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Measuring Complexity and Change in Human Rights

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INTRODUCTION

The concept of human rights is actually quite a simple one that appeals to a rational, inherent, and natural sense of justice and one that both proscribes and prescribes different kinds of state and non-state action meant to promote and protect human dignity. But the substantive content of human rights, the empirical reality of how such rights are enjoyed, and the degree to which they are protected are complex, multifaceted, and present significant challenges for a political science of human rights that relies on comparative measures and systematic analytical techniques. Human rights are specially bounded by a constellation of concepts that complicate their measurement – distinctions between process and outcome, principles and standards, rights and obligations, violation and protection, among others. This paper builds on a series of human rights measurement frameworks developed over the last few years (see Landman 2002; Landman and Carvalho 2009, *forthcoming*) that are based on accepted international principles and standards in order to map the issues of measurement that human rights research has already addressed and to highlight the avenues for further inquiry in the field.

This paper's point of departure is that human rights have become an accepted legal and normative standard through which to judge the quality of human dignity as it is experienced by nearly six billion people around the world in a variety of very different social, economic, and political contexts. The standard has arisen through the concerted efforts of thousands of people over many years inspired by a simple set of ideas that have become codified through the mechanism of public international law and realized through

the domestic legal frameworks and governmental institutions of states around the world. As is clear from evidence collected in a variety of different ways, however, this realization is incomplete, where there remains a large and variable gap between the expectations for human dignity outlined through human rights standards and the reality of the precariousness of those rights as they are variously enjoyed around the world. Both the standard and the gap are subject to measurement, where we understand measurement to be the cognitive process through which abstract concepts find numerical expression in the form of valid, reliable and meaningful indicators. The paper does not concern itself with the ongoing and unresolved debates about the absence of agreed philosophical foundations for human rights, nor does it engage with the persistent arguments based on cultural relativism. Rather, it takes for granted that the extant international law of human rights is both a useful starting point for the measurement of human rights and the outcome of a long and iterated negotiated settlement across many diverse state and non-state actors about what constitutes the basic guarantees for the realization of human dignity. By delineating the purely legal conception of human rights from its philosophical and socio-anthropological perspectives, this paper attempts to provide scholars and practitioners in the field a secure (although partial) basis from which to commence the task of monitoring and measurement.

The paper follows the development of international human rights law, including the main instruments, general comments, and debates surrounding the interpretation of human rights from the larger academic, non-governmental, and policy communities. The framework of content that we present moves well beyond the ‘generations’ approaches to

human rights or any privileging of particular rights to show that human rights now comprise a set of *standards* (i.e. regarding human rights for all individuals and the rights of particular groups) that have different *dimensions* grounded in the notion of state obligations to *respect, protect, and fulfil*. In this way, we argue that all rights give rise to a negative obligation of states to refrain from violating rights and to prevent third parties from doing the same, as well as a positive obligation that requires that states provide the necessary resources for fulfilling their rights commitments. This means that measures for human rights will necessarily include those that capture their *violation* and their *realisation*, which we group into the notions of *rights in principle* (i.e. those formal legal commitments that states make), *rights in practice* (i.e. the enjoyment of rights by individuals on their own or as members of a group), and *rights as policy* (i.e. the structures, processes, and outcomes of governmental efforts to promote and protect human rights). This framework also includes reference to a series of organising *principles* -- *availability, accessibility, adaptability, and acceptability* -- that deepen the understanding of implementation of human rights and the processes involved in their realization.

HUMAN RIGHTS IN INTERNATIONAL LAW

The content of human rights as established in international law is dependent on the creation and adoption of legal standards by states; norms that enable the human rights community to hold states accountable for those actions that violate the dignity of individuals residing within their jurisdictions. Human rights standards have been the unique contribution made by international law to the discourse on human rights. Counted

among these standards are the main international treaties for the promotion and protection of human rights,¹ and the various regional instruments found in Europe,² the Inter-American System,³ and African Union.⁴ Across these instruments, there has been a process of iteration, consensus, and sedimentation of ideas around the core content of human rights; however, these various standards comprise only the substantive portion of the concept. Human rights also include procedural or ‘process’ features, which are those facets of the concept that states need to consider when implementing the standards that they have accepted. This section of the paper discusses the features of human rights as elaborated in international law and the interpretations of the law by international human rights treaty bodies, and special mechanisms. It also addresses one of the most controversial debates that arose at the time of the drafting of the two International

¹ International Convention on the Elimination of All Forms of Racial Discrimination, 1965; International Covenant on Civil and Political Rights, 1966 and its protocols; International Covenant on Economic, Social and Cultural Rights, 1966 and its protocols; Convention on the Elimination of All Forms of Discrimination against Women, 1979 and its protocol; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984 and its protocol; Convention on the Rights of the Child, 1989 and its protocols; International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990; and Convention on the Rights of Persons with Disabilities, 2006 and its protocol. The International Convention for the Protection of All Persons from Enforced Disappearance was signed in 2006 but has not yet entered force.

² There are three systems functioning in Europe in parallel. They are listed here along with the main human rights instruments they have produced: Council of Europe (Convention for the Protection of Human Rights and Fundamental Freedoms, 1950 and its protocols; European Social Charter, 1961, revised in 1996; European Agreement relating to Persons participating in Proceedings of the European Commission and Court of Human Rights, 1969 and 1996; European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, 1987; European Charter for Regional or Minority Languages, 1992; The Framework Convention for the Protection of National Minorities, 1995; and Council of Europe Convention on Action against Trafficking in Human Beings, 2005), The European Union (Treaty on European Union, 1992 and subsequent amendments; Charter of Fundamental Rights of the European Union, 2000) and the Organisation for Security and Cooperation in Europe (various Permanent Council decisions and formal commitments by the OSCE on human rights).

³ American Convention on Human Rights, 1969 and its two protocols; Inter-American Convention to Prevent and Punish Torture, 1985; Inter-American Convention on the Forced Disappearance of Persons, 1994; Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women, 1994; and Inter-American Convention on the Elimination of all Forms of Discrimination against Persons with Disabilities, 1999.

⁴ African Charter on Human and People’s Rights, 1981 and its two protocols; African Charter on the Rights and Welfare of the Child, 1990; and African Union Convention Governing the Specific Aspects of Refugee Problems in Africa, 1969.

Covenants in the 1950s and 1960s – the creation of ‘categories’ of human rights. Human rights create obligations on states for their fulfillment. The nature of these obligations has also been debated under the notion of ‘dimensions’, which is also tied into the controversy related to the categories of rights. We briefly sketch the literature on the various elements that comprise the concept of human rights as interpreted by the institutions involved in standard setting, implementation, and monitoring at the international level and formulate a comprehensive model of human rights in international law.

The content of human rights

As a prelude to the discussion on the constitutive elements of human rights, this section takes a step back to understand what is meant by a ‘concept’ in the general sense of the term and the manner in which the meaning and measurement of concepts are inextricably linked. There are at least two interrelated views on this issue: the semantic approach which focuses on the definition of a concept as the primary and only source of meaning, and the causal ontological approach which maintains that a concept comprises both the ‘theoretical and empirical analysis of [an] object or phenomenon referred to by the word’ (Goertz 2006: 3-4). This paper adheres to the latter approach and attempts to highlight human rights as a specific theoretical and empirical concept. This exercise has important implications for the measures used to monitor human rights and the conclusions that are derived from the results.

A concept can be understood as being multilevel and multidimensional in character. There are essentially three levels at which a concept can be mapped: a) the ‘basic level’, which consists of the theoretical propositions about the core meaning of the concept, b) the ‘secondary level’ that highlight the constitutive elements of the concept, and c) the ‘indicator/data level’ that operationalise these elements into specific measures (Goertz 2006: 4-6, 30-65). Such a conceptualization is very similar to the ‘measurement cycle’ proposed by Adcock and Collier (2001: 531) who distinguish between the following: a) background concept, b) systematized concept, c) indicators, and d) scores on units of analysis (e.g. individuals, groups, municipalities, sub-national units, and nation-states). A background concept is ‘the broad constellation of meanings and understandings associated with a given concept’. This background concept undergoes a process of conceptualization by a scholar or a group of scholars and is transformed into a systematized concept which is ‘a specific formulation’ of the background concept. The second level, i.e. measurement of the concept begins when the systematized concept is operationalised into indicators. The indicators are used to score cases and the analysis of observed scores is in turn, used to refine these indicators. The modified indicators can then assist in fine-tuning the systematized concept and provide insights into the meanings associated with the background concept (see also Landman 2006a: 76-78).

Human rights, at the basic or background level, are conceptualized as minimum legal standards accepted by states that a) ensure the protection of the dignity of individuals, b) define the limits of state behaviour towards their residents and c) can be used to hold states accountable for the failure to meet these standards (Chapman and Russell 2002;

Sepúlveda 2003; Nickel 2007). These rights have been distinguished into three ‘categories’: a) civil and political rights, b) economic, social, and cultural rights, and c) solidarity rights. This classification of rights has attracted considerable debate with one group making the claim that these three categories create distinct and separate obligations on states for the provision of rights; on the other hand, scholars have taken the stand that while the core content of each human right is distinctly separate from another, each right creates obligations on states for implementation and monitoring that are similar, a point that is addressed later in the paper.

The concept of human rights can be delineated further into three ‘secondary level’ concepts: ‘rights-in principle’, ‘rights-in-practice’, and ‘rights as policy’ (see Landman 2002).⁵ Rights measured in principle evaluate the international and national commitments made by States (de jure State compliance). Rights in principle are the necessary condition among these three dimensions at the secondary level of the concept; without the creation and acceptance of legal standards by states, human rights would exist (depending on the foundational theories of rights) at the moral plane of existence, but they could not be justiciable by law. However, legal protections of rights are not sufficient conditions for the existence of human rights; by accepting these obligations, states agree to execute policies that implement the provisions of these treaties. Hence, rights measured as policy processes and outcomes assess the impact of government policies on the enjoyment of

⁵ On similar lines, the Special Rapporteur on the Right to the Highest Attainable Standard of Health suggests structural, process, and outcome indicators to measure the right to health (Hunt 2006). Malhotra and Fasel (2005) reiterate this distinction by proposing two kinds of indicators: a) general indicators that measure the extent to which the process of implementing human rights includes the main human rights principles such as participation, inclusion, empowerment, non-discrimination and accountability; and b) indicators to measure the realisation of substantive human rights.

rights. Rights measured in practice determine the actual enjoyment of rights by individuals and groups in States (de facto State compliance) (Landman and Häusermann 2003; Landman 2004, 2006b). Each of these three ‘elements’ has been measured with indicators that have helped clarify the content of the concept further and are discussed in the subsequent paragraphs.⁶

[Figure 1 here]

Rights in Principle

Human rights standards are those specific rights that have been codified in international law. When a state signs or accedes to an international treaty, it formally accepts a legally binding obligation to implement the provisions of the treaty. These standards have been adopted at the international, regional and national levels (see the discussion above). They have also taken the form of two types of documents a) a treaty or declaration protection human rights in general and b) the protection of the rights of individuals who are members of specific groups (see Table 1).

[Table 1 here]

⁶ Goertz (2006: 63-64) suggests that the concepts used at the indicator level should be in a substitutable relationship; being able to substitute indicators at this level of the concept allows greater flexibility, viability, and opportunity to capture the local context and mechanisms used in research and measurement without losing out on the validity of measures. However, this is not acceptable when applied to human rights as derived from international human rights law; human rights obligations require states to implement policies for that ensure the enjoyment of rights while taking into consideration that the manner in which these policies are created and implemented do not violate human rights principles or standards (see CESCR 1999a, 1999b, 2000).

The International Bill of Rights⁷ – the 1948 Universal Declaration of Human Rights (UDHR), the 1966 International Covenant on Civil and Political Rights (ICCPR) and the 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR) – and the 1984 Convention against Torture (CAT) highlight the legal protections that individuals can claim from the state. The two Covenants also reflect the most commonly accepted categorization of human rights: a) civil and political rights, b) economic, social and cultural rights, and c) solidarity rights. Civil and political rights protect the personhood of individuals and their ability to participate in the public activities of their countries, economic, social and cultural rights provide individuals with access to economic resources, social opportunities for growth and the enjoyment of their distinct ways of life as well as protection from the arbitrary loss of these rights and solidarity rights seek to guarantee for individuals access to public goods like development and the environment (Freeman 2002; Landman 2006a). This categorization loosely follows a temporal frame; it has been suggested that since human rights are the consequence of struggles of peoples against oppression and injustice, successive generations of people have fought for distinct ‘generations of rights’ with civil and political rights comprising the first generation, economic, social and cultural rights, making up the second generation, and solidarity rights, the third. Consequently, it was proposed that civil and political rights are preminent and should be attained before the struggles for the other rights could be pursued. This division of human rights has been challenged by scholars in the community. Art 1 of the UDHR states that ‘all human beings are ...equal in dignity

⁷ This conception suggests that the protection and enjoyment of these rights is as important as fundamental rights enshrined in national constitutions (Freeman 2002; Nickel 2007).

and rights'. A corollary that follows from this statement could be that the rights that they enjoy are also equal. The 1993 Vienna Declaration and Programme of Action states that human rights are indivisible, interrelated and interdependent. The enjoyment and implementation of one set of rights is inextricably linked to the fulfillment of the other rights (Alfredsson and Eide 1999; Donnelly 1999; Freeman 2002).

The second set of human rights treaties protect the rights of individuals who by virtue of being members of a particular group or possessing certain characteristics, may be particularly vulnerable to rights violations. Thus, the 1966 International Convention on the Elimination of all Forms of Racial Discrimination (CERD) addresses all forms of racial discrimination, the 1989 Convention on the Rights of the Child (CRC) specifies the legal protections to be given to the rights of children and the obligations accrued to the state to uphold these rights, and the 1979 Convention on the Elimination of Discrimination against Women (CEDAW) highlights the rights of women and ensures them protection from discrimination on arbitrary or unjustified grounds. Other rights protections have been provided to individuals with disabilities, who belong to an indigenous or ethnic population, and migrant workers.

Typically, efforts to measure rights in principle include the development of dichotomous and polychotomous scales that indicate the degree to which a state has formally committed itself to a legal instrument at the international or domestic level. Some efforts at measuring rights in principle used dummy variables for treaty ratification (e.g. Keith 1999; Hathaway 2002; Neumayer 2005), while later efforts also paid attention to state

signature of treaties and reservations filed upon ratification (Landman 2005). Efforts at measuring rights in principle at the domestic level have a longer tradition and either count provisions in national constitutions that protect different categories of rights (e.g. van Maarseveen and van der Tang 1978) or develop an additive scales that code such provision across different rights categories (e.g. Foweraker and Landman 1997). At both levels of analysis, state commitment to rights in principle can be tracked across time and space to the changing legal terrain of rights as it has developed through history.

Rights in Policy

The human rights mechanisms engaged in the clarification of the content of specific human rights provide guidance to states on their protection and promotion by elaborating on a set of human rights principles. The formal human rights regime establishes two types of institutional mechanisms to oversee the implementation of the treaties. The treaty bodies allow for the creation of committees of experts that state parties periodically report to on the progress in the protection and promotion of human rights. Led by the Committee on Civil and Political Rights (CCPR) and the Committee on Economic, Social and Cultural Rights (CESCR), these mechanisms have taken the lead in clarifying the meaning of the right, the nature of state parties' obligations under the treaty, as well as the specific principles and procedures involved in implementing these obligations by drafting 'General Comments' or 'General Recommendations' (see, for example, CCPR 1989, 2004; CESCR 1990, 2000; CRC 2003). The Special Procedures established by the UN Human Rights Council (formerly the UN Commission on Human Rights) are also involved in this process. These procedures consist of either groups or individual experts

in the field who often take the initiative in clarifying the scope and content of the human right they are monitoring. For example, the Special Rapporteur on the Right to the Highest Attainable Standard of Health has taken this opportunity and contributed to further clarifying of the right to health in his annual reports to the UN Commission of Human Rights and the UN General Assembly (Rosas and Scheinin 2001; Hunt 2003a, 2003b, 2004a, 2004b, 2005, 2006, 2007, 2008; Rodley 2003; Symonides 2003). A set of ‘organizing principles’ – availability, accessibility, acceptability and adaptability – have been elaborated by the CESCR as guidelines for states on the implementation of the rights to food, education, and health.⁸ Availability refers to the resources and infrastructure required for the functioning of the resources that states provide as a fulfillment of their obligations. It refers to the implementation of policies to ensure that the core content of the right are made available to all individuals. Accessibility requires that provisions for implementation of the right make the enjoyment of the right accessible to all individuals. This principle comprises non-discrimination in access, physical accessibility (with regard to safety and convenience) and economic accessibility (affordability). Acceptability consists of the relevance, cultural appropriateness and quality of the resource being provided. States are obligated to ensure that the provision of rights is in keeping with cultural and local sensibilities. The fourth principle, i.e. adaptability refers to flexibility in the implementation of policies to provide for the right to ensure that such policies adapt to the changing needs of societies and communities (CESCR 1999a, 1999b, 2000). These indicators that measure implementation of policies

⁸ The General Comment on the Right to Health replaces the principle of adaptability with the principle of quality (CESCR 2000: para 12). In addition to these principles, a set of human rights principles have also been proposed to take into account when making and implementing human rights policies: non-discrimination, participation, adequate progress, and effective remedy (UNDP 2000: 93-95).

to ensure the protection and enjoyment of rights are related to the concept of progressive realization of rights. It may be argued that most rights cannot be immediately secured by states but call for prioritization due to socio-economic and political conditions that determine which rights claims reach urgency, limited resources at the disposal of states, and the making and execution of policies to ensure their implementation. If we accept this premise, then the indicators that measure the gradual implementation of policies using a human rights-based approach would be applicable to all categories of rights.

Since resources available to states are limited, they need to be spent on priority areas determined by the state but informed by the state's human rights obligations. However, it was long considered appropriate that civil and political rights created immediate obligations on states while economic, social and cultural rights could be implemented through progressive realization subject to the availability of resources. Recent interpretations of these rights however, have recognized that they also impose an immediate obligation on states towards the realization of economic, social and cultural rights such as the rights to food, health, housing, education, and work. General or basic obligations towards the rights to non-discrimination, legal remedies and effective participation are also of an immediate nature and not subject to progressive realization (CESCR 1990; UNDP 2000; Green 2001; Chapman and Russell 2002; Sepúlveda 2002; van Bueren 2002). Civil and political rights are considered to impose the obligation towards immediate realization. This distinction between immediate and progressive realization has been challenged by recent developments in law and its interpretation (Eide 2001; CRC 2003; Chapman 2007). For example, Donnelly (2007: 48-50) suggests with

the support of empirical examples that all human rights go through a process of development which reaches a minimal level of achievement in the institutionalization of these norms. The fulfillment of rights, however, is an ongoing recursive process that is contingent on existing socio-political and economic circumstances.

Measures for rights in policy are to date underdeveloped and tend to over rely on proxy measures of taken from the development literature, such as the Human Development Index (Kimenyi 2007; ul Haq 2003) and the Physical Quality of Life Index (Milner et al. 2004; Moon and Dixon 1985, 1992;), or are derived using such measures as against rights in principle measures and other indicators to show the gap between state capacity and state willingness to realize such rights (see, e.g. Cingranelli and Richards 2007). The Office of the High Commissioner for Human Rights along with a team of international experts, has been at the forefront of developing measures that more accurately represent the complexities of rights in policy outlined here (UN 2006, 2008).

Rights in practice

The last concept that would help explain the meaning of human rights has been conceptualized as the ‘dimensions’ of human rights. This notion of dimensions has evolved from capturing the temporal evolution of rights to highlighting the precise nature of the legal obligations of states and the policy and practical implications of fulfilling these commitments. Civil and political rights were often considered to be ‘negative rights’ as their implementation supposedly required the state to simply refrain from interfering in their enjoyment. Economic, social, cultural, and solidarity rights, on the

other hand, were referred to as ‘positive rights’ as their implementation was thought to require investment of limited state resources for their enjoyment. These distinctions present a ‘false dichotomy’ between the categories of rights. All rights have positive and negative characteristics, with the state being obligated to desist from actively preventing the enjoyment of rights as well as to put into place policies to facilitate their pursuit. This has been reiterated by the Committee on Civil and Political Rights (CCPR) and the Committee on Economic, Social and Cultural Rights (CESCR) (CESCR 1990; Holmes 1999; CCPR 2004; UNDP 2006; Donnelly 2007).

The ‘dimensions’ of rights have since then been reconceptualized along the lines of an ‘obligations’ approach, which relates to the obligations that States are bound to uphold as members to international treaties and covenants (Eide 1989; Sepúlveda 2003; Chapman 2007). The obligations of States to respect, protect, and fulfill rights were originally thought of with respect to the rights in the UNCESCR and applied by the CESCR to the rights to adequate food, education and health (CESCR 1999a, 1999b, 2000). The UNDP then adapted this framework to specify states’ obligations towards all human rights, an application that was later recognized by the CCPR (CESCR 1999b: para. 15; UNDP 2000; CCPR 2004). The obligation to respect rights entails refraining from actively depriving people of a guaranteed right. This requires States Parties not to deny or limit access to the enjoyment of rights and desist from a policy of direct or indirect discrimination. The obligation to protect rights involves preventing other actors – individuals, groups or corporations – from depriving people of a guaranteed right. Finally, the obligation to fulfill rights refers to working actively to ensure through the

creation of systems of governance, the provision of resources and infrastructure that all individuals enjoy the rights guaranteed to them under international law. This obligation would expect the state to execute policies that for example, eliminate discrimination based on sex or race in the workplace, or provide access to primary and higher education to economically deprived or socially excluded sections of the population (UNDP 2000; Green 2001; Sepúlveda 2003; Landman 2006b).

As for rights in policy, rights in practice measures are very much in need of development to capture the full array of standards, dimensions, and principles outlined here. For example, events-based and standards-based data (e.g. Freedom House, Political Terror Scale) on human rights typically measure state and non-state violations of civil and political rights but not economic and social rights, although the CIRI human rights data project has developed comparable measures of the violation of worker rights and women's economic and social rights.⁹ Socio-economic and administrative statistics, on the other hand, have been used to provide proxy measures for the fulfillment of economic and social rights, but they have not been widely used to capture the respect for, or protection of, civil and political rights (see Landman 2002, 2006b). Since our framework moves away from a strict separation between positive and negative conceptions of human rights, it is clear that it is possible to develop measures of, for example, state investment in the judiciary, electoral administration, prisons, and other institutions whose remit is to guarantee the protection of particular sets of civil and political rights.

⁹ See Stohl et al., 1984; Stohl et al., 1986; Gibney and Stohl 1988; Gastil 1990; Cingranelli and Richards 2007

MEASUREMENT COMPLEXITY, VALIDITY, AND VIABILITY

The conception of human rights as derived from international law has now been outlined from which it is clear that the concept consists of three constitutive elements: standards that determine the limits of state behaviour towards its residents and its obligations to enable the enjoyment of their rights (i.e. rights in principle); the policies that are implemented to realize these rights (i.e. rights as policy); and the actual realization of the three dimensions of these rights (i.e. rights in practice). Each of these constitutive elements is further divided into a set of indicators as a tangible measure of an abstract concept. However, like any other concept in the social sciences, human rights has attracted complex and contested meanings; the intricate latticework of concepts that constitute human rights have often led to problems of validity and viability in developing measures for monitoring human rights. Even though we have highlighted and provided examples of existing measures that have begun to capture the various standards, dimensions, and principles of human rights outlined here, we nevertheless think that significant questions remain. What do we measure when we measure human rights? Do indicators used to measure the concept do the job? Can viable human rights measures – indicators that do not consume financial and human resources and are easily available and accessible – also be valid? This section of the paper presents four pathways that have been suggested to address this tradeoff between the complexity, validity, and viability of measurement:

- a) The ‘basic rights’ argument – the list of rights protected in international law can be reduced to a select set of rights to be used as proxy measures for the others;

- b) The ‘obligations’ argument – at a minimum, human rights measures should reflect the de facto protection of rights in a state;
- c) The ‘implementation’ argument – human rights measures should reflect the claim that human rights are concerned with the process of achieving rights and not just their outcome; and,
- d) The ‘unique rights’ argument – each right enshrines a distinct obligation that is not reducible to a general set of principles; therefore, each human right needs to be modeled separate and distinct from other rights.

The ‘basic rights’ argument

The notion of ‘basic rights’ might be traced back to the Lockean conception of natural rights to life, liberty and property. In more recent times, it has been argued that the list of rights that were set out in the UDHR and subsequently protected by the two Covenants and regional treaties could be reduced, for a variety of reasons, to a ‘short-list’ (Donnelly and Howard 1988: 214). These vary from Shue’s (1996) set of three rights (security, subsistence, and liberty rights, mirroring Locke), Donnelly and Howard’s (1988) list of ten rights grouped into four clusters (survival rights, membership rights, protection rights, and empowerment rights), and Nickel’s (2007) identification of seven families of rights (security rights, due process rights, liberty rights, rights of political participation, equality rights, social rights, and rights of distinctive groups). If we accept the idea that rights are interdependent, then Donnelly and Howard (1988) suggest that a set of rights could be selected as complementary to the rights enshrined in the UDHR. These scholars have presented a theoretically substantiated argument for this exercise in reduction, thus

ensuring that indicators used to measure these rights would be valid and the conclusions drawn from the results of the assessment could be generalized to the broader family of rights. Moreover, narrowing down the list of rights to be monitored by states would be viable since it would enable the freeing up of limited resources and significantly diminish the complexity in measurement of human rights (Donnelly and Howard 1988; Shue 1996; Nickel 2007: 92-103). Following this suggestion might reduce the breadth of rights to be monitored; however, the complexity of the measurement (suggested by the model mapped out in Figure 1) remains untouched.

The 'obligations' argument

This alternative is an attempt to reduce the complexity of rights measurement while attempting to retain the validity of the measures used and making the process of measurement a viable one. Since the international law of human rights creates obligations on states to respect, protect, and fulfill rights, it would be essential to map, at least this *de facto* enjoyment of rights. The combination of an 'obligations' approach with the classification of categories suggests a simple 2x3 framework of measurement of rights (see Landman 2006b). Undoubtedly, developing indicators and monitoring the protection of rights using this framework is not resource-intensive. The framework is easy to understand and apply (see UNDP 2000: 102; Landman 2006b). However, the inherent simplicity of this alternative might present the temptation to measure outcomes without adequate disaggregation to capture elements of non-discrimination. The lack of indicators on the process of implementation raises questions about the validity of the measures used.

In this paper, we have therefore proposed the further ‘layers’ of availability, accessibility, adaptability, and acceptability to capture these important principles.

The ‘implementation’ argument

Since human rights are concerned with the process of achieving rights and not just their outcome, measuring the implementation of policies drawn up for the enjoyment of human rights would be an essential part of measuring rights. One such framework incorporates the constitutive elements of the conceptual model outlined above and applies this to the right to the highest attainable standard of health (see Figure 2). This example includes specific indicators on the policy process. Input indicators that are included here measure the investment and expenditure of State resources to establish institutions, infrastructure, programmes, etc. to implement a right. Process indicators measure the implementation of policies and provisions at the different stages. Performance indicators map the time taken to produce the various outputs pre-determined by the policies and programmes. Output indicators measure the immediate results of a particular policy. Outcome indicators map the long-term effect of a policy or programme as well as the overall enjoyment of a right (UNDP 2002; Landman and Häusermann 2003; Shrestha and Oiron 2006). The framework also incorporates the four human rights principles of non-discrimination, participation, effective remedy and adequate realization to assess the implementation of state policies (UNDP 2000). While this framework of indicators may be valid, i.e. they measure rights as opposed to the outcome of the enjoyment of rights; the tradeoff here has clearly been with the issue of complexity and validity.

[Figure 2 here]

The 'unique rights' argument

The fourth and final alternative to addressing the tradeoff between the complexity, validity, and viability of rights measures is the argument that each human right is unique in the claims that individuals enjoy and the obligations that states accede to.

Consequently, a general conceptual model of human rights is not applicable. Each human right would be measured using a distinct framework mapping the meaning of the right as protected in international law. This would be based on the interpretation of the right published by treaty bodies and special procedures which clarify the nature of the obligations of states with respect to the right and the process to be followed to implement the provisions of the treaty with respect to that right. One such example is the work of the Special Rapporteur on the Right to the Highest Attainable Standard of Health and the researchers who have assisted him in clarifying the meaning of the right to health and developing indicators to measure its implementation (see Figure 4; Hunt 2003a, 2006; Backman et al 2008). Like the previous alternative, the measures adopted here are valid but complex and not viable for states to develop and use.

[Figure 3 here]

The four alternative pathways discussed above reflect efforts to address the trade-off between the complexity and viability of human rights measurement while attempting to produce valid measures for the purpose. Figure 4 summarises these relationships and

highlights various measures that have been used to monitor human rights. We suggest that there is a direct and negative relationship between measurement complexity and viability. The adoption of a complex conceptual framework for measurement might reduce its viability (with respect to financial costs, and the availability and accessibility of the data required). The validity of the measures used is determined by the model of human rights suggested in Figure 1. Human rights measures could either be employed to map the complete conceptual framework of human rights or certain constitutive elements. This choice has a related impact (which may be negative or positive) on measurement viability.

To date, there have been significant attempts to measure various elements of the framework develop here as well as the alternative pathways outlined above. As we have mentioned briefly in the paper, there are events-based measures, standards-based measures, survey-based measures, and official socio-economic and administrative statistics. Survey-based measures and official statistics have been employed as measures in all four pathways, while events-based measures and standards-based measures have been utilised in some of these alternatives. The choice of pathway to adopt in human rights measurement depends on the goals of measurement and the resources available for the purpose. A researcher would be expected to prioritize from the three components of measurement complexity, validity, and viability and select an alternative best suited to her needs.

[Figure 4 here]

SUMMARY

This paper has sought to highlight the complex content of human rights as derived from international human rights law with the purpose of establishing clarity in its monitoring and measurement. The first section described the international law of human rights as it assists in mapping the distinct contours of the concept of human rights. We suggested that this concept could be understood at three conceptual levels: the basic level which related to the core content of human rights, the secondary level which highlighted the constitutive elements of the concept, and the indicator/data level which operationalised these elements into distinct measures. This operationalisation, however, is not as simple as developing a basic set of indicators that are then used to assign scores to units. Rather, the content of human rights, it was shown, involves a complex web of understandings that can be broadly defined in terms of the standards, dimensions, and organising principles, each of which requires different sets of indicators, which in turn, have been measured using events-based data, standards-based data, survey-based data, and socio-economic and administrative statistics. The final section presented a comparative account of the trade-off between complexity, validity, and viability of the measurement of this concept. Researchers and social scientists continue to grapple with making human rights easier to measure, collect data, understand, and interpret, but we believe that renewed attention is needed to the complexity of the content of rights as they are meant to be realised across the globe. We hope that our paper contributes to this renewed attention.

Figures and Tables

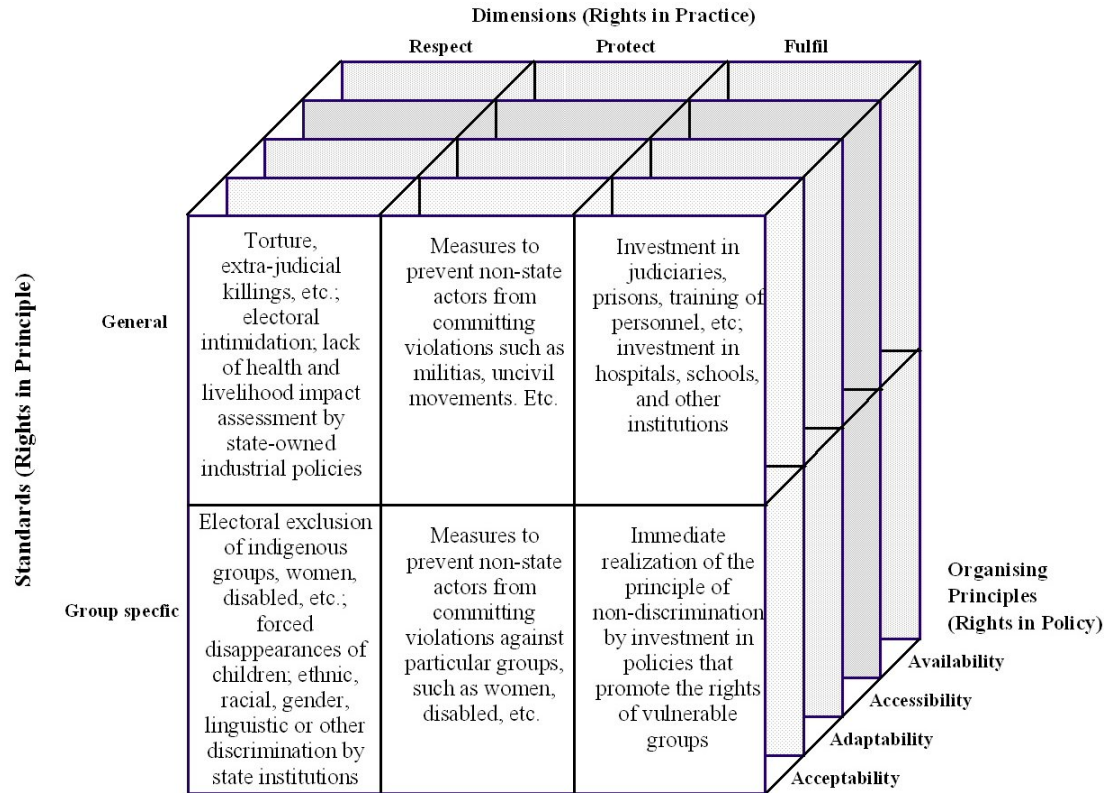


Figure 1: The complexity of human rights content

Table 1.1 Obligations of States towards the child's right to health

Obligations of States	Availability					Accessibility			Adaptability (to the evolving capacities of the child)	Acceptability (best interests of the child being paramount)
	Input (State resources invested; legislation & policies approved)	Process (functioning of different aspects of policies & provisions)	Performance (time taken to produce output)	Output (immediate results)	Outcome (Survival & devt* as min. outcome)	Non-discrimination	Physical	Economic		
Respect rights (by State)	Including right to health in devtal* projects as policy determinant	Including right to health at every stage of implementing devtal projects	Time taken to complete devtal projects after excluding potential violations of right to health	No. of devtal policies that include right to health as policy determinant	Short- & long-term health effects of including right to health in devtal projects	Devtal projects that violate the right to health of particular sections of the population	Devtal projects that impede physical access to health services	Devtal projects that reduce economic access to health services	Do State policies on developmental projects allow for increased participation of older children?	Do developmental projects violate best interests of the child with regards to its right to health?
Protect rights (from violation by non-State actors)	Legislation/ policies on detecting industrial pollution	Including right to health at every stage of implementing industrial projects	Economic costs of excluding potential violations of right to health	No. of industrial projects that include right to health as policy determinant	Levels of industrial pollution that impact the child's right to health	Industrial projects that violate the right to health of particular sections of the population	Industrial projects that impede physical access to health services	Industrial projects that reduce economic access to health services	Do State policies on industrial projects allow for increased participation of older children?	Do State policies on industrial pollution protect the child's right to health?
Fulfil rights (promote and facilitate by the State)	Budgetary allocation & spending on child immunization	No. of doctors trained to administer child immunization	Time it takes to immunize children in a district	No. of children immunized in a year	Fatality rate for children immunized for a disease	Do all children have access to immunization services irrespective of social inequalities?	Distance between immunization centre & nearby villages	Cost to travel to immunization centre if immunization is free	Do State health policies that allow for increased participation of older children?	Do State immunization policies promote best interests of the child?

Note: * - 'devt' is the abbreviated form of 'development' and 'devtal' is the abbreviated form of 'developmental'.

Sources: CESCR, 1999; UNDP, 2000: 102; Green, 2001: 1074; Landman, 2004.

Table 1.2 Obligations of States to adhere to human rights principles when providing for the child's right to health

Human Rights Principles	Availability					Accessibility			Adaptability (to the evolving capacities of the child)	Acceptability (best interests of the child being paramount)
	Input (State resources invested; legislation & policies approved)	Process (functioning of different aspects of policies & provisions)	Performance (time taken to produce output)	Output (immediate results)	Outcome (Survival & devt* as min. general outcome)	Non-discrimination	Physical	Economic		
Participation (meaningful and effective)	Budgetary allocation & spending on health education (linked to right to information)	No of teachers provided training in health education	Time it takes to educate children about common diseases, first aid, etc.	No of children provided health education in a year	Level of awareness among children about common diseases, first aid, etc.	Do all children have access to health education irrespective of social inequalities?	Distance between village and centre providing health education	Cost to travel to centre providing health education	Do State health education policies provide for children's participation?	Do State health education policies promote the best interests of the child?
Effective remedy (judicial, quasi-judicial and/ or informal)	Legislation/ policies on remedies available to children on violation of right to health	No of judges and lawyers trained on the child's right to health	Time it takes to train judges & lawyers on the child's right to health	Levels of awareness among judges and lawyers on the child's right to health	Cases on the violation of the child's right to health admitted in court	Do all children have access to judicial remedy on violation of the right to health?	Distance between nearest judicial tribunal and village	Cost to invoke judicial remedies on violation of right to health	Do remedial mechanisms provide for children's participation?	Do remedial mechanisms for violation of the right to health promote best interests of the child?
Adequate progress in realisation (benchmarks & targets)	For budgetary allocation & spending on health services	For no. of doctors that should be trained to administer child immunization	For time it should take to immunize children in a district	For no. of children that should be immunized in a year	For fatality rate for children immunized for a disease	For no. of children who have access to immunization services irrespective of social inequalities	For avg. proposed distance between immunization centre & nearby villages	For proposed cost to travel to immunization centre if immunization is free	For increased participation of older children	For State immunization policies promote best interests of the child

Note: * - 'devt' is the abbreviated form of 'development'.

Sources: CESCR, 1999; UNDP, 2000: 102; Green, 2001: 1074; Landman, 2004.

Reproduced from Carvalho 2008: 551-552

Figure 2. Assessing States' children's rights obligations using the child's right to health as an example

Table 1. List of human rights protected under international law

1. Non-discrimination
2. Life
3. Liberty and security of the person
4. Protection against slavery and servitude
5. Protection against torture
6. Legal personality
7. Equal protection of the law
8. Legal remedy
9. Protection against arbitrary arrest, detention or exile
10. Access to independent and impartial tribunal
11. Presumption of innocence
12. Protection against ex post facto laws
13. Privacy, family, home and correspondence
14. Freedom of movement and residence
15. Nationality
16. Marry and found a family
17. Protection and assistance of families
18. Marriage only with free consent of spouses
19. Equal rights of men and women in marriage
20. Freedom of thought, conscience and religion
21. Freedom of opinion and expression
22. Freedom of the press
23. Freedom of assembly
24. Freedom of association
25. Participation in government
26. Social security
27. Work
28. No compulsory or forced labour
29. Just and favourable conditions of work
30. Trade unions
31. Rest, leisure and paid holidays
32. Adequate standard of living
33. Education
34. Participation in cultural life
35. Self-determination
36. Protection of and assistance to children
37. Freedom from hunger
38. Health
39. Asylum
40. Property
41. Compulsory primary education
42. Humane treatment when deprived of liberty
43. Protection against imprisonment for debt
44. Expulsion of aliens only by law
45. Prohibition of war propaganda and incitement to discrimination
46. Minority culture
47. No imprisonment for breach of civil obligations
48. Protection of children
49. Access to public service
50. Democracy
51. Participation in cultural and scientific life
52. Protection of intellectual property rights
53. International and social order for realizing rights
54. Political self-determination
55. Economic self-determination
56. Women's rights
57. Prohibition of the death penalty
58. Prohibition of apartheid

Sources: Davidson 1993: Appendix 1; Gibson 1996: 37-38; Green 2001: 1069; Donnelly 2003: 24
Reproduced from Landman, 2006a: 16

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