Comment

Policies, Aspirations, or Rights? A Case for Mainstreaming Socioeconomic Rights in the Malawi Growth and Development Strategy (MGDS)

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I. INTRODUCTION

Malawi is one of the least developed countries in the world. According to the 2010 United Nations Development Programme (UNDP) Human Development Report, Malawi ranks number 153 from a sample of 169 countries in terms of the level of human development.1 The UNDP Human Development Report is the general framework used by the United Nations Organization (UN) in determining the general levels of prosperity among States.

Malawi faces a multiplicity of socioeconomic problems. These include a fast-growing population that in turn exerts substantial pressure on limited land and natural resources;2 high unemployment levels; endemic official corruption in government and public administration; a bloated civil service with generally low levels of efficiency;3 lack of fiscal discipline in the public service; heavy dependence on outside balance of payments support;4 generally low levels of education and training opportunities; a poor state of health services compounded by an HIV/AIDS pandemic that

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is not yet under control;\(^5\) heavy dependence on agriculture and exports of a few agricultural commodities which are largely in raw (unprocessed) form; a low-level productivity in small-scale farming and a vast gap between small-scale and estate agriculture with respect to product range and productivity;\(^6\) and vulnerability to external political and economic shocks, as well as other factors on account of the country’s landlocked geographical location.\(^7\)

This cocktail of socio-economic problems accentuates and exacerbates one major phenomenon: poverty. The International Monetary Fund’s 2002 *Malawi Poverty Reduction Strategy Paper* (MPRSP) acknowledged this fact, stating that poverty in the country was “widespread, deep and severe.”\(^8\) The policy document that followed the MPRSP, *The Malawi Growth and Development Strategy: From Poverty to Prosperity 2006-2011* (MGDS), acknowledges that the situation has not improved much from what it was at the time the 2002 MPRSP was produced. The MGDS makes a ringing admission that during the implementation period of the MPRSP, very little progress had been made in reducing poverty, noting in 2006 that “[p]overty has not changed significantly for the past seven years.”\(^9\)

In light of this state of affairs, the importance of critical human rights discourse on poverty in Malawi cannot be overemphasized. In this paper, I explore the human rights obligations of the Malawian Government as well as the international community (including multilateral institutions) in relation to the critical issue of poverty. I critique the approach taken by the government in relation to the issue of poverty, arguing that, notwithstanding fairly progressive expressions of the Malawian Government’s commitment to human rights in the process of economic and development planning made in the MGDS; the government does not yet seem to have come around to acknowledge that the phenomenon of poverty is, in itself, an important human rights issue. In particular, the paper observes, on critical examination, that the approach taken in the MGDS continues to demonstrate that the government does not seem to recognize the essence and place of socioeconomic rights in its economic and development planning processes. The paper recommends a more robust inclusion, articulation, and application of a conception of the socioeconomic rights obligations of the State as well as the international community in the framing of future poverty reduction strategies (or other policy instruments

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7. Id. at 8.3.
9. IMF, MALAWI: POVERTY REDUCTION STRATEGY PAPER – GROWTH AND DEVELOPMENT STRATEGY xiii (2007). The MGDS observes that over a period of seven years, from 2000-2006, poverty levels had only reduced from 54% of the population living below the poverty line (pegged at one USD per day) in 2000, to 52.4% of the population living below the poverty line at the time of writing the report.
with similar import).

II. THE MEANING OF POVERTY

It has been said that the defining feature of poverty is that it entails the restriction of opportunities for a person to pursue his or her well-being. Sen states that poverty entails “the failure of basic [human] capabilities to reach certain minimally acceptable levels.” The UN Office of the High Commissioner for Human Rights (OHCHR) has adopted Sen’s capabilities approach, arguing that since poverty denotes an extreme form of deprivation, only those capability failures that are deemed to be basic in order of priority would count as poverty. As much as it is recognized that there is a degree of relativity in the concept of poverty from community to community, the OHCHR states that there are certain basic capabilities that are common to all. These include adequate nutrition, adequate health, adequate education, and adequate housing. In summary, the OHCHR states that the defining feature of a poor person is that he or she has very restricted opportunities to pursue his or her well-being. Poverty can thus be seen as a situation defined by low levels of capability. The OHCHR approach rejects the straightjacket idea of narrowly viewing poverty in a one-dimensional fashion as a lack of adequate income. Instead of simply identifying the poor as those who fall below a certain minimum income level, commonly called the poverty line, there is need to come up with innovative mechanisms that use qualitative as well as quantitative methods to define the minimum level of capability attributes below which a person is to be deemed poor.

I submit that this is the correct approach and that a system of indicators, akin to those used by the UNDP to measure the level of human development as stated in the UNDP Human Development Reports, be adopted in that regard. The UNDP characterizes as Low Human Development Countries those that fall below the Human Development Index (HDI) value of 0.5. This approach is consistent with Sen’s capabilities approach, and it is more appropriate in defining poverty than the overly simplistic and narrow so-called income poverty line approach. Sen’s capabilities approach is also assumed by the Asian Development Bank (ADB). The ADB states that “poverty is, thus, better measured in terms of basic education, health care, nutrition, water, and sanitation, as well as income, employment, and wages. Such measures must also serve as a proxy for other important intangibles such as feelings of powerlessness

12. OHCHR, supra note 10.
13. Id. at 20.
14. Id. at 10.
15. Id. at 7.
16. Id. at 75.
17. See UNITED NATIONS DEV. PROGRAMME, HUMAN DEVELOPMENT REPORT 141 (2004).
and lack of freedom to participate.”

The list of capabilities is obviously broader than what the ADB outlines in its Report. For example, access to housing, the lack of which is clearly one of the essential determinants of poverty, is not included on the list. All in all, the position taken by the OHCHR, in attaching content to Sen’s theoretical grounding of the capabilities approach, is most astute in conceptualizing the meaning of poverty. What the positions taken by such bodies as the ADB do is to further support the shift away from a narrow conception of poverty that is limited to the so-called poverty line as usually set by the World Bank and the IMF - also called the Bretton Woods Institutions (BWIs). Some financial institutions have notably acknowledged the deficiencies of the narrow poverty line approach in defining poverty and embraced the broader conception, consistent with Sen. For instance, the ADB, while observing that “the United Nations (UN) and the World Bank have adopted a $1/day and a $2/day per-capita poverty line for international comparisons,” goes on to quickly note that “[i]t is now increasingly realized that poverty is a multidimensional concept and should encompass all important human requirements.” It argues that “lack of income is not the only kind of deprivation people may suffer” and that “people can still suffer acute deprivation in many aspects of life even if they possess adequate incomes.” Thus, it is argued, recent thinking on poverty suggests that “poverty should be viewed in terms of an inadequate standard of living, which is more general than a lack of income.”

Observably, in Malawi, neither the MPRSP nor the MGDS, makes an attempt at adopting a principled definition of the meaning of the term “poverty,” although the notion of poverty reduction undergirds the ultimate goals of these strategic documents. In the absence of such an express working definition, it is submitted that Sen’s capabilities approach, as adopted by the OHCHR and embraced by some regional financial institutions such as the ADB, should inform our understanding of poverty in relation to the implementation of these policies.

III. POVERTY AS A HUMAN RIGHTS ISSUE

A number of commentators have identified poverty as a serious human rights issue. Former U.N. High Commissioner for Human Rights Mary Robinson has said, “I am often asked what is the most serious form of human rights violations in the world today, and my reply is consistent: extreme poverty.” Cuellar locates poverty in human rights discourse,
stating that “poverty is inseparably linked to human rights, acting as both cause and effect of human rights violations.” 22 The International Covenant on Economic, Social, and Cultural Rights (ICESCR) 23 does not expressly identify the issue of poverty as one of its areas of concern. However, the Committee on Economic, Social, and Cultural Rights (CESCR) has made it clear that poverty is one of the recurring themes in the ICESCR and has always been one of the central concerns of the CESCR. 24

Henry Shue has provided a sound conceptual justification for the recognition of poverty as a human rights issue, as he addresses the concept of what he refers to as “basic rights.” He asks, “Why, then, according to the argument so far, are security and subsistence basic rights?” 25 He argues that the justification lies in the fact that each is essential to a normal healthy life. 26 “Because the actual deprivation of either can be so very serious . . . even the threatened deprivation of either can be a powerful weapon against anyone whose security or subsistence is not in fact socially guaranteed.” 27 Shue contends that “[p]eople who cannot provide for their own security and subsistence and who lack social guarantees for both are very weak, and possibly helpless, against any individual or institution in a position to deprive them of anything else they value by means of threatening their security or subsistence.” 28 He concludes in this regard that: “[a] fundamental purpose of acknowledging any basic rights at all is to prevent, or eliminate, insofar as possible the degree of vulnerability that leaves people at the mercy of others. Social guarantees of security and subsistence would go a long way toward accomplishing this purpose.” 29 He urges that “security and subsistence are basic rights . . . because of the roles they play in both the enjoyment and the protection of all other rights.” 30

It is evident that when Shue discusses the concept of subsistence, which he also refers to as “minimal economic security,” 31 he is essentially talking about a guarantee that one will be protected from sinking below an unacceptable level of poverty. Indeed, as he acknowledges earlier in his work, his project on basic rights in this regard is about the “morality of

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26. Id.
27. Id.
28. Id. at 30.
29. Id.
30. Id.
31. Id. at 23.
depths," which "specify the line beneath which no one is to be allowed to sink." The consequences of abject poverty can be "very serious - potentially incapacitating, crippling, or fatal." It therefore emerges that, notwithstanding apparent silence in international human rights instruments, a purposive approach to interpreting instruments such as the ICESCR, as demonstrated by the CESCR above, leads one to the inescapable conclusion that poverty is a serious human rights issue in the world, by and of itself. In addition, as the seminal philosophical discourse of Henry Shue shows, there is sound justification for holding that subsistence rights, the guarantee of which lies at the core of the idea of poverty reduction and eradication, are fundamental human rights; and hence that the question of poverty itself is also an issue of fundamental human rights.

IV. THE ORIGINS AND CHARACTER OF PRSPS

A. The PRGF, PRSPs, and the MDGS in Context

The concept of Poverty Reduction Strategy Papers (PRSPs) emanates from a set of policies adopted by the BWIs under the Poverty Reduction and Growth Facility (PRGF) scheme adopted in 2000. This section explores the origins and character of PRSPs in the context of the development process, and it locates the relevance and place of the human rights based approach to development - and poverty reduction in particular - in the conceptualization and implementation of the PRSPs.

The MGDS, which is the focus of this paper, is Malawi’s PRSP. Thus the MGDS can, in this regard, only be properly understood in the context of the wider scheme of PRSPs under the PRGF scheme as adopted by the BWIs. In turn, I argue, one can only properly appreciate the essential character of PRSPs by first sufficiently understanding their context, which includes their historical, socioeconomic, and philosophical backgrounds.

This section sets out to examine these issues with a fair degree of detail. This section therefore, in this regard, forms the theoretical basis for the discussion and critique of the MGDS from a human rights perspective that follow in subsequent sections of the paper.

B. Conceptual Background: SAPs as a Precursor to PRSPs

For many years, numerous African countries, including Malawi, have had to adopt and implement policies dictated by the BWIs which are in turn driven by the interests of the major economic powers behind these institutions such as the United States of America and European Union countries. These policies, commonly and informally referred to as the

32. Id. at 18.
33. Id.
34. Id. at 29.
35. Joe Oloka-Onyango & Depeeka Udagama, The Realization of Economic, Social and
Washington Consensus\textsuperscript{36} and formally known as Structural Adjustment Programmes (SAPs),\textsuperscript{37} have required the structural adjustment of economies in developing countries, most particularly in Africa. Among other things, SAPs have required:

- deep cuts to social programmes usually in the areas of health, education and housing and massive layoffs in the civil service;
- currency devaluation measures which increase import costs while reducing the value of domestically produced goods;
- liberalization of trade and investment and high interest rates to attract foreign investment;
- [and the] privatization of government-held enterprises.\textsuperscript{38}

The policies were first imposed with a view to “jumpstarting” ailing economies, some of which were on the brink of collapse in the wake of the global economic recession in the 1970s.\textsuperscript{39} As Goodhart argues, these neoliberal programs for structural adjustment have all too often meant that public-sector spending directed toward socioeconomic rights is sacrificed at the altar of fiscal discipline.\textsuperscript{40}

Klein largely attributes the origins of these policies in their contemporary form to what she calls the “Chicago School strain of capitalism” led by Professor Milton Friedman at the University of Chicago’s School of Economics.\textsuperscript{41} Klein in her book \textit{The Shock Doctrine}, goes to lengths demonstrating the profound depth and breadth of the worldwide influence exerted by the Friedmanite Chicago School of Economics. She writes that it was Friedman “who coined a phrase for this painful tactic: economic ‘shock treatment.’” She states that “in the decades since, whenever governments have imposed sweeping free-market programmes, the all-at-once shock treatment or ‘shock therapy’ has been a method of choice.”\textsuperscript{42} Klein states


\textsuperscript{36} Id. ¶ 21.

\textsuperscript{37} Id. With changing times and consequences, SAPs have evolved over time. Variants of SAPs have included the Enhanced Structural Adjustment Facilities (ESAF), the Poverty Reduction and Growth Facility (PRGF) and the Extended Credit Facility (ECF). See \textit{The Poverty Reduction and Growth Facility (PRGF): A Blind Alley}, \textit{Forum on the Future of Aid}, http://www.futureofaid.net/node/209 (last visited July 9, 2011).


\textsuperscript{40} Michael Goodhart, “None So Poor that He Is Compelled to Sell Himself”: Democracy, Subsistence, and Basic Income, in \textit{ECONOMIC RIGHTS: CONCEPTUAL, MEASUREMENT, AND POLICY ISSUES} 111 (Shareen Hertel & Lause Minkler eds., 2007).


\textsuperscript{42} Id. at 7.
that the Friedmanite Chicagoans saw interferences everywhere: in many economies, to make products more affordable, politicians fixed prices; to make workers less exploited, they set minimum wages; to make sure everyone had access to education, they kept it in the hands of the State. These measures, she argues, seemed to help people but Friedman and his school saw it otherwise. They argued that these policies were actually doing untold harm to market equilibrium and the ability of the various signals of the economy to function. They therefore proceeded on a puritan mission to strip markets of these (perceived) distortions. The Washington Consensus (and hence the SAPs) proceeded on the basic rightist philosophy of “small government.”

In other words, it proceeded (and still proceeds) on the assumption that the market works best and ultimately to the benefit of all if it is largely left to its own devices – allowing the forces of supply and demand to dictate market results. The role of Government, according to this philosophy, should be regulatory, and even this regulation should be stripped to bare essentials.

It quickly became clear, however, that the SAPs were miserably failing to improve the lot of people in developing countries, particularly in Africa. Observable effects of SAPs in developing countries included declining productive capacities, loss of industrial output, depressed employment opportunities, significant falls in real wages, and rising poverty levels generally – a prospect that was antithetical to the major social objective that these policies were meant to achieve. The result was that SAPs became very unpopular for causing untold hardship for poor people using the largely unproven mantra of trickle-down economics, which, Klein argues, was taken directly from the Milton Friedman rule book. The SAPs caused massive deprivations of socioeconomic entitlements, driving millions of people into poverty in the process, and in this regard, they were a direct cause of widespread and systemic violations of socioeconomic rights.

In subsequent years, notwithstanding minor reforms, the fundamentals of the SAPs remained largely the same until the mid-1990s, which saw the onset of the end-poverty and debt cancellation campaigns. The BWIs came under intense and unrelenting criticism for their lack of sympathy for the poor in the poorest and most heavily indebted countries. They also came under stinging criticism that after almost two decades of pushing through the implementation of SAPs, there was little, if anything, to show for their relevance and effectiveness. On the contrary, the stark reality was

45. See, e.g., Jubilee 2000 and the Campaign for Debt Cancellation, THIRD WORLD NETWORK, http://www.twnside.org.sg/title/thomas-cn.htm (last visited July 9, 2011). The article provides a synopsis of the origins of the debt cancellation campaign for poor countries that emerged out of a concern in respect of the then-mounting debt crisis that was in turn the result, at least in part, of the structural adjustment policies that developing countries were required to implement.
that poor countries had generally become poorer as well as deeply mired in foreign debt during the period of implementation.

It was because of these criticisms, among others, that the BWIs decided to embark on a paradigm shift from the SAPs to the Poverty Reduction and Growth Facility (PRGF). The PRGF was meant to provide the poor countries themselves with greater latitude in determining their own path of development, which had to include a direct reference to and plan for poverty reduction over time. This was in response to the criticism that SAPs lacked a human face and were essentially impositions from the BWIs and rich countries upon poorer countries. As a policy mechanism for effectuating the PRGF, the BWIs came up with the idea of Poverty Reduction Strategy Papers (PRSPs). According to the PRGF, the core principles of PRSPs were that they should be:

- country-driven, promoting national ownership of strategies through broad-based participation of civil society;
- result-oriented and focused on outcomes that will benefit the poor;
- comprehensive in recognizing the multidimensional nature of poverty; and
- partnership-oriented, involving coordinated participation of development partners (government, domestic stakeholders, and external donors).46

C. The General Character and Nature of PRSPs: SAPs in Disguise?

As mentioned above, the Poverty Reduction and Growth Facility (PRGF) framework marked a shift from SAPs to PRSPs.47 For ten years, through the PRGF, the IMF and the World Bank made poverty reduction and growth the lynchpins of their lending to low-income countries. The IMF has since shifted further from the PRGF approach to what it calls the Extended Credit Facility (ECF).48 This approach, according to the Fund, will make its support more flexible and tailored to country needs. This new lending window, according to the IMF, will be in line with the objectives of a country’s own poverty reduction strategy.49 As a matter of principle, this formulation does not seem to represent any departure from the PRGF, but, perhaps the proverbial devil is in the details of the ECF.

The ECF provides financial assistance to countries with protracted balance of payments problems. The ECF was created under the newly established Poverty Reduction and Growth Trust (PRGT) as part of a

49. Id.
broader reform to make the Fund’s financial support more flexible and better tailored to the diverse needs of LICs (Less Industrialised Countries), including in times of crisis. “The ECF succeeds the Poverty Reduction and Growth Facility (PRGF) as the Fund’s main tool for providing medium-term support to LICs, with higher levels of access, more concessional financing terms, and more flexible program design features, as well as streamlined and more focused conditionality.”

Significantly, the IMF states that under the ECF, “legally binding structural conditions have been abolished.” The removal of legally binding structural conditions is meant to be a major paradigm shift from all previous forms of SAPs, and indeed, it is apparent that the IMF wishes to rid itself of the language of structural adjustment policies altogether.

It is noteworthy though, that although the PRGF has since been replaced by the ECF operating within the framework of the new PRGT, the underlying requirement that LICs adopt PRSPs as a pre-condition for accessing concessional facilities remains intact. In addition, the joint staffs of the IMF and the World Bank still have to approve the PRSP in order for the country in issue to access concessional lending facilities. In this regard, while the terms of the loan agreement itself do not contain “legally binding structural conditions,” these are still required as a precondition for the approval of the PRSP and also, hence, as a precondition for the grant of the ECF.

According to the IMF, the PRSP approach is intended to be a comprehensive country-based strategy for poverty reduction. It is aimed at providing

the crucial link between national public actions, donor support, and the development outcomes needed to meet the United Nations’ Millennium Development Goals (MDGs), which are centered on halving poverty between 1990 and 2015. PRSPs help guide Fund and Bank concessional lending as well as debt relief under the . . . HIPC Initiative.

The PRSP process has still attracted criticism as a new form of SAPs insofar as the BWIs stick to rigid requirements that must be met for a PRSP to pass the debt relief test. Oloka-Onyango observes that “there is a thread of continuity between the old policy stipulations and the new, in that the ‘fundamentals’ (including the liberalization of the economy, rapid
privatization and deregulation) have remained intact."\(^5\)

Leite for instance, writing on *The International Monetary Fund and Human Rights* in his capacity as the Assistant Director of the IMF in Europe, stated after the adoption of the PRGF, that “[a]djustment is often the best choice - sometimes the only available choice - but while the costs of adjustment are inevitable, they need not fall primarily on the poor, nor compromise human rights.”\(^5\) Ultimately, he states that in order to advance human rights, PRSPs should “focus on sustainable growth and a stable macroeconomic environment - which in themselves are supportive of human rights.”\(^5\) It is the same old “trickle down” economic ideology that assumes fair redistribution of wealth in a capitalist society. While these strategies should indeed focus on sustainable growth and a stable macroeconomic environment, they should equally focus on mainstreaming a rights-based approach to the implementation of such strategies that is expressly articulated in the PRSP.

It is noteworthy that Oloka-Onyago’s comments, although they were made in respect of the BWIs policies under the PRGF, equally ring true under the new ECF. Thus for instance, in its first review of the facilities extended to Moldova under the ECF, the IMF Executive Board states that “[t]he ongoing and envisaged structural reforms are appropriately focused on stepping up liberalization and deregulation and creating a business environment conducive to investments and exports.”\(^5\)

Thus, however differently colored, it still emerges that the “Washington Consensus” remains the prevalent economic ideology among the international financial institutions in Washington. This study examines the extent to which, if at all, PRSPs, and in particular the MGDS, operate within the framework of the Washington Consensus and how this impacts the implementation of socio-economic rights.

D. The PRSP Process and National Sovereignty

Related to the issue of the relationship between PRSPs and SAPs as discussed above is the notion of national sovereignty in the discourse. This is important, considering that international human rights law recognizes the right to self-determination as an essential group right. Thus, Article 1, Part 1 of the Covenant guarantees the right of peoples to self-determination that includes the right of peoples to “freely pursue their economic, social and cultural development.”\(^6\) Oloka-Onyango argues that:

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58. Id.


60. This right is also guaranteed in Article 1 Part 1 of the ICCPR and Article 20 Part 1 of the
Commencing with a very broad purview, one can see that, in Africa, the operations of the two institutions [IMF and World Bank] work to undermine the right to self-determination. This takes place in a variety of ways, ranging from the humiliating fashion in which “Paris Club” debt-rescheduling meetings take place, to the issue of conditionality. It extends to the manner in which Bank policy has become so deeply insinuated in national policy without the concomitant accountability that usually accompanies political power.61

Cheru takes a similar view. He states that “[r]eal national ownership of poverty reduction frameworks can only happen if the threat of ‘conditionality’ by the IMF and the World Bank is removed from the backs of vulnerable governments. Linking debt relief to the preparation of the PRSP removes the ‘autonomy’ of countries.”62

In that vein, the policies of the BWIs in this regard, have the effect of impairing the national sovereignty of developing countries. It is pertinent however, to go beyond issues of national sovereignty and assess whether PRSPs have the substantive effect of acting as effective tools for the realization of economic and social rights.

E. The Essential Character of the MGDS

In Malawi, the MGDS that I critique in this paper is the document that fits the cap of a ‘Poverty Reduction Strategy Paper’ (PRSP) as required by the BWIs in order for the country to access concessional finance facilities from these institutions.63

PRSPs are of vital importance as they constitute an overarching comprehensive policy instrument that guides all other socioeconomic policies of the state. The foundational essence of the MGDS, as Malawi’s extant PRSP, emerges from the document itself where it is stated that it is “the overarching strategy for Malawi. . . . The purpose of the MGDS is to serve as a single reference document for policy makers in Government; the Private Sector; Civil Society Organizations; Donors and Cooperating Partners and the general public on socio-economic growth and development priorities for Malawi.”64

It is therefore clear from the above, that insofar as one wishes to engage


63. Illustrative of this point, the MGDS is described by the IMF as “Malawi: Poverty Reduction Strategy Paper: Growth and Development Strategy.” See IMF COUNTRY REPORT NO. 07/55.

government’s short- to medium-term socioeconomic rights commitments and plans for progressive realization, including the fight against poverty, the MGDS is the primary and indeed major port of call. As explained earlier, this explains the justification for the exploration of the MGDS in this study.

F. PRSPs and the Human Rights-Based Approach to Poverty Reduction

There is growing emphasis today on the need for governments and development agencies to adopt the human rights-based approach to human development. Thus the UNDP Human Development Report 2000 was devoted to this issue. The World Bank has argued that there is no need for an explicit human rights approach in PRSPs, as the goals of human rights and poverty reduction in PRSPs are the same. The World Bank, however, has been rather ambivalent in making explicit recognition of human rights norms in its work. While the Bank has, to its credit, recognized the barriers to poverty reduction posed by discrimination, powerlessness, and corruption, it “has stopped short of taking into account all the international human rights obligations of recipient countries - civil and political as well as economic, social, and cultural - in support of the PRSP process.”

In this vein, Haug and Rauan argue that there is need for a more thoroughly developed and explicit link between poverty reduction strategies and rights-relevant policies and measurements. They state that what rights-based thinking can add to development thinking is that rights are legal and can be claimed. In other words, they state, rights-based approaches include an accountability system on duty bearers in order to ensure effective implementation of economic and social rights. In their analysis, rights can be regarded as the legal basis for the poor to claim their rights and poverty reduction strategies as the operational policy instrument for action.

Hunt and others take a similar approach and state that PRSPs should be underpinned by human rights. This is because, among other things, economic, social, and cultural rights are binding international human rights, not just programmatic aspirations, and there is need to create and strengthen the institutions through which policymakers can be held accountable for their actions.

According to the OHCHR, “one of the most distinctive features of a human rights approach to poverty reduction is that it is explicitly based

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67. See Vivanco, supra note 39.
upon the norms and values set out in the international law of human rights.”

The office advises that when beginning to prepare a PRSP, a state should expressly identify national human rights law and practice in its jurisdiction; the international and regional human rights treaties; other important human rights instruments such as the UDHR; and commitments entered into at recent world conferences insofar as they bear upon human rights. The OHCHR has further observed that under a rights based approach, poverty reduction “is a matter of right rather than charity. Essential to the very definition of human rights is the existence of claims and corresponding obligations at various levels of government and society.”

Goodhart furthers the debate by arguing that although the primary obligation to fulfil the rights lies on states, the broader obligation lies on the whole international community. The Bretton Woods Project argues that many PRSPs have adopted the Washington consensus, which is in many ways diametrically opposed to the idea of a state having redistributive or regulatory roles. It is submitted that this is one reason why there is a gap between PRSPs and human rights.

The IMF has acknowledged that human rights may play a role in the context of PRSPs. Assistant Director Sergio Pereira Leite paid particular attention to Amartya Sen’s seminal work Development as Freedom, rhetorically stating that “[Sen’s] contribution has made many of us wonder whether the IMF could do more for human rights.” That statement notwithstanding, the IMF continues to show its reticence to fully embrace the inclusion of human rights norms in its policy work. The following statement from Assistant Director Leite is particularly telling: “[w]hile human rights advocates should be given every opportunity to participate in the PRSP consultations, they should not expect the IMF to impose human rights conditions on its assistance to member countries. The IMF simply does not have the expertise required to make judgments in this area.”

G. Conclusions on PRSPs

PRSPs are important instruments that possess a very strong potential for steering less developed countries (LDCs) into a path of sustainable development and thus play a significant role in progressively ushering the people in those countries towards the full realization of socioeconomic

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70. OHCHR, supra note 10, at 1.
71. Id. at 29.
73. Goodhart, supra note 40, at 102.
75. Sergio Pereira Leite, supra note 57.
76. Id.
rights. This potential could be better realized where the human rights-based approach to development and poverty reduction is adopted. Such an approach, among other things, clearly articulates the country's human rights obligations in the PRSP, and identifies the respective rights holders and duty-bearers.

A number of problems continue to beset these instruments, however. Principal among them is the problem of the infringement of national sovereignty. The adoption of these instruments has largely been the result of an imposition from the BWIs (i.e., the World Bank and the IMF) as a precondition for further financial assistance. Thus, notwithstanding claims that PRSPs are nationally owned and driven, this section has demonstrated that the BWIs still in many ways dictate their terms. The BWIs do this by spelling out minimum requirements that a PRSP has to satisfy in order to be approved. This approval in turn qualifies the PRSP as an instrument upon which the BWIs can extend financial assistance to the state concerned. These dictates leave the LDCs in a choiceless situation where they have no alternative but to accept and satisfy such requirements. Unfortunately, in the quest to meet such requirements, LDCs frequently sacrifice necessary broad-based public participation in the PRSPs' architecture. This not only goes against the grain of the fundamental international law principle of state sovereignty, but it is also undemocratic as it limits the capacity of governments to remain accountable to their electorates in the adoption of socioeconomic policies and priorities.

The problem of national sovereignty—coupled with the concomitant infringement of the democratic entitlement of the people in the LDCs, as discussed above—gets compounded by the fact that the BWIs themselves have not yet properly embraced the human rights based approach to their work, citing lack of expertise in these matters as the chief reason for not embracing such an approach.

In conclusion, more can be achieved in terms of development, and in turn in the progressive realization of socioeconomic rights, if people in LDCs are truly empowered through the adoption of the human rights based approach to development (and poverty reduction in particular) by states and the BWIs alike. Such an approach will place emphasis on broad-based public participation that is consistent both with the principle of national sovereignty and the principle of democracy. The approach will also expressly identify the specific human rights issues that attach to every development item articulated in the PRSP and identify the respective rights holders and duty-bearers. In other words, the rights-based approach is an entitlement-based approach and not merely a policy-oriented and aspirational one. An entitlement-based approach ensures greater accountability by duty bearers and in turn, is more likely to achieve better development results.

In this article, I discuss the MGDS, which is the existing PRSP for Malawi, against this backdrop.
V. INTERNATIONAL NORMATIVE FRAMEWORK OF ECONOMIC AND SOCIAL RIGHTS

A. Duties of the State: An Overview

The evolving discourse on economic and social rights has brought to the fore four interrelated duties of the state. These are the duties to respect, protect, promote, and fulfill human rights.

The duty to respect is a negative duty. It requires the state to refrain from interfering in the enjoyment of human rights. With respect to social and economic rights, “this means the state is obliged to respect free use of resources owned or at the disposal of the individual alone or in any form of association with others.” The duty to protect is a positive one. It obliges the state “to protect rights-holders against other subjects by legislation and the provision of effective remedies.” Just like the duty to protect, the duty to promote requires the state to create an environment in which individuals are able to realize their rights through, among other things, promoting tolerance and raising awareness. Last but not least is the duty to fulfill. This is a more positive obligation on the state “to move its machinery towards the actual realisation of the rights . . . [through] the direct provision of basic needs . . . or resources.”

In this section, I discuss the way these duties are to be discharged. The section addresses the nature of obligations imposed by socioeconomic rights and identifies the actors on whom these obligations are placed. However, before proceeding to discuss the nature of these obligations, I first briefly discuss the status of socioeconomic rights in international human rights law.

B. Status of Economic and Social Rights: An Overview

There has been extensive debate on the status of economic and social rights. Some have argued that these rights are not human rights at all. Steiner and Alston capture this debate succinctly:

[At one extreme lies the view that these rights are superior to civil and political rights. . . Of what use is the right to free speech to those who are starving or illiterate? At the other extreme we find the view that economic and social rights do not constitute rights

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78. Id.
79. Id. at 46.
80. Id.
81. Id. at 47.
(as properly understood) at all. Treating them as rights undermines the enjoyment of individual freedoms, distorts the functioning of free markets by justifying large-scale state intervention in the economy, and provides an excuse to downgrade the importance of civil and political rights.\textsuperscript{82}

The socioeconomic rights critics argue that insofar as the implementation of these rights has budgetary implications, they cannot be justiciable as courts are incompetent to make such decisions.\textsuperscript{83} Further, it has been argued that courts lack the democratic legitimacy to make decisions that affect the redistribution of resources, and that allowing courts to make enforceable decisions on these matters undermines the concept of separation of powers.\textsuperscript{84} In recent years however, this approach has met with heavy criticism. The CESCR for instance has argued that

While the respective competencies of various branches of government must be respected, it is appropriate to acknowledge that courts are generally involved in a considerable range of matters which have important resource implications. The adoption of a rigid classification of economic, social and cultural rights which puts them, by definition, beyond the reach of the courts would thus be arbitrary and incompatible with the principle that the two sets of human rights are indivisible and interdependent.\textsuperscript{85}

Arguments that seek to relegate economic and social rights to mere programmatic aspirations are unsustainable. Such arguments simply serve the purpose of curtailing the realization of the rights of the poor and other most vulnerable and disadvantaged groups in society.\textsuperscript{86} As much as it is recognized that the implementation of these rights calls for a wider margin of discretion in view of their demands on available resources,\textsuperscript{87} that in no

\textsuperscript{83}\textsc{Johann de Waal et al., The Bill of Rights Handbook} 433 (2001).
\textsuperscript{84}\textit{Id}.
\textsuperscript{86}\textit{Id}.
\textsuperscript{87}See The Masstricht Guidelines on Violations of Economic, Social, and Cultural Rights, U.N. Doc. E/C.12/2000/13 (Jan. 26, 1997). \textsc{See also Soobramoney v. Minister of Health (KwaZulu-Natal) 1998 (1) SA 765 (CC) (S.Afr.).} In this case the Constitutional Court grappled with the issue of whether it was within its mandate to order the KwaZulu-Natal provincial health department to provide dialysis treatment to Mr. Soobramoney for his chronic renal failure, pursuant to section 27(3) of the South African Constitution that guarantees the right to emergency medical treatment, and section 27(1)(a), which guarantees the right of access to healthcare. The Court found against Mr. Soobramoney. The Court delineated a very wide margin of appreciation for the executive, stating that “[t]he provincial administration which is responsible for health services in KwaZulu-Natal has to make decisions about the funding that should be made available for health care and how such funds should be spent. These choices involve difficult decisions to be taken at the political level in fixing the health budget, and at
way deprives them of meaningful content.  

C. The Nature of Obligations

1. Progressive Realization

In view of the largely positive nature of obligations imposed by economic and social rights, and the onerous demands they make on available resources, it is generally not possible to have them implemented on the same time frame as civil and political rights. Article 2(1) of the ICESCR provides that

Each state party to the covenant undertakes to take steps, individually and through international assistance and cooperation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realisation of the rights recognised in the present covenant by all appropriate means, including particularly the adoption of legislative measures.  

It has been said that the idea of progressive realization expresses the intent of this provision. The CESCR has described this idea as a flexibility device made in “recognition of the fact that full realization of all economic, social and cultural rights will generally not [be able to be] achieved in a short period of time.” The CESCR has gone further to state though, that the concept of progressive realization is not aimed at emptying these rights of all meaningful content, and that “it must be read in the light of the overall objective . . . [of] the covenant which is to establish clear obligations for states in respect of the full realization of the rights in question.”

In the African context, some scholars have argued that in light of the absence of the words ‘progressive realization’ in the ACHPR, the social and economic rights guaranteed thereunder impose unqualified immediate obligations. Odinkalu argues that “unlike the ICESCR, the African Charter

the functional level in deciding upon the priorities to be met. A court will be slow to interfere with rational decisions taken in good faith by the political organs and medical authorities whose responsibility it is to deal with such matters.” id. at 29.

88. Thus, although the South African Constitutional Court has, for instance, adopted a largely deferential approach towards the executive organ of Government in matters of socio-economic rights, it has still, in appropriate cases, vigorously asserted its mandate by ordering the Government to take appropriate positive action in order to give effect to socio-economic rights. Thus for instance, in Minister of Health and Others v. Treatment Action Campaign and Others 2002 (5) SA 703 (CC) (S.Afr), the Constitutional Court ordered the government to provide Nevirapine, a drug that significantly reduces the incidence of mother-to-child transmission of HIV at birth, to all pregnant mothers in South Africa.

89. ICESCR, supra note 23 (emphasis added).


91. Id.

92. Id.
avoids the incremental language of progressive realization in guaranteeing . . . social and cultural rights . . . . Instead, the obligations that state parties assume with respect to these rights are clearly stated as being of immediate application."93

This debate however, seems to have been finally settled by the African Commission on Human and Peoples’ Rights (ACHPR). In *Purohit and Moore v. The Gambia*,94 the Commission considered the argument and held that millions of people in Africa are not enjoying the right to health maximally because African countries are generally faced with the problem of poverty which renders them incapable to provide the necessary amenities, infrastructure and resources that facilitate the full enjoyment of this right. Therefore, having due regard to this depressing but real state of affairs, the African Commission would like to read into Article 16 the obligation on part of states party to the African charter to take concrete and targeted steps, while taking full advantage of its available resources, to ensure that the right to health is fully realized in all aspects without discrimination of any kind.95

Although made in the context of the right to health under Article 16(1) of the Charter, it is clear that the reasoning of the Commission in *Purohit and Moore v. The Gambia* is equally applicable to all economic, social, and cultural rights under the charter. I submit that this decision, contrary to the views of such scholars as Odinkalu, shows that the Charter should also be read as implying the concept of ‘progressive realization’ in this category of rights.

Another important obligation of states related to the concept of progressive realization is the duty to “take steps” as envisaged under Article 2(1) of the ICESCR. Thus, while the full realization of the rights is to be achieved progressively, states are under an immediate obligation to take “deliberate, concrete and targeted [steps] as clearly as possible,” towards discharging the covenant obligations.96 This implies that states must, as soon as they commit themselves to these obligations, at least draw up programs or strategies targeted at the progressive realization of the rights.

The concept of progressive realization must therefore be factored into PRSPs for them to take a more meaningful role having regard to the respective states’ maximum available resources. The PRSPs must, however, not be structured in a manner that empties some of the rights of all content,

95. Id. at ¶ 84.
by indefinitely postponing their implementation, for instance, under the guise of progressive realization. They must represent clear, deliberate, concrete, and targeted steps to be taken to address all the important areas of economic and social rights as the realization of these rights lies at the core of poverty reduction.

2. Minimum Core Content Obligations

Although economic and social rights permit progressive realization, in order to avoid the prospect of some of the rights being emptied of essential content, the concept of core minimum obligations has been developed. These obligations are designed “to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights.” The CESC has stated that if the rights were to be interpreted in a way that does not impose these minimum obligations, the Covenant would be “deprived of its raison d’etre.” Musungu, relying on CESC General Comment Number 14, paragraph 47, argues that these core obligations are non-derogable.

I submit however, that the concept of minimum core content notwithstanding, considering the nature of economic and social rights and the severe resource constraints that less developed countries face, the idea of non-derogability is untenable. Indeed, the CESC itself, in General Comment Number 3, paragraph 10, states that

in order for a State party to be able to attribute its failure to meet at least its minimum core obligations to a lack of available resources it must demonstrate that every effort has been made to use all resources that are at its disposal in an effort to satisfy, as a matter of priority, those minimum obligations.

This paragraph clearly suggests that core minimum obligations are derogable in exceptional cases. It is perhaps arguable that the CESC might have contradicted itself in the two general comments by suggesting derogability in one and non-derogability in another. This, however, is not the case. Paragraph 47 of General Comment Number 14 should be read as being specific to that General Comment. This is particularly so because paragraph 47 makes specific reference to paragraph 43 above, which are non-derogable.

97. Id. ¶ 10.
98. Id.
to reflect the general rule.

3. Obligations of the International Community

The CESC 

101. Id. ¶ 13.
103. Goodhart, supra note 40, at 97.
104. Id. at 98.
105. Id. at 105.
106. Id. at 102.
107. Id.
Thus, the major issue here is that of subsistence. In this regard he urges that DHR only calls for guaranteed subsistence, not the reduction or elimination of inequality, and that it does not, therefore, introduce an unending burden of ongoing redistribution. He observes, however, that many societies might be so under-resourced as to fail to meet even the minimal socioeconomic obligations that are necessary to secure rights and emancipation for their people. He concludes, significantly, that he does not see this inability as a sign that socioeconomic rights are conditional, but that rather, he sees such inability as a trigger for wider (global) social obligations.

Skogly and Gibney urge that human rights law comprises more than mere reciprocal engagements between contracting states and that, on the contrary, it has introduced a “public order” that is of an objective nature, protecting the fundamental rights of individuals rather than the interests of contracting states. In other words, it is evident that Skogly and Gibney believe that in the context of the “public order” created by the international human rights regime, international obligations that apply beyond a state’s own territory exist. Without such extraterritorial application, it is submitted, the whole ethos behind an international human rights regime would be rendered nugatory.

More specifically, as a point of law, the obligations of the international community in respect of the fundamental human rights interests of people in foreign countries derive from the U.N. Charter. One of the purposes of the U.N. under Article 1 of the U.N. Charter is “to achieve international cooperation in solving international problems of an economic, social, cultural and humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms.” Another purpose of the organization is “to be a centre for harmonizing the actions of nations in the attainment of these common ends.” This position is reiterated in Article 55(a) of the U.N. Charter that states, among other things, that the U.N. shall promote “solutions of international economic, social, health and related problems.” In addition, Article 56 of the U.N. Charter provides that “[a]ll members pledge themselves to take joint and separate action in cooperation with the organization for the achievement of the purposes set forth in Article 55.” These provisions impose human rights (including socioeconomic rights) obligations on member states of the U.N. towards the international community at large.

The ICESCR provides additional obligations for its ratifying countries. Article 2, Part 1, of the ICESCR imposes treaty obligations on members of

108. Id.
109. Id.
110. Id.
111. Id.
112. Skogly & Gibney, supra note 102, at 269.
114. Id. ¶ 4.
115. Id. art. 55.
116. Id. art. 56.
the U.N. to provide technical and financial assistance to developing countries in order to achieve full realization of economic and social rights. This provision clearly imposes extra-territorial obligations in this regard.

The BWIs, as specialized agencies of the U.N., have consistently argued that they are bound by their Articles of Agreement to be non-political in their approach. Article IV, Section 10 of the World Bank Articles of Agreement for instance states that “[t]he Bank and its officers shall not interfere in the political affairs of any member; nor shall they be influenced in their decisions by the political character of the member or members concerned. Only economic considerations shall be relevant to their decisions, and these considerations shall be weighed impartially.”

Article 24 of the ICESCR then seems to compound matters. It provides that

Nothing in the present covenant shall be interpreted as impairing the provisions of the Charter of the United Nations and of the constitutions of the specialized agencies which define the respective responsibilities of the various organs of the United Nations and of the specialized agencies in regard to the matters dealt with in the present covenant.

Reading the Articles of Agreement together with Article 24 of the Covenant, one might argue that insofar as the constitutions of the BWIs confine their mandates to purely economic considerations, Article 24 should be understood as exempting them from taking a human rights based approach. Akermak, however, observes that these institutions were set up by, and comprise, members that have undertaken human rights obligations by ratifying various human rights instruments. He argues that as such, they should not be able to neglect their obligations because they sometimes act through an international organization. As subjects of international law, he contends, these institutions should refrain from acting in a manner that would undermine a member state’s ability to fulfill its own freely assumed international legal obligations.

Henry Shue adopts a similar approach. He argues that “insofar as the IMF is an extension of national governments, it shares the same double duty of all government institutions to avoid depriving people of their rights or perpetuating deprivation.” He specifically argues against those


120. Akermark, supra note 117, at 516.

121. Shue, supra note 25, at 172.
aspects of the SAPs’ and succeeding BWIs’ policies that compel developing countries to cut vital social expenditure, thus sacrificing essential “basic rights” at the altar of fiscal discipline. He urges that the IMF “similarly lacks any entitlement to thwart the efforts of other institutions to fulfill rights by, for example, undercutting the effects of denials of government assistance intended to discourage rights violations.”122

This is the correct approach; more so considering that the U.N. Charter itself, as demonstrated earlier, imposes such obligations. Specialized agencies of the U.N. would be acting in bad faith if they were to defeat the U.N.’s core purposes.

4. Conclusions on the International Framework

What emerges from the above analysis is that economic and social rights are as legally enforceable as civil and political rights, albeit in a different manner. The argument that social and economic rights are unenforceable is unsustainable, bearing in mind, the interconnectedness and indivisibility of all human rights.

Further, paying particular attention to the General Comments of the CESC, particularly General Comment No. 3 that defines the nature of state obligations in this category of rights, it is observable that while they allow for progressive realization of the rights within the maximum available resources, each right has a minimum core content. This enjoins the state to ensure the satisfaction of the minimum essential levels of each right immediately, unless it shows exceptional cause not to do so. Further, there is an immediate obligation to take steps. At a minimum, this entails that rights must not be indefinitely postponed and the state must at least have a reasonable written program or strategy as to how it intends to effectuate the realization of each right.

This necessitates the need to assess whether PRSPs, such as the MGDS for purposes of this study, are underlaid by the core minimum obligations and conception of the duty to take steps.

Further, an assessment of the performance of the respective states through PRSPs has to be gauged within the context of the legal obligations of the international community at large. This study thus far has shown that the international community also possesses extra-territorial obligations toward deprived people in less resourced countries.

VI. A RIGHTS-BASED ANALYSIS OF THE MGDS

A. Introduction to Rights-Based Analysis

In the foregoing pages, I have discussed the general normative framework relating to the issues of poverty and fundamental human rights. The discussion has thus far demonstrated a proper conception of the

122. Id.
meaning of poverty, that poverty is a fundamental human rights issue, and the role that international financial institutions have played in fashioning the landscape of poverty reduction strategies in developing countries.

In this section, I examine the MGDS in light of the foregoing discussion, exploring whether it is underlaid by a proper conception of the role of socioeconomic rights in achieving sustainable development and the progressive eradication of poverty. Additionally, this article explores whether the MGDS generally is a proper and effective tool for ensuring that the government discharges its domestic and international law obligations in the area of socioeconomic rights.

B. Public Participation in the MGDS Process

Public participation in the adoption of government policy is critical within the rights framework. A rights-based approach places people at the center of development. It places “emphasis on broad-based participation and programming that builds the capacity of poor and marginalized groups to claim and exercise their rights, [and thus] prevents elites from capturing both the benefits and processes of programs.”123 Programs “are based on the needs and legitimate claims of people; [and] this leads to the design and implementation of programs that are more likely to have direct benefits for poverty reduction, education, health, and gender equality.”124 In this section, therefore, I explore the question as to whether the process towards the development and adoption of the MGDS drew wide and varied participation from all sectors of the population.

Research findings by the Malawi Economic Justice Network show that the MGDS is a product of relatively lower levels of consultative and participatory processes in comparison with the MPRSP. It has been stated that while the MPRSP and the Malawi Vision 2020 Document incorporated views and inputs from communities, the MGDS incorporated views of a smaller set of stakeholders, and that civil society participation took place in the processes after key documents were already developed.125 Paradoxically, the MPRSP was also criticized for its failure to ensure broad public participation during its development stages.126 Fozzard and Simwaka, for instance, rued the rushed timetable, the secretive negotiations between Government and IMF/World Bank, and the lack of opportunity for comprehensive consultation that characterized the PRSP process, noting

124. Id. at 10.
125. See Broken Bridges: Gaps in Civil Society Participation in the Transition to the Second Malawi PRSP, MALAWI ECON. JUSTICE CENTER (2006), http://www.futureofaid.net/node/206 (acknowledging the Malawi Economic Justice Network (MEJN) as the source of the research findings).
126. Kapindu, supra note 38, at 500-02.
that these flaws were criticized from the start.127 They stated that only a small segment of civil society organizations actively participated in the PRSP process and that there was general government reluctance to engage in meaningful consultation and participation in the poverty planning process.128

Fozzard and Simwaka’s observations have been echoed by McGee et al., who have similarly argued that government was not open to civil society involvement and that it was up to civil society to push itself into the process and demonstrate that it added value to the discussions.129 What emerges is that public participation and even consultation was very minimal during the development of the MPRSP. Fozzard and Simwaka also pointed out that in the few public outreach attempts that were made, “consultations [were] held at the national level . . . through half-day meetings” in all the districts.130 Further, the MPRSP was not translated into local languages, thus further restricting the extent to which the public could participate in its development.131

Since research shows that the levels of public participation in the development of the MGDS are lower than they were during the MPRSP process, the only logical conclusion is therefore that the problem of lack of sufficient public participation in the case of the MGDS is more serious. Further, some of the concerns relating to public participation that characterized the MPRSP, such as the lack of translations in local languages, might have been addressed during the MGDS process, but remain regrettably salient.

I therefore submit in this regard that the MGDS lacks one of the essential attributes that must characterise a rights-based development instrument: broad public participation.

C. The Role of the BWIs

As stated above, the MGDS is the name given to Malawi’s existing PRSP. The involvement of the BWIs in its development, as well as approval, has been the same as in most other countries where PRSPs have been adopted under the aegis of the BWIs policies. The MGDS was adopted in terms of the BWIs PRGF, prior to the introduction of the ECF.132


128. Id.


130. Fozzard & Simwaka, supra note 127, at 8.

131. This was confirmed during my interview with Mr. Kubalasa, DK, Programme Manager for PRSP and Budget Monitoring, MEJN, at the MEJN offices in Lilongwe (July 22, 2004).

Even so, as earlier observed, the ECF has continued with the tradition of insisting on developing countries adopting PRSPs that meet certain minimum criteria, as a pre-requisite for accessing concessional loan and other finance facilities. This has certainly been so in the case of Malawi. The World Bank, for instance, acknowledges that it has been actively involved in the development of the MGDS and indeed that PRSPs have to be consistent with certain requirements set by the twin BWIs in order for a country to access concessional lending facilities. This is problematic because, as Cheru argues, “linking debt relief to the preparation of the PRSP removes the ‘autonomy’ of countries.”

D. Analysis of the MGDS Content: Policies, Aspirations, or Rights?

In this penultimate part of the Comment, first, I examine the extent to which the concept of human rights generally has been incorporated as an integral part of the MGDS and question whether human rights have been included in a fashion that exerts, or has the potential of exerting, a significant influence on the development of various government programs and policies. Second, I explore the question of whether socioeconomic issues in the MGDS have been addressed from the premise that they are, on the one hand, mere programmatic policy issues or aspirations; or, on the other, that they are rights that guarantee the people of Malawi judicially enforceable claims. As Haug and Rauan have persuasively argued, in the development of a PRSP, there is distinct need for a more thoroughly developed and explicit link between the poverty reduction strategy and rights-relevant policies and measurements. Further, such an explicit reference to rights can be regarded as the legal basis for the poor to claim their rights and the poverty reduction strategy as the operational policy instrument for action.

The MGDS certainly acknowledges human rights and the important role that they play in the development process. At a perhaps superficial level, the document has more references to human rights than its predecessor PRSP. Ostensibly, that might create the impression that the MGDS has been more emphatic and specific than the MPRSP in articulating human rights issues as an integral part of the development process and poverty reduction in particular. That, however, does not appear to be the case. While the MGDS comes out explicitly in contextualizing human rights within the rights based approach to development paradigm, it fails to locate the specific role that such rights play in the process or to clarify the relevance of such an approach to the poor in society. The two contrasting passages that define the role played by human rights in the two documents

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133. IMF, supra note 48.
134. Cheru, supra note 55.
135. Haug and Rauan, supra note 68, at 265.
136. On a precise count, the MPRSP had thirty-two references to the term “human rights” while in the MGDS, there are sixty-two references. See MPRSP, supra note 8; MGDS, supra note 64.
are as follows:

MPRSP:

Human rights are . . . an essential part of democracy and are fundamental to poverty reduction. Declarations of human rights are intended to protect the poor from mistreatment by more powerful individuals and organizations such as Government, and guarantee access of the poor to basic services. Prior to 1994, Malawi’s human rights record was amongst the poorest in the region, if not the world. Since then its record has improved. The Constitution through Sections 12 and 13 explicitly guarantees the right to basic economic and social rights.137

MGDS:

A rights based approach to development is the basis of equality and equity, both in the distribution of development gains and in the level of participation in the development process. Human rights are an integral part of the overall national development agenda. However, awareness of human rights is a concern among many people in Malawi. The key areas of concern in human rights awareness are the rights of vulnerable groups and how to exercise them, and roles of governance institutions in promotion and protection of human rights.138

The MPRSP makes an explicit connection between socioeconomic rights and poverty reduction, emphasizing that these rights guarantee, among other things, “access of the poor to basic services.”139 This is an important proposition, the equivalent of which, by contrast, is conspicuously missing in the MGDS.

Having said that, it is important to observe that it is not enough to have general statements that affirm the government’s commitment to socioeconomic rights or a human-rights based approach to development in a PRSP. There must, in addition, be a clear demonstration that all the specific strategies adopted are informed by an appropriate conception of human rights that ultimately empowers people, especially the poor and vulnerable, with justiciable claims on government; and give meaning and content to the concept of national ownership.

This seems to be an area where the MGDS falls severely short. The OHCHR has stated that, in the context of the rights based approach to development, a state should expressly identify (a) the national human rights law and practice in its jurisdiction; (b) the international and regional human rights treaties; (c) other important human rights instruments such as

137. MPRSP, supra note 8, at 85
138. MGDS, supra note 64, at 67.
139. MPRSP, supra note 8, at 85.
the UDHR; and (d) commitments entered into at recent world conferences insofar as they bear upon human rights, such as the MGDS.140

In this regard, apart from the general statements above that seem to emphasize the importance of human rights in the process, little has been done to articulate the relevant human rights law and practice in Malawi. This is more so with the MGDS as compared with the MPRSP. As shown above, under the MPRSP, there was an attempt, for instance, to make reference to the fundamental principles and the directive principles of national policy contained in sections 12 and 13 of the Constitution respectively. Evidently, the discussion was too superficial, and in some respects inaccurate, but still an attempt was made.141 By contrast, under the MGDS, only a general expression as to the relevance of a rights-based approach is made, but there is no attempt at all to articulate the specific relevant aspects of the local law. The OHCHR has emphasized that when adopting a PRSP (such as the MGDS) it is important to incorporate relevant international human rights law, including an explicit reference to applicable instruments and the obligations that they impose on the state and other actors in society. Again, while a minor attempt was made under the MPRSP in this regard, under the MGDS, no such attempt is made. The picture that emerges, then, is that the MGDS’s approach is more vague and non-committal on adopting a rights-based approach to development that goes beyond the mere expression of vogue terse statements with little practical significance in the overall implementation of the strategy.

Related to the foregoing discussion is the question of whether the MGDS addresses socioeconomic issues from the premise that these issues are mere programmatic policies or that they are enforceable fundamental human rights. Bilchitz observes poignantly in his work Poverty and Fundamental Rights,

[s]ocio-economic rights are widely regarded as aspirational goals, rhetorically useful, but having few practical implications for government policy and hence the distribution of resources within a polity. It is, therefore, not surprising that socio-economic rights

140. OHCHR, supra note 10.

141. One such inaccuracy is the impression created that sections 12 and 13 guarantee socioeconomic rights. On careful consideration of the Constitution, it is clear that this is not so. Section 14 of the Constitution clearly states that Section 13 is only of a directory nature. Thus Section 13 of the Constitution does not give rise to binding and justiciable rights and duties. However, there are provisions that guarantee socio-economic rights, such as Section 25 on the right to education; Section 28 on the right to property; Section 29 on the right to work and to pursue economic activity and a livelihood; and Section 30 the right to development, a right that is so broad as to include, among others, equal access to healthcare services, food, shelter, and basic services. A more accurate and elaborate discussion that includes these other dimensions as they relate to the advancement of socio-economic rights in Malawi was germane.

142. The MPRSP made references to “Declarations” on human rights. It also stated that the “[g]overnment has ratified major international human rights instruments as well as key human rights related International Labour Conventions” relating to poverty reduction. GOV’T OF MALAWI, supra note 8, at 85.
have been systematically neglected, regarded as having little to offer a world filled with severe poverty and inequality.\textsuperscript{143}

The MGDS, unfortunately, seems to fall squarely within the context described by Bilchitz above. It is significant that the MGDS addresses a wide array of socioeconomic issues including poverty and social vulnerability;\textsuperscript{144} agriculture and food security;\textsuperscript{145} irrigation and water development;\textsuperscript{146} energy generation and supply;\textsuperscript{147} prevention and management of nutrition disorders, HIV, and AIDS;\textsuperscript{148} housing;\textsuperscript{149} and social protection and disaster risk management\textsuperscript{150} (including health\textsuperscript{151} and education).\textsuperscript{152}

Unfortunately, however, while all these are direct issues of socioeconomic rights, the MGDS does not acknowledge them as such anywhere.\textsuperscript{153} This is a critical problem from the perspective of the essential rights-based approach to development planning and poverty reduction in particular. Insofar as issues such as health, food and nutrition, water and energy are not explicitly stated as rights; the planning does not proceed from the conception that these are actually enforceable claims that people have and in respect of which the government may be held to account through judicial and not just political processes.

Under the MGDS, human rights issues are confined to a specific theme on “Good Governance”\textsuperscript{154} which largely deals with issues of strengthening the capacity of democratic accountability institutions such as the Human Rights Commission and the Ombudsman, and enhancing public human rights awareness. Thus, evidently, human rights and relevant socio-economic rights in particular are not mainstreamed, and they do not form part of the planning in respect of specific thematic socio-economic issues under the MGDS.

It is therefore evident that under the MGDS, socio-economic rights issues are not approached from the prism of human rights. They are rather approached as programmatic goals and aspirations, tied to the country’s Vision 2020 document that was adopted in 1996,\textsuperscript{155} and the 2000

\textsuperscript{143} DAVID BILCHITZ, POVERTY AND FUNDAMENTAL RIGHTS 1 (2007).
\textsuperscript{144} MGDS, supra note 64, at 7.
\textsuperscript{145} Id. at 14.
\textsuperscript{146} Id. at 19.
\textsuperscript{147} Id. at 22.
\textsuperscript{148} Id. at 25.
\textsuperscript{149} Id. at 41.
\textsuperscript{150} Id. at 43.
\textsuperscript{151} Id. at 48.
\textsuperscript{152} Id. at 50.
\textsuperscript{153} All these issues are addressed either directly or indirectly under section 30 of the Constitution of Malawi as well as various provisions of the ICESCR, read together with the General Comments of the Committee on Economic, Social, and Cultural Rights that has elaborated on the content of the various rights guaranteed in the ICESCR.
\textsuperscript{154} See MGDS, supra note 64, at 69.
\textsuperscript{155} MGDS, supra note 64, at 1.
Millennium Development goals. This is a deficient approach that does not sufficiently empower the targeted population as rights-holders to hold government and other duty-bearers to account in respect of failures to live up to their commitments.

VII. CONCLUSION

This discussion has traversed a number of critical issues in relation to the concept of poverty as it relates to human rights generally. The paper has also specifically addressed this issue in the context of Malawi, under the framework of the Malawi Development and Growth Strategy (MGDS). The paper demonstrates that poverty is an important human rights issue in itself. It also shows that the obligations and efforts of developing countries to address socioeconomic rights issues have, in recent history, been severely constrained by the policies of multilateral institutions such as the IMF and the World Bank, otherwise known as the Bretton Woods Institutions (BWIs). The paper argues that the policies of the BWIs over the years, which have tended to encourage greater deregulation of the markets, privatization, and austerity measures, have resulted in cuts on important social expenditure and have adversely affected the poor and occasioned violations of socioeconomic rights.

The paper argues that it is untenable for the BWIs to state that they have no human rights mandate because, as Shue argues, these institutions represent an extension of national governments, and that they therefore share the same double duty of all government institutions to avoid depriving people of their rights and to protect people from being deprived of their rights. These institutions lack any entitlement to thwart the efforts of developing countries by, for example, undercutting the effects of denials of government assistance intended to discourage rights violations. Insofar as the policies of the BWIs are imposed on developing countries, such policies infringe on the sovereignty of these developing countries. PRSPs are imposed in the sense that BWIs require specific prior conditions to be met by the developing countries before the latter can access concessional loan facilities. The developing countries are, in turn, economically vulnerable and find themselves in a choiceless position under the circumstances. In the premises, most of the PRSPs, such as the MGDS, are ultimately not truly nationally owned as claimed by the BWIs. It is submitted that BWIs would have greater legitimacy if their conditionalities were premised on socioeconomic rights aimed at empowering subjects to hold their governments and other relevant non-state actors who have human rights obligations to account.

An important observation that needs to be made here is that there

157. Shue, supra note 25, at 172.
158. Id.
appears to be an uncomfortable disconnect between the work of U.N. agencies such as the U.N. Development Programme (UNDP) and the OHCHR, on the one hand, and specialized U.N. agencies such as the IMF and the World Bank. These institutions should necessarily work together in coming up with proper approaches for poverty reduction in the world. Among other things, such a concerted approach could eliminate the concern raised by Leite of the IMF above, that the IMF and the World Bank do not have the necessary expertise in order to include human rights conceptions to their policies towards developing countries. A more concerted effort by the relevant actors in the area of financial and technical assistance to developing countries in pursuit of the full realization of socioeconomic rights would further ensure that global resources that are unevenly distributed around the world, are equitably redistributed to achieve that goal. Global statistics show that many people are unable to attain the very basic essentials of life, while others are able to afford numerous luxuries.\(^{159}\) Such statistics also tend to show that meeting the basic needs of all people around the world is not an impossible task given the existing global resources.\(^{160}\)

Concerns about the approach of the BWIs notwithstanding, what is even more important is an examination of the content of the MGDS itself: asking whether the MGDS is properly framed as an effective tool for ensuring that socioeconomic rights are realized as a project of poverty reduction and eventual eradication. The paper concludes that despite the commitment to a rights-based approach to development that is stated by the Malawi Government, a careful analysis of the MGDS shows that socioeconomic issues are merely addressed as issues of programmatic policies or aspirations, tied to medium term broader policies such as the Malawi Vision 2020 on the domestic front; and the MGDS on the global plane. This does not sit comfortably with a longer-term sustainable development that must ensure, for instance, that no one is excluded from reaping the benefits of macroeconomic development as a matter of right. While elsewhere this might be viewed suspiciously as an unwelcome socialist ideology, which could be the subject of another long discussion, it suffices here to point out that socioeconomic rights do impose redistributive obligations on states and that there are compelling philosophical justifications premised on notions of equity, justice, and human dignity for such a redistributive approach.

\(^{159}\) Bilchitz, \textit{supra} note 143, at 1.
\(^{160}\) \textit{Id.}