From basic needs to basic rights

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Development theory has evolved from a concern with needs to support for rights. But human rights must now be redefined from the perspective of women’s needs.

It could be argued that, once the basic needs of all humans are recognised — including the basic needs of all female humans — the peoples of this planet will be nearer to defining what is to be understood by basic rights. Following this, we could understand basic rights as those rights which stem from people’s basic needs, whether or not they are framed in legal terms. If we accept this, it would seem that basic rights can be achieved only after there is an understanding that basic rights amount to more than legal rights; rather, basic rights refer to all human needs.

As a feminist lawyer, I was very pleased to write an article on this theme, and to accept the challenge of reconceptualising human rights — everyone’s human rights — from the perspective of women’s needs. Although I have lectured extensively on the male bias in the notion of human rights, I have not been involved in any narrowly-defined way in ‘development’ issues, except in so far as to have stated over and over again that there cannot be sustainable human development if male-biased administration of justice systems are left intact in developing as well as in the so-called developed nations. This is because, if the administration of justice is male-biased, women’s human-rights violations remain unpunished. If women are understood as persons ‘entitled’ to the benefits of development, one of which is the right to a non-sexist administration of justice, this necessarily implies that violations of women’s rights should and will not go systematically unpunished. The links need to be made between development and the concept of justice for all, regardless of sex or other differentiation.

To reach a practical everyday recognition of women and girls as humans, and realise their rights, we must understand and recognise the basic needs of female humans as ones which society has an obligation to satisfy. It must be recognised that the shift in development thinking from meeting basic needs to asserting basic rights is a long process, promoted by many women making many links all over the world: firstly linking women’s needs to development, then women’s rights to development, later women’s rights to human rights, and now women’s needs to human rights.

As an outsider with regard to what was known as ‘Women in Development’ (WID), my impression is that this framework did not address women’s inequality and lack of
power in relation to men; worse still, that the ‘basic needs’ of women were understood from an androcentric perspective to include only those needs which stem from the so-called ‘practical interests’ (Molynex 1981) of women such as food, clothing, housing, and water. ‘Basic needs’ were not understood to include the so-called ‘strategic interests’ of women, such as freedom from gender violence, physical integrity, and sexual and reproductive freedom. This narrow concept of ‘basic needs’ was the governing principle in development work for many years, and continues to be a strong influence today.

Failures of the needs approach

WID interventions which focused on women’s marginalisation by attempting to meet their practical needs did not challenge those structures which fundamentally impede women’s participation inhuman society on an equal basis with men. In a world where men’s needs are conflated with human needs, we must be aware that many of women’s so-called ‘needs’ arise from their subordinate position to men; and that it is this position which needs to change. We must be suspicious of the notion that women have special or additional needs: women need to be protected, women need childcare benefits, women need alimony, women need development aid, and so on. What has not been said often enough is that women’s primary need is for freedom from subordination to men.

If subordination to men is seen as the underlying reason for women’s immediate, practical needs, then these needs can be seen in a new light: for example, women would not ‘need’ childcare if it were accepted that both parents had equal responsibility for the care of their children. Similarly, women would not ‘need’ alimony if they were paid fair salaries which did not discriminate on grounds of sex. Women might not ‘need’ development aid if more women were in decision-making positions so that development policies and structural adjustment programmes did not depend on increasing amounts of unpaid labour performed by women. Peace and equality cannot be achieved if women have yet to be treated as fully ‘human’ in our societies, being seen instead as an aberration from the norm.

Understanding the basic needs of women, as defined by women, will help us better to define human rights as rights pertaining to women as well as men, and to enforce women’s rights as human rights. In this way, we may come closer to establishing true democracies and sustainable development. After years of working from a needs approach in development, especially when thinking about women in development, we are now embarking on a human-rights-orientated approach to development for all. A human-rights approach to development would mean that women will no longer be seen as ‘beneficiaries’ of development policies, but as persons entitled to the benefits of development. This approach means that development has to be redefined to include the elimination of discrimination against women.

The human-rights approach implies the recognition that human rights are possessed by all humans for no other reason than because we are human beings. In every culture today, female humans of all ages are less valued than male humans, yet even in those cultures or societies in which girls and women are undervalued, in most cases the principle of women’s humanity is not denied, even while some of their human rights are denied in practice. But since human rights implicitly convey an idea of individual dignity, recognising the principle of women’s human rights will eventually lead to female humans being valued as individuals.
Developing a rights agenda

In 1985, the dominant paradigm for discussing women’s issues was still the WID paradigm. Nevertheless, a small women’s rights movement went to the Third UN World Conference on Women, held in Nairobi, with an agenda of exploring development within a rights framework. In this context, it is interesting to remember that the main themes in the 1975 and 1980 Women’s Conferences in Mexico and Copenhagen were ‘Development’ and ‘Peace’. In Nairobi, the main theme was the remaining principle of the three which had been chosen as a framework for the UN Decade for Women, 1975-85: equality. This theme was very helpful for the introduction of a rights approach in Nairobi. Timidly, women began to discuss what ‘equality before the law’ should mean to women. They knew that equality could not mean that women should be treated as men, but that women should be treated in a non-discriminatory way.

In Nairobi, the issue of violence against women was linked to development for the first time. Increasingly since then, women have demanded that governments do something to stop this violence, and have seen their need for protection from this violence as a right which should be recognised in law. In 1990, Roxana Carillo, a Peruvian feminist, wrote her ground-breaking paper, ‘Violence Against Women: an Obstacle to Development’, demonstrating the social and economic costs of gender violence to society. By 1993, when the UN Conference on Human Rights took place in Vienna, awareness of women’s human rights had become more widespread. With the impetus provided by the Vienna Conference, especially the Global Campaign for Women’s Human Rights, the focus of the women’s movement shifted to human rights.

Many say that the problem with this focus is that it emphasises civil and political rights. I do not agree with this view. In Vienna, the women’s caucus paper — the lobbying document produced by the women’s caucus at the NGO Forum — emphasises the indivisibility and inter-relationship of economic, social, cultural, civil, and political rights. It also urges the Conference to recognise that ‘human rights’, true democracy, and peace are incompatible with poverty and exploitation. Furthermore, the paper called upon the Conference to consider:

- measures to bring about an end to the policies of structural adjustment which lead to violations of economic, social and cultural rights generally and have a particularly severe and discriminatory impact on women;
- means of achieving sustainable development in all countries and the inclusion of women from all sectors in the development process;
- procedures to implement socio-economic rights, such as an optional protocol allowing for individual complaints to the UN Covenant on Economic, Social and Cultural Rights; and to ensure the accountability of States to undertake affirmative measures to guarantee these rights.

These are only some of the socio-economic and cultural issues cited on the caucus paper. From the evidence of this paper, it cannot be said that women focused too narrowly on political and civil rights. True, the Vienna Declaration and Programme of Action did little to address women’s economic, social, and cultural rights, but that was not because the focus of the women’s movement was on political and civil rights. That was because historically, narrowly-defined civil and political rights have always been recognised and implemented at an earlier stage than those rights which have been described as social, economic, and cultural rights. In my view, it was the Vienna Conference that failed to pay sufficient attention to women’s voices.
Indivisible rights

Many arguments have been invoked to stress the different nature of civil and political rights on the one hand, and economic, social, and cultural rights on the other. I will analyse just one of these, to show the arbitrariness of these arguments as well as of the divide itself. This is the claim that political and civil rights are ‘real’ rights i.e. they are legally enforceable or justiciable, while social, economic, and cultural rights are not describable in legal terms, and cannot be enforced in a court of law. According to this argument, economic policies of governments are not concerned with rights. From the perspective of women’s needs, this argument is based on false premises. Most women cannot enforce their political and civil rights in a court of law, because their legal or economic status does not permit them to do so. So, from the perspective of women’s needs, there is no difference in legal status between political and economic rights: neither is enforceable.

The realities of women’s lives do not permit a distinction between one set of rights and the other. From the perspective of women’s needs it is easier to see the indivisibility and inter-connectedness of these two sets of rights. From the perspective of women’s lives, both must be redefined in ways which make them legally enforceable.

The ‘universality’ of human rights

Even when many insist that the concept of human rights is broader than the legal structures which embody only some aspects of these rights (see for instance Smart 1989), it cannot be denied that the legal component is predominant. This is why it is always important to deal with the legal concept of human rights when trying to understand their nature. It can be argued that this concept is the product of a specific period of history, in a specific region: the Renaissance period in Europe; and the cultural values which are at the basis of the legal concept of human rights stem from the philosophical, political, and legal values of the Renaissance. These values have undergone, and are still undergoing, a process of transformation, as a result of revolutions and social movements.

Even when we narrow the meaning of human rights to those rights represented in law, we are not only dealing with enforcing and justifying the law; we are dealing with cultural values which stem from philosophy, politics, and religion. Values represented in law are much broader than the specific laws and judicial decisions which embody them. These ‘legal values’ are always the product of tensions within a given society, and within a group of societies, and are therefore also constantly undergoing transformation.

One such transformation occurred in the eighteenth century, when the American and French Revolutions set the seal on how the principles of equality before the law, freedom of thought, human dignity, and democratic government were to be conceptualised. Because during that century the concept of equality of all was understood to include only men of the higher classes, women’s needs were not taken into account in the shaping of these principles. However, this continued into the twentieth century, and has not been seen as contradicting the ‘universality’ of rights (Tomasevski 1993).

In the nineteenth century, the needs for social justice and economic security were recognised as a result of the pressure of the social movements of that century. However, even though thousands of women participated in those movements, the concerns of men tended to predominate, so that women’s economic and social needs did not shape the newly recognised concepts of social and economic rights.
The Universal Declaration of Human Rights, 1948

On 10 December, 1948, the United Nations General Assembly proclaimed the Universal Declaration of Human Rights. For the first time in the recorded history of humanity, the rights which every individual, whatever his or her origin, can claim as a member of human society were defined and registered in an international document. The principles set out in the Declaration were called universal, but it should not be forgotten that the Declaration was proclaimed by an organisation from which many Asian and African countries were excluded, and that it was not accepted in full by all the States belonging to the General Assembly. In addition, although Article 2 of the Declaration can be interpreted as meaning that a person’s sex cannot be used to exclude him or her from the enjoyment of all the rights included in it, women’s needs and interests as women were not taken into account in the formulation of those rights.

The Declaration has been criticised by feminists from different regions for putting forward a view of human rights which is too strongly influenced by a liberal Western philosophy which stresses the rights of the individual. The Declaration makes an unclear distinction between human rights and the rights of the citizen, at a point in history when most women around the world were not considered full citizens. It also placed greater emphasis on civil and political rights, rather than on economic, social, and cultural rights.

However, whatever their historical background, the human rights listed in the Declaration have been recognised by the entire international community, and the Declaration is considered a document of undeniable political, moral, and ultimately legal authority. The Declaration is, for example, the explicit point of reference of many national constitutions and a large number of treaties, including the International Covenant on Economic, Social and Cultural Rights.

The assertion of universal human rights recognised in the 1948 Declaration was not a final achievement, but should be seen as a conquest which must be constantly renewed, especially by those groups of people who have not participated fully in the historical process of the definition of human rights. Today, even after 170 governments at the World Conference on Human Rights in Vienna in June 1993 reaffirmed the ‘solemn commitment of all States to fulfil their obligations to promote universal respect for, and observance and protection of all human rights and fundamental freedoms ...’ the universality of human rights remains fragile.

The movement from basic needs to basic rights

At community, national and regional levels, the links have been established between development and women’s knowledge and enforcement of their legal rights, and between women’s rights and human rights. At an international level the women’s movement achieved significant gains in the recognition of women’s rights, incorporated in the many Conventions on women’s rights, especially the 1979 Convention of the Elimination of All Forms of Discrimination Against Women, (CEDAW), and those gains proclaimed by the First, Second and Third UN World Conferences on Women. Building on these gains, the Global Campaign for Women’s Human Rights succeeded in making the link between women’s rights and human rights. This campaign was a significant factor in the recognition, by the 1993 World Conference on Human Rights in Vienna, that women’s rights are human rights.

In 1994, the Institute for Women, Law and Development embarked on a global two-year project entitled ‘From basic needs to basic rights’. In October 1994, the project
convened an international conference in Kuala Lumpur, which analysed the gains and future strategies in the continuing struggle for the protection and promotion of the human rights of women. One hundred women came to the consultation, representing thousands more who are convinced that a human-rights-based approach to achieving sustainable development will highlight the need for eliminating the exploitation, violence, subordination, oppression, and discrimination experienced by women in all spheres, as well as emphasising the need to eliminate other forms of violations of human rights, including racism, homophobia, and ageism.

The women present at this consultation agreed, among other things, that the absence of rights for women in one sphere could obstruct the exercise of rights they already have in another sphere. Women’s realisation of their civil and political rights is linked indivisibly with the fulfilment of their economic, social, and cultural rights. It is also recognised that women’s responsibilities in the domestic sphere limit the full exercise of their rights in the public sphere. While all are entitled to human rights, women experience particular differential obstacles to enjoying rights because of gender discrimination, in addition to other socio-economic and demographic variables such as class, ethnicity, race, rurality or urbanity, age, and region. Accordingly, women have a particular interest in ensuring state compliance with national and international norms around social, economic and political rights, so that these obstacles are removed.

Another conclusion of the conference was that women continue to be faced with the routine denial of these rights throughout the world today. This denial takes many forms, from the outright violation of fundamental rights to women to the failure by states and the international community more generally to recognise and remedy such violations when they occur. The world community’s persistent failure to respect and ensure civil, political, economic, and social rights for women not only prevents women from fully participating in the economic, social, political, and civil life of their countries, but also compromises the principles of universality and indivisibility on which the entire human-rights system is based. The worldwide mobilisation of women to claim their human rights has not only exposed the systematic and widespread denial of rights to women but also the need to reinterpret and expand these rights fully to encompass the reality of women’s lives.

Redefining human rights

We must redefine each recognised human right, and shape ‘new’ human rights from the perspective of women’s needs. But, since ‘women’s needs’ must also be defined, redefined, and recognised, we must understand the process by which needs become socially recognised. The first step in this process is that women must begin to understand that they are fully human, before they can understand their needs as human needs, and thus assert their right to have these needs met. We are on the path to this understanding, but we have yet many obstacles to surmount.

As we approach the Fourth Conference to be held in Beijing in 1995, the concept of women’s human rights faces a challenge from the forces of fundamentalism. Different constituencies, informed by specific interpretations of religion, are joining efforts to reverse what has been achieved; it is ironic that this challenge will
come during the one UN Conference which is supposed to recognise and build upon women’s dignity and rights.

Although women have not participated fully in the design and definition of those rights which today are considered human rights, it is imperative that the universality of human rights as a concept should not be questioned by the women’s movement at this particular time, when those who are questioning it are the same people who are opposed to women’s rights. Women need to understand that if rights are not considered to be universal, they will be overcome by notions of cultural and religious diversity which erode women’s human rights.

What women can do and are doing is to challenge the traditional patriarchal way of understanding human rights. For example, women are redefining equality, promoting an understanding that this concept does not require the elimination of diversity and difference. On the contrary, equality would be a meaningless and unnecessary concept if difference didn’t exist. Women are questioning the logic of dividing human rights into political and civil on the one hand, and social, economic, and cultural on the other. Rejecting this as an artificial distinction, women’s research and experience is emphasising the links between political, civil, religious, social, economic, and cultural rights, and the rights of marginalised groups.

Fortunately, in the lead-up to the Beijing Conference, and after the Vatican and other bodies have tried to deny to women those rights gained in other UN Conferences, the ‘Basic needs to basic rights’ approach has become almost as popular, as ‘Women’s rights are human rights’ was during the months before the Vienna Conference in 1993. I hope that the idea that we can go from meeting basic needs to asserting basic rights will give the women of the world the energy to continue onwards beyond the Conference to a world order in which physical, spiritual, and emotional fulfilment, justice, development, and peace are the values that society cherishes.

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Notes
1 Excerpt from Part II of the Vienna Declaration and Programme of Action translated by the author of this article from the official Spanish version.
2 Taken from the draft report written by many women at the Consultation in Kuala Lumpur 4-28 October, 1994.

References