

**Implementing Human Rights-Based Development:
Some preliminary evidence from Malawi**

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Expert seminar: Extreme poverty and human rights

Geneva, 23-24 February 2007

Introduction

While the human rights-based approach to development (or HRBA) was generally neglected until the end of the 1990s, it has, in the past decade received an astonishing amount of attention particularly from UN agencies, international civil society organisations and donor agencies. The HRBA is an important tool not only for *poverty reduction* but also in efforts to combat *poverty production* since it entails a comprehensive re-definition of the aims and approaches to development. Indeed most agree that the approach ‘creates claims and not charity’ and hence ‘the *end* of development ... differs, and consequently the whole process of thinking about it, of defining the nature of the problem, changes as well – a new vision emerges’ (Uvin 2004: 129). Moreover, the HRBA ‘affects the way development actions are implemented’, in other words, ‘the means, the processes, are different, even if many of the goals remain the same’ (Ibid). Human rights therefore ‘contribute to human development by guaranteeing a protected space where the elite cannot monopolize development processes, policies and programmes. The human rights framework also introduces the important idea that certain actors have duties to facilitate and foster

development' (OHCHR 2006). But most importantly, linking human rights to development actually forces development practitioners to confront the tough questions of their work: matters of power and politics, exclusion and discrimination, structure and policy (Uvin 2004). And as Arjun Sengupta (2005: Para. 23) puts it, 'if poverty is considered as a violation of human rights, it could mobilize public action which itself may significantly contribute to the adoption of appropriate policies, especially by Governments in democratic countries'.

At this stage it is important to distinguish between 'rights-based development' and 'human rights-based development', since these terms result in some confusion when used interchangeably by various international organisations and aid agencies. As Eide (2006: 250) points out, a rights-based approach can 'cover any kind of rights and is locally determined as a result of power relations' and can include 'established property rights irrespective of whether their origin, use or inheritance principles are "just"'. By comparison, a human rights-based approach 'builds on the international normative system of rights and the obligations undertaken by (most) states, which makes possible a growing international consensus on the content of the rights and the corresponding responsibility of the duty-holders' (Ibid).

More rhetoric than actual implementation

The current situation is, alas, one where an excessive amount of attention on the human rights-based approach is currently directed at the rhetorical level rather than on the practical implementation of development policies (Eide 2006; Hansen and Sano 2006). The challenge, as Mary Robinson puts it, is to make 'the language and

approach of human rights accessible to wider audiences’ and ‘problems of precision in how human rights standards can be applied in different policy making situations remain’. And while ‘the work continues and is deepening ... there is still a long way to go’ (Robinson 2004: 868). Indeed, a human rights-based approach to development may not live up to expectations unless three sets of interrelated issues are addressed (Banik, St Clair and McNeill 2006). First, there is a danger that in the process of ‘operationalisation’ – from global theory to national practice – much of the substance of the HRBA will be lost; and global issues that impinge substantially on poverty, such as trade, capital flows and migration, will be omitted from the agenda. Second, issues related to international accountability (donors, multilateral institutions and international organisations), unfair transnational practices, and unequal power relations that negatively affect the poor – both intra and internationally – may remain unaddressed. Finally, there is the danger that the HRBA, like other approaches before it, will be drained of political power and prove to be difficult to implement at the national and local levels. In the ensuing sections of this essay, I will concentrate primarily on this third aspect, i.e. the challenges associated with implementing the HRBA at the national and local levels.

The traditional blindness of development policy towards questions related to power, conflict, exclusion and discrimination leave development bureaucracies and experts poorly prepared to implement an HRBA. Another important hindrance is the apparent lack of common concerns between human rights activists and organisations and development practitioners at the country level (Uvin 2004). As a result, the continuation of poverty and violations of rights are often seen as separate issues, and

although the current focus on promoting democracy, good governance and anti-corruption has opened up some channels to reconnect rights with development practice, there is a risk that poverty will take second place to other more pressing concerns of powerful players, such as terrorism (Banik, St. Clair and McNeill 2006). In short, although ‘a human rights-based development is desirable and possible ... doubts persist whether it is probable’ (Eide 2006: 253).

National and local action: Some points for discussion

Malawi is an interesting case for several reasons. Despite being home to large groups of people living in extreme poverty – and faced with immense challenges related to food insecurity, environmental degradation, unemployment and HIV/AIDS – the country has enjoyed relative political stability in recent years and has attempted to implement several programmes targeted at the poorest of the poor, albeit with limited success. There is also a considerable amount of ‘rights-based talk’ in the country, mainly due to the large and influential presence of UN organisations, international NGOs and bilateral foreign donors. Indeed, the dependence of Malawi’s economy on foreign aid has also made the country a hotbed for experimenting with a human rights-based approach to development and poverty reduction.

There are several areas which offer both promise and new types of challenges in implementing a HRBA. Some of these challenges are briefly discussed below.

1. *Elite-based political culture and lack of participation by the poor*

The introduction of multiparty elections in 1994 – after almost four decades of dictatorship – gave Malawians and donors alike new hope that democracy would be better able to tackle widespread inequalities in power and wealth. The past decade has, however, revealed and reaffirmed the dominant role played by a small group of elite politicians in national-level politics. Thus, and in relation to Amartya Sen’s (1994; 2000) argument that political freedoms play an important instrumental role in addressing pressing economic need, Englund (2006: 6) writes that the experience with political freedom in Malawi suggests that ‘the mere allowance of arguments and disputes to take place in public is less crucial to democracy than what those arguments are *about*’. The point here is that the idea of democracy and human rights introduced in Malawi in 1994 caught the imagination of elite politicians, bureaucrats and journalists together with donor representatives. The overwhelming preoccupation with political freedoms failed, however, to mobilise the large majority of rural poor, and ‘[f]or all the evocations of participation and empowerment in the rhetoric of freedom, the rural and urban poor had few opportunities to participate in defining what freedom, human rights, and democracy might mean in a Malawian context’ (Ibid). While a very narrowly defined system of rights – mainly obsessed with elections and the right to vote – resulted in some political squabbles, ‘the ruling elite and its non-governmental watchdogs effectively silenced public debates on social and economic rights’. Englund goes on to write that ‘[a]n impression of robust democratic processes was thereby created, not least for the benefit of foreign donors, but structural inequalities were hidden behind the notion that “poverty alleviation” was basically a technical issue. Empowerment, in effect, became *disempowerment* by

using the notions of freedom, democracy, and human rights to confine the scope of what could be discussed' (Ibid: 10).

2. *Incorporation of ratified international human rights treaties in domestic legal system*

Chapter IV of Malawi's very progressive Constitution is dedicated entirely to human rights. Of particular importance is Section 30, which provides for a 'right to development' whereby '[a]ll persons and peoples' can enjoy 'economic, social, cultural and political development, and women children and the disabled in particular shall be given special consideration in the application of this right' (Para. 1).

Accordingly, the state is required to 'take all necessary measures' including 'equality of opportunity for all in their access to basic resources, education, health services, food, shelter, employment and infrastructure' (Para. 2). The state is further required to 'introduce reforms aimed at eradicating social injustices and inequalities' (Para. 3).

Despite such constitutional guarantees in the area of economic and social rights, low levels of economic growth combined with high levels of unemployment, frequent food shortages and recurrent natural disasters have, however, slowed down the process of realisation of these rights (Chirwa et al. 2003).

Since 1994, the courts have been active and innovative in several respects – including the positive manner in which the Bill of Rights was interpreted in relation to prisoners' rights, etc. However, the major focus of the judiciary has been on civil and political rights. While litigation on economic, social and cultural rights has been

scarce, the Attorney General of Malawi claimed that it has nonetheless had a positive impact in relation to issues of employment (e.g. daily wages and price-setting mechanisms by employers) and campaigns demanding the right to education.

After the introduction of the 1994 Constitution, the legal profession in Malawi has also been increasingly exposed to international human rights law. The courts have, however, not given such law much prominence in their rulings largely due to the lack of training of judges and lawyers in international human rights terminology and use. Hansen (2002: 40), for example, notes that several judges feel uncomfortable applying international human rights law since they have difficulty applying international provisions to suit domestic realities.

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

3. *Monitoring and review by Malawi Human Rights Commission (MHRC)*

Since 1994, successive governments in Malawi have supported the creation of institutions of oversight such as the Human Rights Commission, the Office of the Ombudsman, the Office of the Auditor General, the Anti-Corruption Bureau, etc.

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

4. *Monitoring and review by civil society organisations*

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

A representative of a major donor organisation complained that the real problem with civil society organisations in the country was related to their ‘self-regulating mechanism of self-censorship’, which prevented them from being brave enough to mount a real and sustained challenge to governmental misdeeds for fear of reprisals. Another interesting view on the role of civil society is forwarded by Englund (2006: 8), who writes that most NGOs in Malawi ‘tacitly support the state not “from below” but as agencies with capacities that are equal, if not superior, to those of the state’. As a result, many question the adversarial functions of civil society organisations in Malawi. And according to one academic, there is no clear line of demarcation

between the state, private sector and civil society organisations. Preferring the ‘convenience of life’ – including opportunities to earn an additional income and not to be harassed by the police – people appear to move effortlessly between these spheres. Hence ‘there is no one to rattle the status quo’ and ‘If you rock the boat, you may without a job *and* be humiliated in front of your family, neighbours and colleagues’. Indeed, most genuine human rights talk in Malawi is still perceived as anti-government and this creates numerous difficulties in holding the authorities to account.

5. *Monitoring and review by Parliament*

A large number of people interviewed – representing various groups including ruling party members, civil servants and human rights commissioners – seemed to agree that the Malawian Parliament was to blame for the lack of better integration between human rights and development. For example, the Law Commissioner claimed that processing laws in Parliament remained a major challenge, and that there was a need to ‘sensitize MPs by facilitating the discussions in the legal affairs committee’, which has been largely inactive. He highlighted nonetheless that workshops and training programmes had resulted in some success in that MPs recently showed an eagerness to pass the domestic violence act and legislation on money laundering. And although Parliament showed little interest in economic and social rights, the Law Commissioner felt that this was not really a challenge for political institutions. Rather, it was the role of NGOs, he argued, to ‘make enough noise’ on these issues. Similarly, a senior official of the Human Rights Commission was frustrated over the manner in which the Commission’s reports on child rape, police brutality and

violence against women were handled in Parliament. He accused MPs of neither reading nor debating issues outlined in the detailed reports submitted to Parliament, and claimed that some MPs believe the MHRC to be an NGO.

Indeed, the general impression was that the Parliament lacks teeth, as was clearly borne out in the December 2006—January 2007 stand-off between President Mutharika and elected MPs on where and when the Parliament should convene. In this connection, Booth et al. (2006: 15) argue that the weak institutionalisation of political parties have allowed successive presidents to manipulate the role and functions of parliament. Moreover, most NGOs and foreign donors are of the view that MPs seldom visit their constituencies and tend to switch party loyalties while Parliament is in session. Similarly, a senior civil servant argued that Parliament exists as a forum for the exhibition of a political majority and ‘citizens are constantly made aware that any enjoyment of socio-economic benefits is closely tied to political affiliation ... There is no automatic right; it does not exist independently but is something that is assigned based on political support ... And rights are preached, but not implemented’. A combination of the above factors has therefore undermined the legitimacy and role of the legislature in the eyes of the small minority of politically emancipated citizens. A journalist summed up the situation when he observed, ‘the importance of an institution can be gauged by the size of its headquarters; our Parliament does not even have a building of its own ... occasionally parliamentary sessions are held at the State House depending on the personal whim of the President’.

6. *Resource constraints and co-ordination of development policy*

With assistance from multilateral institutions and bilateral donor agencies, the civil service in Malawi has achieved a certain degree of professionalism, particularly at the highest echelons of government with the recruitment of several competent officers at the principal secretary level. The lack of institutional capacity required for the successful implementation of anti-poverty programmes is, however, particularly absent at the middle and lower ranks of the civil service. The low level of salaries, absence of proper facilities and the country's patronage-oriented political system are some of the reasons behind this predicament. As Booth et al. (2006: ix) argue, politicians have undermined civil servants' capacity to formulate and implement development policy by refusing to delegate power for fear of losing their ability to 'use policies for short-term political gain or patronage'. In addition, there has been a slow but steady erosion of civil service ethics and a steady increase in corruption levels (Ibid). In recent years, opposition parties in parliament have also accused the government of distributing development funds unequally between the three major regions of Malawi – the southern region has traditionally received greater allocations than the comparatively poorer northern region.

Chisinga (2002: 42) argues that while much has been achieved at the national policy level in terms of a Poverty Alleviation Programme (PAP), the impact of policy implementation at the village level has been negligible and most often 'accidental'. This, he argues, is primarily due to the lack of information sharing between national and local levels, and the weak system of communication which leaves villages

isolated from the centres of power. Large groups of rural Malawians have little or no access to newspapers, televisions and radio sets, with access to the relatively small national media largely limited to the urban centres of Lilongwe, Zomba and Blantyre. Moreover, journalists seldom undertake investigative reporting, relying mainly on ‘telephone briefings, press conferences called by officials and similarly formal exercises’ (Chirwa et al. 2003: 99). Indeed, a journalist in one of the largest newspapers in the country went on to note that there were no regular and institutionalised interactions between the President and the media. A formal press conference is usually held at the airport when the President leaves the country and at the State House upon his return from a trip abroad.

7. *Adapting ‘traditional culture’ to the demands of universal human rights*

The language of personal freedom and human rights introduced progressively following multiparty elections in 1994 and sustained donor pressure, appeared to be warmly embraced by the political elite. However, large groups of the rural poor, including women who continue to face daily forms of gender-based discrimination, remain sceptical of the benefits of human rights-talk (Ulvær 2003). For example, Ribohn (2002: 166) writes of how ‘[l]ocal reactions against human rights are based on notions of a new “culture”, associated with “Western” values’. And ‘[o]ne consequence of local human rights discourses in Malawi is that women as a category are placed in opposition to human rights. Both men and women argue that women should maintain “culture”’ (Ibid: 167). Indeed it is common to hear villagers – and even some highly educated Malawians – argue that maintaining traditional culture is of paramount consideration, even if this means overriding universalistic human

rights. And villagers increasingly speak of ‘stability’, which they believe is at risk upon the introduction of human rights language: ‘Official statements stressing the importance of changing women’s role in society increase the fear of instability and uncertainty (Ibid: 176). Hence, ‘the emphasis on “traditional culture” and its consequences may be seen as a reaction against transnational policies embraced by the government’ (Ibid: 177).

8. *Accountability of international actors and the role of donors*

Despite Malawi’s large-scale dependency on foreign aid, a common complaint among politicians and administrators related to their interactions with donor representatives in designing and implementing development policy. For example, some were concerned with the trend whereby donors tended to ‘lecture the government on various issues without understanding properly what the government says and believes in’. As Piron (2005) argues, ‘power relations between recipient governments and donor agencies are highly unequal’ and characterised by ‘a lack of transparency with regards to how aid agencies allocate financial resources, set priorities, and assess performance’. This is particularly true in the Malawian case. Moreover, several national-level politicians pointed to the fact that effective accountability mechanisms are totally absent in the international aid industry and donors and multilateral institutions are seldom held accountable by individuals and communities in countries where they provide assistance. And there is seldom much information available to national governments regarding the measures undertaken by aid agencies to stand accountable for failed projects and negative impacts resulting from an intervention. Further, representatives of some prominent NGOs in Malawi claimed that there is no

consistent commitment on the part of donors and the government to operationalise and apply the HRBA. In fact, they argued that there was hardly any interaction between the two sides on the issue of linking human rights with development. Some of the ‘new’ donors like Taiwan (which has become a close ally after Malawi’s refusal to accept Chinese aid) were accused of continuing to be obsessed with handouts, charitable acts, which in essence go against the principles of a human rights approach.

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

Conclusion

The human rights framework operates with national governments as the principal duty bearers. Even if we accept that the primary responsibility for poverty reduction rests with the state, there are a large number of non-state actors and organisations – with their own agendas and levels of power and influence – who both participate in

and influence the formulation and implementation of public policy. In addition, the poor are a heterogeneous group and there are differences in terms of ethnicity, linguistic ties, political loyalties, etc. These give rise to several relevant and interrelated questions: How does the state actually target the poor? How do cultural practices, shared norms, the role of kinship or the extended family, etc. clash with the often individualistic approach of a human rights-based approach? Does this in turn generate local forms of resistance? What is the nature of the relationship between donors/UN agencies and the political-administrative elite of the country in linking human rights and poverty reduction?

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

accepting it? To what extent do government ministries cooperate and interact in implementing human rights-based approaches?

There is also an urgent need for a systematic attempt to connect the HRBA to other accepted approaches, to learn and understand the language and the concepts of 'others'. This in order to bridge not only the gap between human rights advocates and conventional development practitioners but also in the quest to understand local demands and frustrations. In terms of the Malawi case, Englund (2006: 11) forcefully argues that the notion of human rights has acquired very little legitimacy among the poor as 'human rights activists and volunteers, compensating for their personal frustrations over education and employment, engaged in practices and discourses that virtually mimicked the elitism of the political class'.

It also appears that the HRBA requires better conceptual clarity at national and local levels; indeed, greater efforts are needed at the programmatic level and in the identification and awareness of what it means to be a right-holder and a duty-bearer and how one can effectively claim one's rights and carry out one's duties. This also means considering the realistic ability of the poor and their representatives or supporters to hold international agents to account for failing to respect, protect and fulfil human rights principles in the development process. In a recent work, Sen (2004: 356) addresses the problems related to convincing policy makers that human right can provide an effective tool for development. He notes 'the scepticism that the idea of human rights generates among many legal and political theorists'. Arguing that such doubts must be addressed, he also notes that 'the conceptual understanding

of human rights, in turn, can benefit substantially from considering the reasoning that moves the activists and the range and effectiveness of practical actions they undertake, including recognition, monitoring and agitation, in addition to legislation.’ Thus, ‘not only is conceptual clarity important for practice, the richness of practice ... is also critically relevant for understanding the concept and reach of human rights’.

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