

Women's Human Rights and Economic Policy

Introduction

In her widely read book on women and world development, Irene provides a wonderful account of the making of this field of study in the early 1970s and reminds us that 'there are many strands of women's rights bound up in the term *women in development*'.

She reminds us that after the first UN World Conference in Mexico in 1975 came a new human rights treaty, the Convention on the Elimination of All Forms of Discrimination Against Women, adopted in 1979. And she discusses the different ways that advocates, practitioners and scholars have contributed to the field. As someone who has played all three of those roles, I am very happy to have been invited to give this lecture.

Rediscovering rights

In the last 30 odd years, the framing of the issues has moved from WID to GAD to Gender Mainstreaming, and there has been a growing danger that the key moral issue of women's rights gets lost. Without a focus on women's rights, women run the risk of being treated as mere instruments, to be incorporated into development in ways that create new forms of gender inequality, even as old forms crumble. In the first years of the new century, growing number of women's organizations have seen this danger, and have begun to reframe the issues in terms of women's rights in development, for example, AWID.

Anchoring women's rights in human rights

Women's advocacy organizations concerned with development have linked with women's advocacy organizations concerned with gender-based violence to rediscover the value of the UN human rights system as an internationally agreed moral and legal framework in which to work for women's rights.

As Maria Suarez, a Costa Rican activist, put it

'Instead of claiming rights as *women*, they claimed the human rights of *half of humanity*.'

As well as using the Beijing Platform for Action as their benchmark, women's organizations have begun to refer to CEDAW and other UN human rights treaties, aware that in signing and ratifying treaties, governments have taken on legal as well as moral obligations.

CEDAW Article 2 requires that States Parties 'refrain from engaging in any act or practice of discrimination against women'.

CEDAW Article 3 requires that States Parties shall take ‘all appropriate measures’ to ensure the ‘full development and advancement of women’

CEDAW Article 4 permits States to adopt temporary special measures aimed at accelerating de facto equality between men and women. This covers measures like political quotas, which Irene has been writing about recently

CEDAW Article 5 is in many ways the most transformative. It states that ‘States parties shall take all appropriate measures to modify the social and cultural patterns of conduct of men and women; with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women’.

Among the other articles are several referring to equality in enjoyment of economic and social rights, such as right to education, right to work, right to health; and calling for appropriate measures to eliminate discrimination against women in other areas of economic and social life. Article 14 elaborates this in relation to rural women, referring among other things to access to credit and land.

It is clear that CEDAW does not only mean the absence of a discriminatory legal framework but also means that policies must not be discriminatory in effect. CEDAW requires that states achieve both substantive and formal equality and recognizes that formal equality alone is insufficient for a state to meet its affirmative obligation to achieve substantive equality between men and women (CEDAW, General Recommendation 25, para. 8).

CEDAW needs to be understood as part of a comprehensive framework for the realization of human rights. It imposes an obligation on States parties to ensure equal enjoyment of *all* rights guaranteed by the State – including substantive civil and political, and economic, social and cultural rights set out in the ICCPR and the ICESCR respectively, as well as all the rights guaranteed in a given State’s domestic law. On points where CEDAW is less specific than other treaties, it is both legitimate and necessary to refer to other treaties. This is especially true with respect to resource allocation, where the ICESCR is an important source of substantive obligations that are relevant to economic policy.

CEDAW and all other human rights treaties do not just impose obligations to legislate, but also obligations to use all other appropriate measures. In clarifying these obligations, it is useful to refer to the framework set out in the Maastricht Guidelines on Violations of Economic, Social and Cultural Rights, which differentiates three dimensions of obligations:

The obligation to *respect* requires states to refrain from interfering with the enjoyment of economic, social and cultural rights. Thus, the right to housing is violated if the State engages in arbitrary forced evictions.

The obligation to *protect* requires States to prevent violations of such rights by third parties. Thus, the failure to ensure that private employers comply with basic labour standards may amount to a violation of the right to work or the right to just and favourable conditions of work.

The obligation to *fulfil* requires States to take appropriate legislative, administrative, budgetary, judicial and other measures towards the full realization of such rights. Thus, the failure of States to provide essential primary health care to those in need may amount to a violation.

Each of these obligations contains elements of obligations of *conduct*, and obligations of *result*. The Maastricht Guidelines explain these obligations thus:

The obligation of *conduct* requires action reasonably calculated to realize the enjoyment of a particular right. The obligation of *result* requires States to achieve specific targets to satisfy a detailed substantive standard.

The obligations of conduct and result are particularly relevant to economic policy, which could often be described as choosing and implementing measures reasonably calculated to achieve specific results, though as we shall see the framework for making economic policy calculations may be at odds with the human rights framework.

States have accepted these obligations in signing human rights treaties, but they do not usually explicitly bear human rights in mind in the operation of their economic policies: human rights are typically seen as the responsibility of Ministries like the Justice Ministry, not of the Finance Ministry. However, governments did recognize, at the UN World Conference on Human Rights in Vienna in 1993, that human rights are 'the first responsibility of governments' (Vienna Declaration Part I, para 1).

The HR obligations of states extend beyond their own borders, as is made clear in the UN Charter Articles 55 and 56. Obligations with respect to international development co-operation between governments are explicitly referred to in Article 2 of ICESCR and underlined in specific provisions in article 11 (right to an adequate standard of living). Articles 22 and 23 specifically refer to the need for international measures. In 1990 CESCR General Comment 3 explicitly stated that : 'international co-operation for development ... is an obligation of all States'.

Inter-governmental organizations are also bound by human rights norms and standards. UN organizations such as UNICEF, UNIFEM and WHO have organized much of their work in relation to CRC, CEDAW, and the Right to Health, respectively. The international financial organizations, the IMF and World Bank, have until recently paid little attention to human rights. However, the World Bank has recently recognized that:

‘The Articles of Agreement permit, and in some cases require, the Bank to recognize the human rights dimensions of its development policies and activities, since it is now evident that human rights are an intrinsic part of the Banks’ mission.’ (Robert 2006).

However, the Bank still has a legalistic approach to what that means. The current General Counsel, Ana Palacio, puts it thus:

‘The Bank’s analytical work can benefit from a systematic inclusion of human rights considerations and the broadened range of legal analysis these require. Areas such as governance or the legal empowerment of the poor are particularly relevant in this respect.’ (Palacio 2006).

I have not been able to find any explicit recognition by the IFIs that economic policy, including the ones that form the conditions for loans, need to be compliant with human rights obligations.

Instrumentalist approaches to gender equality among practitioners and scholars

Many practitioners in international development agencies, and the IFIs, adopt an instrumentalist approach to gender equality, as do many economists working on gender and development. At the core of this approach is the idea that gender equality should be a policy goal because it can be shown to be more efficient.

For instance, practitioners in the Gender Sector in the World Bank are currently attempting to persuade policy makers that ‘gender equality is smart economics’ because it leads to increases in output. This is a brilliant slogan, being used with considerable flair and energy, and definitely having an impact on bilateral donors, though I am not sure how much impact it is having on the rest of the Bank. But some of us are concerned that gender equality does not always seem to promote economic growth. And it is quite possible for a country to reach a high level of economic development without reducing some key forms of gender inequality, My Japanese feminist friends point to the example of their country.

In the last few years, there has been a considerable amount of quantitative cross-country analysis by economists on the relation between gender equality and economic growth. Their findings support the view that reducing the gender gap in education is growth promoting. But in relation to the labour market, Stephen Klasen has found that reducing the gender gap in labour force participation rates promotes faster growth, while Stephanie Seguino has found

that a high gender wage gap has promoted economic growth in newly industrializing Asian countries, such as S Korea and Taiwan. It seems that the smart thing to do in terms of economic growth is to educate women to the same standard as men, bring them in increasing numbers into the labour market, and pay them less than men.

To me this suggests that it is better to start from the idea that gender equality is right (judged against human rights standards) than that it is smart; and to start by evaluating economic policies against the standard of human rights obligations rather than the extra output that might be produced. I am optimistic that there is more chance of getting a hearing for this way of looking at things today than there would have been a few months ago. For the last two months the financial crisis has amply demonstrated that the economic policies considered in the last 25 years to be *the smartest*, the policies of financial liberalization and downsizing the state to remove so-called distortions in markets, have turned out not to be so smart after all. They have led the world financial system to the brink of disaster and ushered in the prospect of a deep recession. It is going to be harder to get a hearing for the argument that increasing women's participation in the labour market is a *smart* thing to do when people are losing their jobs, open unemployment is rising, and terms and conditions in informal work are deteriorating. In my view it would be better to base the argument for increasing women's participation in the labour market of women's right to enjoy the right to work on an equal basis with men.

Economists often respond that human rights obligations are incapable to providing much guidance to economic policy because they give no guidance on how to choose among competing priorities.

In this context the principle of indivisibility of human rights (put forward at the UN World Conference on human rights in 1993) may be seen as particularly disabling. But Mary Robinson, the former UN High Commissioner for Human Rights, in her contribution to the 2000 *Human Development Report*, makes a useful distinction between prioritising rights and prioritising resources:

'civil and political rights, on the one hand, and economic, social and cultural rights, on the other, must be treated equally. Neither set has priority over the other. Although every country must set priorities for the use of its resources at any given time, this is not the same as choosing between specific rights.'

I want to unpack these arguments in more detail, drawing on

Budgeting for Women's Rights; Monitoring Government Budgets for Compliance with CEDAW, UNIFEM, New York, 2006.

(with R. Balakrishnan) 'Auditing Economic Policy in the Light of Obligations on Economic and Social Rights', *Essex Human Rights Review*, Vo. No 5. No. 1 , 2008.

Smart economics: comparing costs and benefits, avoiding inefficiency

Consider this example from the WDR2006

‘To finance better-quality schooling for those who have the least educated parents, and who attend the worst schools, it may be necessary to raise taxes on other people. The basic economic insight that such taxation distorts incentives remains valid. Such policies should be implemented only to the extent that the (present) value of the long-run benefits of greater equity exceed the efficiency costs of funding them.’ (World Bank 2006:22)

The message is that that public money should not be spent to provide poor people with the same quality of education as rich people unless it can be shown that the benefits of this equitable policy exceed its efficiency costs. The efficiency costs are argued to arise because it is believed that taxation causes rich people to contribute less to economic growth than they otherwise would. Efficiency sounds a good thing- no one wants to be inefficient. And efficiency costs definitely sound like something to be avoided.

Economic and social rights

A very different logic is found in the human rights approach to education. The *International Covenant on Economic, Social and Cultural Rights* states that everyone has a right to education without discrimination. It also states that

‘The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right:

(a) Primary education shall be compulsory and available free to all.....

(b) Secondary educationshall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education....’

No mention of efficiency costs here (which some economists would argue simply demonstrates that the *Covenant* is merely aspirational and of no practical value). But the ICESCR does not imply that the rights it specifies can be realized regardless of resource availability.

The ICESCR specifies that States Parties have the obligation of ‘achieving progressively the full realization of the rights recognized in the present Covenant’ .. ‘to the maximum of available resources’. This obligation does recognize that the resources at the disposition of a government are not unlimited, and that fulfilling economic and social rights will take time. The Committee

on ESCR has clarified in several General Comments that the concept of 'progressive realization' is not intended to take away all 'meaningful content' of a State's obligation to realize economic, social and cultural rights. It imposes a 'specific and continuing' duty to move as 'expeditiously and effectively as possible' towards full realization of rights. Steps toward full realization of rights must be 'taken within a reasonable short time after the Covenant's entry into force for the States concerned' and such steps should be 'deliberate, concrete and targeted as clearly as possible'.

The key role of taxation in mobilizing available resources has been noted by some of the UN Special Rapporteurs on human rights. For instance, Ms Tomasenski, Special Rapporteur on the right to education noted in 2005 that 'It is hard to imagine how any state would raise the revenue to finance health, education, water, and sanitation, or assistance for those too young or too old to work, were it not for taxation.' Mr Alston, Special Rapporteur on extrajudicial, summary or arbitrary executions has also moute the important of taxation to realization of civil and political rights. In a statement of the Human Rights Council in March 2007, he comments that in Guatemala 'The reason the executive branch of the Guatemalan State has so little money to spend on the criminal justice system is that the Congress resist the imposition of all but the most perfunctory taxes. To put this in perspective, as a percentage of GDP, Guatemala's total tax revenue in 2005 was 9.6 percent of GDP. By regional comparison, its percentage tax revenue is lower than that of Belize, Costa Rica, El Salvador, Honduras, or Nicaragua, and radically lower than that of the countries of South America.'

Of course, the system of taxation must be organized so as to comply with human rights standards. Ms Tomasevski noted that the European Court of Human Rights has legitimised the power of states to levy taxes, provided that judicial remedies exist to prevent taxation amounting to arbitrary confiscation. She further noted that 'The human rights jurisprudence regarding taxation has affirmed the principle of ability to contribute.' Taxation must also be non-discriminatory as between different social groups, such as women and men.

From this perspective taxation is thus an indispensable instrument for realizing human rights, rather than a distortion that creates in efficiency.

HR vs efficiency?

So do we have to choose between human rights and efficiency? Well, efficiency is not quite as clear-cut as it sounds. The efficiency of any system of economic arrangements can properly only be specified in relation to a set of 'initial endowments' (ie distributions of resources) and a set of possibilities for using these resources in production and consumption and a set of objectives we wish to achieve. However, the distribution of resources and the

possibilities for using them depend not only on the natural environment and technology and tastes, but also on the set of rights and obligations that are regarded as legitimate in a particular society. Now that slavery is not regarded as legitimate, a calculation that slavery is more productive, or gives more pleasure to slave owners, than alternative arrangements for employing labour, would not be regarded as justification for reintroducing it; and laws banning slavery are not considered 'distortions', ie government interventions which might prevent the most efficient use of resources.

As Ha Joon Chang has pointed out in a 2001 UNRISD paper,

'if we want to decide on whether a particular market is "free" [of distorting government interventions] or not, we need to take a position on the legitimacy of the underlying rights-obligations structure...'

Human rights provides us with an internationally agreed standard (both moral and legal) against which to judge the legitimacy of the underlying rights- obligations structure; and of the objectives that the economy serves. Efficiency can then be defined in terms of the most efficient use of resources, given compliance with human rights standards. Thus, not resource use that maximizes economic growth, but resource use that maximizes HR compliant growth.

Women's human rights in the global economic crisis

How far does this approach help us in trying to address Women's human rights in the current economic context?

First, we must recognize that the global economic crisis puts progress in realizing women's human rights in jeopardy. Many countries are in financial crisis. We have gone from runs on banks in rich countries, to runs on the whole economies of some eastern European countries. There have been stock market falls and capital flight from 'emerging economies ' in Asia and Latin America. Falls in commodity prices are starting to reduce export revenues in Africa. Aid to the poorest countries is likely to fall. All countries will be affected by recession. Jobs will be lost, unemployment will rise and household incomes will drop. Households will try to meet their basic needs through strategies such as increasing the numbers of household members trying to earn money, reducing consumption of food, and substituting homemade products for market bought products. Quantity and quality of public services are likely to fall as governments revenues plummet. Funding for women's machineries and vital women specific programmes, such as those related to violence against women may be cut.

In previous regional and national crises, women have disproportionately born the costs.

In South Korea after the financial crisis in 1996/7, women lost their jobs at a rate twice that of men, and female labour force participation fell.

In the Philippines, unemployment rose to 9.5% for men and 9.9% for women. For people who remained in paid work, women's mean weekly hours of work rose, while men's fell, in a context in which women typically spent almost 4 times as much as men on housework and child-care.

In Czech Republic and Poland, in the early 1990s, female unemployment rates rose higher than male unemployment rates. This was not the case in Hungary. However, in the latter case, women's participation rate declined by much more than men's participation rates

In a community in Canada which suffered a heavy loss of employment in the mid 1990s, women were found to be coping by doing more unpaid work, such as engaging in bulk or group shopping, making meals from scratch, vegetable gardening, canning or preserving, hunting or fishing.

The CEDAW committee has in the past noted that the impact of economic crisis on women's rights is a cause for concern. For instance, at its meeting in August 2002, at which it considered the combined fourth and fifth report for Argentina, the Committee expressed its concern at the impact of the financial crisis in Argentina and 'urged the government to take every precaution to ensure that women did not suffer disproportionately from job loss, interrupted or delayed payment of wages, shortages of food, medicines, or health services' (Press Release WOM/1360). The Committee had heard from the President of the Women's National Council of Argentina that the Federal Plan for Women had suffered a 33 per cent cut in its budget.

The depth and distribution of the costs of the current crisis depends on the policies taken in response. While human rights norms and standards cannot prescribe the detail of appropriate policy responses to the crisis, they can give broad guidance on what kinds of policy response would and would not be in compliance with human rights obligations. They can provide a moral compass for economic policy that may find some resonance as the costs become evident of amoral policies that are guided by maximizing possibilities for individual enrichment.

The following principles are particularly relevant in responding to the crisis.

Non-discrimination

States have an obligation to 'guarantee' that there will be no discrimination in the exercise of rights. This is an immediate obligation. In the policy response to the recession it will be particularly important to draw the attention of governments to the application of this principle to the right to work. CEDAW Article 11 requires States Parties to take 'all appropriate measures to ensure that women have 'the right to work, as an inalienable right of all human beings', on a

basis of equality with men. Jobs for men cannot be prioritized over jobs for women. Nor can decent work be prioritized for men, while women are left to pick up what casual work they can. It is clear from paragraphs c), d) e) and f) of Article 11 that 'work' should be understood as paid employment with various rights attached, including rights to promotion, job security, training, social security, safe working conditions, and conditions that allow parents to combine family obligations with work responsibilities.

Minimum Essential Levels/Minimum Core Obligations

States that are parties to the ICESCR are also under a 'minimum core' obligation to ensure the satisfaction of, at the very least, 'minimum essential levels of each of the rights' in the ICESCR. This means that a state party in which any 'significant number' of persons is 'deprived of essential foodstuffs, of essential primary health care, etc. is prima facie failing to meet obligations' under the Covenant. Even in times of severe resource constraints, states must ensure that rights are fulfilled for vulnerable members of society. The Committee on Economic, Social and Cultural Rights has begun to identify the content of the minimum core obligations with respect to the rights to food, education, health, and water (General Comments Nos. 11, 13, 14 and 15 respectively) The provision of minimum essential levels is an immediate obligation. If it is impossible for states to satisfy this from the resources that a country possesses, then richer states have an obligation to assist.

Non-Retrogression

There is a strong presumption that retrogressive measures on the part of a State are not permitted. An example of a potentially retrogressive measure would be cuts to expenditures on public services that are critical for realization of economic and social rights; or cuts to taxes that are critical for funding such services. If such retrogressive measures are deliberate, then the State has to show that they have been 'introduced after consideration of all alternatives and are fully justifiable by reference to totality of rights provided for in the Covenant and in context of the full use of the maximum of available resources'. For example, cutting government spending on health and education, while not cutting expenditure on arms will likely violate the principle of non-retrogression.

Accountability, Participation and Transparency

In a statement on poverty and the ICESCR, the Committee has stated that:

'the international human rights normative framework includes the right of those affected by key decisions to participate in the relevant decision-making processes.' It has also emphasized

that: 'rights and obligations demand accountability...whatever the mechanisms of accountability, they must be accessible, transparent and effective.'

Let us now summarise the implications of CEDAW, together with the International Covenant on Economic, Social and Cultural Rights, for a gender-equitable response to the crisis. The key requirements are:

- that policy should support the women's right to work, on equal terms with men; as well as introducing infrastructure projects that will provide paid work for men, governments should introduce projects that will provide paid work for women- for example, community kitchens and community care services.
- that women should not suffer disproportionately if public expenditure is cut ; expenditure cuts should be subject to 'strict scrutiny'; particular attention needs to be paid to whether expenditure cuts will transfer burdens to women, by increasing the amount of unpaid work they have to do.
- that in the design of macroeconomic policy response there should be 'the most careful consideration of all alternatives'.

Consideration of all alternatives

The consideration of alternatives has been constrained by rigid views on what constitutes sound macroeconomic policy. Inflation targeting at expense of employment. Balanced budget rules that unbalanced societies. Downsizing the public sector on the grounds that the private sector does things more efficiently . IMF requirements to pay down debt and build up foreign exchange reserves that have prevented many countries in sub-Saharan Africa from spending much of the additional aid they have been getting.

So-called sound macroeconomic policy has in the view of myself and my co-author Nilufer Cagatay, been characterized by 3 biases:

Deflationary bias, privatization bias, and male breadwinner bias.

Under the pressure of the economic crisis, there are welcome signs that the first two biases are diminishing. Central banks in many countries are beginning to consider employment as well as inflation and are cutting interest rates. Banks in rich countries are queuing up to place themselves under partial public ownership. The IMF has announced new low conditionality facilities though it is far from clear how far the poorest countries are going to be allowed to consider alternatives.

But we have yet to see signs of diminution of male breadwinner bias. Instead the danger is that this will strengthen, and much more attention will be given to decent paid jobs for men than for women, while women will be expected to provide the ultimate safety net with their unpaid work and meager and diminishing earnings from casual work .

There is a danger that the policy response will be Keynesianism for the rich countries, and neo-liberalism for the poor countries; Keynesianism for men and neo-liberalism for women. Such a bifurcated response would not be in compliance with human rights obligations.

Using human rights to hold governments to account in the economic crisis

Governments and IFIs may be slow to consider their economic policies in the light of human rights obligations, but there are already many civil society organizations that have begun to do this. There is a network of organizations working on economic and social rights that is active in scrutinizing economic policy from a human rights perspective, using the principles outlined in this lecture, and in making reports and ringing cases to UN and regional human rights commissions and committees. They will be meeting in Kenya in early December.

In relation specifically to women's rights, Gender responsive budget initiatives bringing together women's organizations and women elected representatives in national and local legislatures may be able to play an important role in calling governments to account in their handling of the crisis.

The case of Mexico has some useful lessons. In 1998-2000, the Ministry of Finance announced that there would have to be expenditure cuts and that these would fall on the National Electricity Commission, the state-owned oil company (PEMEX), and the Department of Communication and Transport. Gender budget analysts showed that the cuts actually fell on the Ministry of Social Affairs, the Ministry of Health and the Ministry of Education. In 2002 further cuts were made. Although programmes specifically targeted to women were not cut, there were cuts in anti-poverty programmes of which women were the main beneficiaries. The budgets of the Ministries of Health and Education were cut, and that of the Social Security Institute. The budgets of the Ministry of National Defence, the Ministry of the Navy and the Ministry of Public Security were not cut. In response the Commission on Gender Equality of the Chamber of Deputies became active in negotiations on the 2003 budget and succeeded in getting larger appropriations than the ones proposed by the government for programmes for reproductive health, reduction of maternal mortality, women in agriculture and immigrant women .

We can also learn from the case of South Africa, where under pressure from the Women's Budget Initiative, various ministries have done gender analysis of their policies and programmes.

For instance, in 1997 an evaluation was done of the Community-based Public Works Programme. It found that while 41% of the jobs went to women, this was lower than the proportion of women in the target population or poor rural people. Moreover, women were often assigned the more menial jobs, their average wages were lower, and their jobs were more short-term, and they were less likely to receive training. The responsible Department agreed to make improvements to make the programme more supportive of gender equality.

In conclusion

In thinking about economic policy and women's rights, I am not suggesting we abandon a concern for efficiency, productivity, economic growth etc. What I am suggesting is these concerns have to be pursued in a human rights compliant way. And that policy instruments, such as taxation, public expenditure, and regulation, that are essential for realization of human rights, should not be labeled 'distortions'.

Let me finish with an alternative slogan: 'gender equality is the right economics'.