

**The Role of Poverty Reduction Strategies in Advancing Economic and Social Rights: Malawian and Ugandan Experiences**

**A Dissertation submitted in partial fulfillment of the requirements of the Degree of Master of Laws in Human Rights and Democratisation in Africa**

**By**

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**At the Faculty of Law, Makerere University- Kampala, Uganda**

**31 October, 2004**

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**DECLARATION**

I, **Redson Edward Kapindu**, hereby declare that this dissertation is my own work and has not been submitted to any other university for the award of a degree.

Signed: .....

Approved by supervisor: .....

**Dr. Baker. G. Wairama**

Date: 31 October 2004.

## DEDICATION

*To all people bound in the manacles of extreme poverty and neocolonialism.*

*Fight for your rights and trust in God.*

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## LIST OF ABBREVIATIONS

<b>ACHPR</b>	African Charter on Human and Peoples' Rights
<b>ACmHPR</b>	African Commission on Human and Peoples' Rights
<b>AIDS</b>	Acquired Immune Deficiency Syndrome
<b>BWIs</b>	Bretton Woods Institutions
<b>CESCR</b>	Committee on Economic, Social and Cultural Rights
<b>EHP</b>	Essential Healthcare Package
<b>ESAF</b>	Enhanced Structural Adjustment Facility
<b>GA</b>	General Assembly
<b>GC</b>	General Comment
<b>HDI</b>	Human Development Index
<b>HDR</b>	Human Development Report
<b>HIPC</b>	Highly Indebted Poor Countries
<b>HIV</b>	Human Immuno-deficiency Virus
<b>ICESCR</b>	International Covenant on Economic, Social and Cultural Rights
<b>ICJ</b>	International Court of Justice
<b>IDA</b>	International Development Association
<b>IMF</b>	International Monetary Fund
<b>I-PRSP</b>	Interim Poverty Reduction Strategy Paper
<b>LDCs</b>	Least Developed Countries
<b>MASAF</b>	Malawi Social Action Fund
<b>MDG</b>	Millenium Development Goals
<b>MEJN</b>	Malawi Economic Justice Network
<b>MHP</b>	Minimum Health Package
<b>OHCHR</b>	Office of the High Commissioner for Human Rights
<b>PAP</b>	Poverty Alleviation Programme
<b>PRGF</b>	Poverty Reduction and Growth facility
<b>PRSP</b>	Poverty Reduction Strategy Paper
<b>SA</b>	South Africa
<b>SAPs</b>	Structural Adjustment Programmes
<b>SWAp</b>	Sector Wide Approach
<b>UDHR</b>	Universal Declaration for Human Rights

<b>UDN</b>	Uganda Debt Network
<b>UN</b>	United Nations Organisation
<b>UNDP</b>	United Nations Development Programme
<b>WB</b>	World Bank
<b>WHO</b>	World Health Organisation
<b>WTO</b>	World Trade Organisation

## TABLE CONTENTS

<b>COPY RIGHT</b> .....	ii
<b>DECLARATION</b> .....	iii
<b>DEDICATION</b> .....	iv
<b>ACKNOWLEDGEMENTS</b> .....	v
<b>LIST OF ABBREVIATIONS</b> .....	vi
<b>TABLE OF CONTENTS</b> .....	viii
<b>1. CHAPTER 1: INTRODUCTION</b> .....	1
1.1 Background to the Study.....	1
1.2 Statement of the Research Problem.....	3
1.3 Objectives of the Study.....	3
1.4 Hypothesis/Research Question.....	4
1.5 Significance of the study.....	4
1.6 Literature Review.....	5
1.6.1 Meaning of Poverty.....	5
1.6.2 Poverty as a Human Rights Issue.....	6
1.6.3 The Origins of PRSPs.....	7
1.6.4 The PRSP Process and National Sovereignty.....	8
1.6.5 PRSPs and the Human Rights Based Approach to Poverty Reduction.....	10
1.7 Methodology.....	12
1.8 Limitations.....	13
1.9 Summary of Chapters.....	13
<b>2. CHAPTER 2: THE PRSP PROCESS IN MALAWI AND UGANDA: AN OVERVIEW</b> .....	14
2.1 The PRSP Process in Malawi.....	14
2.1.1 Rationale Behind the Adoption of the Malawi Poverty Reduction Strategy Paper (MPRSP).....	14
2.1.2 Participation in the PRSP Process and National Ownership.....	16
2.2 The PRSP Process in Uganda.....	18
2.2.1 Rationale Behind the Adoption of the Ugandan PRSP.....	18

2.2.2	Participation in the PEAP Process and National Ownership.....	19
2.3	Conclusion.....	20
<b>3.</b>	<b>CHAPTER 3: INTERNATIONAL NORMATIVE FRAMEWORK OF ECONOMIC AND SOCIAL RIGHTS.....</b>	<b>22</b>
3.1	Status of Economic and Social Rights: An Overview.....	22
3.2	Nature of Obligations.....	24
3.2.1	The Duties to Respect, Protect, Promote and Fulfill.....	24
3.2.2	Progressive Realisation.....	25
3.2.3	Core Minimum Obligations.....	27
3.2.4	Obligations of the International Community.....	28
3.3	Conclusion.....	30
<b>4.</b>	<b>CHAPTER 4: AN OVERVIEW OF THE RIGHTS TO HEALTH AND HOUSING.....</b>	<b>32</b>
4.1	Scope of the Right to Health: Brief Overview.....	32
4.2	Scope of the Right to Housing.....	34
4.3	Conclusion.....	39
<b>5.</b>	<b>CHAPTER 5: THE PRSP AND THE RIGHTS TO HEALTH AND HOUSING IN MALAWI AND UGANDA: A CRITICAL APPRAISAL.....</b>	<b>40</b>
5.1	The MPRSP and the Right to Health in Malawi.....	40
5.1.1	Constitutional Measures.....	40
5.1.2	Health Under the MPRSP.....	41
5.1.3	Critique of the Measures Adopted.....	44
5.2	The PEAP and the Right to Health in Uganda.....	49
5.2.1	Constitutional Measures.....	49
5.2.2	Health Under the PEAP.....	49
5.2.3	Critique of Measures Adopted.....	51
5.3	PRSPs and the Right to Housing in Malawi and Uganda.....	53
5.3.1	Constitutional Measures.....	53
5.3.2	Housing Under the MPRSP and PEAP.....	54
5.3.3	A Critique of the MPRSP and PEAP Approach to Housing.....	54

5.4	Conclusion.....	56
6.	<b>CHAPTER 6: CONCLUSION AND RECOMMENDATIONS.....</b>	<b>59</b>
7.	<b>APPENDIX I.....</b>	<b>63</b>
8.	<b>APPENDIX II.....</b>	<b>67</b>
9.	<b>BIBLOGRAPHY.....</b>	<b>70</b>

# CHAPTER 1

## 1. INTRODUCTION

### 1.1 Background to the study

Poverty Reduction Strategy Papers (PRSPs) were born out of the policies of the World Bank (WB) and the International Monetary Fund (IMF).<sup>1</sup> They were introduced ‘in the wake of the failure of Structural Adjustment Programmes (SAPs) to reduce the incidence of poverty’.<sup>2</sup> PRSPs have been linked with the IMF and WB Heavily Indebted Poor Countries (HIPC) debt relief initiative.<sup>3</sup> In order to have access to debt relief, countries have had to draw up PRSPs and start moving towards their effective implementation.<sup>4</sup> PRSPs are now meant to be the national guide informing almost every facet of the human development framework. They are being used as benchmarks for the prioritization of the use of public and external resources for poverty reduction<sup>5</sup>. Further, multilateral as well as bilateral donors and lending institutions are using them as an overarching framework from which policies and actions of developing countries are to be gauged and decisions on further assistance or loans made.<sup>6</sup>

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<sup>1</sup> These institutions are collectively referred to as the Bretton Woods Institutions. It was agreed at the September 1999 Annual Meetings of the World Bank Group and the IMF that nationally owned participatory poverty reduction strategies should become the basis for concessional lending and debt relief under the enhanced Heavily Indebted Poor Countries (HIPC) Initiative.

See World Bank Group, *Overview of Poverty Reduction Strategies*, <<http://www.worldbank.org/poverty/strategies/index.htm>> (accessed on 16 August 2004).

<sup>2</sup> Oloka-Onyango, J *Economic and Social Rights in the Aftermath of Uganda’s Fourth Constitution: A Critical Reconceptualization*, CBR Working Paper No.88, (2004), 24. See section 1.6.2(a) of this work for discussion on SAPs.

<sup>3</sup> See n.1 above.

<sup>4</sup> Mathews, S *Poverty Reduction Strategies and Human Rights: A Position Paper*, presented at the World Social Forum-2004, Mumbai, India, p.2

<sup>5</sup> See Mathews (n.4 above) p.1

<sup>6</sup> See Mathews (n.4 above), p.2.

In that light, PRSPs have become pivotal to the social fabric of the countries concerned as they affect the daily undertakings of the people through, among other things, their allocative and redistributive roles.<sup>7</sup>

SAPs and PRSPs have been linked with globalisation.<sup>8</sup> Central to the globalisation discourse is the issue of the uneven power distribution, both political and economic between the rich northern world and the developing south, particularly the struggling, weak African economies. In this connection, focus is primarily on the IMF, the WB and the World Trade Organisation (WTO) whose policies and operations are largely dictated by the rich north.<sup>9</sup> According to the anti-globalisation protesters who gathered around the WTO conference venue in Seattle in 1999, these institutions have formed an 'unholy trinity of undemocratic institutions' perpetrating global economic violence on the developing world.<sup>10</sup> It has been argued that what is sad about the policies of these institutions is that they are imposed on African countries leaving them with the agonising choice of either bowing to their demands or risking the freezing of financial assistance<sup>11</sup>. As Mathews aptly puts it:

the PRSP, as a key vehicle for donor lending and aid disbursements wields power and influence and for this reason tends to overwhelm and subsume other strategies at other levels, leaving participants little choice but to tag onto 'the only game in town'. Any look at poverty reduction strategies and human rights needs to focus on PRSPs, as it comes in tow with a number of ramifications and impacts, both in terms of process and content that deserve assessment and response from a human rights perspective.<sup>12</sup>

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<sup>7</sup> MEJN: *Economic Governance-Budget Literacy Project*, <<http://www.mejn.org/econgovnc.htm>> (accessed on 29 March, 2004)

<sup>8</sup> Globalisation has been defined as the 'intensification of economic, political, social and cultural relations across international boundaries'. See Akindele, S *Globalisation and its implications for Africa* (2002) 2.1; See also Koma, K *Globalisation and Africa*, <<http://www.globalprogress.org/ingles/Dakar/Koma.html>>, (accessed on 2 May, 2004).

<sup>9</sup> This discussion does not focus on the WTO.

<sup>10</sup> See Iya, P *Globalisation and the African renaissance: A case of incompatibility in Africa* in E. Maloka (ed.), *United States of Africa?* (2001) 318.

<sup>11</sup> Oloka-Onyango, J and Udagama, D *The realisation of Economic, Social and Cultural Rights: Globalisation and its impact on the full enjoyment of human rights*, E/CN.4/Sub.2/2000/13.para.22

<sup>12</sup> See Mathews (n.4 above), p.1

With this background, it is submitted that the importance of an examination of PRSPs in relation to economic and social rights cannot be overemphasised.

## **1.2 Statement of the research problem**

The PRSPs of Malawi and Uganda are not premised on the human rights based approach to poverty reduction. They largely address issues of economic and social rights from a benefactor and beneficiary perspective rather than from a claim-holder and duty bearer perspective. Further to that, these policies are largely premised on the requirements of the Bretton Woods Institutions (BWIs) that have received heavy criticism for not factoring in human rights considerations, when implementing their policies towards developing countries. This problem thus calls for a harmonisation of PRSPs with the obligations of the states as well as the BWIs to ensure the full realisation of these rights.

## **1.3 Objectives of the study**

The objective of the study is to examine the role of PRSPs as effective policy tools for developing countries in general, and the two countries under study in particular, in the realisation of economic and social rights. The study examines whether the adoption of the PRSPs is a manifestation of the respective governments' commitment to establish a comprehensive policy framework for the realisation of economic and social rights of the people; or their adoption has just been a typical instance of poverty stricken Least Developed Countries (LDCs) sacrificing their national sovereignty to the dictates of the BWIs so as to benefit from the HIPC Initiative. This is important as the motivation behind the adoption of a particular policy or strategy is most likely to reflect in its implementation. The study thus aims, ultimately, at making recommendations that would further the full realisation of economic and social rights through the agency of the PRSPs of the two countries. It is the author's view that the conclusions drawn shall equally be applicable to other developing countries that are in the same poverty bracket as the countries under study.

## **1.4 Hypothesis/Research Question**

This thesis rests on the premise that PRSPs can have more meaning if they serve as effective tools for the realisation of economic and social rights. The study therefore seeks to answer the question: 'Are the PRSPs of Malawi and Uganda effective tools for the advancement of economic and social rights?'

## **1.5 Significance of the Study**

The concept of human rights based approach to poverty reduction that this discussion adopts for analysis is one that has largely been ignored by many economic planners and policymakers in many countries. Malawi and Uganda are no exception.<sup>13</sup> There has been very little study of the extent to which the two governments adopt a human rights based approach in their poverty reduction strategies both in their conception and implementation.

The importance of this study is underscored by the fact that the governments of Malawi and Uganda are bound by their constitutions as well as various international treaties such as the African Charter on Human and Peoples Rights (ACHPR)<sup>14</sup> and the International Covenant on Economic, Social and Cultural Rights 1966 (ICESCR),<sup>15</sup> to ensure the realisation of economic and social rights.

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<sup>13</sup> This was confirmed during my interview with Mr. M. Chimkunda, Assistant Chief Economist at the Ministry of Finance at the Ministry offices on 23 July, 2004. It was further emphasised during my interview with Mr. M. Kajumi, Monitoring and Evaluation Specialist, MASAF on 26 July 2004. In the context of Uganda, Mr. Zie Gariyo, Executive Director of the Uganda Debt Network confirmed this during an interview on 12 October 2002 at the UDN offices in Kampala.

<sup>14</sup> Malawi ratified the ACHPR on 23 February 1990 whereas Uganda ratified the same on 18 August 1986. See <<http://www.africa-union.org/home/welcome.htm>> (accessed on 11 October 2004).

<sup>15</sup> Malawi ratified the ICESCR on 22 March 1994 whereas Uganda ratified the same on 21 April 1987. See <<http://www.unhchr.ch/pdf/report.pdf>> (accessed on 11 October 2004).

## 1.6 Literature Review

### 1.6.1 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.<sup>16</sup> Sen states that poverty entails ‘the failure of basic [human] capabilities to reach certain minimally acceptable levels’.<sup>17</sup> The Office of the High Commissioner for Human Rights (OHCHR) argues 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.<sup>18</sup> As much as it is recognised 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 clothing and adequate housing.<sup>19</sup> The OHCHR approach rejects the idea of viewing poverty uni-dimensionally as a lack of adequate income.<sup>20</sup> It is thus argued that 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.<sup>21</sup>

This study agrees with this approach and argues 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 characterises as LDCs those countries that fall below the Human Development

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<sup>16</sup> OHCHR, *Human Rights and Poverty Reduction: A Conceptual Framework*, (2003), 7.

<sup>17</sup> A. Sen, *Inequality Re-examined* (1992), 109.

<sup>18</sup> OHCHR (as in n.16 above).

<sup>19</sup> OHCHR, (as in n.16 above).

<sup>20</sup> OHCHR, (as in n.15 above).

<sup>21</sup> OHCHR, *Draft Guidelines: A Human Rights Based Approach to Poverty Reduction Strategies*, (2002) para.48.

Index (HDI) value of 0.5.<sup>22</sup> This study argues that it would be apposite to define the poor in terms of a similar index rather than with reference to the so-called income poverty line.

### 1.6.2 *Poverty as a human rights issue*

A number of commentators have identified poverty as a serious human rights issue. Former UN High Commissioner for Human Rights Mary Robinson has said that: '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'.<sup>23</sup>

Haugh and Ruan state that poverty, particularly in its extreme forms, amounts to a violation of not only virtually all social and economic rights, 'but also – through marginalisation and discrimination – of civil and political rights'.<sup>24</sup>

According to Mazengera, poverty has the effect of nullifying economic and social rights like health, adequate housing, food and safe water.<sup>25</sup>

The Committee on Economic and Social Rights (CESCR) has affirmed these propositions, stating that:

Although the term is not explicitly used in the International Covenant on Economic, Social and Cultural Rights, poverty is one of the recurring themes in the Covenant and has always been one of the central concerns of the Committee.<sup>26</sup>

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<sup>22</sup> See UNDP, Human Development Report 2004, p. 141

<sup>23</sup> UNDP, *Poverty and Human Rights: A Practice Note* (2003), iv.

<sup>24</sup> Haugh & Rauan, *Integrating Poverty Reduction and the Right to Food in Africa (March, 2002)*, <<http://www.norad.nu/norsk/files/1NORDGRKrapport.doc>>, (accessed on 29 March, 2004)

<sup>25</sup> Mazengera, S 'Making rights of poor people practical in Malawi through a rights based approach to development', *LLM Thesis, University of Pretoria*, (2001).

<sup>26</sup> See *Statement of the Committee on Economic, Social and Cultural Rights to the Third United Nations Conference on the Least Developed Countries*, adopted at the twenty fifth session (20<sup>th</sup> meeting), 4 May 2001.

There thus seems to be no doubt that poverty is a serious human rights issue today.

### 1.6.3 *The origins of PRSPs*

#### (a) The advent of SAPs

As stated in the background, PRSPs came about in the wake of the failure of SAPs to reduce the incidence of poverty.<sup>27</sup> According to Oloka-Onyango, SAPs emerged out of a concern that sub-saharan African countries had failed to come out of abject poverty and marginalisation during the 1970s and early 1980s. They were thus geared to remove 'structural and institutional impediments standing in the way of effective development.'<sup>28</sup>

Some of the essential characteristics of SAPs are:

- 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;
- privatization of government-held enterprises.<sup>29</sup>

These measures, commonly referred to as the Washington Consensus, were intended to operate as a 'shock therapy' aimed at jumpstarting these ailing economies.<sup>30</sup>

After years of experimentation, it became apparent that the SAPs were not achieving the desired results. Deep cuts in social spending, trade liberalization and

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<sup>27</sup> See Oloka-Onyango, (n. 2 above).

<sup>28</sup> See Oloka-Onyango, (n.2 above), 22

<sup>29</sup> Halifax Initiative, *What are Structural Adjustment Programmes (SAPs)?*

<<http://www.chebucto.ns.ca/current/P7/bwi/cccsap.html>> (accessed on 28 August 2004)

<sup>30</sup> See Jakobeit, C 'The World Bank and Human Development; Washington's New Strategic Approach', in *Development & Co-operation No.6*.

privatization of government held enterprises among others, only perpetuated the poverty situation of most African people, thus drawing heavy criticism of the BWIs. The critics argue that decreases in social expenditure as required by the SAPs have had an adverse impact on the fulfillment of human rights obligations, particularly economic and social rights, by developing countries.<sup>31</sup>

(b) The PGRF and PRSPs

In reaction to the damaging criticisms leveled against the SAPs, the BWIs came with the Poverty Reduction and Growth Facility (PRGF) framework that marked a shift from SAPs to PRSPs.<sup>32</sup>

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)<sup>33</sup>, which are centered on halving poverty between 2000 and 2015. PRSPs provide the operational basis for Fund and Bank concessional lending and for debt relief under the HIPC Initiative.<sup>34</sup>

The BWIs state that the core principles of PRSPs are 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;

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<sup>31</sup> See Akermark, S 'International Development Finance Institutions: The World Bank and the International Monetary Fund' in A. Eide at al, *Economic, Social and Cultural Rights: A textbook* (2001), 516.

<sup>32</sup> See note 1 above.

<sup>33</sup> See UNGA, *UN Millennium Development Goals (MDGs)*, <<http://www.un.org/millenniumgoals/>>, (accessed on 27 August 2004)

<sup>34</sup> IMF, *Poverty Reduction Strategy Papers: A Fact Sheet*,

<<http://www.imf.org/external/np/exr/facts/prsp.htm>> (accessed on 26 August 2004)

- comprehensive in recognizing the multidimensional nature of poverty; and
- partnership-oriented, involving coordinated participation of development partners (government, domestic stakeholders, and external donors).<sup>35</sup>

However, the PRSP process has still attracted criticism as a new form of SAPs in so far as the BWIs stick to rigid requirements that must be met for a PRSP to pass the debt relief test.<sup>36</sup> Oloka-Onyango observes that:

there is a thread of continuity between the old policy stipulations and the new, in that the 'fundamentals' (including the liberalisation of the economy and rapid privatisation and deregulation) have remained intact.<sup>37</sup>

This study examines the extent to which, if at all, PRSPs operate within the framework of the Washington Consensus.

#### 1.6.4 *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 recognises the right to self-determination as an essential group right. Thus, Article 1(1) of the ICESCR guarantees the right of peoples to self-determination that includes the right of peoples to 'freely...pursue their economic, social and cultural development'.<sup>38</sup>

Oloka-Onyango argues that:

Commencing with a very broad purview, one can see that, in Africa, the operations of the two institutions [IMF and WB] 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-

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<sup>35</sup> See IMF, (n.34 above).

<sup>36</sup> Cheru, F *Foot-dragging on Foreign Debt*, <<http://www.southcentre.org/info/southbulletin/bulletin10/bulletin10web-03.htm>> (accessed on 26 August 2004).

<sup>37</sup> See Oloka-Onyango, (n.2 above) 24.

<sup>38</sup> This right is also guaranteed in Art. 1(1) of the ICCPR and Art. 20 (1) of the ACHPR.

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.<sup>39</sup>

Cheru takes a similar view. He states that:

Real 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.<sup>40</sup>

In that vein, it is submitted that the policies of the BWIs in this regard, have the effect of impairing the national sovereignty of developing countries. However, this study takes the view that it is pertinent to go beyond issues of national sovereignty and assess whether PRSPs have the substantive effect of acting as effective tools for the realisation of economic and social rights.

#### *1.6.5 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.<sup>41</sup> 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.<sup>42</sup> Haugh and Ruan however 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

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<sup>39</sup> Oloka-Onyango, J *Beyond the Rhetoric: Reinvigorating the Struggle for Economic and Social Rights in Africa*, <<http://www1.umn.edu/humanrts/africa/Oloka-Onyango.html>> (accessed on 30 August 2004)

<sup>40</sup> See Cheru (as in n.36 above).

<sup>41</sup> See UNDP, *Human Development Report 2000: Human Rights and Human Development*.

<sup>42</sup> See Mathews, (n.4 above) 6.

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.<sup>43</sup>

Hunt et al 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 that there is need to create and strengthen the institutions through which policy-makers can be held accountable for their actions.<sup>44</sup>

According to the OHCHR:

One of the most distinctive features of a human rights based approach to poverty reduction is that it is explicitly based upon the norms and values set out in the international law of human rights.<sup>45</sup>

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 in so far as they bear upon human rights.<sup>46</sup> The OHCHR has further observed that under a rights based approach, the issue of poverty reduction is:

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<sup>43</sup> See Haugh & Ruan (n.14 above).

<sup>44</sup> See Hunt, P et al, 'Draft Guidelines: A Human Rights Approach to Poverty Reduction Strategies', (2002) in *Mathews* (n.4 above) 8.

<sup>45</sup> OHCHR, *Human Rights and Poverty Reduction: A Conceptual Framework*, (2003) 1.

<sup>46</sup> See OHCHR, *Draft Guidelines*, (n.21 above).

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.<sup>47</sup>

Osmani 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.<sup>48</sup>

Gibbons states 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, and that this is one reason why there is a gap between PRSPs and human rights.<sup>49</sup>

In this respect, it is essential to examine whether Malawi and Uganda adopt the Washington consensus shorn of any human rights considerations.

## **1.7 Methodology**

This research is largely desk-oriented and Internet research has been used extensively. Interviews have been conducted with a few stakeholders in the process. The study involves an examination of relevant national, regional and international human rights instruments that relate to the subject matter and the writings of various commentators on the subject, as well as relevant case law.

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<sup>47</sup> See Opening Statement of the High Commissioner for Human Rights, 2<sup>nd</sup> Inter-Agency Workshop, 'Implementing a Human Rights-based Approach in the Context of UN Reform', 5-7 May 2003, Stamford, NY, U.S.A, in *Mathews*, (n.4 above) 8-9.

<sup>48</sup> See World Vision & World Bank, *PRSP Conference Report* (September 2002), <[http://www.worldbank.org/poverty/events/092502\\_session1b.pdf](http://www.worldbank.org/poverty/events/092502_session1b.pdf)> (accessed on 29 March, 2004)

<sup>49</sup> See, E. Gibbons in *Democratising Development: Deepening Social Accountability Through PRSPs*, <[http://www.worldbank.org/poverty/events/092502\\_session1b.pdf](http://www.worldbank.org/poverty/events/092502_session1b.pdf)> (accessed on 29 March, 2004).

## **1.8 Limitations**

The discussion is limited to an examination of selected areas of economic and social rights, namely: health and housing. This owes to the limited length of the paper. These two areas are chosen because they are some of the areas that are most closely associated with the impact of extreme poverty. Further, as observed earlier, the human rights based approach requires that poverty reduction strategies be reasonable both in their conception and implementation. This study focuses on their conception. It thus analyses the PRSPs' content rather than their implementation.

The discussion is not aimed at being a comprehensive jurisprudential analysis of the rights to health and housing. It only makes a general overview of their content with a view to demonstrating how the PRSPs of Malawi and Uganda impact on the advancement of these rights.

## **1.9 Summary of chapters**

This study is divided into six chapters. Chapter two is a concise analysis of the PRSP processes in Malawi and Uganda. It addresses issues of participation and national ownership, among others and locates the role of the BWIs in the process. Chapter 3 is a general overview of the international legal obligations that the two governments have in the area of economic and social rights. Chapter four provides an overview of the scope of the rights to health and housing. Chapter five is a critical analysis of the extent to which the PRSPs of the two countries act as effective tools for advancing the rights to health and housing in the two countries. Chapter six concludes the discussion. It makes necessary recommendations in order to strengthen the human rights based approach to poverty reduction within the framework of the PRSPs, with a view to ensuring the progressive realisation of economic and social rights.

## CHAPTER 2

### 2. THE PRSP PROCESS IN MALAWI AND UGANDA: AN OVERVIEW

The idea of poverty reduction in LDCs is doubtlessly noble. It is axiomatic that people in a particular society know best the problems that they face. It is thus imperative that they be engaged as active participants in formulating strategies that seek to address those problems. This ensures that there is a popular sense of ownership and is one of the surest ways of garnering commitment to implement the strategies. This chapter explores the processes of adopting the PRSPs of Malawi and Uganda with special focus on the extent of participation by civil society and the public generally. It also locates the role of the BWIs in the process, critically evaluating whether the PRSPs are not merely drawn to meet the requirements for debt relief under the HIPC Initiative and to access concessional BWIs lending.

#### 2.1 The PRSP process in Malawi

##### 2.1.1 Rationale Behind the adoption of the Malawi Poverty Reduction Paper (MPRSP)

The Malawi government has stated that the process towards the adoption of the MPRSP was initiated with a view to effectuate lessons learnt from past experiences in order to achieve meaningful poverty reduction.<sup>50</sup> The past experiences cited include the failure of the SAPs and the Poverty Alleviation Programme (PAP).<sup>51</sup> Some of the core strategies under the PAP included introduction of free primary education and setting up of the Malawi Social Action Fund (MASAF) as a funded, demand-driven, community based initiative for social development with emphasis on community participation.<sup>52</sup> The MPRSP notes that despite their emphasis on raising national productivity through sustainable

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<sup>50</sup> Government of Malawi, Malawi Poverty Reduction Strategy Paper (MPRSP) (2002).

<sup>51</sup> As in n.50 above.

<sup>52</sup> See MPRSP, 17. Also see the Government of Malawi, *National Plan of Action for the Promotion and Protection of Human Rights in Malawi 2004-2011* (2003) (NAP), 36.

economic growth and socio-cultural development the SAPs, in their varied forms, and the PAP, failed in their objectives and poverty remained endemic. This has been attributed to, among other things, the inconsistent application of the SAPs and fact that the PAP did not have a well articulated action plan to ensure a holistic approach to implementation and that it lacked prioritisation.<sup>53</sup> It is thus interesting that the government of Malawi, through the MPRSP, makes no reference to any connection between the drawing up of the MPRSP and the issue of debt relief under the HIPC Initiative. On reading the MPRSP, the impression that one gets is that it is a home-grown document born out of the realisation by government of the need to have a concrete, well prioritised and targeted strategy to reduce poverty. A number of commentators however have clearly stated that this, at least, was not the only rationale behind the drawing up of the MPRSP. Fozzard and Simwaka for instance state that:

The [Malawi] government began work on its Poverty Reduction Strategy Paper in May 2000, primarily in order to comply with IMF and World Bank financing requirements and the timetable for HIPC funding.<sup>54</sup>

They further state that because of the limited time available to access the HIPC relief funds, the government first prepared a 'PRSP Road Map' and subsequently an Interim PRSP (I-PRSP) that was approved by the BWIs in December 2000.<sup>55</sup> McGee et al support this version and state that:

Many involved in the preparation of the draft I-PRSP stated that 'the original understanding of the purpose of the I-PRSP was that it was simply a requirement for reaching the HIPC decision point'<sup>56</sup>

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<sup>53</sup> MPRSP, (as in n.50 above). This was also echoed during my interview with Mr. R. Mwadiwa, Budget Director at the Ministry of Finance during the PRSP process period, on 22 July 2004.

<sup>54</sup> Fozzard, A and Simwaka, C *How, When and Why does Poverty get Budget Priority: Poverty Reduction Strategy and Public Expenditure in Malawi: ODI Working Paper 166*, (2002), 8.

<sup>55</sup> As in n.54 above.

<sup>56</sup> R. McGee et al, *Assessing Participation in Poverty Reduction Strategy Papers: A Desk-based Synthesis of Experience in Sub-Saharan Africa* (2002), 50.

The deep involvement of the BWIs in even the drawing up of the final version of the MPRSP is further exemplified by the MPRSP Progress Report prepared by the joint staffs of the IMF and IDA that states that:

The strategy, which was launched in April 2002, was endorsed by the Boards of the IMF and the IDA on August 5, 2002 and August 29, 2002 respectively.<sup>57</sup>

Thus, as much as it is clear that the government of Malawi had a home-grown plan to reduce poverty as demonstrated by its adoption of the PAP soon after coming to power in 1994, the facts above, coupled with the general observations on the genesis of PRSPs articulated in chapter one,<sup>58</sup> show that the idea of the MPRSP emanated more from the BWIs.

### 2.1.2 Participation in the PRSP process and national ownership

As noted above, one of the essential features of an appropriate PRSP is that it should be country-driven and promote national ownership through broad-based participation of civil society.<sup>59</sup> It is thus critical to analyse the level of civil society and public participation in the MPRSP process. The MPRSP's self-proclaimed attribute is that it was achieved through 'a highly consultative process involving a broad range of stakeholders over the course of 15 months'.<sup>60</sup> It further states that 'stakeholders in all the 27 districts and 4 cities and municipalities were consulted'.<sup>61</sup> The BWIs however, whilst observing that 'the MPRSP process in Malawi was highly participatory', state that the participatory momentum was not sustained throughout the process.<sup>62</sup>

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<sup>57</sup> IMF & IDA, *Malawi Poverty Reduction Strategy Paper-Progress Report: Joint Staff Assessment* (2003), p.1

<sup>58</sup> See section 1.6.3 above.

<sup>59</sup> See n.35 above.

<sup>60</sup> MPRSP, xi.

<sup>61</sup> MPRSP, 2.

<sup>62</sup> IMF& IDA, (as in n.57 above), 4.

Fozzard and Simwaka are more critical. They state that:

The rushed timetable, the secretive negotiations between Government and IMF/World Bank and the lack of opportunity for comprehensive consultation were criticised from the start.<sup>63</sup>

They conclude that the small but vocal Malawi Economic Justice Network (MEJN), a civil society organisation that actively participated in the PRSP process, has lamented government's reluctance to engage in meaningful consultation and participation in the poverty planning process.<sup>64</sup>

McGee et al similarly state that government has not been open to civil society involvement and that it has been up to civil society to push itself into the process as well as showing that it has added value to it.<sup>65</sup> What emerges is that it was largely through the vigour of the MEJN that a segment of civil society was consulted in the process. It further appears that only the MEJN can be said to have meaningfully participated rather than just having been consulted in the process.<sup>66</sup> Public participation, and even consultation, was very minimal. Thus, although the MPRSP boasts of stakeholders in all the 27 districts and 4 cities and municipalities having been consulted, Fozzard and Simwaka state that 'consultations [were] held at the national level...through **half-day** meetings' in all the districts.<sup>67</sup> Further, the PRSP was not and has not yet been translated into local languages.<sup>68</sup> Considering the high levels of illiteracy,<sup>69</sup> and the fact that even some of the fairly literate people cannot easily follow the PRSP's technical language, the necessity of such translation cannot be overemphasised. In light of the foregoing, it is submitted that if there was public participation at the national level at all, then it was at best largely purely cosmetic. Worse still, the PRSP was not even taken to Parliament, as the

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<sup>63</sup> Fozzard & Simwaka, (n.54 above), 9.

<sup>64</sup> As in n.63 above.

<sup>65</sup> McGee et al, (n.56 above), 51.

<sup>66</sup> See McGee et al, (n.56 above), pp 49-54.

<sup>67</sup> Fozzard & Simwaka, (as n n.54 above).

<sup>68</sup> This was confirmed during my interview with Mr. Kubalasa, DK, Programme Manager for PRSP and Budget Monitoring, MEJN, at the MEJN offices in Lilongwe on 22 July 2004.

<sup>69</sup> The UNDP 2004 HDR puts the adult literacy rate Malawi at 61.8%. See UNDP, HDR 2004, 142.

people's elected representatives, for debate and approval.<sup>70</sup> It is submitted that this is a serious weakness and puts a serious dent on the idea of national ownership of the MPRSP.

## **2.2 The PRSP Process in Uganda**

### **2.2.1 Rationale behind the adoption of the Ugandan PRSP.**

The PRSP of Uganda, quite unlike many others, is not called a 'Poverty Reduction Strategy Paper'. It is called a Poverty Eradication Action Plan (PEAP). The history behind the adoption of the PEAP as Uganda's PRSP is quite distinct and fairly more encouraging than that of many countries. Uganda first drew a comprehensive PEAP in 1997.<sup>71</sup> There is a worth of literature that demonstrates that by late 1999, Uganda had already demonstrated progress in its implementation.<sup>72</sup> As a result, when the issue of debt relief for poor countries came to the fore in 2000 following the Jubilee 2000 debt cancellation campaign, Uganda did not need to develop an I-PRSP as most other LDCs did.<sup>73</sup> It only needed to revise the PEAP so that largely its form, and to a lesser extent its content, could be attuned to the BWIs' requirements for debt relief under the HIPC Initiative. What is perhaps more interesting is that in the case of Uganda, the transformation of the PEAP into a PRSP seems to have been more in the interests of the BWIs after their policy shift in 1999 from the ESAF to the PRGF. Thus, government officials in Uganda were under pressure from the BWIs to produce a PRSP and qualify for HIPC debt relief. The BWIs were under heavy criticism that the HIPC Initiative was not working and Uganda, in light of its pre-existing PEAP and demonstrated commitment to

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<sup>70</sup> See Fozzard & Simwaka, (n.54 above).

<sup>71</sup> See GRIPS Development Forum, Uganda Poverty Eradication Action Plan (PEAP), <<http://www.grips.ac.jp/module/prsp/UgandaPRSP.htm>> (accessed on 10 October 2004).

<sup>72</sup> See McGee et al, (n.56 above); Foster, M and Mijumbi, P *How, When and Why does Poverty get Budget Priority: Poverty Reduction Strategy and Public Expenditure in Uganda: ODI Working Paper 163*, (2002); Gariyo, Z *Participatory Poverty Reduction Strategy Papers: The PRSP Process in Uganda* (2002),

<sup>73</sup> See McGee, (n.56 above), 69.

implement, became a showpiece for donors to stem the increasing tide of criticism.<sup>74</sup> As a result, Uganda became the first country to have its PRSP approved by the Executive Boards of the BWIs in March 2000 and benefit under the enhanced HIPC Initiative.<sup>75</sup>

Thus, unlike many countries, Uganda's PRSP is still a largely home-grown strategy that was born out of Uganda's desire to have a comprehensive, concrete and targeted strategy to reduce poverty. However, one still notices the heavy hand of the BWIs being pervasive throughout the process. It has been argued that even when the government of Uganda was preparing its 1997 PEAP, there was an underlying consciousness that its strictures had to tie in tune with the Washington consensus.<sup>76</sup>

### 2.2.2 Participation in the PEAP process and national ownership

It has been said that Uganda's PRSP 'undoubtedly presents one of the most comprehensive and country-owned participatory process[es] to date'.<sup>77</sup> Gariyo states that the 1997 PEAP was developed after two years of extensive consultation of, and participation by, civil society.<sup>78</sup> Leading the civil society groups that participated was the Uganda Debt Network (UDN) that is Uganda's leading civil society organisation in the area of economic justice.<sup>79</sup> Of course, just like in the Malawi experience, civil society groups had to lobby their way into the process that

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<sup>74</sup> See Gariyo, (n.72 above), 8.

<sup>75</sup> See Foster & Mijumbi, (n.72 above), 4.

<sup>76</sup> Malaluan and Guttal state that 'countries that have been through past structural adjustment regimes and are now preparing PRSPs know what the Bank and the Fund want to see in such documents...[to] trigger the required financing.' See J. Malaluan & S. Guttal, *Poverty Reduction Strategy Papers: A Poor Package for Poverty Reduction* (2003), 8.

<sup>77</sup> See McGee et al, (n.56 above),69.

<sup>78</sup> See Gariyo, (n. 72 above), 7. See also generally, Gariyo, *Z Civil Society in the PRSP Process: The Uganda Experience* (2002),

<<http://www.trocaire.org/policyandadvocacy/.../Civilsociet%20inthePRSPprocesstheUgandaexperience.ht>> (accessed on 6 October 2004).

<sup>79</sup> See Gariyo, (n.78 above); and McGee at al, (n.56 above).

was initially viewed as being the domain of only government and its donor partners.<sup>80</sup> Thus, by the time the need arose to revise the PEAP with a view to transforming it into a PRSP under the PRGF, there was already an array of highly empowered civil society groups ready to participate and a pre-existing understanding by government of the need for broad civil society participation.<sup>81</sup>

McGee et al state that in Uganda:

The participatory process has been higher quality, more sustained, much more country-owned, higher-profile and influential than in any other country, not least because of the favourable conditions which existed and substantial donor support.<sup>82</sup>

However, these impressive observations notwithstanding, it is noteworthy that the PEAP, just like the MPRSP, has not been translated into any local language.<sup>83</sup> As in Malawi, the relatively high levels of illiteracy as well lack of technical literacy for the PEAP language did not and do not bode well with the concept of popular public participation.<sup>84</sup> Further, as with the MPRSP, the PEAP was not put to Parliament for debate and approval and this casts some doubt on its legitimacy as a popular, people-owned strategy.

### 2.3 Conclusion

The discussion in this chapter shows that there is a striking conceptual difference in the forces that drove Malawi and Uganda into adopting PRSPs. Whilst the example of Malawi clearly falls in the category of those countries that adopted PRSPs primarily in order to access debt relief under HIPC, Uganda had in the 1997 PEAP a so to speak PRSP, that pre-dated the PRGF. Thus, instead of simply being pushed by the BWIs into adopting the PRSP, Uganda was rather cajoled into

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<sup>80</sup> See McGee et al, (n.56 above), 69.

<sup>81</sup> Gariyo, (n.78 above).

<sup>82</sup> McGee et al, (as in n.77 above).

<sup>83</sup> Confirmed during my interview with Mr. Zie Gariyo on 12 October 2004.

<sup>84</sup> UNDP 2004 HDR puts the adult literacy rate in Uganda at 68.9%. See UNDP *HDR 2004*, 141.

revising its PEAP to suit the PRGF framework for PRSPs. This was done so that Uganda could be used as a showpiece for donors to stem the increasing tide of criticism that the HIPC Initiative was becoming another BWIs farce.<sup>85</sup>

The fact that there was broad participation in the formulation of the PEAP might be part of the explanation as to why there has been better implementation of the same over the years in Uganda as compared to other countries such as Malawi. This is because popular participation and a clear sense of national ownership are critical to garner commitment for implementation. It is still clear from this discussion though, that the role of the BWIs has been pervasive in both processes. The PRSP process and some of the flaws as identified notwithstanding, it is a given fact that the PRSPs are here and they wield power and influence that subsumes other strategies at other levels.<sup>86</sup> As Matthews states, any look at poverty reduction strategies and human rights needs to focus on both process and content.<sup>87</sup> It is therefore very essential to examine the content of the PRSPs with a view to establishing whether they offer an effective conceptual framework that is requisite for enhancing the welfare and development of the people of the two countries through the advancement of economic and social rights. Thus the discussion that follows in the next four chapters focuses on the content of the PRSPs of Malawi and Uganda, with special focus on health and housing.

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<sup>85</sup> See Gariyo, (n.72 above).

<sup>86</sup> See Matthews, (n.12 above).

<sup>87</sup> As in n.86 above.

## CHAPTER 3

### 3. INTERNATIONAL NORMATIVE FRAMEWORK OF ECONOMIC AND SOCIAL RIGHTS

The governments of Malawi and Uganda have obligations at international law, to respect, protect, promote and fulfil economic and social rights generally, and the rights to health and housing in particular. As stated earlier, they are parties to, among other treaties, the ICESCR and the ACHPR.<sup>88</sup>

This chapter provides an overview of the nature of obligations that the countries under study, as well as specialised agencies of the UN such as the BWIs, have in the area of economic and social rights. Such an overview is necessary for at least two reasons. Firstly, it informs the appreciation of the scope of specific social and economic rights such as health and housing that this study addresses. Secondly, as stated in the introduction, this study also aims at making general recommendations on the role of PRSPs in effecting the progressive realisation of economic and social rights generally and this calls for a general appreciation of these rights.

#### 3.1 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. They state that:

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 (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

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<sup>88</sup> See notes 14 & 15 above.

in the economy, and provides an excuse to downgrade the importance of civil and political rights.<sup>89</sup>

The socio-economic rights critics argue that in so far as the execution or implementation of these rights has budgetary implications, they cannot be justiciable as courts are incompetent to make such decisions.<sup>90</sup> It has been viewed that allowing courts to do so militates against the concept of separation of powers.<sup>91</sup> 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.<sup>92</sup>

It is therefore submitted that arguments that seek to relegate economic and social rights to mere programmatic aspirations are unsustainable. Such arguments simply serve the purpose of curtailing the realisation of the rights of the poor and other most vulnerable and disadvantaged groups in society.<sup>93</sup> As much as it is recognised that the implementation of these rights calls for a wider margin of discretion in view of their demands on available resources,<sup>94</sup> that in no way deprives them of meaningful content.<sup>95</sup>

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<sup>89</sup> Steiner, H & Alston, P *International Human Rights in Context: Law, Politics, Morals* (2000), 237.

<sup>90</sup> See De Waal, J et al, *The Bill of Rights Handbook*, (2001), 433.

<sup>91</sup> De Waal et al, (n.90 above).

<sup>92</sup> See CESCR, *General Comment No.9 (1998): Domestic Application of the Covenant (GC No.9)*, para.10. See also para. 22 of the *Maastricht Guidelines on Violations of Economic, Social and Cultural Rights* (1997) (the Maastricht Guidelines).

<sup>93</sup> GC No.9, (n.90 above), para.10.

<sup>94</sup> See Maastricht Guidelines, para 8.

<sup>95</sup> See *Soobramoney v Minister of Health (Kwa Zulu Natal)*, 1998 (1) SA 765 (CC), paras 24,25, 29.

## 3.2 Nature of obligations

### 3.2.1 *The duties to respect, protect, promote and fulfil*

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 fulfil.

The ‘duty to respect’ is a negative duty. It requires the state to refrain from interfering in the enjoyment of human rights.<sup>96</sup> 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’.<sup>97</sup>

The ‘duty to protect’ is a positive one. It obliges the state ‘to protect right-holders against other subjects by legislation and the provision of effective remedies.’<sup>98</sup>

The ‘duty to promote’ enjoins the state to create a conducive atmosphere to ensure that individuals are able to realise their rights through among other things, promoting tolerance and raising awareness.<sup>99</sup>

The ‘duty to fulfil’ is a more positive obligation on the state ‘to move its machinery towards the actual realisation of the rights...It could consist in the direct provision of basic needs...or resources.’<sup>100</sup> Thus the concepts that follow below inform the way these duties are to be discharged.

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<sup>96</sup> See the decision of the ACmHPR in *Social and Economic Rights Centre, Centre for Social and Economic Rights v Nigeria (Serac Case)*, Communication No. 155/96, para 46.

<sup>97</sup> See *Serac Case*, (as in n.96 above).

<sup>98</sup> See *Serac Case*, (n.96 above), para 47.

<sup>99</sup> See *Serac Case*, (as in n.98 above).

<sup>100</sup> See *Serac Case*, (n.96 above), para 48.

### 3.2.2 *Progressive realisation*

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 co-operation, 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.<sup>101</sup>

It has been said that the idea of progressive realisation expresses the intent of this provision.<sup>102</sup> The CESCR has described this idea as a flexibility device made in 'recognition of the fact that full realisation of all economic, social and cultural rights will generally not...be achieved in a short period of time.'<sup>103</sup>

The CESCR has gone further to state though, that the concept of progressive realisation 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 realisation of the rights in question.<sup>104</sup>

In the African context, some scholars have argued that in light of the absence of the words 'progressive realisation' in the ACHPR, the social and economic rights

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<sup>101</sup> Emphasis supplied.

<sup>102</sup> See CESCR, *General Comment No.3 (1990): The Nature of States Parties' Obligations (art.2, para.1 of the covenant)* (GC No. 3), para 9.

<sup>103</sup> GC No.3 (as in n.102 above).

<sup>104</sup> GC No. 3 (as in n.102 above)

guaranteed thereunder impose unqualified immediate obligations. Odinkalu argues that:

unlike the ICESCR, the African Charter avoids the incremental language of progressive realisation in guaranteeing... economic, social and cultural rights... Instead, the obligations that states parties assume with respect to these rights are clearly stated as being of immediate application.<sup>105</sup>

This debate however, seems to have been finally settled by the ACmHPR. In ***Purohit and Moore v The Gambia***,<sup>106</sup> 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 [*sic*] its available resources, to ensure that the right to health is fully realised in all aspects without discrimination of any kind.<sup>107</sup>

Although made in the context of the right to health under Article 16(1) of the charter, it is clear that the reasoning is equally applicable to all economic, social and cultural rights under the charter. It is therefore submitted 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 realisation' in this category of rights.

Another important obligation of states related to the concept of progressive realisation is the duty to 'take steps' as envisaged under Article 2(1) of the

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<sup>105</sup>See Odinkalu, C 'Implementing Economic, Social and Cultural Rights Under the African Charter on Human and Peoples Rights' in M. Evans and R. Murray (eds.), *The African charter on human and peoples rights: The system in practice*, 1986-2000

<sup>106</sup> Communication No. 241/2001

<sup>107</sup> Para. 84

ICESCR. Thus, while the full realisation 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.<sup>108</sup> This implies that states must, as soon as they commit themselves to these obligations, at least draw up programmes or strategies targeted at the progressive realisation of the rights.

The concept of progressive realisation 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, for instance by indefinitely postponing their implementation, under the guise of progressive realisation. 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 realisation of these rights lies at the core of poverty reduction.

### 3.2.3 Core Minimum Obligations

Although economic and social rights permit of progressive realisation, 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'.<sup>109</sup> The CESCR has stated that if the rights were to be interpreted in a way that does not impose these minimum obligations, the ICESCR would be deprived of its *raison d'être*.<sup>110</sup> Musungu, relying on CESCR GC No.14 paragraph 47, argues that these core obligations are non-derogable.<sup>111</sup> The salient part of that paragraph provides that:

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<sup>108</sup> GC No.3, (n.102 above), para 2.

<sup>109</sup> GC No. 3 (as in n.102 above), para 10.

<sup>110</sup> GC No. 3 (as in n.109 above).

<sup>111</sup> See Musungu, F 'The Right to Health in the Global Economy: Reading Human Rights Obligations into the Patent Regime of the WTO-TRIPS Agreement', *LLM Thesis, University of Pretoria*, (2001) 19.

a state party cannot, under any circumstances whatsoever, justify its non-compliance with the core obligations set out in paragraph 43 above, which are non-derogable.

It is submitted however, that the concept of minimum core content notwithstanding, considering the nature of economic and social rights and the severe resource constraints that LDCs face, the idea of non-derogability is untenable. Indeed, the CESCR itself, in GC No. 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 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, as a general rule. It is perhaps arguable that the CESCR might have contradicted itself in the two general comments by suggesting derogability in one and non-derogability in another. This study though takes the view that that is not the case. Instead of generalising the application of paragraph 47 of GC No.14, that paragraph should be read as being specific to that GC. This is more so as it makes specific reference to its paragraph 43. GC No.3 on the other hand is of general application and should be taken to reflect the general rule.

#### *3.2.4 Obligations of the international community*

The CESCR states that the phrase ‘to the maximum of its available resources’ under Article 2(1) of the ICESCR should be read as including both resources within a state and those available from the international community through international co-operation and assistance.<sup>112</sup>

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<sup>112</sup> GC No. 3 ( n.102 above), para 13.

It is also imperative to direct attention to the Charter of the UN (the UN Charter). One of the purposes of the UN under Article 1 of the UN Charter is:

To achieve international co-operation 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...<sup>113</sup>

And also 'to be a centre for harmonising the actions of nations in the attainment of these common ends.'<sup>114</sup>

This position is reiterated in Article 55(a) of the UN Charter that states, among other things, that the UN shall promote:

solutions of international economic, social, health and related problems...

Article 56 of the UN Charter then provides that:

All members pledge themselves to take joint and separate action in co-operation with the organisation for the achievement of the purposes set forth in Article 55.

It is submitted that these provisions, in consonance with Article 2(1) of the ICESCR, impose treaty obligations on members of the UN to provide technical and financial assistance to developing countries in order to achieve full realisation of economic and social rights.

On their part, the BWIs, as specialised agencies of the UN, have consistently argued that they are bound by their Articles of Agreement to be non-political in their approach.<sup>115</sup> Article IV, Section 10 of the WB Articles of Agreement for instance states that:

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<sup>113</sup> Article 1(3) of the UN Charter.

<sup>114</sup> Article 1(4) of the UN Charter.

<sup>115</sup> See Akermark, (n.31 above), 516.

The 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 specialised agencies which define the respective responsibilities of the various organs of the United Nations and of the specialised agencies in regard to the matters dealt with in the present covenant.

Reading the Articles of Agreement together with Article 24 of the ICESCR, one might argue that in so far 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 organisation. As subjects of international law, he contends, these institutions should refrain from acting in a manner that would undermine the member states' ability to fulfil their own freely assumed international legal obligations.<sup>116</sup>

This study agrees with this approach. This is more so considering that the UN Charter itself, as demonstrated earlier, imposes such obligations. Specialised agencies of the UN would be acting in bad faith if they were to defeat the UN's core purposes.

### **3.3 Conclusion**

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

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<sup>116</sup> See Akermak, (n.31 above), 526.

argument that social and economic rights are unenforceable is unsustainable, bearing in mind, among others, the interconnectedness of human rights.

Further, paying particular attention to the GCs of the CESCR, particularly GC No. 3 that defines the nature of state obligations in this category of rights, it is observable that whilst they allow for progressive realisation 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 circumstances 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 programme or strategy as to how it intends to effectuate the realisation of each right.

This necessitates the need to assess whether PRSPs are underlain 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.

## CHAPTER 4

### 4. AN OVERVIEW OF THE RIGHTS TO HEALTH AND HOUSING

Premised on the general normative framework of economic and social rights outlined in Chapter 3, this chapter provides a concise overview of the scope of the rights to health and housing that are the specific focus of this study. The chapter highlights the various essential elements of these rights as identified by the CESCR, as well as the minimum core content obligations that apply to them. It lays the foundation for a critical analysis of the role of the PRSPs of the two countries in ensuring the progressive realisation of the full enjoyment of these rights in chapter five.

#### *4.1 Scope of the right to health*

The WHO conceptualises health as a 'state of complete Physical, mental and social well-being and not merely the absence of disease and infirmity'.<sup>117</sup> It thus embraces a wide range of socio-economic factors that are the underlying determinants of health such as nutrition, housing, safe and potable water, and a healthy environment.<sup>118</sup>

The CESCR has identified four interrelated essential elements of the right to health whose application is dependent on the prevailing conditions of each country. These elements are availability, accessibility, acceptability and quality and they are discussed in turn:

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<sup>117</sup> See General Comment No. 14 (2000): The Right to the Highest Attainable standard of health (Art.12 of the Covenant), (GC No. 14), para 4.

<sup>118</sup> GC No. 14 (as in n. 117 above).

(a) availability

This requires the availability, in sufficient quantities, of functioning public health and health care facilities, goods, services and programmes in the respective states.<sup>119</sup>

(b) accessibility

This requires the equal accessibility to all of health facilities, goods and services. Accessibility includes physical accessibility, economic accessibility (affordability) and information accessibility.<sup>120</sup> Musungu argues that *‘the affordability requirement would also mean that the privatisation and liberalisation in the health sector should not constitute a threat to the affordability of health care services.’*<sup>121</sup> Information accessibility on the other hand implies the right to seek and impart information and ideas concerning health issues.<sup>122</sup>

(c) acceptability

This implies that the health facilities, goods and services must be sensitive to, among other things, the culture in their community setting and respect medical ethics such as confidentiality.<sup>123</sup>

(d) quality

This entails that the health facilities, goods and services must be of reasonably good quality to ensure the improvement of the health status of those concerned.<sup>124</sup>

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<sup>119</sup> GC No. 14, para 12(a).

<sup>120</sup> GC No. 14, para 12(b).

<sup>121</sup> See Musungu, (n.111 above) 19.

<sup>122</sup> GC No. 14 ( as in n. 120 above).

<sup>123</sup> GC No. 14, para 12(c).

These essential elements are very critical towards the full realisation of the right to health. They apply to all the underlying determinants of health mentioned above. An effective strategy to reduce poverty through the improvement of the health status of the people must be tailored towards ensuring the effective guarantee of these elements.

Further, it is imperative to note what have been identified as the core minimum obligations in respect of the right to health. These core obligations include ensuring the following:

- (a) equal access to primary health services especially for vulnerable and marginalized groups.<sup>125</sup>
- (b) access to minimum essential nutrition for everyone.<sup>126</sup>
- (c) access to basic shelter, sanitation, safe and potable water;<sup>127</sup> and
- (d) access to essential drugs as defined by WHO from time to time.<sup>128</sup>

Thus, where it is shown that the state is not ensuring the realisation of these minimum core obligations, then the state is in violation of the right.

#### *4.2 Scope of the right to housing*

It has been said that the right to housing should not be interpreted in a restricted sense to mean the shelter provided by merely having a roof over one's head, or

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<sup>124</sup> GC No. 14, para 12(d).

<sup>125</sup> GC No. 14, para 43(a).

<sup>126</sup> GC No. 14, para 43(b).

<sup>127</sup> GC No. 14, para 43(c).

<sup>128</sup> GC No. 14, para 43(d).

viewing shelter as a commodity, but should be viewed as the right to live somewhere in security, peace and dignity.<sup>129</sup>

In the leading South African case of ***Government of South Africa and others v Grootboom and others (the Grootboom case)***,<sup>130</sup> the constitutional court held that:

Housing entails more than bricks and mortar...For a person to have access to adequate housing...there must be land, there must be services, there must be a dwelling.<sup>131</sup>

The Commission on Human Settlements has stated that:

Adequate shelter means ...adequate privacy, adequate space, adequate security, adequate lighting and ventilation, adequate basic infrastructure and adequate location with regard to work and basic facilities- all at a reasonable cost.<sup>132</sup>

These passages show that the right to housing is of a broader compass than the traditional conception of having a roof over one's head, and is closely intertwined with the enjoyment of other rights including the rights to life and health.

The CESCR has identified a number of interrelated factors that characterise the right to adequate shelter. These include:

(a) Legal security of tenure

This implies that the state should take immediate measures aimed at conferring legal security of tenure upon persons and households currently lacking such protection. This is to be done in consultation with affected persons.<sup>133</sup> It includes

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<sup>129</sup> CESCR, *General Comment No.4 (1991): The right to adequate housing (art. 11(1) of the covenant)* (GC No.4), para 7.

<sup>130</sup> 2000 (11) BCLR 1169 (CC).

<sup>131</sup> As in n.130 above, para 35.

<sup>132</sup> See GC No. 4, para 7.

<sup>133</sup> GC No.4, para 8(a).

rental accommodation whether private or public and informal settlements, and is closely related with the issue of forced evictions.<sup>134</sup> In SA, the issue of forced eviction from an informal settlement was brought to a head in the **Grootboom case**. Yacoob J summarised the facts of the case as follows:

The group of people with whom we are concerned in these proceedings lived in appalling conditions, decided to move out and illegally occupied someone else's land. They were evicted and left homeless. The root cause of their problems is the intolerable conditions under which they were living...They are people whose rights have to be determined in this case.<sup>135</sup>

The court held that under the circumstances, the state was in violation of its duty to respect and protect their right to shelter by evicting them from their dwellings, without offering them alternative accommodation.

(b) Availability of services, materials, facilities and infrastructure

This entails sustainable access to such resources as safe drinking water, energy for cooking, lighting, sanitation and washing facilities, and refuse disposal among others.<sup>136</sup>

(c) Affordability

This enjoins the state to take steps to ensure that the percentage of housing related costs, such as some of the services mentioned in (b) above, is in general, commensurate with income levels. It requires states to establish housing subsidies for those unable to obtain affordable housing.<sup>137</sup> Thus in the **Grootboom case**, the court held that:

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<sup>134</sup> See *CESCR General Comment No. 7, (1997): Article 11 paragraph 1, of the Covenant- Forced evictions* (GC No.7).

<sup>135</sup> As in n.130 above (para.3). See also the *Olga Tellis v Bombay Municipal Co-operation (Olga Tellis case)* 1985 (3) SCC 545, where the court similarly held that such evictions are inconsistent with the right to life and its concomitant right of pursuing a livelihood.

<sup>136</sup> GC No. 4, para 8(b).

<sup>137</sup> GC No. 4, para 8(c).

For those who can afford to pay for adequate housing, the state's primary obligation lies in unlocking the system, providing access to housing stock and legislative framework to facilitate self-built houses through planning laws and access to finance. Issues of development and social welfare are raised in respect of those who cannot afford to provide themselves with housing. State policy needs to address both these groups. The poor are particularly vulnerable and their needs require special attention.<sup>138</sup>

States are further enjoined to protect tenants against excessive rent levels or increases.<sup>139</sup>

(d) Habitability

This means that housing must be habitable. Inhabitants must be protected from such hazards as excessive cold or heat, rain and disease vectors among others.<sup>140</sup>

(e) Accessibility

This enjoins the state to fully take into account the special needs of such vulnerable groups as the elderly and the physically disabled in formulating its housing policy and law. It further requires states to ensure, as a central policy goal, the increased access to land by the landless or impoverished segments of the society.<sup>141</sup>

(f) Location

This entails that housing should be made accessible in locations that are within reasonable reach of employment options, health care services, schools and other social facilities.<sup>142</sup>

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<sup>138</sup> See n. 130 above, para 36.

<sup>139</sup> As in n.133 above.

<sup>140</sup> GC No.4, para 8(d).

<sup>141</sup> GC No.4, para 8(e)

<sup>142</sup> GC No. 4, para 8(f).

In terms of core minimum obligations, CESCR GC Nos.4 and 7 respectively, that address this right, do not offer any concrete guide. In the **Grootboom case**, the court considered the issue of core minimum content in respect of the right and decided not to apply it to SA. The court argued that ‘the committee [CESCR] developed the concept of minimum core over many years of examining reports by reporting states’ and that it did not have comparable information.<sup>143</sup> The court then held that it simply had to direct itself to the principle of reasonableness, although there might be cases where the content of minimum core obligations would help in determining reasonableness.<sup>144</sup>

The court emphasised that the state is obliged to take measures, including legislation and programmes, and that the ‘policies and programmes must be reasonable both in their conception and their implementation’.<sup>145</sup> On the particular facts of the case, the court held that although the government of SA had adopted legislation and devised programmes intended at the progressive realisation of the right to housing, the same failed the reasonableness test in so far as they did not make provision for measures to be taken in respect of people in desperate need. These included those with no access to land, the homeless, and those in crisis because of natural disasters or because their houses were under threat of demolition. The court held that these groups needed immediate attention and that their immediate needs could be met by relief, short of housing, which fulfils the requisite standards of durability, habitability and stability.<sup>146</sup>

Critiquing the **Grootboom case**’s refusal to adopt the concept of minimum core content, Mzikenge-Chirwa argues that:

In recognising the minimum core concept, issues of poverty and deprivation are given priority. For a continent characterised by widespread corruption, misallocation of resources

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<sup>143</sup> As in n.130 above, para 32.

<sup>144</sup> As in n. 130 above, para 33.

<sup>145</sup> As in n.130 above, para 42.

<sup>146</sup> As in n.130 above, para 52.

and mismanagement, a principle requiring the state to consider provision of minimum essential levels of economic, social and cultural rights as a matter of priority is most commendable. Given the high levels of poverty among the majority in South Africa generated by the apartheid regime, the constitutional court erred by not adopting the minimum core concept.<sup>147</sup>

Whilst agreeing with Mzikenge-Chirwa on the desirability of the minimum core content, it is submitted that there is no cause for concern when the decision is read as a whole. On a critical examination of ***Grootboom***, it is submitted that the court did impliedly accede to the concept of minimum core content. This is so in light of its holding that for persons in desperate need as identified under paragraph 52 of the judgment, the state is bound to take ***immediate interim measures of relief***, even if they do not constitute housing, provided they fulfil the requisite standards of durability, habitability and stability. This paper argues that these measures constitute the minimum core content for the right to housing. Denying any ascription of the concept to this right will fly in the face of the *raison d'être* of the right.

### **4.3 Conclusion**

This chapter shows that all states have obligations at international law to take immediate and progressive measures to ensure the full realisation of the rights to health and housing and articulates their scope. The scope of these rights must be understood within the overall framework of the principles applicable to economic and social rights generally as articulated in chapter 3, including the duty to take steps and the concept of core minimum obligations.

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<sup>147</sup> Mzikenge-Chirwa, D 'Minister of Health and Others v Treatment Action Campaign and Others: Its Implications for the Combat Against HIV/AIDS and the Protection of Economic, Social and Cultural Rights in Africa', (2003) 9:1 *East African Journal of Peace and Human Rights*, 174.

## CHAPTER 5

### 5. THE PRSP AND THE RIGHTS TO HEALTH AND HOUSING IN MALAWI AND UGANDA: A CRITICAL APPRAISAL

This chapter critically examines whether the PRSPs of Malawi and Uganda have identified health and housing as priority issues. It analyses whether they sufficiently provide for measures that are necessary to ensure that the two countries meet their international obligations to ensure the progressive realisation of these rights. In respect of the right to adequate housing, the positions of the two countries are discussed together. This is because of the striking commonalities in terms of the two countries' approaches to the issue, coupled with the fact that the constitutional guarantees applicable are just the same as those applicable to the right to health that is discussed first.

#### 5.1 The MPRSP and right to health in Malawi

##### 5.1.1 Constitutional measures

In Malawi, health finds expression in sections 13(c) and 30(2) of the constitution. Section 13(c) states that the state shall actively adopt and implement policies and legislation aimed at providing 'adequate health commensurate with the health needs of Malawian society and international standards of health care.' This provision is supported by a binding obligation on the state in section 30(2) of the constitution that states that:

The state shall take all necessary measures for the realisation of the right to development. Such measures shall include, amongst other things, equality of opportunity for all in their access to basic resources, education, **health services**, food, shelter, employment and infrastructure.

Section 30(4) of the constitution goes further to enjoin the state 'to justify its policies in accordance with this responsibility'

Malawi therefore is not only bound by international law to justify its policies in accordance with its responsibilities on this right, it is equally bound by its own constitution. Thus the content of the MPRSP must accordingly be justified in respect of this right.

### 5.1.2 Health under the MPRSP

The MPRSP identifies poor health as one of the key causes of poverty.<sup>148</sup> Health is covered under Pillar 2 of the MPRSP on human and capital development. It recognises that the health of an individual is directly related to economic and social well-being.<sup>149</sup> It gives a very gloomy picture of the state of poverty in Malawi in relation to health noting, among other things, that life expectancy dropped in the country from 43 years in 1996 to 39 years in 2000, and that infant, under-five as well as maternal mortality rates had been on the increase during the same period.<sup>150</sup> This was so notwithstanding a progressive increase in budgetary allocations to the health sector.<sup>151</sup>

To address the various health problems that the country faces, the MPRSP has framed what is termed an Essential Healthcare Package (EHP). The EHP is described as a 'bundle of health services provided at community, primary and secondary levels, supported by the necessary administrative, logistics and management systems'.<sup>152</sup> The MPRSP places the EHP under three main objectives. These objectives are the improvement of quality and availability of essential health care inputs; the improvement of access to, and equity of essential

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<sup>148</sup> MPRSP, x

<sup>149</sup> MPRSP, 58

<sup>150</sup> These are said to be the most important indicators to measure the health status of a nation. See SAHRC, 4<sup>th</sup> *Economic and Social Rights Report: The Right to Health*, <<http://www.sahrc.org.za>> (accessed on 10 July 2004)

<sup>151</sup> MPRSP (as in n. 149 above).

<sup>152</sup> MPRSP, 59.

health care; and strengthening of administration and finance of essential healthcare services.<sup>153</sup> These objectives are examined in turn.

(a) Improving quality and availability of health care

The MPRSP observes that a major problem leading to the country's poor health indicators is the shortage of adequately compensated medical staff.<sup>154</sup> It attributes this to a number of factors including brain drain due to poor remuneration and career prospects, as well as death of staff exacerbated by the HIV/AIDS pandemic.<sup>155</sup> It also identifies the problem of shortage of drugs, particularly in rural areas as a result of, among other factors, low and inefficient drug allocations, and pilferage.<sup>156</sup> It stresses that drugs and medical supplies required in an EHP must be constantly present in health facilities both in adequate quantities and of appropriate quality.<sup>157</sup>

To reduce shortage of health personnel, the EHP seeks to increase the number of locally trained health personnel, and to review remuneration and career structures for health personnel.<sup>158</sup>

To reduce shortage of drugs, the EHP seeks to ensure the review of the procurement, logistics, management, distribution, and prescription of drugs so that all drugs procured reach the intended patients and are prescribed properly.<sup>159</sup> It also seeks to ensure gradual increase in budget allocations to drugs and medical supplies. Annex 2 to the MPRSP<sup>160</sup> under Goal 2.3, shows the strategised phased

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<sup>153</sup> MPRSP, 60.

<sup>154</sup> MPRSP, 58.

<sup>155</sup> As in n.154 above.

<sup>156</sup> MPRSP, 59.

<sup>157</sup> MPRSP, 61.

<sup>158</sup> MPRSP (n.154 above).

<sup>159</sup> As in n.158 above.

<sup>160</sup> See Appendix II below.

costing of the budget for financial years 2002-2003 through to 2004-2005. The costing thereunder is demonstrably incremental.

(b) Improving access to and equity of essential health care

The MPRSP identifies lack of access to essential health care as another serious poverty problem.<sup>161</sup> It notes, among other things, that health centres, particularly in rural areas, are not adequate.<sup>162</sup> It further notes that even the existing health structures need to be rehabilitated and modernised.<sup>163</sup> The MPRSP therefore makes provision for increased access to health care facilities through rehabilitation of existing infrastructure and increase in mobile health services.<sup>164</sup> It emphasises the need for health centres to have functioning support systems such as potable water, electric energy including back-up supplies, and communication systems.<sup>165</sup>

(c) Strengthening administration and financing of essential healthcare services

The MPRSP notes that weak financial and managerial capacity in health centres also contributes to inefficiency and poor service delivery.<sup>166</sup> It therefore makes provision for the training and retraining of financial and management health staff.<sup>167</sup>

In terms of lack of sufficient finances to run health institutions,<sup>168</sup> the MPRSP states that the financing strategy 'will take full account of the fact that many Malawians can afford to contribute better health care', and justifies this statement by arguing

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<sup>161</sup> See n. 153above.

<sup>162</sup> MPRSP, 59.

<sup>163</sup> See n.162 above.

<sup>164</sup> MPRSP, 61.

<sup>165</sup> As in.n.116 above.

<sup>166</sup> See n.153above.

<sup>167</sup> See n. 164 above

<sup>168</sup> See n. 153 above.

that in 1999-2000, the richest 40% of the population spent MK822 million (about U\$ 14.95 million at the time) on health care.<sup>169</sup> It therefore states that:

operational research will guide the decision as to whether the EHP will be free at the point of entry, or subject to user fees charges with an exemption mechanism for poor or targeted groups.<sup>170</sup>

The MPRSP further calls for strengthening of essential healthcare services through development of a Sector Wide Approach (SWAp) in the health sector.<sup>171</sup> The role of the SWAp is to ensure the co-ordination, strengthening and effecting of donor and government financing on the EHP.<sup>172</sup> It states that this will largely leave private sources of finance to develop the rest on the non-EHP health sector.<sup>173</sup>

### 5.1.3 Critique of measures instituted

#### (a) Positive developments

It is significant that the MPRSP has identified health as one of the key causes of poverty in Malawi. It rightly concludes that health is directly related to the general economic and social well-being of an individual.<sup>174</sup> This is in accord with the conceptualisation of the right to health as 'a state of complete physical, mental and social well-being and not merely the absence of physical infirmity'.<sup>175</sup> It is also significant to note that the MPRSP recognises some of the interrelated essential elements of the right to health as identified by the CESCR under GC No.14. The EHP expressly mentions availability, accessibility and quality,<sup>176</sup> although it is conspicuously silent on acceptability.<sup>177</sup>

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<sup>169</sup> MPRSP,61.

<sup>170</sup> As in n.169 above.

<sup>171</sup> MPRSP, 62.

<sup>172</sup> As in n. 169 above.

<sup>173</sup> As in n.169 above.

<sup>174</sup> See n.149 above.

<sup>175</sup> See n.117 above.

<sup>176</sup> See section 4.1(a), (b) and (d) above.

Further, the MPRSP strategises a phased increase in budgetary allocations.<sup>178</sup> This is in line with the demands of, among others, Article 2(1) of the ICESCR as read with GC No. 14 of the CESCR in terms of progressive realisation of the right.<sup>179</sup> It is also clear that health is one of the key priority areas under the MPRSP. An examination of Annex 2 to the MPRSP shows that apart from education, health is apportioned the biggest funding.<sup>180</sup> These, it is submitted, are positive measures that are in line with the duty of the state to 'take steps' with a view to ensuring the progressive realisation of the right.<sup>181</sup>

(b) Weaknesses

The positive measures above notwithstanding, the MPRSP has a number of weaknesses in relation to the right to health.

Firstly, It is conspicuous that the MPRSP is not expressly based on the norms and values set out in the international law of human rights.<sup>182</sup> Its conceptualisation of health is not premised on health as a right that imposes duties on the state. As observed in the literature review, in order to comply with the human rights based approach to poverty reduction strategies, a PRSP 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 in so far as they bear upon human rights.<sup>183</sup> The MPRSP makes literally no mention of any of these instruments and the obligations thereunder. Thus, without any reference to underlying legal norms, there is a disconnect between law and policy that creates room for the state to view the MPRSP strategies as mere programmatic aspirations

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<sup>177</sup> See section 4.1(d) above.

<sup>178</sup> See n.160 above.

<sup>179</sup> See n.101 above.

<sup>180</sup> See Appendix II attached.

<sup>181</sup> See n.108 above.

<sup>182</sup> See n.45 above.

<sup>183</sup> See n. 46 above.

and not policies targeted at giving effect to legal rights.<sup>184</sup> Further, it is observable that the MPRSP does not even mention the principles of national policy enshrined in section 13 of the constitution that are supposed to be the overarching framework guiding government's policy formulation. It is therefore submitted that the MPRSP has a major weakness in that respect.

Secondly, the MPRSP makes no reference to the concept of core minimum content of the right to health so as to ensure, at the very least, satisfaction of the minimum essential levels of the right.<sup>185</sup> Indeed, an examination of the discussion on health under Pillar 2 of the MPRSP shows that not only is this concept not mentioned, it is also not given any implied effect. Thus for instance, the MPRSP does not state that every person is entitled to primary health care 'as of right'. As demonstrated above, the right to primary health care is non-derogable.<sup>186</sup> Thus, the MPRSP, in its analysis of issues, ought to have clearly borne this fact out and stated the mechanisms of accountability against which the state is to be held in this respect. This is another major weakness of the MPRSP bearing in mind, as Mzikenge-Chirwa succinctly puts it, that:

For a continent characterised by widespread corruption, misallocation of resources and mismanagement, a principle requiring the state to consider provision of minimum essential levels of economic, social and cultural rights as a matter of priority is most commendable.<sup>187</sup>

It is therefore submitted that the MPRSP lacks conceptual reasonableness under the ***Grootboom*** test in this regard.

Another weakness of the MPRSP relates to the strategies that it puts in place with a view to addressing the challenge of insufficiency of finances. As shown above, the MPRSP states that many Malawians can afford to contribute better health care and uses this as a justification to introduce user-fees in hospitals under the EHP as

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<sup>184</sup> See n.44 above

<sup>185</sup> See n. 109 above.

<sup>186</sup> See n.111 above.

<sup>187</sup> As in n.147 above.

part of a cost-sharing mechanism.<sup>188</sup> It must be stressed here that hitherto, essential healthcare services in Malawi have remained free for everyone at entry-point, with the exception that those who have needed more expensive forms of healthcare have had the option to access the 'private wards' of the hospitals.<sup>189</sup> It is submitted that statements in the MPRSP like:

operational research will guide the decision as to whether the EHP will be free at the point of entry, or subject to user fees charges with an exemption mechanism for poor or targeted groups;<sup>190</sup>

and that development of the rest of the non-EHP health sector should be left to private sources of finance,<sup>191</sup> can only be construed as a resurrection through the back-door of the failed SAPs. It must be recalled that the cost-sharing scheme in social services is an essential component of SAPs.<sup>192</sup>

This study argues that the statement that many Malawians can afford to contribute finances towards better health care goes against the weight of evidence. The MPRSP itself concedes that poverty in the country is widespread, deep and severe, and that as at 1998, 65.3% of the population were poor.<sup>193</sup> The poor were categorised as those whose consumption of basic needs was below MK 10.47 (US\$ 0.34) per day.<sup>194</sup> It goes without saying that this is a shocking indicator. Worse still, successive indicators of the UNDP HDR indicate that the level of poverty in the country has since deepened.<sup>195</sup> It is therefore submitted that this statement in the MPRSP is just one of the subtle ways of rolling-back the role of the state in the health sector and re-introducing the SAPs with a view to impressing the BWIs.

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<sup>188</sup> See n.169 above.

<sup>189</sup> Partnerships for Health Reform, *Health Reform Policy Issues in Malawi: A Rapid Assessment* (1998), 16.

<sup>190</sup> See n. 170 above.

<sup>191</sup> See n. 125 above.

<sup>192</sup> As in n. 29 above.

<sup>193</sup> MPRSP, 5.

<sup>194</sup> As in n.193 above.

<sup>195</sup> See UNDP 2004 HDR, 142, 146.

Studies in other LDCs have shown that whilst the idea of cost-sharing through user fees is possible in the developed or middle-income world, this is not practicable in LDCs.<sup>196</sup> The studies demonstrate that the impact of user-fees is actually minimal on the health budget expenditure and that the fees, however minimal, substantially discourage people from seeking health services in the formal sector.<sup>197</sup>

This study argues that such a policy is inconsistent with the duty of the state to ensure economic accessibility and availability of health services as expounded by the CESCRC as it will have a negative impact on the affordability of health services. It is further submitted that this measure is likely to lead to a breach of the obligation of the state to respect the right to health by taking away entitlements that were already being enjoyed under the pre-existing free essential healthcare services policy.<sup>198</sup> It is also inconsistent with the duty to fulfil in that instead of moving its machinery towards the actual realisation of the right through the direct provision of basic health needs or resources,<sup>199</sup> the state is proposing to shirk this obligation.

Another weakness of the MPRSP is that it does not place emphasis on preventive healthcare strategies including the critical role of public health education. Such a strategy is very essential and constitutes one of the measures of discharging the duty of the state to promote the right to health through raising awareness of healthcare issues.<sup>200</sup> Emphasis on public health education ensures information accessibility of health information by the poor that is an essential element of the right to health.

Further, the MPRSP falls short of proposing the enactment of legislation with a view to stressing that health is a right and clearly identifying who the duty bearers and the claim-holders are in that regard, as well as clearly stating their respective roles.

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<sup>196</sup> See R.K Quaye, *Paying for Health Services in East Africa: A Research Note* (2004).

<sup>197</sup> See Quaye, (n.196 above), 97,99.

<sup>198</sup> See n. 96 above.

<sup>199</sup> See n. 100 above.

<sup>200</sup> See n. 99 above.

## 5.2 The PEAP and the right to health in Uganda

### 5.2.1 Constitutional measures

In Uganda, the right to health finds expression as a non-binding aspiration in the national objectives and directive principles of national policy. Principle XIV(b) provides in part, that the state shall ensure that

all Ugandans enjoy rights and opportunities and access to education, health services, clean and safe water, work, decent shelter, adequate clothing, food security and pension and retirement benefits.

Further, principle XX states that ‘the state shall take all practical measures to ensure the provision of medical services to the population.’

In terms of the bill of rights, the right to health is not mentioned at all.

It is submitted though, that Article 45 of the Uganda constitution that states that the rights and freedoms specifically mentioned in the bill of rights are not to be regarded as excluding others not specifically mentioned, should be read to imply into the constitution the full scope of all economic and social rights including the right to health.

It follows therefore that, just like Malawi, Uganda is bound by its own constitution as well as international law, to justify its policies in accordance with its responsibilities on this right. Thus similarly, the content of the PEAP must accordingly be justified in respect of this right.

### 5.2.2 Health under the PEAP

The PEAP recognises health as one of the central concerns for the poor and emphasises the need to effectively address it.<sup>201</sup>Health is specifically addressed

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<sup>201</sup> PEAP, 8.

under Pillar 4 on actions which directly improve the quality of life of the poor.<sup>202</sup> It is also addressed in part 2 of the PEAP that addresses the national vision and overall goals.<sup>203</sup> Quite unlike the MPRSP, the PEAP paints a rather positive picture of the trend of health indicators in the country. Indications from the PEAP, as corroborated by the UNDP HDR 2004 are that life expectancy has been on the increase throughout the past decade, and that infant, under-five as well as maternal mortality rates have been on the decrease.<sup>204</sup>

The PEAP still recognises though, that the indicators are still very poor and hence the need for a special focus on the health sector in the PEAP.<sup>205</sup> It also recognises the specific challenges posed by the HIV/AIDS pandemic and quite unlike the Malawi situation, indicators are that the pandemic has at least been contained and that infection rates are going down.<sup>206</sup> It stresses the link between education, access to information and health, especially in the primary healthcare sector.<sup>207</sup> It thus emphasises the enormous importance of sending out simple health messages to the public as a way of addressing the wider issue of health.<sup>208</sup>

Just like in the MPRSP, the PEAP frames the Minimum Health Package (MHP) to address the poverty related health challenges that the country faces.<sup>209</sup> However, quite unlike the MPRSP that clearly identifies the specific challenges being faced and the respective strategies under the EHP to address them, the PEAP outlines the challenges very briefly.<sup>210</sup> It states that the MHP seeks to improve service delivery through better remuneration and training, better infrastructure, and better

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<sup>202</sup> PEAP, 13.

<sup>203</sup> PEAP, 10.

<sup>204</sup> PEAP, 10. Also UNDP HDR 2004, 141.

<sup>205</sup> PEAP, (as in n.203 above).

<sup>206</sup> PEAP, (as in n.156 above).

<sup>207</sup> PEAP, 10, 11.

<sup>208</sup> PEAP, 12.

<sup>209</sup> The MHP is described as a co-ordinating framework of the new health strategic plan. (See PEAP,17)

<sup>210</sup> Contrast with MPRSP, (See n.153 above).

accountability to consumers.<sup>211</sup> It also identifies the pro-poor implementation of cost-recovery measures through the successful identification of targeting mechanisms.<sup>212</sup>

### 5.2.3 Critique of measures adopted

#### (a) Positive measures

The PEAP, just like the MPRSP, clearly identifies health as a central concern in the poverty reduction drive.<sup>213</sup> This is in line with the position of the CESCR that has stated that poverty reduction is one of the central concerns in the discourse on economic, social and cultural rights.<sup>214</sup> By giving health specific attention in the PEAP, the government of Uganda is, at least in part, complying with its obligation to take steps through, at a minimum, the adoption of policies aimed at progressively achieving the full realisation of the right.<sup>215</sup>

Further, just like the MPRSP, the PEAP strategises a phased increase in budget allocations to the health sector that is in line with the country's obligations.<sup>216</sup> It is also clear that the health sector has been prioritised in terms of quantum of funding than most areas that do not directly deal with the provision of social services.<sup>217</sup> This is a positive measure in line with the duty of the state to fulfil the right to health.

Furthermore, and quite unlike the MPRSP, the PEAP identifies public education with a view to enhance public awareness of necessary health issues as a key

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<sup>211</sup> PEAP, 17.

<sup>212</sup> PEAP, (as in n.211 above).

<sup>213</sup> See n. 201 above.

<sup>214</sup> See n.16 above.

<sup>215</sup> See n. 108 above.

<sup>216</sup> See Appendix I attached.

<sup>217</sup> As in n.216 above.

strategy in ensuring the enhancement of good health in the country.<sup>218</sup> This is very critical and in compliance with the duty to promote the right to health.<sup>219</sup>

(b) Weaknesses

The PEAP has a number of weaknesses as well in relation to the right to health.

Firstly, just like the MPRSP, the PEAP is not expressly premised on the norms and values of international human rights law.<sup>220</sup> The measures adopted under the PEAP are not conceived as legal obligations but rather, as programmatic aspirations.<sup>221</sup> Lack of an expressed sense of legal obligation leaves the state to view health, and indeed all other areas covered under the PRSP as pure matters of policy that may be disregarded without legal sanction. It is interesting that the PEAP does not even mention the constitutional national objectives and directive principles of national policy. One would have thought that these should have provided the overarching framework within which the PEAP would be formulated. Thus, just like the MPRSP, the PEAP has a major weakness in this regard.

Secondly, the PEAP similarly makes neither express reference of Uganda's core minimum obligations as identified by the CESCR, nor is there any implied provision for the same. The conceptual weakness of the PEAP in this respect is thus as discussed in relation to the MPRSP.<sup>222</sup>

Further, again as mirrored in the Malawi experience, the PEAP makes an implied suggestion of the introduction of user fees for essential primary healthcare.<sup>223</sup> By stating that 'the pro-poor implementation of cost-recovery will require successful

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<sup>218</sup> See notes 207, 208 above.

<sup>219</sup> See n. 99 above.

<sup>220</sup> See n. 45 above.

<sup>221</sup> See n.44 above.

<sup>222</sup> See n. 185 above.

<sup>223</sup> The MPRSP though, expressly mentions the introduction of user fees. See n.190 above.

identification of targeting mechanisms',<sup>224</sup> it is apparent that the PEAP is impliedly proposing introduction of user fees. This rings in consonance with the language of introduction of user fees 'with an exemption mechanism for the poor or targeted groups' as used in the MPRSP.<sup>225</sup> Thus the argument raised under the MPRSP discussion in this respect similarly applies to the PEAP. In the case of Uganda, the situation is probably even worse because the country once introduced and later abolished targeted user fees in public hospitals after observing the disadvantages of such fees.<sup>226</sup> This PEAP proposal thus comes notwithstanding the studies discussed above that show that user fees in public hospitals in LDCs have negative consequences on access to healthcare.<sup>227</sup> It is submitted that the subtle proposed re-introduction of this SAPs measure is inconsistent with Uganda's obligations to respect and fulfil the right as discussed above.

Lastly, the PEAP similarly falls short of making legislative proposals with a view to stressing that health is a right and clearly identifying who the duty bearers and the claim-holders are in that regard, as well as clearly stating their respective roles

### **5.3 PRSPs and the right to housing in Malawi and Uganda**

#### **5.3.1 Constitutional measures**

There is a sharp contrast in the manner in which the right to housing is provided for under the Malawian and Ugandan constitutions. Whereas in Malawi housing is not even mentioned in the principles of national policy, it finds expression as a binding right in section 30(2) of the bill of rights.<sup>228</sup> In Uganda on the other hand, the right finds no mention in the bill of rights whereas it is provided for in Principle XIV(b) of the national objectives and directive principles of national policy.<sup>229</sup>

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<sup>224</sup> PEAP, 17.

<sup>225</sup> See n. 122 above.

<sup>226</sup> Quaye, (n. 196 above), 98-100

<sup>227</sup> Quaye, (as in n.226 above).

<sup>228</sup> See section 5.1.1 above.

<sup>229</sup> See section 5.2.1 above.

It is submitted however that the clarity with which this right is covered under these two constitutions is substantially the same as that in relation to the right to health as discussed above, particularly in view of the fact that Article 45 of the Uganda constitution indirectly guarantees the right.<sup>230</sup>

### 5.3.2 Housing under the MPRSP and PEAP

The MPRSP does not address housing as a poverty issue. The closest that it comes to is to address issues of access to land.<sup>231</sup> An examination of these land issues though reveals that they are discussed in the context of agriculture and not housing.<sup>232</sup> Similarly the PEAP does not address the issue of housing in any serious way. It merely mentions it in passing, stating that 'housing is a private sector responsibility, but the state can encourage the availability of low cost housing'.<sup>233</sup>

### 5.3.3 A critique of the MPRSP and PEAP approach to housing

Shelter is indisputably one of the basic needs of humanity.<sup>234</sup> It has been argued that as a basic need, housing should be placed along the same priority lines as education and health.<sup>235</sup> Indeed, the CESCR has emphatically stated that the right to housing is of central importance to the enjoyment of all economic, social and cultural rights.<sup>236</sup>

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<sup>230</sup> See section 5.2.1 above.

<sup>231</sup> MPRSP, 65, 67.

<sup>232</sup> MPRSP, Pillar III, 65,67.

<sup>233</sup> PEAP, 17.

<sup>234</sup> See A. Nuwagaba, *The Impact of Macro-adjustment Programmes on Housing Investment in Kampala City, Uganda: Shelter Implications for the Urban Poor*, <<http://www.ajol.info>> (accessed on 22 September 2004).

<sup>235</sup> See M. Kasekende in 'Summit Communications', *Cheaper and Better Housing is a Priority*, <<http://www.summitreports.com/uganda/housing.htm>> (accessed on 22 September 2004).

<sup>236</sup> GC No. 4, para 1.

Thus the fact that the PRSPs of Malawi and Uganda have not addressed the issue of housing in any meaningful way is as surprising as it is disturbing. It goes without saying that poor housing in the two countries is rampant and lack of adequate housing has severe ripple implications on the enjoyment of other rights including the right to health.<sup>237</sup> In both countries, problems of lack of access to safe drinking water, energy for cooking, lighting, washing facilities and refuse disposal facilities among others are very commonplace in households.<sup>238</sup> Affordability of housing, particularly in urban areas such as Blantyre and Lilongwe in Malawi and Kampala in Uganda is another big problem that affects the poor quite severely. Nuwagaba argues that:

The gist is that ...the orthodox Structural Adjustment Programme (SAP) methodology...has ably nurtured the seeds so as to create formidable problems. These already threaten the very survival of the urban poor and urgent intervention to defuse them is imperative. Such interventions should aim ...to identify the urban vulnerable groups, especially the poor, and design strategies directed at cushioning them from 'shocks' as a result of adjustment programmes.<sup>239</sup>

Problems relating to affordability extend from arbitrary rent increases to related costs such as those for basic services like water, and energy for lighting and cooking.<sup>240</sup> Related to this is the problem of lack of security of tenure from unreasonable evictions that is common among the poor.<sup>241</sup> Accessibility to housing for vulnerable groups such as orphaned street children and those who are in

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<sup>237</sup> See Summit Communications, (n.235 above); Nuwagaba (n.234 above); Also see Benson et al, *Malawi: An Atlas for Social Statistics* (2002) 67-74; Malawi National Statistical Office: *1998 Population and Housing Census*, <[http://www.nso.malawi.net/data\\_online/demography/census\\_98/census\\_results.html](http://www.nso.malawi.net/data_online/demography/census_98/census_results.html)> (accessed on 4 September 2004).

<sup>238</sup> As in n. 237 above.

<sup>239</sup> Nuwagaba, (n.234 above).

<sup>240</sup> See The Monitor, *Why Ugandans Don't Take Housing Loans*, <<http://allafrica.com/stories/200409200349.html>>, (accessed on 22 September 2004).

<sup>241</sup> As in n.240 above.

extreme poverty and have no habitable shelters is yet another problem. There is a growing problem of homeless street children in both countries.<sup>242</sup>

The foregoing problems are certainly key poverty issues. Malawi and Uganda are therefore under an obligation to provide clear plans in their PRSPs on how these issues are to be addressed. For instance, the CDESCR states that steps should be taken to ensure that housing related costs are, in general, commensurate with income levels. It states that subsidies should be provided to those unable to find affordable housing and that forms and levels of housing finance should reflect housing needs. Further, in accordance with the principle of affordability, the right to housing entails that tenants should be protected from unreasonable rent levels or increases as well as illegal evictions. In respect of people with physical disability challenges, the state is under an obligation to ensure that planning laws and regulations that ensure that housing structures comply with their special needs are in place.<sup>243</sup>

These are measures that would directly address most of the problems identified above. It is submitted that these are issues that Malawi and Uganda ought to have clearly outlined in their PRSPs.

Further, minimum core content obligations in respect of the right to housing require the state to take immediate interim measures of relief for persons in desperate need such as the homeless. By not making provision for immediate strategies to address the problems facing those in desperate need, such as homeless street children, the PRSPs of Malawi and Uganda are to that extent unreasonable in conception and fall below the minimum requisites of the right to housing.

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<sup>242</sup> In Uganda, this problem is compounded by the massive internal displacements due to the conflict in the north. According to UNICEF, 'some percent of the 1.6 million displaced people in northern Uganda are women and children. Homeless and Struggling to survive, many are subjected to sexual violence and other forms of exploitation.' See Bellamy, *Calls on LRA to Release Children* <<http://www.reliefweb.int/w/rwb.nsf>>. (accessed on 7 October 2004).

<sup>243</sup> See section 4.2 above

## 5.4 Conclusion

Although the PRSPs of Malawi and Uganda have made provision for the improvement of health services and the general health of their people, which is in accord with their obligation to take steps to ensure the progressive realisation of this right, there are a number of evident weaknesses. For instance, the Malawi PRSP does not place as much emphasis on preventive health care services, especially the raising of awareness through dissemination of health information that is in accordance with the duty of the state to promote the right. The Ugandan PRSP falls short of addressing the separate essential elements of the right to health, viz; availability, accessibility, acceptability and quality. It addresses health in a very brief way. This is inconsistent with the duty of the state to set out clear and elaborate strategies aimed at ensuring that the right to health, in all its essential elements, is appropriately addressed. Further, this chapter has shown that the PRSPs of the two countries do not explicitly place health as a human rights issue, needless to mention that they do not identify the essential core minimum areas that must be addressed with immediacy. The discussion further shows that the PRSPs make no legislative proposals. Article 2(1) of the ICESCR is explicit in emphasising that the measures that states are to adopt in ensuring the progressive realisation of economic and social rights should include legislative ones. Thus it is submitted that the PRSPs of the two countries fall far short of the requisites of the right to health.

With respect to the right to housing, notwithstanding its critical importance, the two PRSPs do not address it in any meaningful way. The slight mention that housing receives under the PEAP for instance, simply states that housing is a concern for the private sector. This is typically characteristic of the SAPs approach that continues to loom large notwithstanding the PRSPs. As a result of their silence on strategies to effectuate the full realisation of the right to housing, and worse still relegating the issue to the private sector, housing problems are on the increase, particularly for the urban poor who are hard hit by the liberalisation of the housing sector. Thus, critical human rights issues of security of tenure, particularly for urban tenants, availability of services essential for housing with the concomitant aspect of affordability and accessibility are left unaddressed by the two states.

Further, the two PRSPs make no provision for those in desperate need for shelter such as the extreme homeless poor and homeless street children, as stated in the ***Grootboom*** decision. This is a serious omission in the PRSPs.

In light of the foregoing, it is submitted that the two PRSPs are not reasonable in conception to the extent that they fail to address a number of critical issues in relation to the rights to health and housing.

## CHAPTER 6

### 6. CONCLUSION AND RECOMMENDATIONS

Poverty reduction is not only a lofty ideal. It is a critical process aimed at achieving the full enjoyment of economic and social rights. It is therefore essential that policy documents such as PRSPs have to be firmly premised on human rights norms.

On a broader level, there is need that they define all people subject to the jurisdiction of the state, particularly the poor, as the claim-holders and the state as the duty-bearer. The specific strategies adopted within the PRSPs must be more specific in identifying the duty bearers and the claim holders.

This study has demonstrated that the PRSPs of Malawi and Uganda, whilst they may in some measure be viewed as tools indirectly targeted at the realisation of economic and social rights, such as the right to health, are lacking in many respects. They are not explicitly premised on human rights norms and fall short of addressing all the necessary essential elements of the rights. In some instances, they propose retrogressive measures from an economic and social rights perspective within the framework of LDCs, such as their proposals to introduce cost sharing user-fees in primary health care.

Further, in some areas such as housing, they are either completely silent or, worse still, propose the complete rolling-back of the state through relegation of the housing responsibility to the private sector and privatising institutions that provide public housing. This is characteristic of the SAPs that, notwithstanding the introduction of the PRSPs through the PRGF, continue to reign supreme. The involvement of the BWIs in the PRSP process, both directly and indirectly, has had very negative implications in not only impairing the sovereignty and autonomy of the LDCs concerned, but also, through the timelines attached to accessing debt relief under the HIPC initiative, negatively affected the time available for genuine public participation. Public participation is important for a number of reasons. Among other things, it is a variant of the exercise by peoples of their right to self-

determination through involvement in the determination of their economic and political destiny. Further, public participation instils a sense of ownership that is critical to elicit the will to faithfully implement the strategies.

This discussion shows that whilst in the case of Uganda the adoption of the PEAP as a PRSP was the culmination of both an internal drive as well as pressure from the BWIs, the situation in Malawi, although reflecting a pre-existing will through the adoption of such policies as the PAP, was largely dictated by the demands of the BWIs. These attributes do not augur well with the need for PRSPs to act as effective tools for the full realisation of human rights. The fact that they are not readily accessible to many people, for instance by being available in English only, is an impediment to peoples empowerment as they cannot make informed claims on the state premised on the PRSPs. Further, the fact that PRSPs are not put to the legislature for debate and adoption reduces their legitimacy and authoritative status.

Whilst advocating for the adoption of a human rights based approach to poverty reduction strategies, this study reckons that there is an apparent tension between theory and practice of human rights and theory and practice of public expenditure management. Thus, generally, rights advocates tend to focus more on the claims of the individual on the state whilst public expenditure authorities generally place more emphasis on moderation and control on financial claims on the state.<sup>244</sup>

This study is not just about drawing a theoretical paradigm within which to locate poverty and human rights, it is geared towards influencing policy makers to adopt a well-balanced integrative and practical approach. Such an approach should highlight the value of human rights entitlements as an important lever in pro-poor change, whilst at the same time ensuring the sustenance of a measure of flexibility that is necessary for policy change and prioritisation within a democratic framework. This study therefore makes the following specific recommendations:

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<sup>244</sup> Norton, A & Elson, D *What's Behind the Budget? Politics, Rights and Accountability in the Budget Process*, ODI Paper (2002) 3.

- The PRSPs of Malawi and Uganda should be revised to make explicit reference to the underlying human rights norms that bind the two countries both at the international as well as domestic levels as their basic foundation. This is important to ensure that there is a clear appreciation on the part of the state that poverty reduction is a legal duty on the part of the state and not merely a programmatic aspiration.
- To ensure that no important areas of economic and social rights are left unaddressed, the respective PRSPs should make reference to specific rights as provided for under the ICESCR and the ACHPR. Further, instead of merely subjecting the PRSPs to the scrutiny of the BWIs, the PRSPs should also be sent to the OHCHR for comment within the spirit of international co-operation and assistance as envisaged under Article 2(1) of the ICESCR.
- PRSPs should make provision for the adoption of legislation that confers statutory entitlements to claim-holders, whilst at the same time prudently striking a careful balance to ensure that the system does not become overloaded with entitlements that would make expenditures either get out of hand altogether, or become so rigid that public policy loses the capacity to respond to new policy priorities.<sup>245</sup> This could be done by, for instance, drawing lessons from South Africa and India where economic and social rights have been enforced through the courts.
- There is need for all organs of government to be involved in the process of adopting PRSPs. Thus, drawing lessons from South Africa for instance where the constitutional court had to vet the extent to which the constitution effectively catered for all fundamental rights including economic and social

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<sup>245</sup> See Norton & Elson (as in n.244 above).

rights, there is need for the judiciary to be involved in assessing the extent to which the PRSPs make provision for economic and social rights.<sup>246</sup>

- There is need for the BWIs to adopt a more hands-off approach in the drawing of the respective countries PRSPs to avoid impairing the national sovereignty and autonomy of LDCs, and also to ensure that there is a true sense of national ownership. At the same time, this study recommends that in light of the human rights obligations that the BWIs have in the area of economic and social rights, the only conditionalities they should impose should be those that relate to furthering the progressive realisation of human rights, particularly in situations where a policy adopted clearly derogates from the state's human rights responsibilities. These conditionalities would be important as part of a system to ensure that states comply with their human rights responsibilities. As such conditionalities would be clearly premised on established legal norms, it would be possible for states to challenge the decision of the BWIs in the International Court of Justice where the conditionalities are deemed unjust.

It is submitted that this approach would add more weight to the role played by PRSPs in advancing economic and social rights.

***(Word Count- Main body including footnotes: 17, 992).***

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<sup>246</sup> See *Ex parte Chairperson of the Constitutional Assembly: in re Certification of the Constitution of the Republic of South Africa* 1996 1996 (4) SA 744 (CC).

## 7. APPENDIX I

### Summary of Medium Term Expenditure Budget Framework: Tables

Table1: Sub-Totals for the Health Sector: 1999/2000 Approved Budget Estimates

	Wage	Non-Wage Recurrent	Domestic Development	Donor Projects	Total Excluding Donors	Total Including Donors
Health Sub-Total		36.77	14.22	114.67	82.92	197.59
GRAND TOTAL		590.39	283.67	518.97	1,281.43	1,800.39
Health as a Percentage of Grand Total		6.23%	5.01%	22.10%	6.47%	10.97%

Source of information: PEAP, Annex Table 3, pp 55, 58.

Table2: Sub-Totals for the Health Sector: 2000/2001 Approved Budget Estimates

	Wage	Non-Wage Recurrent	Domestic Development	Donor Projects	Total Excluding Donors	Total Including Donors
Health Sub-Total	33.52	56.93	11.55	124.76	102.00	226.77
GRAND TOTAL	450.84	653.85	341.51	573.09	1,446.19	2,019.29
Health as a Percentage of Grand Total	7.44%	8.71%	3.38%	21.77%	7.05%	11.23%

Source of information: PEAP, Annex Table 3, pp 55, 58.

Table3: Sub-Totals for the Health Sector: 2001/2002 Approved Budget Estimates

	Wage	Non-Wage Recurrent	Domestic Development	Donor Projects	Total Excluding Donors	Total Including Donors
Health Sub-Total	36.88	76.35	12.22	135.24	125.45	260.69
GRAND TOTAL	500.59	736.67	366.02	623.19	1,603.28	2,226.47
Health as a Percentage of Grand Total	7.37%	10.36%	3.34%	21.70%	7.83%	11.71%

Source of information: PEAP, Annex Table 3, pp 62, 67.

Table4: Sub-Totals for the Health Sector: 2002/2003 Approved Budget Estimates

	Wage	Non-Wage Recurrent	Domestic Development	Donor Projects	Total Excluding Donors	Total Including Donors
Health Sub-Total	40.90	98.95	13.73	146.06	153.39	299.45
GRAND TOTAL	565.20	809.33	414.63	673.04	1,789.16	2,462.20
Health as a Percentage of Grand Total	7.24%	12.23%	3.31%	21.70%	8.86%	12.16%

Source of information: PEAP, Annex Table 3, pp 62, 67.

- N/B:**
- 1. Tables designed by author.**
  - 2. Percentages calculated by author.**
  - 3. No figures available for 2003/2004 as PEAP is under Review.**
  - 4. Amounts in billions of Uganda Shillings**

**8. APPENDIX 2**

**Summary of Medium Term Expenditure Budget Framework: Table**

Table1: Sub-Totals for the Health Sector: 2002/2003 Projected Budget Estimates

	Improve Quality of Essential Health Care	Improve Access to and Equity of Essential Health Care	Strengthen Management and Financing of Essential Health Care
Sub-Total	3,263.18	459.67	845.71
Health Sector Sub-Total	4568.55		
GRAND TOTAL	41,332.18		
Health Sub-Total as Percentage of Grand Total.	11.05%		

Table2: Sub-Totals for the Health Sector: 2003/2004 Projected Budget Estimates

	Improve Quality of Essential Health Care	Improve Access to and Equity of Essential Health Care	Strengthen Management and Financing of Essential Health Care
Sub-Total	3673.17	459.67	971.91
Health Sector Sub-Total	5104.74		
GRAND TOTAL	43975.68		
Health Sub-Total as Percentage of Grand Total.	11.61%		

Table3: Sub-Totals for the Health Sector: 2004/2005 Projected Budget Estimates

	Improve Quality of Essential Health Care	Improve Access to and Equity of Essential Health Care	Strengthen Management and Financing of Essential Health Care
Sub-Total	4046.59	511.67	1104.91
Health Sector Sub-Total	5663.16		
GRAND TOTAL	46269.62		
Health Sub-Total as Percentage of Grand Total.	12.24%		

Source of information: MPRSP Annex 2, pp 45, 47.

- N/B:**
- 1. Tables designed by author.**
  - 2. Percentages calculated by author.**
  - 3. Amounts in Millions of Malawi Kwacha**

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