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Rights, capabilities and collective action: the ‘missing ingredient’ in the MDGs

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This paper examines the two-way relationship between the concepts of rights and capabilities in helping to carve out pathways to women’s empowerment and gender justice as a contribution to on-going deliberations about the post-MDG agenda. It argues for the importance of feminist collective action as a crucial bridge between the two and a means of bringing their synergies to life.

Those who have written about the conceptual relationship between rights and capabilities agree they are distinct concepts but with important overlaps (Sen, Nussbaum, Vizard et al). On the one hand, as Sen has argued, while the ‘opportunity aspect’ of certain rights spell out important capabilities (such as the right to health, nutrition and education), but capabilities do not necessarily capture the ‘process’ aspect of these rights. In other words, one may enjoy the capabilities associated with health and education through patronage and favours rather than as a matter of right. Capabilities refer to actually existing potentials for ‘being and doing’ and these may be very restricted. Rights can enhance capabilities, strengthening their freedom dimensions.

On the other hand, rights are meaningless, existing only at the level of law and discourse, if they do not translate into the *enhancement* of human capabilities, in other words, expanding the field of possibilities available to people. But, and here is the conundrum, rights also depend on capabilities (Nussbaum). The right to productive employment and decent work, to education, to maternal health services, to political participation, to freedom of movement only become ‘real’ if the capabilities exist to exercise these rights.

* The views expressed in this paper are those of the author and do not necessarily represent those of the United Nations.

So my argument is that the right to certain capabilities should *in principle* guarantee those capabilities on a non-negotiable basis, but such rights can only be secured if certain other capabilities exist, including not only the knowledge of these rights, but their internalization, the belief in ‘the right to have rights’, one’s own and those of others. The conundrum we must deal with, in relation to both the MDGs and what comes after them, is that those who would have most to gain from a human rights articulation of these agendas are very often those who are least likely to enjoy the basic capabilities necessary to translate their rights into reality (Kabeer). What I would like to do in the rest of the paper is to explore the role that has been played by feminist collective action in helping to translate rights into capabilities in certain contexts and capabilities into rights in others. Let me begin by exploring the translation of rights into capabilities.

CEDAW, adopted in 1979, is of course, the most comprehensive international convention relating to women’s rights, bringing together and expanding some of the existing treaties on women’s rights. In subsequent years, international mobilisations by feminist organisations across the world served to bring about a number of paradigm shifts in the international human rights agenda as it related to women’s rights, most notably at Vienna, Cairo and Beijing: the recognition of women’s rights as human rights, the extension of human rights across the public-private divide and the conceptualisation of the right to bodily integrity, encompassing rights relating to freedom from violence, sexuality and reproduction.

These were profoundly important achievements. They served to bring hitherto hidden and ignored concerns, deemed ‘private’, onto the public agenda. They also provided a valuable international resource for further feminist mobilisations to translate them into concrete, local-level improvements into women’s lives. While a great deal of this translation took place through policy processes, the rights dimension added a concern with the respect and dignity of the human being, non-discrimination and the need for accountability to the formulation of policy. However, the process of translation – of rights into policies and policies into real changes in women’s lives – has been extremely uneven.

A very important study of the translation of global norms on women’s rights into domestic policy frameworks is that by Htun and Weldon () and relates to global norms relating to violence against women. I would like to draw out three important points from this study for the purposes of this paper. The first relates to the measure of policy responsiveness used by the study: this included not only the adoption of specialized legislation relating to different forms of violence but also extended to the provision of support services for victims of violence, reaching out to marginalized groups of women, providing training for professionals responding to violence and funding public education programme to prevent future violence. These additional provisions served to transform the formal right to freedom from violence into both process freedoms (legislations make violence against women a criminal offence) but also ‘opportunity freedoms’, enhancing women’s capabilities by addressing the some of the concrete causes and consequences of violence.

The second important point relates to its finding: that it was the presence of autonomous and active feminist organisations in a society, much more than the presence of women in legislatures, per capita income or the presence of left or religious parties, that explained national variations in progressiveness of state responses, although significantly, effective women’s national machineries were an enabling factor. In other words, not only had women’s collective activism been a major force in getting the hidden and unacknowledged

injustice of VAW onto the global agenda but it had also facilitated the translation of this international agenda into concrete policy measures at the local level.

The third important point relates to the reasons suggested by the study as to why women's autonomous organizations were such an effective force for change on the issue of VAW: first, women organizing as women generate social knowledge about women's position as a group in society and a distinct set of priorities based on this knowledge, often in opposition to dominant norms. Second, it is extremely difficult for feminists within mainstream policy-making bodies to take up the certain feminist issues, particularly when they go against mainstream norms, without the political support of broader mobilized constituency. And finally, women within autonomous organisations do not have to divert their energies into making convoluted arguments about the relevance of gender equality issues to organisational agendas that were not established with gender equality as their goal – the instrumental arguments that we are all familiar with.

We do not have such clear-cut accounts of all the ways in which feminist activism has succeeded in the process of legitimizing feminist concerns in the policy domain and translating these policies into changes on the ground but we do have evidence of the myriad of different fronts on which feminists have organised, many of them directly related to the MDGs and to the issues prioritized in the MDG agenda. Not all of these are women only organisations but they are all inspired by a feminist politics. Some examples will serve to make the point.

In Brazil, *Mulher e Democracia*, a feminist network, seeks to equip grassroots women leaders with the knowledge and skills to run for political office as well as working with women who have been elected to office to build their capacities as advocates for women. Collective efforts to build capabilities thus feeds into – and goes beyond – political participation as defined by the MDG agenda. Among its successes, the organisation counts the support that has been shown by politicians from right-wing parties for women's rights issues as a result of their engagement with feminist activists and other women politicians as part of activities organized by *Mulher e Democracia*. The building of cross-party alliances on women's issues have in turn given rise to a number of legislative successes (Andrea Cornwall).

In South Africa, the Sonke Gender Justice Network uses innovative approaches to work with men, strengthening their capacity and commitment to care for children, including orphans affected by HIV/AIDS in rural areas. Research conducted in 3 rural communities found that among those men who had participated, 25% subsequently tested for HIV, two-thirds increased their condoms, 80% talked with friends and family about HIV and AIDS, gender equality and human rights and about half indicated that they responded to acts of gender-based violence they witnessed.

In Mexico, an alliance between two of its strongest civil society networks, a network of feminist groups and a network of people who had been working on budget analysis and public funds transparency, came together to campaign around maternal mortality, highlighting the low priority it occupied in state policy, its complex underlying causes and the failure to direct additional public resources to largely indigenous states with the highest rates. The campaign was organised around a rights-based approach, influenced by the ICPD agenda, and helped to prioritize maternal mortality in the government's policy agenda. The experience of the campaign highlighted that 'moving from citizens demands to actual change

in government performance and then to actual change in the living conditions of its most disadvantaged citizens is a long, arduous and complicated process'. Nevertheless, inroads had been made into the legislative process, groundwork has been laid in the executive and Mexico has experienced a significant decline of 30% in mortality rates. However, and this relates to the points I want to raise later, advocates encountered the most entrenched barriers to citizenship engagement and policy responsiveness in precisely those states with the highest mortality rates (Layton et al)

Reading through many more examples of this nature, what comes through is the extent to which they have relied on the rights discourse to push for the enhancement of human capabilities, both intangible ones relating to political efficacy and changing attitudes but also tangible achievements in terms of HIV/AIDS, violence against women and maternal mortality. What also comes through is that even when feminist organisations are not directly involved, feminist ideas and politics have been a major driving force for these changes. Feminist have achieved positive spill-over effects in their societies!

Let me turn now to the contexts where it has been the contribution of human capabilities to the realisation of rights that has been the primary focus of collective action rather than the contribution of rights to the enhancement of human capabilities. These are contexts which are characterised by the absence of a culture of rights, both the more widely accepted civil and political rights as well as the more contested social and economic rights which are considered costlier to implement and hence qualified by the idea of 'progressive realisation'. The global flow of new ideas and values made possible by rapidly changing information and communication technologies, the increasing movement of people across the world, should not deflect attention from the fact that the idea of rights has not been embraced with equal enthusiasm by all societies nor has it filtered through to all groups within particular societies.

Indeed, one reason why so many feminists have sought to bypass their own governments and put their energies into influencing the international agenda on human rights is precisely because they recognize the entrenched nature of the barriers to citizenship in their own contexts. The struggle for rights within such contexts have to contend with states that have little or no accountability to their citizens, particularly their poor and marginalized citizens and societies that embody stable structures of oppression in which inequalities – around caste, class, gender, ethnicity – have become so naturalized that they are not perceived as unjust, even by those at the bottom of these hierarchies.

In such contexts, building the human capabilities of women and other oppressed groups while addressing the practical needs of their everyday lives may represent an alternative pathway to social justice. The language of capabilities is not only less politically threatening than the language of rights, it is also, as Nussbaum points out, not strongly linked to any particular cultural tradition: 'ideas of activity and ability are everywhere'. This renders the concept easier to adopt in different contexts. The idea of capabilities also lends itself more readily to a substantive policy agenda than the idea of rights which often inform basic principles of policy without necessarily spelling out its substance. It is worth recalling that in the debates leading up to Cairo, many feminists, particularly from the South, were uneasy about the emphasis on reproductive rights because the language of reproductive health appeared better at capturing the reality of women's health needs than the abstract individualism they associated with notions of rights (Petchesky). Once again, let me draw on some empirical examples, largely from India, although the arguments I am making have wider relevance.

Sheela Patel has commented on the indifference displayed to the rights discourse by women in low income urban settlements in Mumbai that her organisation worked with. Their ambivalence did not appear to be conceptual or ideological; rather they were 'structural and pragmatic'. She identifies two sets of concerns.

First, the vulnerability of these women, the precariousness of their shelter and livelihoods, made it difficult for them to press for either the enforcement of rights or the implementation of stated policies. They were reluctant to engage in the forms of contestation, often antagonistic, generally associated with claims making. And secondly, they did not believe the state had the solutions they were looking for. Rights-claiming may work when it involves a simple transfer of financial resources, but its effectiveness is less evident when there are multiple and complex needs with no ready-made solutions that can be the subject of claims. Instead, groups were encouraged by the organisation to experiment with their own solutions, closely tailored to their ground level realities, referred to as 'pilot precedent setting projects' which were then used to lobby for support from local officials.

A somewhat different set of concerns are to be found in Das Gupta's reflections (2012) on her ten years of experience as an activist seeking to negotiate maternal health rights, post-ICPD, in the face of state apathy in Uttar Pradesh, despite the fact that it had the highest number of maternal deaths in India. Das Gupta writes: "As part of a civil society alliance trying to apply rights-based approaches, there has often been a struggle between getting normative statements politically endorsed in laws or covenants, and the experience of applying them in practice. Normative statements often have limited impact on the ability of poor communities to get themselves recognised as genuine 'rights holders' and to be able to exercise the rights or claim state accountability for ensuring them....".

While she recognises that political statements of human rights such as UN treaties and laws are important at the discursive level in terms of setting global or national standards and symbolize a public acknowledgement of the 'wrongs' that prompt codification of the 'rights', she also notes the argument by Yamin that human rights language has largely maintained an understanding of human beings as autonomous individuals, without fully appreciating how social relations constitute the structures of choices within which people perceive, evaluate and act.

'A case in point' Das Gupta observes, 'is rights conferred on poor women in contexts where they have limited access to the means to actualize their entitlements and where they are often not seen, and do not see themselves, as worthy of having rights' (p. 2). The organisation's experiences had made it clear that the assumptions embedded in 'rights-based approaches' were not necessarily borne out in the reality of Uttar Pradesh: 'the normative language around state accountability is situated in an imagined context of state-civil society relations, where the state is imagined as a 'singular and sovereign adjudicator and enforcer of rights' and where civil society can and does hold the state to account. The reality, she pointed out, was that many of the women they worked with, while formally rights-bearing citizens, did not have the 'confidence and resources' – in other words, the capabilities – to claim their rights. Nor was their status as rights-bearing citizens recognised by the relevant duty-bearers, public officials responsible for service delivery.

The strategy suggested by their experience was the fostering of the 'critical consciousness' of the women they worked with as a means of fostering their capacity to engage in forms of advocacy that resonated with their own worldviews: 'when poor women articulate their claim

to state accountability for their sisters who lost their lives, it brings an element of social justice into reviewing the quality of the outcomes of public decisions and actions’.

A third example comes from the Mahila Samakhya programme. This is a national level partnership between government and civil society in India, based on explicitly feminist principles, set up in the late 1980s for the empowerment of rural women through setting up collectives for ‘educational’ purposes. The education in question was aimed at developing the kind of critical consciousness that Das Gupta talked about, or what Ramachandran described as ‘a process which enables us to question, conceptualise, find answers, act and reflect on our actions, and raise new questions’. What is striking about a recent volume (2012) reflecting on the past experiences of the organisation is how little the language of rights featured either in the setting up of the organisation – or indeed in the retrospective assessments contributed by various authors.

This does not mean that rights were considered antithetical to the programme’s vision but simply that it was designed to begin with the existing realities of rural women, to ‘create a time and space for women to meet, be together, and begin the process of thinking and reflecting on their situation, its meaning and where they wish to go’. It is worth noting though the point made in the introduction that ‘rights-based approaches’ seemed to be rapidly replacing ‘empowerment’ in the lexicon employed by government, NGOs and donors in contemporary India.

A number of points can be drawn out from these examples for the argument I am making here. While a great deal of the literature on human capabilities tends to focus on the capabilities of individuals, it is very clear that for poor and marginalized groups, both men and women, it will be the strengthening of their collective capabilities through processes which emphasize the shared and structural nature of injustice that will serve to politicize the capabilities agenda: like ideas about activity and ability, ideas about justice too are everywhere - even in the most dysfunctional of states. The examples I have used, and there are many more, are concerned with the inter-subjective renegotiation of individual identities and consciousness as the basis for developing more collective identities based on horizontal solidarities.

And central to the construction of collective capabilities is the development of a ‘critical consciousness’ that encourages women to question their subordinate status in society and to demand recognition of their status as human beings. It is through this process that women may gain the capacity to secure their rights that Nussbaum referred to. This is the point made by Shireen Huq on the basis of her experiences as a member of Naripokkho, a feminist organisation in Bangladesh: ‘Our experience of discrimination as *women* led us to demand fair treatment and respect for our dignity as *human beings* and only thereafter to claim our rights and entitlements as *citizens*’.