

**Title: Making the rights of poor people practical in Malawi through
a rights based approach to development**

Submitted in partial fulfilment of the requirements of the degree of LLM
(Human Rights and Democratisation in Africa)

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Abstract

This thesis tackles the issue of human rights and poverty in the context of Malawi. Our main concern is to find ways of how to make human rights practical for poor people in Malawi through a human rights based approach to development. Our thesis has therefore examined the normative framework of human rights and development. It has also examined priorities of poor communities and how they can be met and sustained. Further, the issue of how these communities can build their capacities and participate in development to enable them realize their rights, is discussed.

We argue that the idea of a society where all human rights are respected is far fetched when poverty erodes rights of poor people. Poor people are in a majority and are a marginalized group who have difficulties to claim or demand their rights. The right to development is therefore seen as a way to address the needs, rights and priorities of large sections of the population. This we propose should be through a human rights based approach to development.

The research answers three main questions. The first questions relate to the normative justification of a rights based approach to development. This we do by examining two main pillars of human rights and development crucial to this approach. The second question we address seeks to find out who poverty affects in Malawi, their human rights, needs and priorities. We address this question by investigating the dimensions and conceptions of poverty in Malawi. We then gather information on various areas where poor people have difficulties accessing their rights and then spell out what obligations are owed in terms of their rights. The last question borders on what strategies can be put to assist poor people to make their rights practical. We come up with participation as a central strategy for allowing poor people to build capacities, make input and contribute as active participants in the development process. This will enable poor people to enjoy their rights in practice. Other contemporary strategies involve human education and involvement of civil society

We complete the thesis by drawing conclusions and making recommendations for improving the realization of human rights by poor people in Malawi.

Making the rights of poor people practical in Malawi through a rights based approach to development.

Dedication

I dedicate this thesis to my lovely wife Charity, our little one, Tsogolo and my mother-all for their love, support and sacrifice for my success.



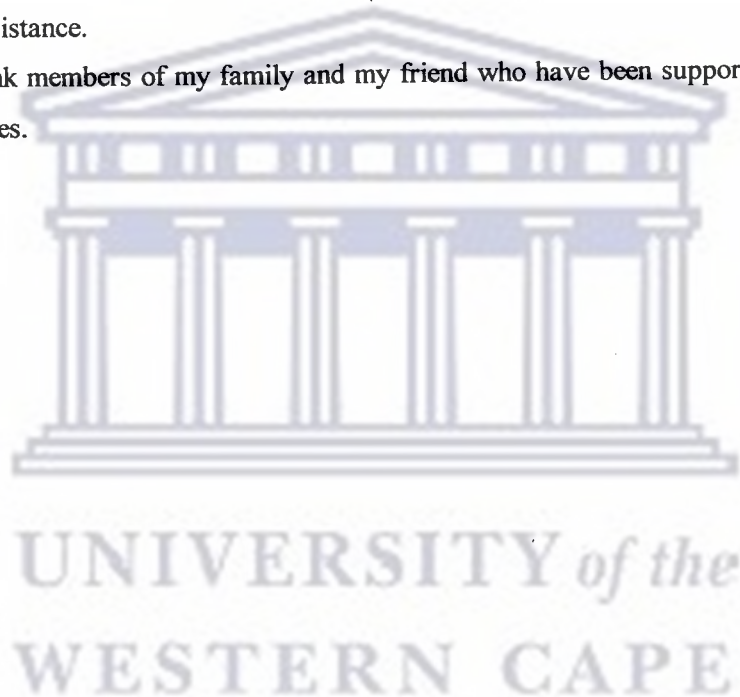
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I also wish to thank members of my family and my friend who have been supportive of me in the course of my studies.



LIST OF ABBREVIATIONS

ACHPR	African Charter on Human and Peoples Rights
ACPPDT	African Charter on Popular Participation in Development and Transformation
JAL	Journal of African Law
CARER	Malawi Centre for Advice Research and Education on Rights
CESCR	International Covenant on Economic Social and Cultural Rights
ACPPDT	African Charter on Popular Participation in Development and Transformation
DFID	Department for International Development
EILR	Emory International Law Review
GNP	Gross National Product
HHDE	Harvard Handbook of Development Economics
HRCA	Human Rights Council of Australia
HRQ	Human Rights Quarterly
HRW	Human Rights Watch
IHRIP	International Human Rights Internship Program
IRIN	United Nations Integrated Regional Information Network
IDO	International Development Organization
MCP	Malawi Congress Party
MDC	Malawi Development Corporation
MHRRC	Malawi Human Rights Resource Centre
MYP	Malawi Young Pioneers
NQHR	Netherlands Quarterly of Human Rights
NIHR	Netherlands Institute of Human Rights
NGO	Non-Governmental Organization
ODI	Overseas Development Institute
OHCHR	Office of High Commissioner for Human Rights
SIM	Studie-en Informatiecentrum Mensrechten
UNDP	United Nations Development Programme
UNDRD	United Nations Declaration on the Right to Development
UDHR	Universal Declaration on Human Rights
UNESCO	United Nations Education Scientific and Cultural Organization

Chapter 1: Introduction

1.0. Background to Study

Poor people, like everyone else in Malawi, are entitled to enjoy human rights provided for under international and national laws. In practice however, this is not the case as poor people face impediments when trying to realize their human rights. A human right is realized when individuals enjoy the freedoms covered by that right and their enjoyment of the right is secure. A person's human rights are therefore realized if social arrangements are in place to protect human rights.¹ A human rights based approach to development is here explored as a way of assisting the poor to realize their rights in practice. A rights based approach to development is ideal since it sets the achievement of human rights as an objective of development.²

A human rights based approach defines development as a subset of human rights so as to derive maximum benefit to marginalized groups like the poor.³ In taking this approach, use is made of the international normative framework of human rights and development, as these are pivotal to realizing rights of the poor. The argument we advance is that rights of poor people in Malawi can practically be realized through development.

The thesis places development as a component of human rights that will involve people's participation in realizing their rights.⁴ We thus examine the right to development within a rights based approach as a mechanism through which poor people can transform their human rights into practice.⁵ Within this framework, poor people in Malawi can have a sufficient legal grounding to stand up and claim their rights in practice. This approach thus links formal entitlements of human rights to their practical enjoyment in practice through suggested strategies. It is in this terrain that the poor have serious problems and these need to be addressed as poor people in Malawi are voiceless and powerless. We believe that through a human rights based approach to development, priorities and needs of the poor can be satisfied and, sustainable development based on human rights achieved.

¹ United Nations Development Programme (UNDP) (2000) 16. The UNDP human development report for 2000 was dedicated to examining human rights and development.

² Overseas Development Institute (ODI) (1999) 1

³ Human Rights Council of Australia (HRCA) (1998) 1; UNDP (2000) 3

⁴ see the Vienna Declaration paragraphs I(10) and (11)

⁵ The right to development is found in the United Nations Declaration on the Right to Development (UNDRD) 1986, African Charter of Human and Peoples Rights (ACHPR) article 22 and Constitution of Malawi, section 30, among other instruments.

1.1. Problem Statement

Although all people in Malawi are entitled to enjoy all their human rights, one can claim that these rights are out of reach of poor people.⁶ This shows that current human rights approaches in Malawi are of limited effectiveness in responding to poor people's needs and human rights. Our area of research therefore examines ways in which poor people can realize their human rights in practice. Our argument is that basic human needs of poor people should be recognized and expressed in human rights terms. This will involve looking at human rights, which if accessed by the poor, can expand their opportunities and address their needs. Meeting these needs is a social goal that should have priority. This exercise makes it possible to identify rights holders and for the poor to take action.⁷ We believe that poor people, because of their situation, have not fully enjoyed or fully appreciated human rights available to them. This is due to a number of factors including lack of access to rights and non-participation in development.

One of the main problems is that development processes meant to address the needs of poor people, have ignored their voices or input. We argue that instead of being ignored, inputs from the poor need consideration for their needs to be met.⁸ Denial of people's needs must be understood as fundamentally humiliating and dehumanising and, resulting in the deprivation of their basic entitlements.⁹ The research proposes to look into how needs and priorities of poor communities can thus be achieved and sustained using a human rights based approach.

We argue that development should be claimed as a human right as it can lead to improvement of people's lives by enabling them access to their rights.¹⁰ Through a human rights based approach to development, we intend to show that given a chance and properly empowered; the poor can prioritise and demand rights directly affecting their livelihood. This approach would thus incorporate a right to participation by poor people in decision-making.¹¹ It will also capacitate poor people so that they can move to claim their rights. This entails having in place relevant mechanisms by which these people can access and translate their rights into action. We will therefore examine access to mechanisms of redress to ensure that rights of poor people can be their realities.

We believe this area needs insight because unless development projects are grounded in a rights context, they may not enhance poor people's capabilities to deal with their daily realities¹ and

⁶ Malawi Centre for Advice Research and Education on Rights (CARER) (1996) 12

⁷ Goldewijk (1999) vii

⁸ Cammack (1997) 1 *Bwalo* 102 121

⁹ Goldewijk (1999) vii

¹⁰ See articles 22 of ACHPR and 1 UNDRD

¹¹ Malawi Government (2001) 7

enjoy human rights. We believe therefore that the thesis will have a bearing on approaches to human rights and development aimed at assisting poor people. This would go a long way to alleviating current problems facing these people.

Apart from encouraging government and development agencies to promote a human rights based approach in development, we seek to contribute to other efforts, which take human rights holistically. Fully implemented, a human rights based approach will contribute to fighting the daily struggles of the poor to realize their rights.

1.2. Relevance of this Topic

The inter-linkage between human rights and development is an emerging area of study in international human rights law. As it were, this approach to development will benefit poor people by engaging them in programs to realize their rights. This topic is relevant therefore, as it will go a long way towards contributing to efforts in Malawi for poor people to be able to know, claim and defend their rights. It will thus seek to put meaning to rights by adding a practical value to be used by the poor.

1.3. Scope and Methodology of Research

The examination in this thesis is limited to Malawi, although comparative literature is used in our analysis. Our hypothesis is that poor people are not able to demand their human rights in practice despite a relevant legal framework because there are poverty related impediments barring them access to human rights in practice.

The methodology employed to gather information is traditional legal research. Literature reviews includes human rights law literature, law and development journals, and relevant jurisprudence both from national, international and other jurisdictions. Comparative analysis of applicable law is employed when advancing our arguments. Case studies are used for illustrations where appropriate. Internet resources supplement other literature as well.

Sources of Information include literature on human rights and development from various sources including international and national legal instruments and reports of and surveys on human rights in Malawi.

1.4. Difficulties and Limitations

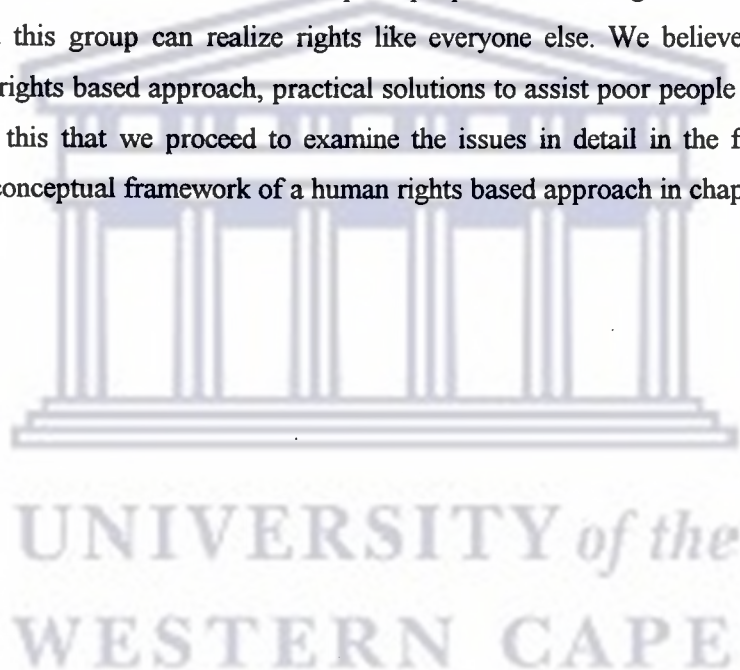
As this area is relatively new, relevant materials are few. Further, specific literature from Malawi on the subject is scanty. Consequently this has had the impact of limiting the thesis. However within these limits, we believe this research will be useful in Malawi and elsewhere.

1.5. Literature Review

The literature available on human rights and development in relation to poor people in Malawi is very scanty and in almost all cases comprise of programmatic proposals by a few development agencies. However, despite this scarcity, inspiration has been drawn from other sources that have touched on this issue. Using this approach, we have examined the relevant literature and suggest how far the same can be applicable in the Malawian situation. We have thus been able to cast our minds on the human rights based approach elsewhere and to identify areas which can contribute to realizing rights in the context of the poor in Malawi.

1.6. Conclusion

It is clear from the above that the area of poor people's human rights in Malawi has to be examined so that this group can realize rights like everyone else. We believe that through the examination of a rights based approach, practical solutions to assist poor people in Malawi will be found. It is with this that we proceed to examine the issues in detail in the following chapters starting with the conceptual framework of a human rights based approach in chapter two.



2.0. The Conceptual Framework for a Human Rights Based Approach to Development

2.1. Introduction

When examining a human rights based approach to development there are two essential normative pillars that need to be dealt with: human rights and development. Here, we determine whether and how human rights concepts are understood and perceived and relate this to concepts of development. This is with a view to locating poor people's perceptions of their rights and dealing with impediments that stand in the way of their rights.

Connected to the above, will be the exploration of the concept of development as a means to improve the livelihoods of poor people. The question we attempt to answer is; how best can human rights and development be fused to make poor people enjoy their rights. By this linkage we argue for a human rights development framework, which recognizes the indivisibility of rights and has room to prioritise the rights of the poor. Our approach in developing this nexus is to encompass core aspects of the right to development and use it to approach human rights issues holistically.

Based on the above, we explore and establish the legal basis of a rights based approach. This analysis will then contribute to the translation of basic wants into practical rights of poor people in Malawi. Rights can only have meaning in the practical sense if the poor are able to enjoy them. By formulating the necessary legal framework, we solidify steps towards the realization of the rights in practice for the poor in Malawi.

2.2. The Human Rights Framework

The idea of human rights as we know it today has its foundations in a world historical context. This history can be traced to many centuries back and many civilizations around the world.¹² Our focus, however, is on contemporary human rights developments after the Second World War.¹³

The first stage in this process begins with the Universal Declaration of Human Rights (UDHR)¹⁴ and entry into force of various international human rights instruments emanating from it.

The basic enunciation of international human rights can be found in the International Bill of Rights, which combines the UDHR, the International Covenant on Civil and Political Rights (CCPR) and the International Covenant on Economic, Social and Cultural Rights (CESCR).¹⁵ The

¹² Buergenthal (1995) 3-5

¹³ Buergenthal (1995) 10

¹⁴ UDHR (1948)

¹⁵ Buergenthal (1995) 28

International Bill of Rights sets a basic standard regarding the rights of individuals and the obligations of states to promote and respect human rights.

Within the context of the poor in Malawi, mention should be made that the Bill of Rights in the Constitution contains a legally binding framework that is relevant to the promotion and protection of human rights and which heavily borrows from the international framework.¹⁶

2.3. Understanding Human Rights

The meaning of human rights should relate to poor people's understanding of the concept and its utilization if it is to carry weight. This is because all people possess human rights in their natural capacity as human beings.

Various philosophers have defined human rights differently but with a common convergence. Human rights have been defined as those claims made by people, for themselves or on behalf of others, based on the humanity of man, as a human being.¹⁷ Human rights can thus be taken as entitlements that are inborn. Further, rights can allow people to lay a claim on certain entitlements. This entails inclusion of human rights by placing certain constitutional and legal back ups. In this way therefore, law is asked to enforce human rights.¹⁸ If so, human rights will ideally stand above the ordinary laws and be antecedent to the political society itself.¹⁹

Human rights have also been viewed as representing demands or claims, which individuals or groups make on society, some of which are protected by the law while others remain aspirations to be attained in future.²⁰ For poor people, human rights also include claims of what is required for development, supported by the universal belief that development is good.²¹ This can assist to highlight particular human rights needs for poor people.

A right once it is recognized as law may be seen as imposing a duty to be fulfilled and every duty must render a benefit to individuals or groups.²² Ideally therefore, even poor people are intended beneficiaries of human rights and should freely take steps to claim their rights. In fact, ever since the establishment of the state as the primary authority in the rule of people, the concept of human rights has evolved as the basic claim of ordinary citizens against their state.²³

¹⁶ The Bill of Rights in the Malawi Constitution is found in sections 15 to 46

¹⁷ Umozurike (1997) 3

¹⁸ Douzinas (1996) 120-121 in Gearty, *et.al* (ed)

¹⁹ Umozurike (1997) 3

²⁰ Umozurike (1997) 4

²¹ O'Manique (1992) 14 *Human Rights Quarterly (HRQ)* 78 82

²² Jones (1994) 26

²³ Cecilia Jimenez, *Contemporary Human Rights Discourse*
< <http://www.philsol.nl/pir/HRDiscourse-97,P.htm>> accessed 31/8/01

However there is need to expound on the meaning of 'right'. This is important taking into account that when we identify the rights of the poor, these should be clear in terms of their practicality and enforceability. Further, there are certain areas of human rights that are disputed, a fact that may at times be used to prevent poor people from claiming their rights.²⁴ By clearing the concept of rights, this uncertainty can be removed.

Rights can themselves be classified in different categories but Hohfeld categorization has become the most popular.²⁵ His categorization includes claim rights, liberty, powers and immunities. Other classes of rights are moral rights, legal rights, negative rights, positive rights as well as civil, juridical, economic or cultural rights. The denominator of all these is that they are termed 'rights'. A right has been defined as a range of interests, liberties and powers or access to the necessary means of satisfying one's interest or exercising ones' liberties or powers.²⁶ Not all rights will, however, give rise to a legal claim although this might create a binding obligation morally, legally or otherwise.

Human rights claims that poor people may have may be legal as well as moral.²⁷ Most human rights actually originate as moral or ethical claims, protected by society.²⁸ This origin in itself, should not therefore belittle human rights as lesser claims in ensuring the fulfilment of societal or state obligations, although a solid legal status provides definite protection. This is also because the nature of human rights is that they accrue to everyone everywhere at all times and in all situations.²⁹

Taken as a whole, human rights aim to give general protection to individuals and groups. This would ensure protection of poor people in society. However, poor people still have to stand up to demand their rights, as human rights protection is a response to experiences of oppression of marginalized groups.³⁰ Social oppression may arise out of situations where due to their powerlessness; marginalized groups are denied their liberties and livelihood. If rights are to be realized, this has to be fought.

Human rights protection can take negative and positive forms. Negative human rights protection will generally function to restrain those in control against taking away the rights and freedoms of

²⁴ Welch (1996) 49 in Moshoehoe *et.al.* (eds.)

²⁵ Jones (1994) 12-14

²⁶ Morton Winston, *On the Indivisibility of Human Rights*,
<<http://web.bu.edu/wcp/papers/Huma/Humawins.htm>> accessed 31/8/01

²⁷ Jones (1994) 81

²⁸ Morton Winston, *On the Indivisibility of Human Rights*,
<<http://web.bu.edu/wcp/papers/Huma/Humawins.htm>> accessed 31/8/01

²⁹ Vienna Declaration (1993)

³⁰ Examples abound and include the American Declaration of Independence (1776), French Revolution 1889, as well as the UDHR 1948 and African Struggles for independence from colonial rule

individuals and groups through abusive exercise of authority.³¹ This entails that people should have recourse to claim their rights when infringed. Positive obligations on the other hand, represent claims that people may require, by way of an obligation, the state to take some measures to implement the rights.³² This obligation will be attached with some qualifications related to resource availability.³³

Although lines have been drawn between negative and positive human rights obligations, our argument is that rights should be regarded as complementary. Further, both positive and negative obligations can be found in all rights although the precise nature of their positive or negative content might differ.³⁴

For poor people, human rights also form a system of norms that protect their human dignity.³⁵ Thus, it is by virtue of our humanity regardless of differentiations of race, religion, political opinion, or other status that we enjoy human rights. This is important, as with human dignity as the basis of their existence, human rights exist prior to the state legal recognition. Put otherwise, people are entitled to lay claims to their human regardless of state acknowledgement in positive law. Human rights law does not therefore create and give rights to human beings, it simply recognizes and announces rights that human beings already have.³⁶

Next, we examine human rights at the regional level as these may affect the level of enjoyment and access poor people have.

The concept of universality of human rights has been a subject of intense political debate for sometime.³⁷ There have been assertions that the contemporary canon of human rights represents western values, which are, in many respects, inconsistent with the African concept of rights.³⁸ An argument forcefully presented in support is that in Africa, collective rather than individual rights are valued.³⁹ This suggests that in African communitarian societies, rights arise out of duty,⁴⁰ whereas western conceptions are based on the autonomous individual unknown to Africa.⁴¹ This romanticizes the idea that individuals in African societies, cannot survive apart from the

³¹ Morton Wilson *On the Indivisibility of Human Rights*, <<http://web.bu.edu/wcp/papers/Huma/Humawins.htm>> Accessed 31/8/01, International Human Rights Internship Program (IHRIP) (1997) 21

³² De Vos (1997) 13 *South African Journal on Human Rights (SAJHR)* 67 69

³³ For example article 2(1) of the Covenant on Economic, Social and Cultural Rights requires states to realize socio-economic rights progressively depending on available resources

³⁴ Re: *Certification Judgement* paras.77-78

³⁵ The Malawi Constitution entrenches, in section 19 the protection of human dignity as a fundamental human rights. One can see in this section an acknowledgement of the concept of dignity as the provision is broad in scope

³⁶ Jones (1994) 9

³⁷ Reenen (1998) 21 *Netherlands Institute of Human Rights (NIHR)* 591 591-592; Dias in Mahoney *et.al.* (eds.) (1993) 703

³⁸ Ibhawoh (2001) 19 *Netherlands Quarterly of Human Rights (NQHR)* 43 43-44

³⁹ An-Na'im (1997) *Emory International Law Review (EILR)* 11 13

⁴⁰ O'Manique (1992) *HRQ* 78 88

⁴¹ Ibhawoh (2001) *NQHR* 43 46

community. It also suggests that individuals are not supposed to have independent rights or claims to entitlements.

Further, proponents of cultural relativism parade it to justify discriminatory treatment based not only on customary laws but religion as well, which it is claimed, has distinct world outlook of the person within his or her society and in relation to authority.⁴²

This relativist thinking can be attributed for having motivated the drafting of an African document that sought to display uniqueness and contextualize human rights concepts in Africa. Thus, the drafting process of the African Charter of Human and Peoples Rights (ACHPR) took into account the African concept of human rights and the pattern of African philosophy of law to meet the needs of Africa.⁴³ These efforts are reflected in the concept of 'people's rights in the ACHPR that also reflects the African concept by referring to the virtues of the historical traditions and values.⁴⁴ Consequently the ACHPR is regarded as the first international human rights treaty to expressly include group rights.⁴⁵

Regarding the above debates, it can be conceded that there are differences in the needs and situations of specific regional groups recognised as deserving special consideration in the protection of rights.⁴⁶ Our submission however, is that while there is some merit in relativism, most arguments tend to substantially deviate from central concepts of human rights. The consequence of such deviation is manifested in perpetuation of suppression of rights of those like the poor and other marginalized groups.⁴⁷ We see today dual societies and patchworks that seek to accommodate irreconcilable old and new ways in place of traditional society.⁴⁸ Inevitably it would be more correct to approach African human rights with the needs of today's African society. Further, the insistence of surrendering rights in the guise of communitarian needs, has been, and can still be open to abuse in Africa to the detriment of poor people.⁴⁹ It also paints a misleading picture that individuals in the African community are unwilling to claim their rights. What is true however is that even in African societies, individuals have always had individual claims albeit with group support. We must be alert therefore, to cynical manipulations of a dying,

⁴² Ibrahimwoh (2001) *NQHR* 43 47-48

⁴³ Meeting of Experts for the Preparation of the Draft of the African Charter, Dakar, Senegal 28-8 December 1979, OAU Doc CAB/LEG/63/Rev. 1 in Benedek (1987) 44

⁴⁴ Paragraph 5 of the preamble

⁴⁵ Benedek in Kuning (ed) (1985) 43

⁴⁶ Cecilia Jimenez, *Contemporary Human Rights Discourse*
< <http://www.philsol.nl/pir/HRDiscourse-97P.htm> > accessed 31/8/01

⁴⁷ O'Manique (1992) *HRQ* 78 88-89

⁴⁸ Newman (1990) 351

⁴⁹ An-Na'im (1997) *EILR* 11 27

lost, or even mythical cultural past made by repressive forces whose practices have, at best only the most tenuous connection to the indigenous culture.⁵⁰

Human rights should otherwise be seen as the heritage of all as the concept of human rights has been developed, struggled for and won by different people in different historical, political and cultural contexts. These struggles and victories should combine to give our contemporary understanding of human rights its essence and validity.⁵¹ It will thus benefit poor people to have a universally recognized concept that will work towards the furtherance and not retrogression of their rights. Such a concept may, where appropriate, incorporate relevant regional particularities with legitimate claims of cultural relativism. In any case, this will have to recognize that substantive human rights limits certain cultural practices, however difficult it may be to specify and defend particular accounts of what those practices are. Common examples can include prohibition of slavery, discrimination on the basis of gender, religion, racial or ethnic origin, which although a culture may accept, cannot be justified under human rights law.⁵²

Apart from the above, we need to examine the local conceptual understanding of human rights in Malawi. This will enrich a human rights based approach, as people would easily familiarize with relevant concepts when programs are initiated.

A number of surveys to establish a conception of human rights in Malawi have been undertaken, especially in rural areas where the majority of poor people live.⁵³ The inquiries have been done by surveying key concepts of human rights including life, livelihood, equality and dignity. What comes out is that Malawians have local concepts linked to human rights. One of the most important of these is the recognition of the conception of all human beings to live freely and in dignity.⁵⁴ The concept of dignity in Malawian society is something that is all encompassing and includes having access to food, clothing and housing as well as being able to criticize leaders freely.⁵⁵ There are also some misconceptions on the clear meaning of what are perceived as human rights brought in the 1994 Malawi constitution.⁵⁶

What comes out, however, is that people are able to relate to some key concepts and more importantly, they are also able to determine that they cannot have rights if issues affecting their daily livelihood are not tackled.⁵⁷ Much as these people may not clearly articulate human rights concepts, as we know them, there is a potential for developing their local understanding when

⁵⁰ Newman (1990) 351

⁵¹ Ibrahwoh (2001) *NQHR* 43 57

⁵² Newman (1990) 351

⁵³ CARER (1996); Oxfam (1999) and Malawi Human Rights Resource Centre (MHRRC) (1999)

⁵⁴ CARER (1996) 19; Oxfam (1999) 11

⁵⁵ CARER (1996) 16

⁵⁶ International Organization Development (IOD) (1998) 15

⁵⁷ Oxfam (1999) 14

dealing with the subject. It can further be concluded that local concepts are not uniquely Malawian but properly identify with concepts examined above.⁵⁸ This is yet another fertile ground within which a human rights based approach can assist and motivate people to realize their rights in practice using international human rights framework in local settings.

2.4. Development and Human Rights

For poor people to be able to realize their rights in practice, it is necessary that human rights and development be intertwined. This is because the rights of the poor people in Malawi border on rights that can be realized through development.⁵⁹ By linking these two concepts, a human rights based approach will create an environment within which all can enjoy human rights. In this section we establish the basis for the right to development and its nexus to poor people's struggle for their rights.

There are various definitions of development by different scholars with varying interests. The determination of what development and its goals are, and its relationship with human rights is, however, our main focus. This departs from previous formulations in which the concept of development was confined only as a means of achieving economic growth to better lives of people.⁶⁰

As a result of narrow focus, too much emphasis was put on gross national product (GNP) as a measure of prosperity, using market valuations and, in practice, measuring national income.⁶¹ This approach had the tendency of ignoring other important aspects of development such as social issues. Another limitation of GNP is that as an average measure, it failed to reflect disparities between rich and poor within a country, which can be notoriously disproportional and, can impact on enjoyment of rights by poor people.⁶² Thus while it is worthwhile that the enhancement of living conditions must clearly be an essential object of the entire economic exercise and that enhancement is an integral part of the development process, other aspects also require serious consideration.⁶³

Development as a process of change should involve people as major stakeholders and beneficiaries of development in their aspirations for a better quality of life.⁶⁴ This process should not be divorced from ensuring that people in their communities and as individuals have sufficient

⁵⁸ MHRRC (1999) 53

⁵⁹ See chapter three below

⁶⁰ Sen (1988) in 1 Harvard Handbook of Development Economics (HHDE) (eds.) 10 11

⁶¹ Sen (1988) HHDE 11-12

⁶² Hewett in Thomas (ed) (1992) 17

⁶³ Sen (1988) in HHDE 1112

⁶⁴ Scheepers (2000) 1

supplies of food, clothing, housing health and education, among other things. Development should be an empowerment process where by people who do not have basic necessities are able to demand for them as of right. This includes government obligations to spread development to all areas without any discrimination. It might also entail positive actions to be considered for people like the poor. This will assist to emphasis the fact development is not simply welfare to the poor people but it is their human right.⁶⁵ A human rights based approach will seek to address these issues by ensuring that human rights are mainstreamed in any development.

The essence of a human rights based approach is to place the human being as a subject of rights. This is in line with the central theme of the Vienna Declaration, which proclaimed that the human rights person is the central subject of human rights and fundamental freedoms and, consequently should be the principal beneficiary and should participate actively in the realisation of these rights and freedoms.⁶⁶ Consequently development in Malawi should be aimed at the delivery of human rights and aspirations of the poor through a process that respects human rights.⁶⁷

There now seems to be an increasing acceptance on the part of governments and development agencies of the undeniable link between development and human rights.⁶⁸ This acceptance brings the recognition that health, education and housing, which arise in development projects, are not matters of charity but are human of rights. Translated into practice, people may therefore claim development as a right as it is inexplicably linked with all other rights.⁶⁹

For poor people the development process is important as it promises them a better life. For this to be real, however, development should be defined and premised in human rights terms. Development should aim to empower people so that they are not reduced to dependency. It is only through a human rights based approach that this can be achieved. In human rights terms, development is a process that should create conditions in which every person can enjoy, exercise and utilize, under the rule of law, all his or her human rights including economic, social, cultural, civil and political rights.⁷⁰ The Declaration on the Right to Development articulates development as a comprehensive economic, social, cultural and political process which aims at the constant improvement of the well being of the entire population and of all individuals on the basis of their

⁶⁵ Cammack (1997) *I Bwalo* 102 106

⁶⁶ Vienna Declaration (1993) paragraphs I (10) and (11)

⁶⁷ IOD (1998) 1

⁶⁸ In Malawi one can cite DFID, Oxfam and UNDP as acknowledging this in their current and proposed future development programmes

⁶⁹ Goonsekere, *A rights based approach to realising gender equality* < [http: vwww.un.org.womanwatch/daw/news/savitri.htm](http://www.un.org/womenwatch/daw/news/savitri.htm)> accessed 6/7/2001; compare Rosas in Eide *et.al.* (eds) (1995) 251-254

⁷⁰ Cammack (1997) *I Bwalo* 102 108

active, free and meaningful participation in development and in the fair distribution of benefits flowing there from.⁷¹

From the above, we can conclude that key processes of development are more encompassing and incorporate issues such as participation, sustainability and empowerment of poor people in a human rights setting. We believe that poor people will be able to benefit if these elements are manifest in any development process, raising their standard of living while they enjoy their rights. This is important as development often involves deliberate intervention in the *status quo*, for instance between the communities and their resources, creating a potential ground where human rights may be violated.⁷² This strengthens the proposition that development should be a subset of human rights.⁷³ The implication of this approach is that development will prioritise human rights and empower the poor. This will inevitably change the poor from being mere passive recipients of development assistance to active participants, including the fact that they can demand for development in their areas as a right in a context that recognizes human rights.⁷⁴

The concept of development rights has also been contested. It is claimed that the proliferation of new rights like development is dangerous and, they are too vague and inconsistent to be justiciable and might undermine the normative force of labelling a concept a right.⁷⁵ It is also said that the rights are difficult to crystallize therefore.⁷⁶

Despite the contentions, it is our argument that the human rights and development approach will be more beneficial to poor people in Malawi and it should be followed. In fact, it can also be claimed that it reflect universally recognized human rights and even customary international law.⁷⁷

2.5. A Human Rights Based Approach

A human rights based approach to development crystallizes the recognition of the inextricable link between human rights and development and application of the recognition in practice. It uses the conceptual framework for the process of human rights and is normatively based in recognized standards of human rights. It is thus directed at promoting and protecting human rights by integrating its norms, standards and principles in plans, policies and processes of development.⁷⁸

The approach recognizes that to attain sustainable development, there is need to identify the

⁷¹ Article 2(1)
⁷² Cammack (1997) *I Bwalo* 102 109
⁷³ Frankovits (1995) in HRCA 1
⁷⁴ UNDP (2000) 76
⁷⁵ Newman (1990) 407
⁷⁶ Rosas in Eide *et.al.* (eds.) (1995) 251-254
⁷⁷ Rosas in Eide *et.al.* (eds.) (1995) 249
⁷⁸ Office of High Commissioner for Human Rights (OHCHR) (2000) 16-17

causes of underdevelopment by meaningfully involving relevant stakeholders. Thus, from the design stage considerations should reign supreme through a joint process with beneficiaries. Recognition of human rights involves the quintessential empowerment strategy and the attraction of a human rights based approach is its normative specificity.⁷⁹

Since its premise is in a holistic understanding of human rights, it is our belief that this is the best avenue through which poor people can translate their rights into tangible entitlements. The rights based approach can provide a better understanding and response to the continuing and daily challenges of poverty they face. This will also uplift the poor from humiliation, abuse, rejection and harassment they face due to lack of a human rights culture.⁸⁰ That is why a human rights based approach that incorporates participation, accountability, non-discrimination and a linkage to human rights standards would be desirable.⁸¹ An important attraction of a human rights strategy is that it can be built upon existing obligations undertaken by the Malawi government at international level.

It is important for a rights based approach to be stated in a clear and unequivocal way so that it communicates its intended meaning. This is because an attachment to human rights is not simply something wheeled around on an *ad hoc* basis. It should not be something that should emerge for the first time in a negative or adversarial context.⁸² There is need for a starting point making human rights as a primarily part of a background not a foreground. Once this is done, the missing dimension of human rights from the development discourse will be filled.

What comes out of this is that a human rights based approach to development can achieve the engagement of the poor using human rights as a means of empowerment.⁸³ For this to be successful, poor people at local level, will need to understand what particular rights mean in terms of concrete entitlements in order for them to claim them. With time this will assist to shorten the gap between aspirations in human rights provisions and the experiences of people living in poverty in Malawi.⁸⁴

2.6. Conclusion

There is a good conceptual and legal framework applicable to Malawi that guarantees the rights of all people. The challenge is to use it for poor people to benefit by invoking the normative

⁷⁹ Alston (2000) 22 *NIH* 95 105
⁸⁰ Cammack (1997) 1 *Bwalo* 102 108
⁸¹ OHCHR (2000) 18
⁸² Alston in HRCA (1995) 6
⁸³ DFID (2000) 5
⁸⁴ CARER (1996) 28

connection of human rights and development. In this way, poor people's claim to human rights will have a practical meaning.

Development and human rights must be seen as fundamentally complementary and mutually reinforcing. Human rights are not simply something that should be incorporated into development; they are claims to the *sine qua nons* of the process itself.⁸⁵

Having established the normative justifications of a human rights based approach to development, the next step is to explore beneficiaries of this approach. In the next chapter therefore, we examine who poor people are in Malawi, their needs and priorities, as well as responsibilities relating to fulfilment of their rights. In doing this we intend to yet move towards assisting the realization of their rights.



⁸⁵ O'Manique (1992) 14 HRQ 78 82

What Poor People Want in Malawi: Identifying Needs and Priorities

3.0. Introduction

The main concentration of a human rights based approach is on poor people. These are people affected by poverty and are unable to enjoy their human rights. In this chapter, we explore who poor people are as well as their human rights needs and priorities. We also intend to show that poor people are owed an obligation, which if fulfilled, may enable them to realize their human rights and satisfy their developmental needs. This will be preceded by a discussion on poverty and human rights.

We live in a society where there are great disparities in wealth. To transform it into one in which there is human dignity, freedom and equality, we need to address the human rights needs of poor people in Malawi. There are economic, social, cultural and development rights in the Malawi Constitution.⁸⁶ This inclusion might be viewed as reflecting the understanding of issues that poor people are facing and can be relied upon in advancing their claims. It is in this context that we examine what poor people want. If this question is answered, yet another step towards the realization of rights by the poor will have been taken.

3.1. Understanding Poverty in Malawi

In order for a human rights based approach to be effective for poor people, there is need to understand poverty and its dimensions. This is because poverty has the effect of nullifying economic and social rights like health, adequate housing, food and safe water, as well as civil and political rights like fair trial, political participation and security of the person.⁸⁷ Poverty is therefore a human rights violation against those condemned to live in poverty. Persons afflicted by poverty suffer violation of basic and universal right to subsistence, that is, the right to what is essential for minimal human well being: safe and adequate water, food and shelter; minimal preventative health care basic socialization or education.⁸⁸ The problem of human rights in situations of poverty, will thus concern redistribution, of access and of needs.

Poverty in Malawi is widespread, deep and severe. The number of Malawians living in poverty continues to increase, from 60% in 1997 to 65.3% in 2001. This is due to failures to implement pro-poor development and economic policies.⁸⁹ The poor in Malawi are defined as those whose consumption of basic needs is below the minimum level estimated at K10.47 per day.⁹⁰ In general, the poor have low levels of access to basic social services. This situation calls for

⁸⁶ Section 30

⁸⁷ McMorrow in McCarthy-Arnolds *et. al.* (eds) (1994) 41

⁸⁸ McMorrow in McCarthy-Arnolds *et. al.* (eds) (1994) 37

⁸⁹ IRIN (2001)

⁹⁰ Malawi Government (2001) 3

prioritisation of resource utilization by development actors, to activities that would spur economic growth and reduce poverty by expanding and creating opportunities for the poor.

Poverty is strongly associated with social disintegration and insecurity. It should not therefore be confined to economic deprivation, as it is also an affront on human decency and dignity.⁹¹ The recognition of basic human needs is thus particularly relevant in response to poverty. The questions of who are the poor therefore involve broad issues. Various conceptualisations have thus been mooted in attempts to address these.⁹²

For purposes of a human rights based approach, poverty should be defined in human rights terms. In human rights terms thus, poverty can be taken as a human condition characterized by sustained deprivation of resources, capabilities, choices and power, necessary for the enjoyment of fundamental civil, cultural, economic, political and social rights.⁹³ Poverty is a trajectory of progressive decline and reduced options in everyday life.⁹⁴ The broad scope of this characterization captures issues relevant to making human rights practical for the poor in Malawi.

Poverty limits freedoms and deprives a person of dignity, and extreme poverty and social exclusion constitute a violation of human dignity.⁹⁵ In the context of Malawi, concepts of poverty encompass ideas of physical want, destitution and lack of specific items.⁹⁶

Human poverty is a term that has also been coined to distinguish broad deprivation from the narrower definitions of poverty.⁹⁷ It is defined by the impoverishment in multiple dimensions-deprivations in long and healthy life, in knowledge, on a decent standard of living, in participation. By contrast, narrow conceptions like income poverty are restricted to single dimension-income.⁹⁸ Human poverty is buttressed by the fact that some people are unable to access resources that exist just because of who they are or what they believe in or where they are-such discrimination is a form of social exclusion and a cause of poverty.⁹⁹

From the above angle, poor people in Malawi fall within human poverty as they lack capabilities to access services like health, drinkable water and housing.¹⁰⁰ In order to deal with these issues, processes of identification, analysis and prioritisation of their issues will need to be undertaken.

91 Kalembe (1997) *I Bwalo* 21 22
92 Athrope (1997) *I Bwalo* 143 145-151
93 OHCHR (2000) 12
94 Goldewijk (1999) 89
95 Vienna Declaration (1993) paragraph I(25)
96 IOD (1999) 13
97 UNDP (2000) 73; UNDP (1997) 25-32
98 UNDP (2000) 17
99 DFID (1999) 13
100 UNDP (2000) 16-17

Core issues concerning poor people such as capabilities, choices available to them and empowerment necessary to enjoy their rights will have to be determined as well.¹⁰¹

3.2. Identifying Poor People in Malawi

To make rights practical, we need to identify people affected by poverty in Malawi and constraints they face. This will assist in strategies for participation of poor people to overcome their problems.

Malawi is classified among the least developed countries ranking 157th on the human development index.¹⁰² Poor people are predominantly in rural areas and informal urban settlements. Their households are disproportionately female headed and are extremely vulnerable to poverty.¹⁰³ This indicates that poverty has a gender dimension in that women are its main victims.¹⁰⁴ Malawi relies heavily on agriculture and most poor people are largely in smallholder or subsistence agriculture. Poverty is widespread among smallholder farmers because of the smallness of their holdings.¹⁰⁵ Due to the smallness, they are unable to produce for subsistence as well for their other needs.

There is also a big disparity between rich and poor in the distribution of income.¹⁰⁶ This impacts on access to social services including health, education, land and adequate housing.¹⁰⁷ Poverty is not only about lack of money, but also more centrally about a dearth of opportunities and choices that allow people to build decent lives.¹⁰⁸

Factors contributing to poverty in Malawi have been analysed to include low agricultural production, low farm income, low education, and poor health and weak institutional structures.¹⁰⁹

The lack of capabilities by the poor to access the necessary facilities therefore serves to perpetuate human poverty, as these are basic and crucial to the sustenance of life. This inaccessibility has a connection to the denial of human rights. This is because lack of access to health or housing for instance, is in itself a violation of socio-economic rights to which all people in Malawi are entitled.¹¹⁰ People are deprived if they cannot obtain the conditions of life-that is diets, amenities, standards and services-which allow them to play their roles. If they lack or are

101 UNDP (2000) 13
102 UNDP (1999) 139
103 Kalembe (1997) *I Bwalo* 21 23-24
104 Women in Law in Southern Africa (WILSA) (Malawi) (1999) 61-62
105 Jones (1998) 3
106 Kalembe (1997) *I Bwalo* 21 23
107 Malawi Government (2001) 3; MHRRC (1998) 19-22
108 Budlender *et.al.*, (1998) 1
109 Jones (1998) 4
110 See section 30 Malawi constitution

denied resources to access these conditions of life and so fulfil membership in society, they may be said to be in poverty.¹¹¹

One would expect that services are accessible to poor people via the state in some way or indeed by them demanding the same. However, the poor are not able to take these issues up due to a lack of the necessary resources and information to enable them take action. With a human rights based approach, any initiative calls for involving poor people and opening to them avenues of redress of human rights deprivation. This would involve assessing their needs and removing obstacles in their way to make the realization of rights practical. This can allow poor people to access needs that will assist them in the actual enjoying of their rights.

3.3. What Poor People Want

An important question is determining what poor people want. Responses to this will contribute to finding strategies to satisfy their needs and priorities, thereby making their rights practical. A rights based approach here implies that people's access to basic needs is protected by law and legal mechanisms and can be claimed.¹¹²

Generally, one can assume that like everyone else, poor people in Malawi aspire to better their lives. However, because they are in poverty, their needs may naturally be basic. This calls for an analysis of poor people's livelihood needs both by them and with them in order to identify their needs. This should involve making them aware of what they are entitled to and getting them to compare with what they have got.¹¹³ This assessment would synthesize human rights and development concepts in a bid to assist the poor find means to enjoy their rights in practice.

All human rights are equal, meaning each right can justly be identified as a priority. However, poor people in Malawi have emphasized that they would like to have socio-economic rights over civil and political rights as improved socio-economic conditions represent a cardinal need in society.¹¹⁴ It is clear that it is through development that their rights can be achieved. This is in line with our idea of development which is predicated on the assumption that all people have a right to have their basic needs met, meaning universal entitlement to socio-economic rights.¹¹⁵ This indicates that given a chance, poor people would like bread and butter and developmental rights prioritised and fulfilled. This entails having access to drinkable water, food, housing, passable roads and health services. Poor people have no access because of rampant poverty and lack of

¹¹¹ Goldewijk (1999) 91

¹¹² Goldewijk (1999) 1

¹¹³ Oxfam (2000) 15

¹¹⁴ CARER (1996) 28-31; Oxfam (1999) 19

¹¹⁵ Hunt in Moon (ed.) (1995) 25

resources has made it hard for them to live in dignity, which they can only restore, by having access to services.¹¹⁶ In express terms, people expect the state to deliver development projects and assistance in their areas for them to fight poverty, hunger and to access markets for their produce.¹¹⁷ This requires having affordable fertilizers, safe water, ready markets and accessible roads, for instance. To poor people, rights mean access to essential services and development facilitates the achievement of a broad range of rights to such access. This translation is an obligation to be done as all human rights apply to all people including the poor.¹¹⁸ One can rely on international instruments on socio-economic rights to support poor people's claims to socio-economic rights.¹¹⁹ While universality means that all people have equal rights in practice, poor people cannot enjoy these due to lack of the necessary capabilities. The resultant inequalities perpetuate their powerlessness leading to social division, constrain development and contribute to violent conflict.¹²⁰ To avoid this therefore, the needs and priorities have to be addressed by looking at root causes of these problems using a human rights approach. It also means that prioritisation will have to be in terms of the greatest needs for the most disadvantaged; meaning putting emphasis on socio-economic rights. Basic needs and social justice will thus be met if the poor participate in development and prioritisation processes.

If basic livelihood problems are addressed, we believe poor people will be able to enjoy their rights fully. This will only be possible by the realization that poor people have rights to education and health and to adequate livelihood including food, water, housing and land, *inter alia*. For poor people to access these rights, they need to speak out when discriminated against and bring the state to account for its human rights obligations.¹²¹ There also has to be equality of opportunity in the fair distribution of development benefits and access to basic resources.¹²²

Poverty and social exclusion may limit access to information, lead to illiteracy, remoteness of people and other issues such as transportation and postal services. The eradication of poverty and the question of income distribution are issues that cannot be neglected in such a context. In terms of approach to a human rights based approach, one may propose that the needs of the poor should be posited in a hierarchy as indicated by them. However, we are not advocating for the superiority of any particular right, as some have argued.¹²³ Our position is that the poor might have certain

¹¹⁶ Oxfam (2000) 11

¹¹⁷ Compare the South African situation in Budlender *et.al.*, (1998) 72-74

¹¹⁸ DFID (2000) 9

¹¹⁹ For instance CESCR; articles 22 ACHPR; 55, 56 UN Charter, 22, 28 UDHR

¹²⁰ DFID (2000) 10

¹²¹ DFID (2000) 12

¹²² Articles 2(3) and 8(1) UNDRD

¹²³ Goonsekere, *A rights based approach to realising gender equality* < <http://www.un.org.womanwatch/daw/news/savitri.htm> > accessed 6/7/2001

needs that are urgent and need priority. This does not entail suspending other rights as most rights are in fact overarching. This makes it possible for the diverse human rights to create synergies that contribute to securing the rights of poor people by enhancing their human capabilities to escape poverty.¹²⁴ A good government will thus recognize the complete range of fundamental rights, and any developmental strategy, in whatever context, will have to be directed towards the goal of maximizing the exercise of the rights of the poor. This would entail assigning priorities at the level of support for the exercise of rights, without diminishing other rights.¹²⁵

3.4. Profile of Select Core Needs

We briefly give a synopsis of select core needs of poor people in Malawi to further amplify what poor people need and to direct the efforts of making poor people realize their rights.

3.4.1. Land and Rural Development

Poverty is also a lack of land and lack of resources to access land and basic rights. It is further a lack of resources to make productive use of that piece of land.¹²⁶ From the various surveys in Malawi, it is apparent that land in rural areas is an important issue as it is for their survival for food production, grazing, housing and basic sustenance. At the same time the poor people have low landholding sizes, which are insufficient to produce food and income.¹²⁷ It is also clear that access to land alone is insufficient but that resources such as seeds, fertilizer, water, credit facilities, implements and tools with which to utilize the land need to be made available.¹²⁸

People generally seem to demonstrate an understanding of their problems relating to land rights.¹²⁹ However, they are not clear as to their rights to claim and where to claim when they experience problems.¹³⁰ This ignorance leads to many problems including land deprivation and denial of access to land that needs to be tackled. The lack of capabilities, information and procedures to follow also deprive the poor from accessing services and infrastructures, which might assist them to live productively on the land and to which they are entitled.¹³¹

¹²⁴ UNDP (2000) 73
¹²⁵ O'Manique (1992) *HRQ* 78 99
¹²⁶ Budlender *et.al.*, (1998) 7
¹²⁷ Malawi Government (2001) 66
¹²⁸ Oxfam (1999) 24
¹²⁹ Oxfam (1999) 25; CARER (1996) 26; IOD (1999) 12
¹³⁰ Oxfam (1999) 24; CARER (1996) 27
¹³¹ See section 28 of the constitution. CESCR article 11

3.4.2. The Right to Sufficient Food and Water

Poverty includes never having quite enough to eat.¹³² Those affected by poverty Malawi are also struggling for basic food for their survival.¹³³ This is a serious problem as lack of food poses a threat to other rights including life. This situation is worsened as the poor of the poorest, women and children, are the worst affected by failure to enjoy their rights to food and water. For instance in rural areas, women spend long hours collecting water, food and fuel wood, and thousands of children die annually of avoidable diseases related to poor sanitation, clean water and malnutrition.¹³⁴

Water sources are mostly unhealthy and out of reach of the poor.¹³⁵ Collecting water directly from wells makes them sick and where there are boreholes, there are too many people queuing for water. The poor end up spending a lot of time looking for water without guarantees of going home with water at all and at the same time exposing themselves to hazards like poor security.¹³⁶ Apart from these problems, accessing clean water in rural areas is difficult. The lack of access to clean water is attributed to the inability by government to provide this basic need and, the lack and failure of infrastructure to provide a reliable source of water.¹³⁷ Water needs to be proximate, clean and drinkable to be of meaning to poor people and to prevent poor health. This is because poor health, dysentery, cholera and pollution are associated with lack of access to clean water and ultimately affect the enjoyment of their rights.¹³⁸

The issue of food security can, in the context of the rural poor, also be linked to their lack of access to land as well as to basic farm inputs. A lot of people in Malawi are starving, as they have no food due to failure of their crops due to drought and flooding.¹³⁹ This reflects lack of capabilities evident in the poor. This lack leads to failures for them to do farming that would not only uplift their lives but also give them sources of income.¹⁴⁰ Food therefore remains a fundamental right and a basic need of the poor in Malawi and removing barriers to this right can enhance chances of practical realization of their rights.

¹³² UNDP (1997) 16

¹³³ Malawi Government (2001) 64-66; Chilowa (1997) *I Bwalo* 36 55

¹³⁴ WLSA (Malawi) (2000) 60

¹³⁵ Oxfam (1999) 18

¹³⁶ Liebenberg (1998) 11

¹³⁷ In Malawi access to piped water is very limited as shown in annex I below. Affordability is also an issue as very few have the means to pay for piped water services.

¹³⁸ Liebenberg (1998) 12

¹³⁹ This can be attributed to lack of capabilities and the necessary human rights avenues by the poor to gain those capabilities. Once capability is gained, one can argue that these people will be able to access means they can use to avert famine

¹⁴⁰ Agriculture plays a major role employing 90% of the population and generating 40% of the GDP. See Chilowa (1997) *I Bwalo* 36 39

3.4.3. Lack of Access to Services

Another area which poor people want prioritised is access to social services and amenities to assist them. Poor people in Malawi complain that they do not have access to good roads, bridges and markets to sell their produce.¹⁴¹ Inadequacies in the provision of these services to the poor affect their livelihood as it reduces their opportunities and choices when they want to improve their lives.

Included also is lack of the poor to access health services. Ill health, powerlessness and poverty reinforce each other in multiple ways.¹⁴² Aids, for instance, has had a devastating effect on rural production and poverty, with an estimated one million Malawians infected and government is losing revenue to the disease.¹⁴³ If there is a lack of access to health services, the life of the poor is made even harder. Related problems include the fact that the poor have to walk long distances to get to clinics.¹⁴⁴ In some instances, they are forced to pay hospital fees, which due to poverty, they often fail to pay.

The Constitution has provided for the right to access services and many people understand that it is the obligation of government to bring these services to them.¹⁴⁵ At the same time however, there is lack of information and awareness on the relevant rights and programmes to enable them benefit from basic services. There is a lack of knowledge of state structures and this is an obstacle to the realization of access to services like health care.¹⁴⁶ This is also connected to powerlessness poor people feel as even with some knowledge they sometimes fail to take action to actualise their rights. The poor end up suffering of not being able to access the relevant mechanisms of redress.¹⁴⁷

3.5. Identifying Obligations Towards the Poor

A sufficient legal basis would strengthen claims of the poor people to human rights. This would be found by linking the normative framework of human rights and development. We attempt to establish this by looking at both international and national legal frameworks. The right to development may be established by examining its legal nature, its substance, its beneficiaries and duty bearers.

¹⁴¹ Chilowa (1997) *I Bwalo* 36 40-41

¹⁴² Liebenberg (1998) 41

¹⁴³ Malawi Government (2001) 56, 62

¹⁴⁴ Malawi Government (2001) (1997); CARER (1996) 21

¹⁴⁵ See section 30

¹⁴⁶ Liebenberg (1998) 19

¹⁴⁷ Liebenberg (1998) 20

The starting point is the ACHPR as it was the first to provide for the right to development.¹⁴⁸ This inclusion was revolutionary as it contributed to a structural approach towards human rights violations by providing developmental rights.

At the international level, the UNDRD forms the normative basis of human rights and development.¹⁴⁹ Although just a declaration, its provisions can be employed for interpretative purposes. This is strengthened by the fact that subsequent UN declarations have affirmed general statements by states.¹⁵⁰ Further to this, the Declaration draws heavily upon provisions of the international law and can be traced as stemming from article 28 of UDHR.¹⁵¹

When one compares the international and African approaches to the right to development, the latter is restrictive. The ACHPR assumes that peoples, as communities, are the only beneficiaries of development whereas in the Declaration, beneficiaries include individuals.¹⁵² In terms of a human rights based approach, the poor would benefit more if they can claim rights to development, individually and as groups. There can be no development without individual participation and human rights guarantees.

In Malawi the legal basis for the right to development is established beyond doubt. First, Malawi is a signatory to relevant international instruments.¹⁵³ Secondly, the Constitution makes the position unequivocal by a provision on the right to development, which is as follows:¹⁵⁴

- 30(1) All persons and people have a right to development and therefore to the enjoyment of 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;
- (2) The state shall take all necessary measures for the realization of the right to development. Such measures shall include, amongst other things, equality of opportunity for all in their access to basic resources, education, health services, food, shelter, employment and infrastructure
- (3) The state shall take measures to introduce reforms aimed at eradicating social injustice and inequalities
- (4) The state shall take responsibility to respect the right to development and to justify its policies in accordance with this responsibility.

¹⁴⁸ Article 22 ACHPR. The ACHPR remains the only legally binding international treaty which recognizes the right to development

¹⁴⁹ UNDRD (1986)

¹⁵⁰ For instance the Vienna Declaration (1993) paragraph I (10). It has already been noted that there are still contentions, especially, by Western governments on the right to development

¹⁵¹ This provides that everyone is entitled to social and international order in which rights and freedoms can be fully realized.

¹⁵² Article 22(1)

¹⁵³ See annexe II for a list of relevant human rights instruments to which Malawi is a party

¹⁵⁴ Section 30

The above provisions make clear the legal obligations on Malawi to respect the right to development. Others may argue to the contrary because of the vagueness with which this right is mentioned. Thus while section 30 obliges the state to introduce measures aimed at eradicating social inequalities and to justify its policies in line with the provisions of the section,¹⁵⁵ the problem may be whether one can truly say that the right to development with respect to the poor has been adequately included. One may thus question whether the constitutional provision has adequately provided the right to development as provided for in the 1986 Declaration.¹⁵⁶

Despite the above weaknesses, we urge that section 30 should still be regarded as guaranteeing the right to development.¹⁵⁷ This is premised on the fact that the provision is entrenched in the Bill of Rights and clearly burdens the government to ensure the realization of this right, through taking all necessary measures. Further, one may argue that a constitutional promise, which is legally binding, has been created here. This promise may be taken as creating a legitimate expectation in the populace that the state will promote and respect the rights relating to development.¹⁵⁸ It is of course up to the organs of state to clarify this either through legislation, or policy or indeed through progressive interpretation of the provision by the courts.¹⁵⁹ The constitution thus creates obligations on the part of the state to promote and respect human rights provisions.¹⁶⁰ The ideal developmental government would thus work towards maximising the rights of all members of the community. An essential process would involve effective satisfaction of development needs. This is because government has a fiduciary duty and its reason for existence is to protect and enhance the exercise of rights of people.¹⁶¹ This should be done through the equitable distribution of resources and support for people's productive capacity through enhanced access to inputs such as land, credit and technology.¹⁶²

If one accepts this, then there is a duty to respect the right to development of poor people. This benefits a human rights based approach as it would allow poor people to have a legal recourse at

¹⁵⁵ Section 30(3) and (4)

¹⁵⁶ UNDRD

¹⁵⁷ As to justiceability of socio-economic rights, see Liebenberg in Eide et.al. (ed.). (2001) 55

¹⁵⁸ Ikhaliel (2000) 45 *Journal of African Law (JAL)* 1 1-2,12

¹⁵⁹ Under section 10(2) and 11(2) (c) of the constitution, courts are empowered to apply international law in the interpretation of the Bill of Rights. One assumes therefore that a court challenge brought under section 30, will use jurisprudence from ESCR committee

¹⁶⁰ Sections 5 and 15(2)

¹⁶¹ O'Manique (1992) *HRQ* 78 94

¹⁶² Kufuor (2001) 15

domestic and international levels should there be need. The task for the state is to fulfil its obligations by distributing development opportunities and channelling social investment in an equal fashion to all. Equality of access to development thus becomes one of the most important claims poor people may make.¹⁶³

The philosophy of human rights is built on the fact that for every right there is a corresponding obligation, although this might be imprecise and not absolute. By their very nature, economic and social rights imply that conditions of poverty and deprivation will be eliminated and basic human needs will be satisfied. By recognizing these rights, the eradication of poverty becomes not merely a policy choice for the state but a legally binding responsibility for which it is accountable.¹⁶⁴ A just government therefore respects these rights, does not impede their exercise, and performs its legal duties.¹⁶⁵ This can also be through creation of an enabling environment to enhance the conditions within which people are able to exercise their rights under law.¹⁶⁶

International human rights law provides a framework of legal norms¹⁶⁷ voluntarily entered into by state parties, which bring with them legal obligations.¹⁶⁸ Since human rights are claims to a set of social arrangements, norms, institutions, laws and an enabling economic environment that can best secure the enjoyment of rights, they create an obligation on government and others to implement policies to put these in place.¹⁶⁹ The promise of human rights is such that it engages the state in a way that other approaches to claims cannot. The conceptualisation of a claim as a human right immediately gives the recognition of state responsibility if it is denied or violated.¹⁷⁰ This in turn gives the poor a powerful tool once they know how to utilize their rights.

In terms of obligations, an important aspect relates to third parties vis a vis human rights of poor people. There are different views as to whether the international community: rich countries and international organizations have a legally defined obligation to assist poor communities.¹⁷¹ Some argue that only state parties are fully responsible for promotion and protection of human right of their own citizens. Others believe that rich countries do have other responsibilities to poorer states: to provide aid and abstain from actions that may hurt the poor.¹⁷² This argument also bears in mind that affluent nations have a grossly disproportionate share of the world's resources and

¹⁶³ Benedek in Kuning (eds.) (1985) 79

¹⁶⁴ De Vos (1997) 13 SAJHR 67 69-71

¹⁶⁵ O'Manique (1992) 14 HRQ 78 92

¹⁶⁶ Goldewijk (1999) 30

¹⁶⁷ For instance UDHR articles 22, 23, 25 and 26; CESC articles 6, 7, 9, 11, 12 and 13

¹⁶⁸ Frankovits in HRCA (1995) 1

¹⁶⁹ UNDP (2000) 73

¹⁷⁰ Goonsekere, *A rights based approach to realising gender equality* < <http://www.un.org.womanwatch/daw/news/savitri.htm> > accessed 6/7/2001

¹⁷¹ UNDP (2000) 79-80

¹⁷² McMorrow in McCarthy-Arnolds *et.al.* (eds.) (1994) 37,41-43; ODI (1998) 3

wealth. If this is accepted, then the poor can demand for development aid and that when such comes, a human rights approach should be adopted. International agencies should scrupulously avoid involvement in projects, which, for example, reinforce discrimination against poor people, contrary to human rights principles, or which involve large-scale evictions or displacements violating human rights.¹⁷³

More problematic, however, are multi national corporations, which as a result of globalisation play a role in defining the plight of the poor.¹⁷⁴ They may, for instance, adversely, affect poverty levels as well as perpetuate human rights abuse. The problem is that these bodies seem to be out of control of state authority and are not personalities that can be held responsible at international law.¹⁷⁵ The state is nevertheless bound to deal with these corporations to protect and promote the rights of the poor. This is because the state cannot relinquish its responsibilities of adopting laws and policies to eradicate poverty in the wake of the global economic integration. One also realizes that globalisation dwindles the autonomy of states through multilateral agreements. In those agreements, states sometimes give away their sovereignty because of the need to maintain competition in the global market place, and for many poor countries, by agreement with creditors.¹⁷⁶ This compromises the rights of the poor. But for an effective protection of human rights, it is crucial that anyone who has the power to affect the rights of others does so without violating them. This duty to respect human rights also applies to transnational corporations.¹⁷⁷

Our hope is that in these circumstances the state and other global actors would work together in a holistic way to assist poor people to realize their rights in Malawi. This would assist poor people to have economic and social rights as well civil and political rights. Currently, this relationship has tended to destroy poor peoples livelihoods by worsening their living conditions and opening them to vulnerability.¹⁷⁸ With a human based approach, our argument is that poor people should no longer accept the contracting away of their rights to global corporations. Global corporations should learn to work positively as agents that promote human rights. They have moral and ethical responsibilities rooted in human rights, to have in place pro-poor policies and facilitate poor people's struggle to realize rights. The challenge is to build awareness among rights holders and to identify the duty holders. Where denied needs of poor people meet human rights, legality will be confronted with principles of legitimacy.¹⁷⁹ The state responsibility is to ensure that all those

¹⁷³ Goldewijk (1999) 93
¹⁷⁴ Chandler in Addo (ed)(1999) 39-40; UNDP (1997) 82, 87
¹⁷⁵ Addo in Addo (ed) (1999) 3-4; UNDP (1999) 25, 36
¹⁷⁶ UNDP (2000) 79
¹⁷⁷ Addo in Addo (ed) (1999) 27-29
¹⁷⁸ Chilowa (1997) *I Bwalo* (1997) 36 61-62
¹⁷⁹ Goldewijk (1999) 142

within its jurisdictions are respecting human rights as poor people will ultimately hold it responsible for failure to do so.¹⁸⁰

Another problematic aspect of these rights is that the nature of state obligations is stated in inherently intractable manner, thus sometimes attracting no real government commitment.¹⁸¹ The obligations, though legal undertakings, are less than full guarantees. However, it is clear that there are some steps, which are immediate obligations, and we argue, these include giving poor people the core minimum content of socio-economic rights.¹⁸² Once lines of responsibilities have been identified, poor people will have yet made another step towards realizing their rights in practice. With these initiatives, what the poor would need are strategies for them to demand their rights in practice.

3.6. Conclusion

In this chapter we have identified who the poor people in Malawi are as well as their needs and priorities in terms of human rights. It is evident that a large proportion of the people in Malawi are living in poverty and their basic needs are not addressed.¹⁸³ This points to the need to improve access and delivery of social services. Indeed, poverty undermines human rights and increases the precariousness of socio-economic rights. People's access to resources and control over productive resources can be determined by human rights guarantees and social awareness can empower people to gain more equitable access to resources, increasing their choices and income earning capacity. We have also established that the poor are rights bearers of socio-economic rights and they are owed a duty and an obligation rooted in human rights, to have their rights fulfilled in practice. Poor people's development needs in their areas can assist them to realize socio-economic rights. Achieving practical realization of rights for the poor will therefore involve tackling poverty through development. Effective solutions would rescue the poor by giving them the necessary tools and equipment to expand their capabilities and choices enabling them to enjoy their rights.

The challenge that remains is activating of the necessary motivation required to move poor people to take practical steps. To be given practical meaning, rights need to be transformed into verifiable goals and objectives of development. A human rights impact assessment method need therefore be adopted to map out all these needs and priorities.

¹⁸⁰ UNDP (2000) 80

¹⁸¹ Newman (1990) 365

¹⁸² General Comment No.3, paragraph 10

¹⁸³ Malawi Government (2001) 7

In finding ways to make their rights practical, our focus will be on the identified areas of priority and how impediments can be overcome. We will therefore proceed to examine means and strategies aimed at assisting poor people realize their rights within a rights based approach to development. Development programs for poor people can benefit from an enlarged concept of human rights that will help not only the observance of those rights but also the development process. Strategies to ensure this will thus be crucial to poor people's realization of human rights in practice.



Chapter four

Strategies for Ensuring Access to Human Rights by Poor People

4.0. Introduction

From the foregoing chapter, it is clear that the main need of poor people in Malawi is access to socio-economic rights, which development can bring about. However, poor people face a number of impediments regarding enforcement their entitlements. Thus, despite their rights being provided for in national and international human rights instruments, poor people are unable to realize them in practice. The distinction between the existence of a right and its exercise is an essential analytical tool therefore to any discussion on rights realization.¹⁸⁴

In this chapter we intend to explore various effective ways that can assist poor people in Malawi to realize their rights in practice. We focus on means for poor people to overcome obstacles, for them to demand and realize their rights. In the strategies examined, participation in development is viewed as a central mechanism through which rights of poor people can be realized.

Supporting participation are efforts in awareness on human rights. The need for the poor to forge strategic partnerships with non-governmental organizations to assist them in accessing rights and bringing forward their claims is also highlighted. These initiatives will assist in exploring the possibilities of realizing human rights in practice.

A human rights based approach should therefore deal with creating access to human rights by ensuring beneficiary participation. By exploring these strategies, we intend to show that a rights based approach if implemented in Malawi can lead the poor to realize their rights.

4.1. Participation

A very important aspect within a human rights based approach that would assist poor people to realize their rights in practice is participation. This right is written into several human rights instruments including the UDHR,¹⁸⁵ CCPR,¹⁸⁶ the ACHPR and other instruments.¹⁸⁷

The right to participation recognizes the right of all peoples and every person to participation in development, as active participants to contribute and enjoy the benefits of development.¹⁸⁸ The central message is that development can only be achieved through the engagement of poor people in processes that affect their lives. The human rights based approach aims at empowering people to participate in taking their own decisions rather than being passive objects of choices made on

¹⁸⁴ O'Manique (1992) 14 HRQ 78 86

¹⁸⁵ Article 21

¹⁸⁶ Article 25

¹⁸⁷ Article 13(1)

¹⁸⁸ Jones (1998) 2. The UNDRD emphasizes participation in its articles 1(1), 2(1), 2(3), 8(1) and 8(2)

their behalf.¹⁸⁹ This is relevant because without involvement in development processes meant to achieve economic progress; poor people's human rights are shunted to the sidelines and trampled.¹⁹⁰ Since poor people cannot access their rights, their voices are not heard resulting in their further marginalization.

We examine some case studies gathered from fieldwork in Malawi, to illustrate concrete scenarios of the relationship between poor people's participation and the struggle to realize human rights.¹⁹¹ They display the extent and manner to which failure to protect human rights and non-participation by people can affect Malawi development programmes as a whole. Participation in community development projects is central therefore to enabling poor people claim their rights and making them practical.¹⁹² It is also trite to point out that participation by ordinary people has been successful in other initiatives like conflict resolution.¹⁹³ Without human rights and sustainable development, poverty will continue to deprive the poor of their fundamental rights and societies will in turn be deprived of these people's contributions.¹⁹⁴

4.1.1. Case study 1 – Wovwe Irrigation Scheme

Wovwe Irrigation scheme is in Karonga district in Malawi.¹⁹⁵ The scheme was developed in the 1980s to increase rice production for consumption and export. The second aim was to give settlement facilities to a political youth group.¹⁹⁶ This latter aim gave local farmers the feeling of exclusion as beneficiaries since it meant political control and coercion, apart from the primary aims of production and development.

The way the scheme was initiated and operated lacked meaningful participation, free expression of ideas and accountability. For instance, although there was a land allocation committee on which villagers were supposed to be represented, this was dominated by political interests. Instead of working for the benefit of the villagers, it alienated them instead.

Further evidence of the deleterious socio-economic effects of the scheme were that, with its arrival, villagers who had originally been on the land were, without any consultation, forced out into marginal infertile areas.¹⁹⁷ There was indeed lack of participation by the villagers both in the

¹⁸⁹

DIFD (2000) 7

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Balais in HRCA (1998) 18; Dias in Mahoney *et.al.* (eds.) (1993) 710

¹⁹¹

Summarized from Cammack (1997) *I Bwalo* 102 112-117

¹⁹²

DIFD (2000) 12

¹⁹³

Kufuor (2000) 7

¹⁹⁴

UNDP (1998) 4

¹⁹⁵

Case study by World Vision International (WVI) (Malawi) (1995)

¹⁹⁶

This group, Malawi Young Pioneers (MYP) was affiliated to the ruling Malawi Congress Party (MCP) until its abandonment in 1993

¹⁹⁷

Cammack (1997) *I Bwalo* 102 110

planning and implementation stages of the scheme, resulting in their rights being infringed in terms of their livelihood, land, property and food.

As the development scheme was not rights based, it did not improve poor people's lives. Thus when the villagers were finally able to voice out their concerns as a result of political changes in 1994, the scheme collapsed as it had never been owned by the people in the first place.

Much as this development scheme would have resulted in increased food security, income and development of the area, the lack of its basis in human rights and non-participation by intended beneficiaries, led to its failure. This is true today as it was in the past.

4.1.2. Case study II- The Fishing village

Tourism can bring income and, properly planned and managed, contribute to expanding poor people's capabilities in Malawi by improving their livelihood. This can be through job creation, infrastructure development and business opportunities. At the same time however, it can show the relationship between class interests and the dispossession of poor powerless communities.¹⁹⁸ The case of Mdulamanja village in Salima district is a case in point.¹⁹⁹

Mdulamanja developed as a fishing village in the 1970s. Nearby was a hotel managed by Malawi Development Corporation (MDC). People were able to co-exist with the hotel and sell their fish and other wares to the hotel and tourists.

Due to privatisation, an investor bought the hotel in 1987. This change in ownership also marked a changed relationship with the village, as the new owner was not happy about it. He petitioned the minister of tourism to have the village removed to give room for expansion. He also cited poor hygiene and thievery as other reasons to justify the removals. He built a wall to bar villager's access to the beach and their fish-landing sites. Later a decision by government was taken to evict the villagers in favour of the investor. Villagers were forcibly removed and given compensation as little as \$20. Throughout these processes, villagers were not part of the determination and decision-making processes although these affected their livelihood.

The case study illustrates that when development is not grounded in human rights, poor people are victimized. It further illustrates the negative consequences of lack of consultation of poor people's needs and concerns in planning development and how their lack of involvement can lead to their marginalisation by reducing their opportunities. At Mdulamanja village, political and economic forces combined to destroy a community in favour of an elitist interest. Another aspect is how globalisation has brought in non-state actors who violate poor people's rights in the guise

¹⁹⁸ Cammack (1997) *I Bwalo* 102 112

¹⁹⁹ Case study by Denman and Ferguson (1995)

of bringing economic development to a country.²⁰⁰ Without meaningful participation of poor people therefore, development cannot bring positive change and human rights needs may end up being disregarded.

4.1.3. Case study III: The Issue of Food Security

The following case study illustrates the relationship between rights and physical want in the context of Malawi's food relief programme.²⁰¹ It highlights how poor people's ignorance of their rights and non-participation can result in undermining their rights to food, social welfare and security.

Droughts have become a normal occurrence in Malawi and relief programmes are part of the government's larger development paradigm. In 1995 a small village in Lilongwe was reduced to the brink of starvation due to famine. The government with the assistance of donors and NGOs planned to distribute maize seed, fertilizer and food. Registration of the poorest and most vulnerable was to determine priorities in relief distribution. Problems started however long before distribution began.

First, villagers as potential beneficiaries were not informed let alone involved in determining the criteria for selection of the most vulnerable. The community as a whole was also by-passed in deciding priorities. As a result the registration officer was accused of being biased, prompting the repetition of registration several times, delaying and frustrating the whole process. The lack of participation in the processes, coupled with ignorance of their entitlements also served to disadvantage the poor from enjoying their rights. Added to this was the lack of effective mechanisms to assist them register their complaints when their rights were sidelined.

Thus while food relief programs might be aimed to secure poor people's rights to food, unless they actively participate and unless human rights concerns are central, the purpose may end up being defeated. Poor people need to participate in development from design to implementation stages so that they are fully informed of their human rights entitlements and voice their inputs. In reality therefore, poverty and famine are not only caused by resource limitations. It is processes through which individuals are wholly or partially excluded from full participation in society in which they live that tend to result in lack of livelihood and destitution. This poses the need for social development, based on collective action by citizens themselves, to enable societies to improve the quality of life.²⁰²

²⁰⁰ UNDP (1999) 87-91

²⁰¹ Cammack (1997) / Bwalo 102 114

²⁰² Goldewijk (1999) 33

4.1.4. Lessons in Participation: A Summary

The above case studies confirm that human rights abuses can occur in development projects by government and donor aided schemes in Malawi.²⁰³ Lack of participation by beneficiaries in planning and implementation of development programmes and failure to prioritise human rights can result in the collapse of development initiatives. For poor people to realize their rights, there must be inclusion and popular participation. Their participation has to be active, free and meaningful.²⁰⁴ This will add value to the outcome thus enabling poor people to enjoy their rights.²⁰⁵ Popular participation is the empowerment of ordinary people to effectively involve themselves in creating the structures and designing policies and programmes that serve the interests of all as well as to effectively contribute to the development process and share equally in its benefits.²⁰⁶

Since their rights are not charity, the poor should assert their position as claim holders. Corresponding obligations on duty holders have also to be fulfilled by necessary steps taken to give effect to rights by eradicating poverty.²⁰⁷ Participation by the poor can result in more effective, more sustainable, more rational and more genuine development processes that will enable them to create opportunities for realizing their rights.²⁰⁸ The state must thus begin to yield space to the poor to participate and widen the social base of power and decision-making. The probability of implementation will be assured in these circumstances, as emphasis will be on ownership and participation and broader commitment.²⁰⁹

One therefore finds that with a human rights based approach, there is value added to development as enhanced accountability helps monitor progress, respect human rights and compel action. Higher empowerment leads to ownership and free meaningful and sustainable improvements in people's lives. Further, by using a human rights based approach, normative clarity and detail is given to development as laws, policies, institutions to ensure accountability are introduced.²¹⁰ The right of participation of poor people will therefore present an opportunity for a holistic fusion of operational and normative aspects of development and human rights.²¹¹

203 Cammack (1997) 1 *Bwalo* (1997) 102 117

204 Article 2(1) UNDRD

205 OHCHR (2000) 18

206 Article 11 African Charter on Popular Participation in Development and Transformation (ACPPDT)

207 OHCHR (2000) 20

208 UNDP (2000) 78

209 Malawi Government (2001) 25

210 OHCHR (2000) 21

211 Jones (1998) 1

Only when people feel they have a stake and a voice, will they throw themselves whole-heartedly into development.²¹² This is more so since poor people are dependant on public provisioning and natural resources for improving their livelihoods and realizing their rights. States have thus an obligation to put in place decision-making processes that are transparent and open to dialogue with the poor, by providing information and hearing people's views on development.²¹³ There have to be institutions therefore, to ensure this, and to thereby assist poor people achieve development and realize their rights.

Participation is therefore crucial within a human rights framework as it will enable poor people to claim their rights and, if followed will yet be another decisive avenue to assisting poor people in Malawi access and realize their rights.

4.2. Indivisibility of human rights as a strategy

One of the basic attributes of human rights is that all human rights are indivisible and have equal force and footing in their conceptualisation and enforcement. Human rights are indivisible because the violation of one right often affects the respect of other rights.²¹⁴ However in practice, civil and political rights are better developed than socio-economic rights.²¹⁵ This ultimately affects socio-economic rights, raising concerns over the tendency to selectively choose civil rights and neglect rights which relate more immediately to people's needs for food, shelter, health care and poverty eradication.²¹⁶

On the positive side, however, it is possible to advance the rights of the poor to survival and subsistence by employing civil and political rights. Studies have shown some causal link between such rights as participation and expression and freedom from discrimination, and poverty.²¹⁷

Human rights are of intrinsic value and are essential means of allowing poor people to obtain the food they need to survive, to keep the land they need for subsistence, to organize with others to promote their own economic betterment and to resist their marginalization.²¹⁸ In Malawi where civil and political rights exist,²¹⁹ the poor can easily mobilize and speak out on their socio-economic rights. Mobilization is the process of motivating people for a purpose, and within a

²¹² UNDP (2000) iii

²¹³ UNDP (2000) 78

²¹⁴ DFID (2000) 15. Actually many jurists have pointed out that human rights are equal and interdependent. This position was stated in the UDHR and reaffirmed in the Vienna Declaration paragraph I (5).

²¹⁵ Imbert (1995) 55 *ICJ Review* 85 87

²¹⁶ Human Rights Watch (HRW) (1997) 3

²¹⁷ UNDP (2000) 74; Scheinin in Eide, *et.al* (eds) (1995) 44

²¹⁸ HRW (1997) 3

²¹⁹ See chapter iv of the constitution which contains the Bill of Rights

human rights based approach, will involve working with an affected population to assist in the amplification of needs and concerns.²²⁰

Through this, strategies can be directed to help the poor people to raise awareness of their own power to act, encouraging them to organize and act collectively when necessary.²²¹ The absence of civil and political rights can contribute to famine and their guarantee, the reverse. This is because no famines are caused by drought or crop failure alone. If shortages exist, assistance to affected areas can be mobilized to assist the poor. This can be through loud popular demands of the poor made through political processes, the media or organizations that represent them, thereby compelling government to act responsibly.²²² The diverse freedoms in a democracy can thus be used to push for accountability to assist the poor enjoy their rights. The poor can, for instance, utilize freedom of expression to make their fears known and giving credible information to be acted upon concerning their realities.²²³

Rural people can also readily protest publicly about their conditions.²²⁴ This can assist to make rights practical for the poor as famine is politicised; it is a key concern for ordinary people; and since basic political liberties exist, attracts the concern of those in power.²²⁵ Freedom of expression and political rights can therefore be used to realize socio-economic rights for the poor.

On the other hand, if people are unable to use their civil and political rights, their socio-economic rights can likewise be suppressed. No organization of the poor can freely protest or express themselves when they have famine. The roots of famine can thus be a result of lack of democratic accountability, neglect by government, ruthless exploitation and suppression.²²⁶ The absence of these rights can therefore block access to socio-economic rights of poor people.

Another example relates to access to land which forms the basis for subsistence, and poor people should not be deprived of the same.²²⁷ Subsistence of the poor is directly linked to land: farming, grazing or shelter. When land is taken away therefore, the ability of the very poor to subsist is jeopardized.²²⁸ It is usually argued in Malawi that basic food, clothing and shelter needs are government priorities but it is government policies in many cases, which serve to further impoverish the poor.²²⁹

²²⁰ IHRIP (1997) 50

²²¹ IHRIP (1997) 36

²²² HRW (1997) 5

²²³ Constitution of Malawi sections 34 to 36

²²⁴ HRW (1997) 7; UNDP (2000) 74

²²⁵ HRW (1997) 7

²²⁶ HRW (1997) 7

²²⁷ Article 1(2) CESC

²²⁸ HRW (1997) 22

²²⁹ Oxfam (2000) 15

The use of civil and political rights comes into play here as well. It is easier for government to deprive the poor of their land where there are weak or no checks and balances and when rights are restricted.²³⁰ However, where these rights exist it is possible for the poor to make strategic use of civil and political rights for purposes of enjoying and realizing socio-economic rights.²³¹ The strategy here can include legal advocacy and education.

4.3. Human Rights Awareness

For poor people to realize their rights in practice they need knowledge of human rights. It is apparent that one of the major obstacles that the poor face relate to the general lack of knowledge and awareness of what their human rights entitlements are and how they can apply these in relation to their problems. This is the single most important obstacle towards the exercise of human rights.²³² Ignorance of rights result in poor people showing remoteness and obliviousness to the range of rights they have. Coupled with a lack of knowledge, they rarely use the range of options available to enforce human rights. These options would assist them to take steps towards practical realization of their rights.

In any processes of development, making people aware of their rights should thus be regarded as important. Knowledge of rights would assist people to know what to do in case the rights are infringed. In planning awareness drives, attention will have to be placed on prioritisation of knowledge of rights immediately necessary to the poor.

To benefit poor people human rights education has to be in the context of the daily realities that they face.²³³ This entails designing and implementing an economic and social rights education program in a holistic and comprehensive manner. Human rights education here could benefit from being integrated into development projects meant for the poor.²³⁴ This is because lack of access to information on various critical issues that may directly affect people, puts them at a disadvantage, as they are unable to take up these issues.²³⁵

Critically therefore, available relevant information can motivate poor people to demand for their rights by drawing attention to neglected areas of their rights so they can take action against the state.²³⁶ Poor people are entitled to demand obligations that government has to fulfil by respecting

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HRW (1997) 22

²³¹

UNDP (2000) 75

²³²

MHRRC (1999) 68

²³³

IHRP (1997) 37

²³⁴

Oxfam (1996) 17

²³⁵

Oxfam (1996) 15

²³⁶

One may note that article 13(1) of CESC states that education shall enable all persons to participate effectively in a free society. This provision may have a bearing on awareness drives for the poor.

and protect their rights.²³⁷ In this way human rights education becomes not only a process of informing people about their rights but of developing their capabilities to use a rights framework to analyse issues and problems with the purpose of stimulating them into action.²³⁸

A human rights based approach proposes that education should be aimed at empowering the poor people to take up issues. Empowerment connotes having power, means or control in situations in which people have choices and control in everyday aspects of their lives.²³⁹ Knowledge that leads to empowerment will take the human person as the centre of the development process. It will also have as a goal, giving power and capabilities to beneficiaries of development.²⁴⁰ This is important, as poor people will be enabled to enhance their human capacities and to take part in overcoming failures that limit their efforts to make their human rights practical. This approach to the dissemination of knowledge will thus assist to make people free from poverty, as they will be able to access their rights. Since they are empowered, people will be able to use their knowledge to move from simply being aware to demanding for their rights. This would result in eventual sustainable change allowing the poor to advance their rights in the context of their own development interests and in consonance with acceptable human rights standards.²⁴¹ Apart from this, one can be sure that human rights education that empowers will go a long way to remove those barriers in the way of poor people's enjoyment of their rights.

For human rights education to be effective, it has to be creative so that it can capture poor people's imagination and appeal. This creativity should encompass all stages of empowerment for the poor. While it is correct that knowledge of rights will in most cases enlighten people, it is also more effective when the methods used are capable of achieving impact.

Currently in Malawi, methods of human rights education look unfamiliar to the poor and this affects the level of their impact.²⁴² It might therefore be worthwhile to investigate indigenous concepts or notions, use song and dance for instance, as vehicles for imparting human rights knowledge, to complement other approaches.²⁴³ Whatever strategy is adopted, poor people should have ownership of the process.

Human rights terminology is empowering and has the potential to empower people at the grassroots level to claim the right to education, health care and land.²⁴⁴

237 DFID (2000) 10
238 IHRIP (1997) 49
239 Hewett in Allan Thomas(ed) (1992) 91
240 OHCHR (2000) 23
241 OHCHR (2000) 27
242 MHRRC (1999) 97
243 Tenga-tenga (1997) 4
244 Alston (1995) in HRCA 7

4.4. The Role of Human Rights Organizations

It is possible for poor people to organize and mobilize themselves for purposes of realizing their rights in practice. However, it would be more productive and realistic for them to work in friendship with non-governmental organizations (NGOs). NGOs need to serve to strengthen the process of participatory decision making as well dissemination and exchange their experiences at a grassroots level.²⁴⁵

NGOs form a crucial part of civil society and can play the role of intermediary organizations for arrangements that lie between the primary units of society and the state.²⁴⁶ Placed in such a position, NGOs can be vehicles through which poor peoples rights can be driven towards practical realization.²⁴⁷ NGOs can further take concerns of poor people to policy makers and implementers to lobby for certain positions or against structural violations of their rights which come through poverty.²⁴⁸ Civil society can also put pressure on governing organizations to act in accordance with agreed human rights principles and obligations, for the benefit of poor people.²⁴⁹ In doing this, human rights NGOs can act as megaphones amplifying the whispering of the people.

Advocacy activities of NGOs would be aimed at strengthening demand for human rights by the poor and to develop method of equating economic challenges faced by poor people to the relevance of human rights. However for this to be possible, there will be need for NGOs in Malawi to shift their working strategies so that they can be centrally focused on addressing the core needs of the poor. It would entail the adoption of a rights framework that analyses societal issues and problems, and advance the rights of the poor. In playing the role this should be in the context of awareness raising by NGOs in solidarity with the poor.²⁵⁰

As to the effectiveness of NGOs in assisting the poor, much will depend on a number of factors including their level of interaction, consultation and parading of relevant issues in a constructive fashion.²⁵¹ An important issue will relate to the focus by the concerned organization on socio-economic rights, subsistence and development, which will have the effect of drawing support from the rural poor. Generally NGOs have problems finding political space and increasingly in Malawi, with funding sources.²⁵² These will have to be overcome if poor people are to use NGOs as vehicles for realizing their rights.

²⁴⁵ Article 23 (D) (1) ACPPDT
²⁴⁶ Welch (1995) 44
²⁴⁷ IHRIP (1995) 49-50
²⁴⁸ IOD (1998) 4
²⁴⁹ DFID (2000) 13
²⁵⁰ IHRIP (1997) 11
²⁵¹ Welch (1995) 75
²⁵² MHRRC (1999) 54

4.5. Access to Mechanisms of Redress

In Malawi there are a number of mechanisms by which rights of the poor may be enforced. It is critical that if poor people are to realize their rights in practice, they should have access to mechanisms of redress through which to enforce their rights or entitlements. By mechanisms of redress, we refer to institutions, which will assist poor people to promote, protect and access their rights.

A fundamental question related to enforcement is accessibility. Access is an important element as it might determine poor peoples fate in the search for justice for the realization of their rights.²⁵³ In making the rights practical access to mechanisms of redress will have to be in terms of time, costs, distance and user friendliness.²⁵⁴

In terms of the poor people, mechanisms of redress might be at two levels: primary and formal. Primary systems refer to multiple institutions and rural mechanisms at local levels, through which people can, chose to claim and advance their claims or settle their disputes.²⁵⁵ Examples of primary systems include village customary courts, church tribunals and family forums. Research has shown that people in rural areas where poor people live have a higher level of trust to these, than formal systems.²⁵⁶ This would mean that when rights are violated, rural people feel more comfortable to approach institutions at a primary level. Reasons for this trust include that they are cheap, easy to access and user friendly procedures that the poor understand.²⁵⁷

Formal institutions refer to those established by virtue of state authority and include police, courts and constitutional bodies. The main problem poor people face when they want to advance their rights is that of expense and cumbersome procedures.²⁵⁸

The above revelation might pose some challenges in the struggle of the poor to realize their rights. This is because most of the responsibility to fulfil most of the rights of the poor is primarily on the state. This means that claims to bring the state to account for its failures will have to be done at the formal level. It therefore follows that it is in the formal systems that poor people's claims can be entertained. It is therefore appropriate that within a rights based approach, efforts should be taken to address problems of access that poor people have. Addressing these problems would result in yet making poor people be nearer to practical enjoyment of their rights. In this regard, partnership with NGOs would be of great use. Through these NGOs, the poor can

²⁵³ WLSA (1999) 20

²⁵⁴ CARER (1996) 22; Oxfam (2000) 16, 18

²⁵⁵ IOD (1999) 29-34

²⁵⁶ WLSA (1999) 10; Straker (1999) 17

²⁵⁷ WLSA (1999) 29, 35, 104; Oxfam (1996) 23

²⁵⁸ Straker (1999) 17; WLSA (1999) 23-26; Oxfam (2000) 23-26

take their claims forward and can also be assisted in getting the know how of the formal processes of the mechanisms of redress.

4.6. Conclusion

Poor people are facing enormous challenges and hassles as they struggle to make their rights practical. We have shown here various ways through which rights of poor people can be made practical. If these strategies were implemented at local and national levels, poor people would be assisted to fully make their rights practical. The primary requirement of human rights, then is not their provisioning but implementation in the sense of day-to-day acceptance of the urgency of people's essential needs as a basis for acquiring the goods and services through which they can be satisfied.²⁵⁹ Making rights practical for poor people is the ultimate goal of a rights based approach to development. If human rights are to be meaningful to the poor, it is vital to adopt a participatory approach to development.²⁶⁰ Human rights are very important resources as they empower the poor to participate in the struggles and to demand protection of their basic interests. Poor people in Malawi have suffered rights violations and conventional strategies in human rights work have ignored their needs. The strategies in this chapter, we believe, can assist meet the rights and needs of poor people if followed. Then, the rights of poor people can be realized in practice.



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²⁵⁹

Goldewijk (1999) 7

²⁶⁰

Dias in Mahoney *et.al.* (eds.) (1993) 707

Chapter 5: Conclusions and Recommendations

In this thesis we have been examining how poor people in Malawi can realize their rights in practice through a human rights based approach to development. This was by examining the basis of human rights for the poor, finding out what their priorities are and suggesting strategies to assist them realize their rights. From the foregoing we have come up with a number of conclusions and recommendations aimed at making rights of poor people practical.

One of the most critical issues in the area of human rights in Malawi that we found is the difficult in the practical realization of human rights by poor people. This is because much as human rights are for all; poor people are still struggling daily to achieve their rights. We further saw that in order for poor people to realize their rights, human rights should be looked at in a broader sense. Thus the need to establish and use the nexus between human rights and development for a human rights based approach to development.

We also saw that the main problem of poor people in Malawi is the lack of basic needs as a result of poverty. Poverty in the thesis was looked at in the broad sense, as human poverty that limits capabilities of individuals and impede them from realizing their human rights. Poverty is a human rights violation as it degrades human dignity and this needs to be explicitly acknowledged by the state. In our conclusion, it is by taking initiatives to empower poor people with capabilities that poverty can be managed. Capabilities to enable them to access their rights to water, housing, income, land and other socio-economic rights. This calls for structural mechanisms that will ensure that demands of poor people are satisfied. The focus should also be on practical steps to enforce human rights through expanding the capacities of poor people to overcome impediments affecting the realization of their rights. We have also concluded that development as a process that can assist to empower people with the necessary capabilities in order for them to be able to enjoy their rights. This is because development can bring with it services such as passable roads, water - things that poor people need to improve their lives and economic condition. An important aspect here is that such development has to be grounded in human rights.

The thesis further concludes that there are legal obligations on the part of government to address needs of poor people by ensuring that they are free from want. These obligations arise out of international commitments Malawi made by ratifying treaties like ICCPR, ICESCR and the ACHPR. Additionally, other international instruments like the UDHR have the force of customary international law and UNDRD can be morally binding. Further, the Constitution of Malawi has a Bill of rights which has given a framework of human rights and specifically provided for the right to development. If these obligations are not fulfilled, then the

government is violating rights of the poor to be free from poverty.

Another important aspect that the thesis has tackled is on strategies that poor people can adopt to realize their rights. Our conclusion is that in order for poor people to fully realise their rights, participatory and human rights based approaches have to be used. Participation of poor people as beneficiaries of development is crucial in ensuring that they realize their rights in practice. Participation has to be at all levels of the development process from the planning stage to implementation. Development needs to be people centred, as it will ensure that poor people benefit in a process that respects their rights. This process should be aimed at empowering poor people and bringing about sustainable human development. Sustainable human development will in turn assist to eliminate poverty, promote human dignity and human rights and, provide equitable opportunity to all. If human rights of poor people are to be meaningfully enhanced therefore, operational strategies for development must be broadened so that they can, overtime, have an impact on conditions that militate against the poor. This entails agitating involvement of the poor in their needs assessment and prioritisation of resource allocation.

In relation to the above, it is also proposed that there should be established a permanent multi-disciplinary forum to facilitate the integration of human rights and development work to eradicate poverty. This would serve to create space for poor people to speak out and be included in planning and implementation of development programs. Such a forum can be established through networking of civil society and other institutions that can facilitate participation of poor people in development initiatives.

Further, human rights NGOs can play a role in ensuring that poor people are genuinely and actively participating and, are benefiting from development. NGOs should work in partnership with the poor to advocate eradication of poverty as a human right concern. This requires NGOs to be open and accessible. NGOs should thus act as channels for poor people's voices to be heard. Human rights education is a crucial element that can enable poor people to realize their rights. Education should be creative and original to achieve maximum impact. It should empower people with necessary knowledge and capabilities to address their human rights issues. Further, education should be participatory and people centred if it is to be successful.

Other strategies to assist poor people will involve ensuring that they have access to mechanisms to which they can resort to for redress. This requires a mechanism to be put in place to assist people access their rights to fight poverty. There is need to improve poor people's access to mechanism of redress such as the judiciary, Human Rights Commission and Ombudsman. These mechanisms can assist to make rights within the reach of poor people. For this to work, the

institutions need to give attention to socio-economic rights. Access can be improved by removing procedural, financial, language, structural and other barriers. Opening access is crucial since the above mechanisms have an important role to play in addressing rights of poor people.

In the light of all the above, government should also fully subscribe to the idea that the advancement of human rights needs to be integrated into all its principal activities through a human rights based approach to development. Steps to address rights of poor people should therefore be holistically integrated into development programmes undertaken by government, international development agencies and development organizations. There is need for prioritisation of human rights in programming of activities meant to address socio-economic needs of poor people. This will enable the poor to access socio-economic rights and result in their expanded opportunities in dealing with daily survival and to enjoy all their rights. It will also aid development players to have more focused programmes; easier setting of goals to be achieved and better strategic interventions aimed at enabling the poor to meet their needs and enjoy their rights. This will require a consistent and coordinated national framework with local benchmarks. This can only be possible if a human rights based approach to development is adopted in Malawi. International assistance can be sought in this regard for implementation of human rights programs for poor people.

Lastly, there is need for further research to be undertaken within the Malawian context to see how best these proposals can be infused into a national plan of action. Areas that would need close attention would include finding effective strategies for education, access and participation of the local population into efforts to realize their rights. Individual human rights and development organizations will also need to make assessment of their programs to ensure that they are human rights based in their dealings with poor people.

Word count: 17, 766

Appendices

Appendix I

Malawi data profile and access to services by poor people

- Sources:
- Bwalo (1997)
 - Human Development Report (1999)
 - World Development Indicators database (July 2001)

	1996	1999	2000
Population, total	10.0 million	10.8 million	11.0 million
Population growth (annual %)	2.6	2.4	2.3
Population density (people per sq. km)	106.5	114.7	117.4
Life expectancy at birth (years)	..	39.5	37.8
Fertility rate, total (births per woman)	..	6.3	..
Mortality rate, infant (per 1,000 live births)	..	131.5	..
Mortality rate, under-5 (per 1,000 live births)	..	227.0	..
Malnutrition prevalence (% of children under 5)	..	Underweight Children under 5 30%	..
Urban population (% of total)	19.7	23.6	24.9
Rural population density (per sq. km of arable land)	429.0	..	..
Illiteracy rate, adult male (% of males 15+)	28.0	26.2	25.5
Illiteracy rate, adult female (% of females 15+)	58.2	54.7	53.5
School enrolment, primary (% net)	..	..	..
School enrolment, secondary (% net)	..	..	..

School enrolment, primary, female (% net)	..	..	..
School enrolment, secondary, female (% net)	..	..	..
Environment			
Surface area (sq. km)	118.5 thousand	118.5 thousand	118.5 thousand
Forest area (sq. km)	..	..	26,010.0
Annual deforestation (% of change)	..	..	2.4
Freshwater resources per capita (cubic meters)	..	1,724.2	..
CO2 emissions (metric tons per capita)	0.1	..	..
Improved water source, urban (% of urban population with access)	..	..	95.0
Improved sanitation facilities, urban (% of urban population with access)	..	..	96.0
Commercial energy use (kg of oil equivalent per capita)	..	..	..
Electric power consumption per capita (kwh)	..	..	..
Economy			
GNI, Atlas method (current US\$)	1.8 billion	2.1 billion	1.9 billion
GNI per capita, Atlas method (current US\$)	180.0	200.0	170.0
GDP (current \$)	2.4 billion	1.8 billion	1.7 billion
GDP growth (annual %)	7.3	4.0	1.7
Inflation, GDP deflator (annual %)	58.9	42.2	24.2
Agriculture, value added (% of GDP)	36.8	37.6	39.9

added (% of GDP)			
Industry, value added (% of GDP)	18.2	17.8	18.7
Services, etc., value added (% of GDP)	45.0	44.6	41.4
Exports of goods and services (% of GDP)	21.3	27.1	25.3
Imports of goods and services (% of GDP)	29.9	42.5	39.5
Gross capital formation (% of GDP)	11.6	14.8	17.7
Trade and finance			
Trade in goods as a share of PPP GDP (%)	19.2	16.6	..
Trade in goods as a share of goods GDP (%)	72.5	98.0	..
Net barter terms of trade (1995=100)	105.8	..	..
Foreign direct investment, net inflows in reporting country (WDI, current US\$)	44.0 million	60.0 million	..
Present value of debt (current US\$)	0.0	1.5 billion	..
Total debt service (current US\$)	88.7 million	68.8 million	..
Short-term debt outstanding (current US\$)	100.0 million	67.4 million	..
Aid per capita (current US\$)	49.2	41.3	..

Poverty Levels: population below poverty level: **42%**

Appendix II

Relevant International human rights treaties ratified by Malawi

Source: Office of the High Commissioner for Human Rights

International Covenant on Civil and Political Rights

Status: Accession

Date of signature	
Date of receipt of instrument by the UN	22/12/93
Date of entry into force	22/03/94
Declarations on procedural articles:	None

International Covenant on Economic, Social and Cultural Rights

Status: Accession

Date of signature	
Date of receipt of instrument by the UN	22/12/93
Date of entry into force	22/03/94
Declarations on procedural articles:	None

African Charter on Human and People's Rights

Source: University of Minnesota Human Rights Library

Date of signature	Date of Ratification	Date deposited
13/11/81	17/11/89	23/02/90

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