needs based) development question to what extent approaches such as a HRBA really ‘re-invent’ development, as its proponents often claim. It is hence claimed that supporters of a HRBA often underestimate the complexity of the processes and methods of development. Moreover, some claim that the major problem is the lack of communication between human rights people on the one hand and supporters of the basic-needs approach on the other.
Related to the above is the claim that a HRBA suffers from conceptual clarity at national and local levels, particularly at programmatic levels where anti-poverty policy is actually implemented. The main difficulty here is the lack of awareness among policymakers regarding what human rights principles actually entail and excuses are frequently made with reference to lack of available financial resources. For example, and according to a UN official, the reluctance to embrace human rights approaches are often made by national partners or certain religious groups based on financial resources, cultural practices and misconceptions of the term ‘human rights’. There is therefore an urgent need for formal and informal dialogue and negotiations coupled with lobbying, networking and flexibility in trying to promote a HRBA which will in turn help in strengthening the conceptual clarity and understanding of the approach.

While the human rights framework operates with national governments as the principal duty bearers, a HRBA also appears unclear on the exact nature of duties and obligations of national governments which are necessary to fulfil, protect and promote human rights. According to Alston:

Sorting out the roles of the government, the private sector, the individual right-holders, and the international community will rarely be a routine accounting matter that can be done with ease in the context of complex development strategies. Such an approach might well be viable and helpful at a micro-level but seems less likely to be so in terms of national level planning of macro-economic policies.

Moreover, a HRBA framework provides for the poor being entitled, through a participatory approach, to the ‘most effective’ poverty reduction strategies available. This can be particularly problematic as there are no indicators to assess, evaluate and test the contents of such strategies and the methods by which they are realised. What types of poverty should one be concerned with and what types of rights? Do some forms of poverty and particular rights receive greater prominence than others? Whose rights? What does it mean to be a right-holder and duty-bearer? Indeed, in several developing countries, politicians and bureaucrats argue that a HRBA has been forcibly imposed on their countries rather than being formulated on the basis of local knowledge and national discourses and processes. Many such leaders distinguish between a HRBA to public policy and a HRBA to development co-operation, and argue that if public policy is to succeed, initiatives must come from within the country at local, regional and national levels. Thus, a HRBA can be particularly problematic when it assumes that ‘good governance is the only missing link between national poverty reduction intentions and actual poverty reduction’. It is also notable that the African Union has its own interpretation of human rights, attaching more importance to collective notions of the person and challenging the main tent of UNICEF’s rights of the children.

In brief, the link between human rights and poverty reduction requires further elaboration and there is a need to question the historical roots of the current linkages between human rights and poverty together with the relative importance of local norms, practices and values. Are national elites convinced about the usefulness of the approach or do they feel pressurised by donors and international agencies into accepting it? To what extent do government ministries cooperate and interact in implementing a HRBA in relation to poverty reduction? There is therefore an urgent need to examine the conditions under which the poor exercise their right to hold authorities accountable (through legal and political institutions) for the absence of or ineffective attempts to promote development and reduce poverty. Malawi provides an instructive example of areas which offer both
promise and new types of challenges in implementing a HRBA. Some of these challenges are briefly discussed below.

Part II: poverty, human rights and political culture in Malawi

The introduction of multiparty elections in 1994 – after almost four decades of dictatorship – gave Malawians and donors alike new hope that democracy would be better able to tackle widespread inequalities in power and wealth. The past decade has, however, revealed and reaffirmed the dominant role played by a small group of elite politicians in national-level politics. Thus, and in relation to Amartya Sen’s argument that political freedoms play an important instrumental role in addressing pressing economic need, Harri Englund finds that the experience with political freedom in Malawi suggests that ‘the mere allowance of arguments and disputes to take place in public is less crucial to democracy than what those arguments are about’. The point here is that the idea of democracy and human rights introduced in Malawi in 1994 primarily caught the imagination of elite politicians, bureaucrats and journalists together with donor representatives. The overwhelming preoccupation with political freedoms failed, however, to mobilise the large majority of rural poor, and ‘[f]or all the evocations of participation and empowerment in the rhetoric of freedom, the rural and urban poor had few opportunities to participate in defining what freedom, human rights, and democracy might mean in a Malawian context’. While a very narrowly defined system of rights – mainly related to elections and the right to vote – resulted in some political squabbles, the power holders were successful in silencing discussions on the fulfilment of economic and social rights. Englund goes on to observe:

[a]n impression of robust democratic processes was thereby created, not least for the benefit of foreign donors, but structural inequalities were hidden behind the notion that ‘poverty alleviation’ was basically a technical issue. Empowerment, in effect, became disempowerment by using the notions of freedom, democracy, and human rights to confine the scope of what could be discussed.

The language of personal freedom and human rights introduced progressively following multiparty elections in 1994 and sustained donor pressure, appeared to be warmly embraced by the political elite. However, large groups of the rural poor, including women who continue to face daily forms of gender-based discrimination, remain sceptical of the benefits of human rights-talk. For example, Ribohn writes of how ‘[l]ocal reactions against human rights are based on notions of a new “culture”, associated with “Western” values’. And ‘[o]ne consequence of local human rights discourses in Malawi is that women as a category are placed in opposition to human rights. Both men and women argue that women should maintain “culture”’. Indeed it is common to hear villagers – and even some highly educated Malawians – argue that maintaining traditional culture is of paramount consideration, even if this means overriding universalistic human rights. And villagers increasingly speak of ‘stability’, which they believe is at risk upon the introduction of human rights language: ‘Official statements stressing the importance of changing women’s role in society increase the fear of instability and uncertainty’. Hence, ‘the emphasis on “traditional culture” and its consequences may be seen as a reaction against transnational policies embraced by the government’.

Human rights integration in development policy

The Malawi Poverty Reduction Strategy (2002) as well as the current Malawi Growth and Development Strategy (2006) both mention human rights although only the former
explicitly mentions elements of a HRBA.\textsuperscript{52} The Malawi Poverty Reduction Strategy (MPRS) for example, notes that human rights are ‘an essential part of democracy and are fundamental to poverty reduction’ and that ‘Declarations of human rights are intended to protect the poor from mistreatment by more powerful individuals and organisations such as Government, and guarantee access of the poor to basic services’.\textsuperscript{53} It goes on to observe that although the overall human rights situation in the country has gradually improved since independence in 1994 – with constitutional guarantees on economic and social rights, the government’s ratification of major human rights instruments and the increasing ‘watchdog’ functions performed by civil society organisations – ‘there is still limited observance and enforcement of human rights provisions’ in the country. And the document highlights that ‘Issues of human rights have not yet taken centre stage because of conflicts between customary practices and the bill of rights, low level of professional skills in human rights organisations and inadequate systems to monitor human rights violations’. The document goes on to highlight that most human rights institutions in the country ‘do not have clear roles and do not use their limited resources effectively’ and ‘in order to address these problems, the capacities of the many human rights organisations will be developed by Government and its development partners’.\textsuperscript{54} In this task, the MPRS mentions further strategic priorities that include an increase in funding of well-functioning and ‘effective’ human rights organisations, recruitment and training of personnel, particularly civil servants in enforcement agencies, on human rights issues. A final priority in this field is also efforts to ‘raise the awareness of citizens about their constitutional rights and obligations’.\textsuperscript{55} 

In 2006, the MPRS was merged with the Malawi Economic Growth Strategy (MEGS) to form the Malawi Growth and Development Strategy (MGDS) – a more comprehensive blueprint for the country’s development grouped around five broad themes – sustainable economic growth, social protection, social development. infrastructure development and improving governance. While several sections of the document made references to human rights, the term was explicitly made a sub-part under the governance theme:

The MGDS recognises the importance of human rights within the context of good governance and democracy. A rights based approach to development is the basis of equality and equity, both in the distribution of development gains and in the level of participation in the development process. Human rights are an integral part of the overall national development agenda....The key areas of concern in human rights awareness are the rights of vulnerable groups and how to exercise them, and roles of governance institutions in promotion and protection of human rights. Empowering the most vulnerable groups that form the larger part of the population can effectively contribute to social, economic and political development of the country. In this regard the MGDS will therefore also focus on public awareness of human rights and acknowledgement of human rights responsibilities.\textsuperscript{56} Accordingly, the long-term goal was to increase awareness regarding the ‘upholding’ of human rights among Malawians while the ‘medium-term expected outcome’ entailed enhancing ‘awareness and practice of human rights and responsibilities’. Although no details were provided over the specific nature of these rights, both goals explicitly mentioned the ‘most vulnerable groups’. The document, however, does not make clear how such groups are to be identified and who typically fall under this category. And even when certain key strategies to promote human rights are forwarded – including ‘effective prosecution of human rights violation’, ‘instituting human rights regulations in workplaces’, ‘instituting effective monitoring and evaluation of human rights issues’, ‘ensuring that economic, social and cultural rights, and the rights of vulnerable groups, receive adequate attention’\textsuperscript{57} – they appear to be mainly general formulations without
any operational content. On the positive side, the MGDS does propose a handful of concrete measures to improve access to justice and rule of law by for example mentioning that customary laws and practices should be acknowledged by the judiciary only when these do not conflict with human rights principles.\textsuperscript{58}

In terms of content, the MGDS did not differ substantially from the MPRS although mention of economic, social and cultural rights was much more explicit (though hidden in a table or two towards the end of a very long document) than was the case in previous government documents. And the general impression is that the document is largely based on an understanding of human rights as civil and political rights. And despite perennial problems of hunger and food insecurity, a ‘right to food’ is conspicuous by its absence.

In terms of implementation of development programmes – and with assistance from multilateral institutions and bilateral donor agencies, the civil service in Malawi has achieved a certain degree of professionalism, particularly at the highest echelons of government with the recruitment of several competent officers at the principal secretary level. The lack of institutional capacity required for the successful implementation of anti-poverty programmes is, however, particularly absent at the middle and lower ranks of the civil service. The low level of salaries, absence of proper facilities and the country’s patronage-oriented political system are some of the reasons behind this predicament. As Booth et al. argue, politicians have undermined civil servants’ capacity to formulate and implement development policy by refusing to delegate power for fear of losing their ability to ‘use policies for short-term political gain or patronage’.\textsuperscript{59} In addition, there has been a slow but steady erosion of civil service ethics and a steady increase in corruption levels.\textsuperscript{60} In recent years, opposition parties in parliament have also accused the government of distributing development funds unequally between the three major regions of Malawi – the southern region has traditionally received greater allocations than the comparatively poorer northern region.

Blessings Chisinga argues that while much has been achieved at the national policy level in terms of a Poverty Alleviation Programme (PAP), the impact of policy implementation at the village level has been negligible and most often ‘accidental’.\textsuperscript{61} This, he argues, is primarily due to the lack of information sharing between national and local levels, and the weak system of communication which leaves villages isolated from the centres of power. Large groups of rural Malawians have little or no access to newspapers, televisions and radio sets, with access to the relatively small national media largely limited to the urban centres of Lilongwe, Zomba and Blantyre. Moreover, journalists seldom undertake investigative reporting, relying mainly on ‘telephone briefings, press conferences called by officials and similarly formal exercises’\textsuperscript{62} Indeed, a journalist in one of the largest newspapers in the country went on to note that there were no regular and institutionalised interactions between the president and the media. A formal press conference is usually held at the airport when the president leaves the country and at the State House upon his return from a trip abroad.

**Judicial (in)activism**

Despite this drawback, Malawi drafted and put into force a constitution which draws considerable inspiration from human rights principles. Thus, Chapter IV of the Constitution is dedicated entirely to human rights. Of particular importance is Section 30, which provides for a ‘right to development’ whereby ‘[a]ll persons and peoples’ can enjoy ‘economic, social, cultural and political development, and women, children and the disabled in particular shall be given special consideration in the application of this right’ (Para. 1).
Accordingly, the state is required to ‘take all necessary measures’ including ‘equality of opportunity for all in their access to basic resources, education, health services, food, shelter, employment and infrastructure’ (Para. 2). The state is further required to ‘introduce reforms aimed at eradicating social injustices and inequalities’ (Para. 3). Despite such constitutional guarantees in the area of social and economic rights, some argue that low levels of economic growth combined with high levels of unemployment, frequent food shortages and recurrent natural disasters have, however, slowed down the process of realisation of these rights.

Since 1994, the courts have been active and innovative in several respects – including the positive manner in which the Bill of Rights was interpreted in relation to prisoners’ rights, etc. However, the major focus of the judiciary has been on civil and political rights. While litigation on economic, social and cultural rights has been scarce, a senior official in the Ministry of Justice claimed that it has nonetheless had a positive impact in relation to issues of employment (e.g. daily wages and price-setting mechanisms by employers) and campaigns demanding the right to education. After the introduction of the 1994 Constitution, the legal profession in Malawi has also been increasingly exposed to international human rights law. The courts have, however, not given such law much prominence in their rulings largely due to the lack of training of judges and lawyers in international human rights terminology and use. Hansen, for example, notes that several judges feel uncomfortable applying international human rights law since they have difficulty applying international provisions to suit domestic realities. Interviews with several judges of the Supreme Court revealed that most judges on the bench did not believe that economic and social rights are justiciable. Indeed, there was great reluctance to encourage litigation on such rights as food and housing. In comparison, many younger judges of the High Court of Malawi, housed adjacent to the Supreme Court building in Blantyre, had a much more progressive view on the matter. Many claimed to have tried to get the Supreme Court interested in development-related issues but felt that such attempts were thwarted by ‘older and more conservative’ judges in the Supreme Court who were ‘obsessed with consolidating political rights’ and who at the same time held the view that ‘the government cannot do more to reduce poverty given resource constraints’.

Moreover, while most donors and international agencies place considerable emphasis on the strengthening of the formal judicial system, over 90% of the population does not have access to formal legal structures. Indeed, it is largely the political elite and a handful of NGOs that go to court; not the poor. And in order to settle local disputes, informal systems including community-based paralegals are widely used. However, and as a local UNDP officer pointed out, most donors have thus far ignored the importance of such informal mechanisms of dispute settlement.

**The performance of oversight institutions**

Since 1994, successive governments in Malawi have supported the creation of institutions of oversight such as the Human Rights Commission, the Office of the Ombudsman, the Office of the Auditor General, the Anti-Corruption Bureau, etc. However, the independence of such institutions from executive control is highly suspect. Interviews with lawyers and officers of the Malawi Human Rights Commission (MHRC) in Lilongwe suggested that the institutions of oversight appear to enjoy ‘pseudo-independence’. For example, although the MHRC has a Constitutional mandate, the executive (primarily the all-powerful president) exercises substantial influence over its workings, having a major say in the appointment of Commissioners and in the disbursement (or withholding) of funds.
A lawyer put things in perspective when he observed, ‘You cannot bite the hand that feeds you.’ However, a senior official put forward a different reason for the Commission’s lack of policy influence, arguing that, ‘even within the MHRC, our understanding of human rights provisions is weak…and this prevents us from being able to examine all pieces of legislation passed by Parliament. …We do not have enough lawyers; poor salaries prevent us from attracting good lawyers’. He went on to add that ‘most human rights campaigns so far have been on civil and political rights. …And since we did not do a good job of influencing the government’s recent MGDS document, the future of socio-economic rights looks very bleak indeed’. Another Commissioner argued that the main function of the MHRC was to promote awareness not just among the poor regarding their rights, but also awareness among members of the judiciary, several of whom lacked an understanding of international human rights law and the corresponding obligations of the Government of Malawi.

A large number of people interviewed – representing various groups including ruling party members, civil servants and human rights commissioners – seemed to agree that the Malawian Parliament was to blame for the lack of better integration between human rights and development. For example, the Law Commissioner claimed that processing laws in Parliament remained a major challenge, and that there was a need to ‘sensitize MPs by facilitating the discussions in the legal affairs committee’, which has been largely inactive. He highlighted nonetheless that workshops and training programmes had resulted in some success in that MPs recently showed an eagerness to pass the domestic violence act and legislation on money laundering. And although Parliament showed little interest in economic and social rights, the Law Commissioner felt that this was not really a challenge for political institutions. Rather, it was the role of NGOs, he argued, to ‘make enough noise’ on these issues. Similarly, a senior official of the Human Rights Commission was frustrated over the manner in which the Commission’s reports on child rape, police brutality and violence against women were handled in Parliament. He accused MPs of neither reading nor debating issues outlined in the detailed reports submitted to Parliament, and claimed that some MPs believe the MHRC to be an NGO.

Indeed, the general impression was that the Parliament lacks teeth, as was clearly borne out in the December 2006–January 2007 stand-off between President Mutharika and elected MPs on where and when the Parliament should convene. In this connection, Booth et al. argue that the weak institutionalisation of political parties in the country have allowed successive presidents to manipulate the role and functions of parliament. Moreover, most NGOs and foreign donors are of the view that MPs seldom visit their constituencies and tend to switch party loyalties while Parliament is in session. Similarly, a senior civil servant argued that Parliament exists as a forum for the exhibition of a political majority and ‘citizens are constantly made aware that any enjoyment of socio-economic benefits is closely tied to political affiliation. There is no automatic right; it does not exist independently but is something that is assigned based on political support. And rights are preached, but not implemented.’ A combination of the above factors has therefore undermined the legitimacy and role of the legislature in the eyes of the small minority of politically emancipated citizens. A journalist summed up the situation when he observed, ‘the importance of an institution can be gauged by the size of its headquarters; our Parliament does not even have a building of its own. Occasionally parliamentary sessions are held at the State House depending on the personal whim of the President’.

Most human rights organisations in Malawi have been historically weak, and have generally failed to create vertical linkages with local organisations. Rather, it was widely argued in Lilongwe that human rights NGOs have, in the past decade or so, spent far too much time in trying to link their existence and activities with international human rights organisations.
like Amnesty and Human Rights Watch. While this has provided some of these Malawian organisations with a certain level of international visibility, this has been at the cost of domestic visibility. Indeed, it was argued that the presence of civil society organisations working on human rights-related issues was virtually negligible at the grassroots level. Senior civil servants pointed to the ‘cut-throat competition’ in the civil society sector and questioned the quality of the work carried out by NGOs claiming to work on human rights issues. The principal secretary of an influential ministry further accused most NGOs of engaging in a ‘mad rush to please donors by promising them the moon in lieu of funds’.

A representative of a major donor organisation complained that the real problem with civil society organisations in the country was related to their ‘self-regulating mechanism of self-censorship’, which prevented them from being brave enough to mount a real and sustained challenge to governmental misdeeds for fear of reprisals. Another interesting view on the role of civil society is forwarded by Englund, who writes that most NGOs in Malawi ‘tacitly support the state not “from below” but as agencies with capacities that are equal, if not superior, to those of the state’. As a result, many question the adversarial functions of civil society organisations in Malawi. And according to one academic, there is no clear line of demarcation between the state, private sector and civil society organisations. Preferring the ‘convenience of life’ – including opportunities to earn an additional income and not to be harassed by the police – people appear to move effortlessly between these spheres. Hence ‘there is no one to rattle the status quo’ and ‘If you rock the boat, you may end up without a job and be humiliated in front of your family, neighbours and colleagues’. Indeed, most genuine human rights talk in Malawi is still perceived as anti-government and this creates numerous difficulties in holding the authorities to account.

Accountability of international actors and the role of donors

Despite Malawi’s large-scale dependency on foreign aid, a common complaint among politicians and administrators related to their interactions with donor representatives in designing and implementing development policy. For example, some were concerned with the trend whereby donors tended to ‘lecture the government on various issues without understanding properly what the government says and believes in’. As Piron argues, ‘power relations between recipient governments and donor agencies are highly unequal’ and characterised by ‘a lack of transparency with regards to how aid agencies allocate financial resources, set priorities, and assess performance’. This is particularly true in the Malawian case. Moreover, several national-level politicians pointed to the fact that effective accountability mechanisms are totally absent in the international aid industry and donors and multilateral institutions are seldom held accountable by individuals and communities in countries where they provide assistance. And there is seldom much information available to national governments regarding the measures undertaken by aid agencies to stand accountable for failed projects and negative impacts resulting from an intervention. Further, representatives of some prominent NGOs in Malawi claimed that there is no consistent commitment on the part of donors and the government to operationalise and apply a HRBA. In fact, they argued that there was hardly any interaction between the two sides on the issue of linking human rights with development. Some of the ‘new’ donors like Taiwan (which has become a close ally after Malawi’s refusal to accept Chinese aid) were accused of continuing to be obsessed with handouts, charitable acts, which in essence go against the principles of a human rights approach.

A senior UN official appeared to take some self-criticism when he observed that linking human rights and development in countries like Malawi has not achieved the desired results
as most donors ‘begin at the wrong end of the development aid spectrum’. Accordingly, organisations like UNDP and UNICEF target formal duty-bearers – through financial allocations to institutions such as the Human Rights Commission, Parliament and the Ombudsman – without providing adequate support to right-holders. Consequently, there is a ‘demand failure’ in that the poor in Malawi do not have the ability to claim their rights – particularly in respect to the right to food and housing – as effectively as some of their counterparts have done in South Africa and India.

**Conclusion**

The human rights framework operates with national governments as the principal duty bearers. Even if we accept that the primary responsibility for poverty reduction rests with the state, there are a large number of non-state actors and organisations – with their own agendas and levels of power and influence – who both participate in and influence the formulation and implementation of public policy. In addition, the poor are a heterogeneous group and there are differences in terms of ethnicity, linguistic ties, political loyalties, etc. These give rise to several relevant and interrelated questions: How does the state actually target the poor? How do cultural practices, shared norms, the role of kinship or the extended family, etc. clash with the often individualistic approach of a human rights-based approach? Does this in turn generate local forms of resistance? What is the nature of the relationship between donors/UN agencies and the political-administrative elite of the country in linking human rights and poverty reduction?

It is thus important to examine state capacity to successfully implement a human rights-based approach to development and poverty reduction and the interaction of various non-state actors (including local elites and the media) that influence this process. Similarly, it is important to understand the conditions under which the poor exercise their right to hold authorities accountable (through legal, political and informal institutions) for unsuccessful developmental interventions. In several developing countries, including Malawi, politicians and bureaucrats argue that the human rights-based approach has been forcibly imposed on their countries rather than being formulated on the basis of local knowledge and national discourses and processes. Therefore the link between human rights and poverty reduction requires further elaboration and there is a need to question the historical roots of the current linkages between human rights and poverty together with the relative importance of local norms, practices and values. Are national elites convinced about the usefulness of the approach or do they feel pressurised by donors and international agencies into accepting it? To what extent do government ministries cooperate and interact in implementing human rights-based approaches?

There is also an urgent need for a systematic attempt to connect a HRBA to other accepted approaches, to learn and understand the language and the concepts of ‘others’. This in order to bridge not only the gap between human rights advocates and conventional development practitioners but also in the quest to understand local demands and frustrations. In terms of the Malawi case, I agree with Englund’s assertion that the notion of human rights has acquired very little legitimacy among the poor as ‘human rights activists and volunteers, compensating for their personal frustrations over education and employment, engaged in practices and discourses that virtually mimicked the elitism of the political class’.

It also appears that a HRBA requires better conceptual clarity at national and local levels; indeed, greater efforts are needed at the programmatic level and in the identification and awareness of what it means to be a right-holder and a duty-bearer and how one can
effectively claim one’s rights and carry out one’s duties. This also means considering the realistic ability of the poor and their representatives or supporters to hold international agents to account for failing to respect, protect and fulfil human rights principles in the development process. In a recent work, Sen addresses the problems related to convincing policy makers that human rights can provide an effective tool for development. He notes ‘the scepticism that the idea of human rights generates among many legal and political theorists’. Arguing that such doubts must be addressed, he also notes that ‘the conceptual understanding of human rights, in turn, can benefit substantially from considering the reasoning that moves the activists and the range and effectiveness of practical actions they undertake, including recognition, monitoring and agitation, in addition to legislation’. Thus, ‘not only is conceptual clarity important for practice, the richness of practice…is also critically relevant for understanding the concept and reach of human rights’.  

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Notes

2. Ibid.
10. Ibid., 9.
13. Ibid.
15. Ibid.
19. Ibid.

21. Ibid., 486.


23. Ibid.

24. Ibid.


27. Ibid.


29. Ibid.


33. Cited in Hansen and Sano, ‘The Implications and Value Added of a Rights-Based Approach’, 44.

34. Uvin, Human Rights and Development.


37. Ibid., 802.

38. Ibid., 803.


42. This section is based on two visits to Malawi in the period September–October 2006 and February–March 2007. All interviews are anonymous.


45. Ibid.

46. Ibid., 10


49. Ibid., 167.

50. Ibid., 176.

51. Ibid., 177.


53. MPRS, ‘Malawi Poverty Reduction Strategy’, 85,

54. Ibid.

55. Ibid.


57. Ibid., 68 and 104.

58. Ibid., 103.


60. Ibid.


64. Ibid.


69. Englund, Prisoners of Freedom, 11.