



The Metrics of Human Rights: Complementarities of the Human Development and Capabilities Approach

SAKIKO FUKUDA-PARR

*Sakiko Fukuda-Parr is Professor of International Affairs at the New School,
USA*

Abstract Capabilities and human rights are closely related and share common commitments to freedom and justice as central political objectives. Much of the literature on this relationship has focused on defining the overlaps and differences between them as theoretical concepts. This paper explores a different aspect of the relationship, namely the overlaps and differences in their respective measurement approaches. The paper argues that human development indicators that are used to evaluate policies for capability expansion, or human development, cannot substitute for human rights indicators because of the differences in them as concepts as well as the way that these concepts are used and applied. Human rights indicators are used to assess the accountability of the state in complying with the obligations that are codified in international and domestic law. However, the literature of development economics and the methods of empirical analysis and aggregative summary measurements extensively used in the human development and capabilities approach can overcome some of the constraints of conventional methods used in human rights assessments. These possibilities are illustrated in the Economic and Social Rights Fulfillment Index, recently developed by Fukuda-Parr, Lawson-Remer and Randolph that develops an empirical model of 'progressive realization' and provides an empirical basis for setting benchmarks.

Key words: Capability approach, Human development, Sen, Nussbaum, Human rights indicators, Rights-based approach to development, Progressive realization

Introduction

Both Nussbaum (1997, 2000, 2003) and Sen (1982, 1999, 2000, 2004, 2005a, 2005b) have written extensively about capabilities and human rights as closely related but distinct concepts that share a common commitment to

5

10

15

20

25

30

35

40





S. Fukuda-Parr

5 freedom and justice as central political objectives. Both have emphasized the potential benefits of the complementarities between the two concepts. According to Sen, 'A more integrated approach can ... bring significant rewards, and facilitate in practical ways the shared attempts to advance the dignity, well-being and freedom of individuals in general' (United Nations Development Programme [UNDP], 2000, p. 19). And in her contribution to the present issue, Nussbaum concludes:

10 The two approaches (one being a species of the other¹) should march forward as allies in the combat against an exclusive focus on economic growth, and for an approach to development that focuses on people's real needs and urgent entitlements.

15 Much of the literature on this relationship, principally by Nussbaum and Sen, has focused on defining the overlaps and differences between human rights and capabilities as theoretical concepts. Above all, the concept of capabilities helps clarify the theory of human rights as ethical claims that impose positive obligations, and provides a robust defense of economic and social rights.² But there are many other ways in which human rights and capabilities are complementary.³ Human rights can be valuable in the field of capabilities as well as the other way round, in clarifying other conceptual issues, and in enriching them as policy frameworks. For example human development and capabilities (HD/C) analysis can benefit from human rights perspectives that focus on locating accountability, directing attention to the vulnerable and the poorest of the poor, and those who suffer from development processes. Human rights analysis can benefit from the literature on HD/C that investigates the merits of diverse policy options and uses quantitative methods and data.

25 This paper takes forward the exploration of the relationship between these two concepts and approaches to development by looking at measurement tools for economic and social human rights.

30
35 **Conceptual framework for human rights measurement: overlaps and differences with the HD/C approach**

40 As normative frameworks for social evaluation, human rights and HD/C overlap significantly in their commitments and priorities. Indicators of human development are frequently used to measure the extent to which human rights are realized. However, this is erroneous since they are different concepts (UNDP, 2000; Green, 2001; Raworth, 2001). Moreover, there are important differences between these two approaches in both the concept and the way that they have been institutionalized and are used; human rights are institutionalized into law while human development remains an analytical framework. Such differences have considerable implications for the design of assessment approaches and measurement tools.





The Metrics of Human Rights

Overlaps and differences: priorities

In *Women and Human Development*, Nussbaum (2000) explores the unequal social and political conditions in India that restrict women's *capabilities* and limit what lives they can lead. She concludes:

The outrages suffered every day by millions of women—hunger, domestic violence, child sexual abuse and child marriage, inequality before the law, poverty, lack of dignity and self regard—are not uniformly regarded as scandalous, and the international community has been slow to judge that they are *human rights abuses*. (Nussbaum, 2000, pp. 298-299; emphasis added)

The fundamental concern that motivates both human rights and human development/capability is the freedom and dignity of all individuals (Sen in UNDP, 2000), and just social arrangements (Nussbaum, this collection). Both concepts are concerned with human life as a whole, incorporating multiple dimensions—an approach that contrasts with other frameworks, notably utilitarianism, which uses reductionism to narrow the scope of analysis to a single dimension. The terrain of human rights and capabilities overlap; Nussbaum's list of 10 central capabilities reflects the core human rights recognized in international law (Nussbaum, 1997, this collection).⁴

Human rights, as entitlements a person has by virtue of being human, could be thought of as claims to essential capabilities. Both rights and capabilities are entitlements that impose correlate obligations of the state that should be reflected in both legislation and other aspects of government policy. In development policy, these two perspectives both emphasize priority attention to inequality, poverty, meeting basic needs, participative process and democratic accountability as core development issues. These agendas are advocated in place of or as a critique of prevailing national and international policies that neglect these issues and tend to give primary attention to economic growth as the over-riding objective. Economists and human rights activists have begun to argue that economic analysis in the HD/C and other heterodox perspectives should be more systematically applied to develop policy instruments for the fulfillment of human rights (Balakrishnan and Elson, 2008; Fukuda-Parr, 2008).

However, there are some differences between human rights and HD/C approaches in their literatures and strategies related to development, poverty and inequality. HD/C is concerned with development. Human rights literature does not engage with this challenge. It has only recently begun to engage with poverty as a major challenge. In the human rights perspective, equality is an essential aspect of the very notion of human rights as entitlements that are due to individuals by virtue of their being human.⁵ As the first line of the Universal Declaration of Human Rights notes: 'All human beings are born free and equal in dignity and rights.' It is an indispensable element of human rights assessment, and is reflected in critique of policy, such as the

5
10
15
20
25
30
35
40
46



S. Fukuda-Parr

5 Millennium Development Goals for their lack of attention to inequality (Office of the High Commissioner for Human Rights, 2008). The human rights analysis of equality is concerned with discrimination as a violation of right to equality, and investigates disparities based on identities of gender, ethnicity, creed, and race. Inequality does not command the central focus in the HD/C literature and policy agendas where the focus is on progress, and deprivation as well as distribution. The HD/C literature has been concerned with capability as the space in which inequalities should be evaluated. It has contributed to the development economics theory and policy by extending concern with inequality beyond distribution of income. The human rights literature has not engaged with these distinctions, but skirts around them by focusing on discrimination as the essential issue, to be specified in different applied contexts.

Specifying important entitlements and obligations

15 Individuals have a large number of capabilities, and the potential is infinite. Not all freedoms are equally important. Some can be trivial, and some can be harmful to the individual or to others. So which capabilities should be adopted as important social goals? What are the minimum capabilities that are necessary for a minimally dignified life that should be guaranteed to all individuals in a society that is just? The edifice of international human rights has been constructed to deliberate on a list of essential human rights. The Universal Declaration of Human Rights arguably constitutes a comprehensive list of such entitlements that should be a minimum for a just society. A major achievement of the twentieth century has been to elaborate on these further in developing an extensive set of human rights instruments in the form of covenants, treaties, declarations, general comments and other documents, and to set up a process for their refinement and implementation.

20 The field of human rights has developed around codifying obligations in international and domestic law, and setting up formal structures and processes for their implementation. Scholarship and advocacy are directed to influencing these processes. Human rights analysis works to locate accountability for securing essential entitlements. The assessment of human rights would then necessarily focus on the extent to which states are complying with their obligations related to most important entitlements required of a just society.

25 While obligations are a core concept in human rights, they are also an important element of capabilities; capabilities, like human rights, are 'urgently important entitlements' that are 'not just optional needs' which can be compromised for some other goal such as economic growth (Nussbaum, 2003, this collection). Nussbaum explains her motive in developing the capabilities approach as a philosophical framework for thinking about these as important issues of justice and provides a rationale for their redress as a priority political goal (Nussbaum, 2000, pp. 298–299). She explains:



The Metrics of Human Rights

the aim of the project as a whole is to provide the philosophical underpinnings for an account of basic constitutional principles that should be respected and implemented by governments of all nations, as a bare minimum of what respect for human dignity requires. (Nussbaum, 2000, p. 5)

5

However, the literature on what should be essential capabilities stops with a controversy on whether a list should be constructed and by whom. Nussbaum argues that the concept of capabilities cannot be used to advance social justice without specifying what capabilities are so important that they are not negotiable. In proposing her list, she explains:

10

these ten central capabilities are supposed to be general goals that can be further specified by the society in question, as it works on the account of fundamental entitlements it wishes to endorse. But in some form all are part of a minimum account of social justice: a society that does not guarantee these to all its citizens, at some appropriate threshold level, falls short of being a fully just society, whatever its level of opulence. (Nussbaum, 2005, p. 42)

15

Sen responds: ‘The problem is not with listing important capabilities, but with insisting on one predetermined canonical list of capabilities, chosen by theorists without any general social discussion or public reasoning’ (2005a, p. 335).

20

The process of legislating international human rights contains much of these elements of general social discussion and public reasoning that Sen refers to. It involves all states, and is increasingly influenced by civil society advocates from across the world. Human rights legislation remains an active site of global negotiations over competing conceptualization of what fundamental claims human beings have on social arrangements nationally and globally. It is surprising that neither Nussbaum nor Sen has seriously considered international human rights instruments as a general list of essential capabilities that is universally applicable. Indeed, Vizard (2007) argues that political and legal consensus forming procedures of the international human rights regime could provide a pragmatic procedure for specifying a list of essential capabilities—or ‘human rights based capability sets’—that would command international legitimacy.

25

Although capabilities can be conceptualized as entitlements, the literature on capabilities does not pursue questions about correlate obligations. The HD/C literature pursues questions about implementing priority goals through economic and social policies and other social arrangements but not through the legal process. These distinct approaches are complementary and pursuing such questions would open up an important new area of research and analysis in HD/C approach. Vizard (2007) argues that a human rights-based capability list would incorporate a specification of associated obligations of national governments, international agencies and other duty bearers.

30

35

40

46



S. Fukuda-Parr

The combination of human rights and capabilities could build a pragmatic framework for international accountability for ending poverty (Vizard, 2007, p. 248).

5

Assessment frameworks: information and data requirements

10

Both human rights and capabilities are complex concepts that pose several difficulties in measurement on which a large literature has developed in both fields.⁶ Nonetheless, in the HD/C field, a pragmatic approach has been followed to develop and use measurement tools that provide useful information adapted to a particular context. Indicators play an essential role in evaluating progress, setting priority goals for social action, and developing policies. A tradition of empirical analysis has been developed for evidence-based policy making in this perspective. For example, the Human Development Index was devised by Sen and Haq for the particular purpose of evaluating development progress of countries in the context of international and national development policy debates.⁷

15

20

Measurement tools and methods of human rights and HD/C overlap in some ways but should differ because they relate to two distinct—although overlapping and complementary—concepts, and are used in different ways. Social evaluation in the human rights perspective is concerned with the extent to which human rights are realized while HD/C is concerned with the expansion of capabilities. Human rights metrics are used in formulating and evaluating economic and social policy in the development context. Human rights metrics are to be used in assessing state performance for their compliance with their obligations in the legal context.

25

30

There are overlaps in the information requirements. Human development indicators serve well to reflect the well being of people and the current enjoyment of rights—although they may not be guaranteed. They focus directly on human well-being and indicators of human outcomes, and would include: multiple dimensions of human life—capabilities or rights—each of which has intrinsic importance and is not substitutable; data showing aggregate average levels of progress and levels of deprivations; data disaggregated by groups such as by gender, ethnicity, religion, race, and class; and indicators of participation and empowerment. These information requirements common to human rights and HD/C assessments contrast with the conventional approach to social evaluation used in development that focuses on economic indicators, aggregates without deprivation and distributional measures.

35

40

However, these indicators are not adequate measures of human rights realization; this entails both the enjoyment of rights as well as the extent to which the rights are guaranteed by state action. Human rights assessment is concerned with whether state conduct is in compliance with the norms and standards of international human rights law.⁸ While obligations are specific to each particular right, the international law identifies common elements of obligations across all economic and social rights are delineated. First, they

46



The Metrics of Human Rights

include three types of behavior: *to respect rights* (not directly violating a person's rights); *to protect rights* (acting to refrain others from violating a person's rights); and *to fulfill rights* (acting to facilitate the realization of rights). Second, the obligations apply to both 'result' (extent to which people are enjoying the right) and 'conduct' (taking action aimed at realization of a right). The actions refer to a range of measures that would create a facilitating environment for the realization of rights, or to provide for them directly. Third, recognizing the limitations of financial and other means necessary for the fulfillment of rights and the diverse initial conditions from which human rights conditions are evaluated, states are not required to achieve full realization of rights overnight, but 'progressively'. According to Article 2.1 of the International Covenant on Economic, Social and Cultural Rights:

5
10

Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and cooperation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means ... (United Nations, 1966)

15
20

However, states cannot wait to make effort, but take steps 'as expeditiously as possible' towards full realization, immediately end discrimination, and must not allow 'retrogression'. Moreover, states have a 'minimum core obligation' to achieve a minimum level of rights with immediate effect. Fourth, international law also specifically calls on states to remove discrimination as an immediate obligation (Committee on Economic, Social and Cultural Rights, 2009). Fifth, important obligations relate to the procedural or cross-cutting norms of non-discrimination, participation and accountability.

25

Human development indicators do not provide information on the extent to which a state is complying with its obligations.

30

Human rights measurement strategies: the use of economic and social science data and methods

35

This section turns to the possible use of data and tools of HD/C approach in human rights assessments. The methodology of human rights analysis has been dominated by case-study analysis that emphasizes contextual specificity and uses qualitative information. It has made very limited use of quantitative analysis, country aggregation, and cross-country comparisons.⁹ Moreover, the conceptual and empirical knowledge of development economics have not been used in human rights analysis. The early literature on human rights measurement assumed that socio-economic indicators of outcome variables were adequate reflections of rights fulfillment, ignoring obligations of progressive realization.¹⁰ While the recent literature on measurement in the

40

46

S. Fukuda-Parr

5 past decade clarified the difference, these outcome measures continue to dominate assessments and advocacy. Measurement tools developed for civil and political rights were based on reports focused on cases of gross violations. These reflect failures to respect, but not to protect and fulfill human rights, nor the concept of progressive realization. Thus these approaches are effective in locating accountability in specific cases, and in generating qualitative information, but have limitations for making assessment of the overall conduct of the state or the overall realization of rights in the following ways:

- 10
- *Obligations*—focus on outcomes reflects enjoyment of rights in the right holder perspective and neglects obligations in the duty bearer perspective.
 - *Positive duties*—obligations to protect and fulfill rights that require positive actions rather than merely refraining from acting to respect.
 - 15 • *Aggregation to the national level*—qualitative case studies cannot be aggregated to reflect on the behavior of the state as a whole with respect to its entire population rather than to specific individuals or groups.
 - *Quantification*—without quantitative information, it is not possible to determine whether compliance is improving or deteriorating, how widespread abuses and suffering might be and the magnitude of populations affected, and empirically analyze which groups might be particularly affected.
 - 20 • *Progressive realization*—progressive realization is a core concept of economic and social rights but has long been controversial; it could provide an ‘escape hatch’ to states who could always argue that they could not make more effort to improve human rights enjoyment amongst the population. Just how much progress should be achieved in a given time and just how much effort should be made? The Committee on Economic, Social and Cultural Rights have adopted a procedure of setting ‘benchmarks’ against which performance would be assessed. But this leaves the problem of setting the benchmark. Without evidence-based information and theoretical approach to setting objective standards for setting benchmarks required to be met by the duty bearer, standards for what level of realization can be expected is left to subjective judgment.
 - 25 • *Cross-country comparison*—because the international system for monitoring human rights is a system of peer review amongst states, cross-country comparison is taboo. It has also been eschewed by many human rights activists who argue that human rights compliance is country specific and defies such comparisons. However, without cross-country comparisons, it is difficult to objectively assess what might be a reasonable achievement in rights realization that could be achieved in a given context of economic, social and political realities.
 - 30
 - 35
 - 40

46 For these reasons, the 2009 *Report of the UN High Commissioner for Human Rights on Implementation of Economic, Social and Cultural rights* concludes that it is ‘important to develop tools to assess the appropriateness of the measures adopted by the State to implement rights, as well as the



The Metrics of Human Rights

achieved results. Monitoring realization requires tools that are capable of measuring results and progress over time' (United Nations, 2009, para. 34). The potential value of using quantitative data in human rights analysis has long been recognized. The first UN Special Rapporteur for Economic, Social and Cultural Rights took up this issue as his main area of work, and noted in his 1990 report:

5

Indeed, without the availability of a measurement device based on some form of statistical data, there is little chance of obtaining an overall picture which shows the extent which these rights are realized. Indicators can provide one means of assessing progress over time towards the 'progressive realization' of these norms. (Turk, 1990, para. 7)

10

That report stimulated many academics, human rights advocates and UN agencies to work on measurement. A significant literature on measurement of human rights emerged addressing numerous conceptual aspects of the challenge and proposed ways of approaching measurement. Much of the initial work concluded that lack of specificity in the substantive contents of rights was a major obstacle to the development of indicators.¹¹ The difficulty of setting standards in the context of 'progressive realization' emerged as another challenge. For example, Chapman (1996) proposed the 'violations approach' given the impossibility of tackling obligations of progressive fulfillment subject to maximum available resources. Alston (2000) proposed an approach, in a paper published in this journal, to developing an index of 'human rights accountability' based on how well states were reporting on their compliance that skirts around these problems by focusing on reporting. Hunt (2003) proposed a procedural approach to using indicators and setting benchmark targets for progressive realization within the human rights machinery. He also proposed a way of organizing indicators in three categories: outcome, structure and process that differentiate between obligations of result and conduct. The Centre for Economic and Social Rights proposed the multiple ways in which human development indicators could be used in human rights analyses but does not address progressive realization (Center for Economic and Social Right, 2008).

15

20

25

30

35

Moving beyond conceptual debates and general approaches, a number of initiatives emerged to develop indicator sets and measurement tools to be used in analyses of human rights situations across different countries of the world. Among the most widely discussed initiatives are: the Office of the High Commissioner for Human Rights (2006, 2008) framework and illustrative indicators; Right to Health indicators by Hunt and others (Backman *et al.*, 2009); Indicators Benchmarking Scoping Assessment (IBSA) initiative indicators for the right to food and right to water by University of Mannheim and FIAN International (Riedel, 2006); education project proposals for right to education developed by Action Aid in collaboration with non-government organizations (NGOs) (Right to Education

40

46

S. Fukuda-Parr

Project, 2010) and academics (Kalantry *et al.*, 2010); proposals for right to water by the NGO COHRE (see Roaf *et al.*, 2005); Organization of American States (OAS) guidelines on indicators (Organization of American States, 2008); and Economic and Social Rights Fulfillment Index (ESRF Index) proposed by Fukuda-Parr *et al.* (2009) and Randolph *et al.* (2010).

How do these approaches overcome the limitations of existing, case based methodologies?

- *Obligations*—all of these initiatives contain the duty bearer perspective rather than focus exclusively on the rights bearer enjoyment of rights. The initiatives from Office of the High Commissioner for Human Rights, Hunt, IBSA, and OAS categorize indicators by outcome, structure and process, which separate the rights bearer perspective under outcome and duty bearer perspective under process, with structure reflecting both perspectives. The initiatives of NGOs for education (Right to Education Project, 2010) and water (Roaf *et al.*, 2005) organize indicators by substantive content of rights: accessibility, adaptability, acceptability, and availability for education, and availability, physical accessibility, quality, affordability for housing. This way of categorizing features of rights has been important in structuring obligations for many other rights. The ESRF Index captures obligations by focusing on resource constraints. Apart from the ESRF Index, these initiatives all aim to develop detailed lists of obligations specific to particular rights. They have adopted the framework of outcome–structure–process in identifying indicators. They produce long lists of obligations: in the case of Hunt’s proposal for health, this numbers 72 (of which only 29 are numerical) indicators; and in the case of the education initiative by Action Aid, over 200 indicators.
- *Positive duties*—all these initiatives focus on positive duties to fulfill rights.
- *Aggregation to the national level*—all these initiatives focus on the country as the unit of analysis rather than on specific individuals. Most make efforts to focus on sub-groups within the country. However there is no aggregation across rights, with the exception of the ESRF Index that is a composite of six core economic and social rights.
- *Quantification*—the initiatives except for the ESRF Index propose indicators that include both non-quantitative and quantitative information, including conventional socio-economic data. For example, COHRE proposes the percentage of local authority water and sanitation budgets that is allocated to marginalized and vulnerable groups, as an indicator of equity in budget allocations (Roaf *et al.*, p. 26). But there is a preponderance of ‘indicators’ that are not quantitative and are expressed as questions with yes/no answers. For example, ‘are specific national and local budgetary strategies in place to address the needs of marginalized and vulnerable groups?’ (Roaf *et al.*, p. 26).
- *Progressive realization*—the ESRF Index tackles the concept of progressive realization head on and proposes an objective, evidence-based



The Metrics of Human Rights

methodology for setting benchmarks based on empirical data. By using the data and methodology of development economics, the Index turns the abstract concept of progressively achieving higher levels of fulfillment as state capacity expands, to an empirically based model of what can realistically be achieved on the basis of historical experience worldwide. All the other proposals provide qualitative and quantitative information on state behavior and rights enjoyment, but do not offer a method for setting benchmarks on an objective basis.

5

- *Cross-country comparison*—all of the proposed methods take a global perspective and potentially make inter-country comparison possible. But such comparisons are of limited value in assessing obligations that are for progressive realization because state capacity is not incorporated in the indicators. Only the ESRF Index does this as explained.

10

Overall, these recent proposals present an important advance over the traditional human rights methodology based on cases. They incorporate the duty bearer perspective and focus on obligations. They take a global perspective and focus on the country—rather than an individual case—as the unit of analysis. Most build on clarifying the core features of substantive rights and developing indicators related to state obligations, but stop at addressing ‘progressive realization’. The ESRF Index, however, takes the literature forward in that direction, towards an empirical, evidence-based approach to setting benchmarks against which progressive realization can be evaluated.

15

20

Economic and Social Rights Fulfillment Index (ESRF Index)

The conceptual framework and the calculation methodology for the ESRF Index are fully elaborated in two articles published in the *Journal of Human Rights*, one on concepts (Fukuda-Parr *et al.*, 2009) and one on the first round of country scores and rankings (Randolph *et al.*, 2010). The index is a composite measure of economic and social rights that incorporates six core rights (rights to health, education, food, housing, social security, decent work), and uses socio-economic survey data from international series with comparable cross-country data and time trends.

25

30

The index integrates obligations of result and obligations of conduct. The socio-economic data are used as indicators of result, the degree to which the people of the country are enjoying their rights in concrete, substantive terms. Then, focusing on the obligations of progressive realization, the index adjusts these outcomes with a measure of state capacity, using Gross Domestic Product (GDP). The adjustment is made to reflect how far the country has moved to achieving a benchmark that is defined as the highest possible level of achievement given the level of resources available. Note that this is not government expenditures but resources available to the state. Note also that it makes no effort to identify specific policy measures to achieve fulfillment, quite intentionally on the grounds that policy measures necessary to secure

35

40

46

S. Fukuda-Parr

human rights enjoyment varies from one country to another. It builds specifically on the position that there is no 'one size fits all' set of policies that would lead to people enjoying their rights; say, for example, the right to primary schooling. In some countries, this may be extra government expenditure to build schools. In others, it may be improving school management. In yet others, the safety on the roads that girls must travel on to reach the school may be the most important means to securing the right to schooling.

Using a methodology termed the 'achievement possibilities frontier' (APF), this index estimates the potential enjoyment level for each core right at a given level of state capacity, measured by GDP per capita. The first step is to look at the historic record of achievement levels of all countries of the world for 25 years. These achievement data are then plotted against GDP per capita in purchasing power parity (PPP) values. A 'frontier' is then drawn, using the highest levels of achievement observed for different levels of GDP. Another way of conceptualizing the APF is that it is a rigorous methodology for setting benchmarks for the obligations of progressive realization for each country.

This procedure is illustrated in Figure 1, which shows the scatter-plots for two indicators: low height for age, an indicator of malnutrition and the right to food; and income/consumption below the poverty threshold of \$1.25, used as an indicator of the right to work that is productive, one of the elements of the right to decent work. The first scatterplot charts the percentage that is not low height for age (or not malnourished) against GDP per capita. The second scatterplot charts the percentage of non-poor against GDP per capita. The line at the top shows the achievement production possibilities frontier. The frontier values can be a basis for setting the benchmark of progressive realization at different levels of income; states should be obligated to achieve the highest level historically recorded for countries with the same level of resources that they currently have. The distance between the current achievement levels of a country against the benchmark, defined by the frontier, represents the extent to which the obligations of progressive realization fall short. All countries should be at the frontier if they were making the best effort to achieve rights fulfillment given the resources that are available. The scatterplots give interesting insights into the nature of progressive realization. They show wide dispersion among countries at the same level of income, and that in most cases the frontier flattens out at a relatively low level of income. These patterns empirically demonstrate the relationship between income and rights enjoyment. Further investigations of this relationship can contribute to clarifying the concepts of progressive realization and maximum available resources that have been problematic in the literature of economic and social rights.

The ESRF provides subscores for each of the core rights, and the aggregate score across the rights is the combined composite score for economic and social rights as a whole. It provides a rigorous and evidence-based tool for monitoring state compliance than outcome indicators evaluated against benchmarks.

The Metrics of Human Rights

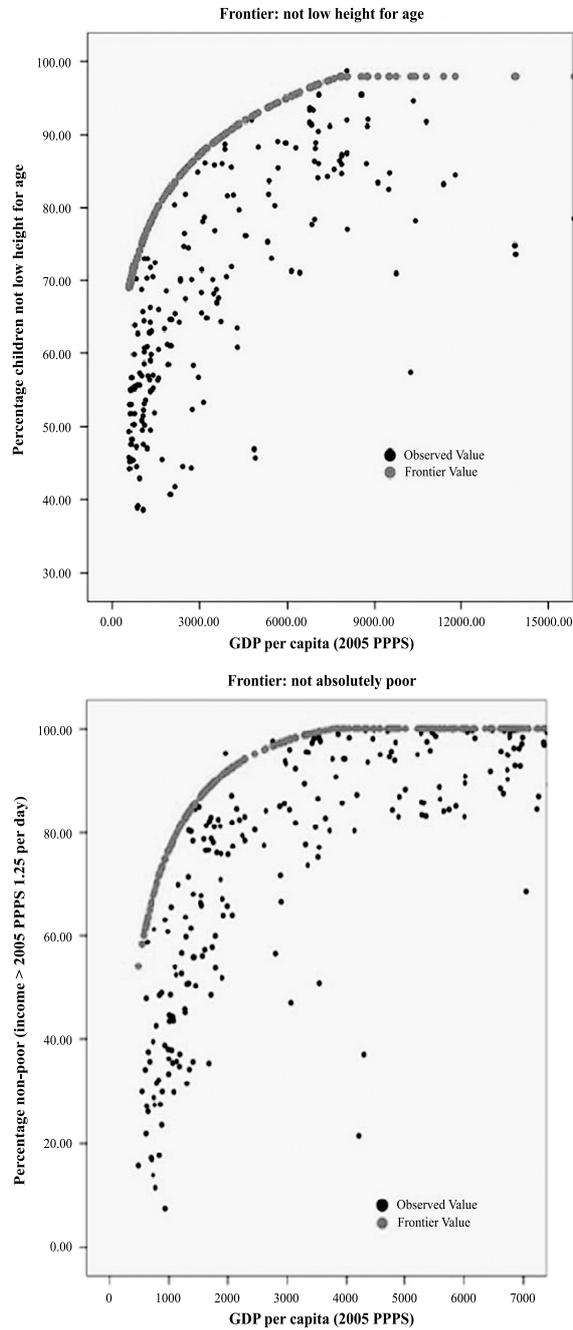


FIGURE 1. Frontier plots for not low height for age (right to food) and not absolutely poor (right to productive work) for all countries with data excluding high income OECD countries, 1990–2006.
Source: Randolph *et al.* (2010), reprinted with permission from *Journal of Human Rights*.



S. Fukuda-Parr

Conclusions

Philip Alston, a leading authority on economic and social rights, noted in a 2000 article in this journal:

5

The international human rights regime is one of the most important positive legacies to emerge from the twentieth century. The principle of accountability is one of its indispensable characteristics. It is not surprising, then, that the greatest challenge confronting the international community in this domain at the beginning of the twenty-first century is to develop approaches that give substance and meaning to that principle. New initiatives are required at both the national and international levels. (Alston 2000)

10

15

In responding to this challenge, the methods and concepts used in the HD/C approach, drawing on economics and social science traditions can be an important resource. The ESRF Index complements the other innovations in assessment tools that are emerging in the human rights field. While most of the new measurement approaches being proposed focus on refining the substantive features of rights and obligations and offer sets of numerous indicators, the ESRF Index methodology is an aggregative summary measure that gives an overall assessment of state performance. Both are useful in locating accountability. The ESRF uses quantitative methods and concepts of economics (production possibilities frontier) and of human development (non-automatic relationship between resources and human outcomes) to develop an empirical basis for modeling progressive realization as a norm. It brings the tradition of evidence-based policy-making into the challenge of developing objective benchmarks for progressive realization in human rights assessments.

20

25

30

As approaches to development, human rights and HD/C approaches share the same key objectives of expanding human freedoms and dignity, and concern with fundamental entitlements of people. But the two concepts have distinct methods and concepts of analysis, and the methodologies of one can enrich the other. Quantitative methods of HD/C can enrich the efforts to develop a metric of human rights. The scope for applying such HD/C methods in human rights analysis extends well beyond this particular case.

35

40

Acknowledgements

I am grateful to comments from the coeditors of this special issue, two anonymous reviewers, and for research assistance from Kelly Gannon. This paper has also benefitted greatly from collaborative work with Susan Randolph and Terra Lawson-Remer over the past three years on human rights measurement. The usual disclaimers apply.

46





The Metrics of Human Rights

Notes

- 1 She conceptualizes capabilities as a species of rights.
- 2 Philosophers have divergent views on the basis of claims to rights (political, legal, or ethical), what claims individuals have right to (social and economic rights?), what correlate obligations they carry (goals or constraints), and whether rights are universally applicable or locally adaptable. The capability approach helps resolve some of these controversies. It provides a clearer framework for entitlements by addressing the unfreedoms that are part of human lives and injustices that individuals face. This perspective contrasts with that of philosophers such as Nozick and Bentham who see freedom limited to non-interference; the capabilities framework incorporates positive freedoms and obligations. Sen (1982) has conceptualized rights as ‘goal rights,’ which impose correlate obligations that require positive as well as negative action by the duty bearer. In response to those who reject these rights as aspirations because they do not lend themselves to clear identification of whose action caused a person’s rights to be unfulfilled, Sen argues that the correlate obligations can be ‘imperfect’ (2004; Sen in UNDP, 2000). See Osmani (2005) and Vizard (2005) for discussion of Sen’s contribution to the field of human rights, particularly in approaching issues of poverty. 5
- 3 See UNDP (2000, ch. 1), contributed by Sen, for exploration of these complementarities when the two concepts are applied to development analysis and policy. 10
- 4 Sen and Nussbaum differ on the scope of rights and capabilities; Sen (2005b) argues that rights are broader than capabilities and include process freedoms that are not capabilities. Nonetheless, the broad range of freedoms is reflected in Sen’s five ‘instrumental freedoms’ (Sen, 1999). 15
- 5 Note that not all human rights theory conceives of human rights in this way. Others conceive of it as an artifact of law or of political society. 20
- 6 To start with, capabilities defy inter-personal comparison since what is valued is unique to the individual. See for a summary discussion of measurement issues in capabilities. For review of difficulties in human rights measurement, see UNDP (2000), Barsh (2003) and Welling (2008). There is also a strong resistance to measurement on the part of many human rights scholars and activists. See Alston (2000). It is beyond the scope of this paper to consider the merits of measurement. The paper examines measurement methodologies. 25
- 7 Sen argues that capabilities that are of most importance would differ from one individual to another, and from one country to another and can only be identified on the basis of democratic debate by the people themselves, indicators for assessing progress can be selected in a particular context (Sen, 2005b). 30
- 8 Committee on Economic, Social and Cultural Rights (1990) General comment 3, The Nature of States Parties’ Obligations; The Maastricht Guidelines on Violations of Economic, Social and Cultural Rights (United Nations, 2000)
- 9 See Alston (2000) for a brief summary of the objections to these methods, and Carr Center (2006) for the views of leading international human rights NGOs and scholars.
- 10 The limitations of focusing on rights enjoyment only is well developed in UNDP (2000), Green (2001) and Raworth (2001). 35
- 11 See Welling (2008) for a good review of this literature.

References

- Alston, P. (2000) ‘Towards a human rights accountability index’, *Journal of Human Rights*, 1(2), pp. 249–271. 40
- Backman, G. *et al.* (2009) ‘Health systems and the right to health: an assessment of 194 countries’, *The Lancet*, 372(9655), pp 2047–2085, [[http://www.lancet.com/journals/lancet/article/PIIS0140-6736\(08\)61781-X/fulltext](http://www.lancet.com/journals/lancet/article/PIIS0140-6736(08)61781-X/fulltext)].
- Balakrishnan, R. and Elson, D. (2008) ‘Auditing economic policy in the light of obligations on economic and social rights’, *Essex Human Rights Review*, 15(1), pp. 29–49. 46

S. Fukuda-Parr

- Barsh, R. L. (2003) 'Measuring human rights: problems of methodology and purpose', *Human Rights Quarterly*, 15(1), pp. 87-121.
- Carr Center (2006) Workshop on Measurement and Human Rights, Policy Report of Carr Center for Human Rights Policy, [http://www.hks.harvard.edu/cchrp/mhr/publications/index.php], accessed 5 January 2011.
- 5 Center for Economic and Social Rights (2008) 'Using quantitative methods to monitor government obligations in terms of the rights to health and education', CESR, Madrid and New York, [http://www.cesr.org/downloads/Quantitative%20Methods%20for%20Measuring%20ESCR.pdf], accessed 4 January 2011.
- Chapman, Audrey (1996) 'A violations approach for monitoring the international covenant on economic, social, and cultural rights', *Human Rights Quarterly*, 18(1), pp. 23-66.
- 10 Committee on Economic Social and Cultural Rights (1990) 'General Comment 3: the nature of states parties' obligations', United Nations, Economic and Social Council, Fifth Session, 14 December.
- Committee on Economic, Social and Cultural Rights (2009) 'General Comment 20: non-discrimination in economic, social and cultural rights', United Nations Economic and Social Council, 42nd session, 4-22 May, UN Doc. E/C.12/GC/20, 10 June.
- 15 Fukuda-Parr, S. (2008) 'Human rights and development', in Kaushik Basu and Ravi Kanbur (Eds), *Arguments for a Better World*, Oxford University Press, Oxford, pp. 76-99.
- Fukuda-Parr, S., Lawson-Remer, T. and Randolph, S. (2009) 'An index of economic and social rights fulfillment: concept and methodology', *Journal of Human Rights*, 8(3), pp. 195-221.
- Green, M. (2001) 'What we talk about when we talk about indicators: current approaches to human rights measurement', *Human Rights Quarterly*, 23, pp. 1062-1097.
- 20 Hunt, P. (2003) 'The right of everyone to enjoy the highest attainable standard of physical and mental health', report of Special Rapporteur of the Commission on Human Rights, United Nations, General Assembly A/58/427, 10 October.
- Kalantry, S., Getgen, J. E. and Koh, S. A. (2010) 'Enhancing enforcement of economic, social and cultural rights: a focus on the right to education in the ICESCR', *Human Rights Quarterly*, 32(2), pp. 253-310.
- 25 Nussbaum, M. C. (1997) 'Capabilities and human rights', *Fordham Law Review*, 66, pp. 273-300.
- Nussbaum, M. C. (2000) *Women and Human Development: The Capabilities Approach*, Cambridge University Press, Cambridge.
- Nussbaum, M. C. (2003) 'Capabilities as fundamental entitlements', *Feminist Economics*, 9(2-3), pp. 33-59.
- Nussbaum, M. C. (2005) 'Capabilities and fundamental entitlements: Sen and social justice', in B. Agarwal, J. Humphries and I. Robeyns, (Eds), *Amartya Sen's Work and Ideas: A Gender Perspective*, Routledge, London, pp. 35-62.
- 30 Office of the High Commissioner for Human Rights (2006), *Report on Indicators for Monitoring Compliance with International Human Rights Instruments* (HRI/MC/2006/7), [http://www2.ohchr.org/english/issues/indicators/docs/HRI.MC.2006.7_en.pdf].
- Office of the High Commissioner for Human Rights (2008), *Report on Indicators for Promoting and Monitoring the Implementation of Human Rights* (HRI/MC/2008/3), [http://www2.ohchr.org/english/issues/indicators/docs/HRI.MC.2008.3_en.pdf].
- 35 Organization of American States, Inter-American Commission on Human Rights (2008) 'Guidelines for preparation of progress indicators in the area of economic, social and cultural rights', Organization of American States OEA/Ser.L/V/II.132 Doc 14, 19 July.
- Osmani, S. (2005) 'Poverty and human rights: building on the capabilities approach', *Journal of Human Development*, 6(2), pp. 205-219.
- 40 Randolph, S., Fukuda-Parr, S. and Lawson-Remer, T. (2010) 'Economic and social rights fulfillment index: country scores and rankings', *Journal of Human Rights*, 9(3), pp. 230-261.
- Raworth, K. (2001) 'Measuring human rights', *Carnegie Council for Ethics in International Affairs, Ethics in International Affairs*, 15(1), pp. 111-131.
- Riedel, E. (2006) 'The IBSA procedure as a tool of human rights monitoring', [http://ibsa.uni-mannheim.de/2_-The_IBSA-Procedure_as_a_Tool_of_Human_Rights_Monitoring_1_.pdf], accessed 17 September 2010.
- 46

The Metrics of Human Rights

- Right to Education Project (2010) 'The indicator tree', [<http://www.right-to-education.org/node/948>], accessed 11 January 2010.
- Roaf, V., Khalfan, A. and Langford, M. (2005) 'Monitoring implementation of the right to water: a framework for developing indicators', *Global Issues Papers No. 14*, [<http://www.canadians.org/water/documents/righttowaterindicators.pdf>], accessed 17 September 2009.
- Sen, A. (1982) 'Rights and agency', *Philosophy and Public Affairs*, 11(1), pp. 3-39. 5
- Sen, A. (1999). *Development as Freedom*, Alfred Knopf Publishers, New York.
- Sen, A. (2004) 'Elements of a theory of human right', *Philosophy and Public Affairs*, 23(4), pp. 315-356.
- Sen, A. (2000) 'Human rights and human development', chapter 1 of UNDP *Human Development Report 2000: Human Rights and Human Development*, Oxford University Press, Oxford. 10
- Sen, A. (2005a) 'Capabilities, lists and Public reason: continuing the conversation', in B. Agarwal, J. Humphreys and I. Robeyns (Eds) *Amartya Sen's Work and Ideas: A Gender Perspective*, Routledge, London, pp. 335-338.
- Sen, A. (2005b) 'Human rights and capabilities', *Journal of Human Development*, 6(2), pp. 151-166.
- Turk, D. (1990) 'Realization of economic, social and cultural rights', progress report prepared by Mr. Danilo Turk, Special Rapporteur E/CN.4/Sub.2/1990/19 United Nations, Economic and Social Council, Commission on Human Rights. 15
- United Nations (1966) *International Covenant on Economic, Social and Cultural Rights*, United Nations, New York, [<http://www2.ohchr.org/english/law/pdf/cescr.pdf>].
- United Nations (1987) 'The Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights', guidelines adopted at a workshop sponsored by the International Commission of Jurists, the Faculty of Law of the University of Limburg, and the Urban Morgan Institute for Human Rights, University of Cincinnati, Maastricht, Netherlands, 22-26 January, UN doc. E/CN.4/1987/17. 20
- United Nations (2000) 'The Maastricht Guidelines on Violations of Economic, Social and Cultural Rights', guidelines adopted at a workshop sponsored by the International Commission of Jurists, the Urban Morgan Institute for Human Rights and the Center for Human Rights of the Faculty of Law of Maastricht University, Maastricht, Netherlands, 22-26 January, UN doc. E/C.12/2000/13. 25
- United Nations (2009) 'Report of the High Commissioner for Human Rights on implementation of economic, social and cultural rights', Economic and Social Council, E/2009/90, 8 June.
- United Nations Development Programme (UNDP) (2000) *Human Development Report 2000: Human Development and Human Rights*, Oxford University Press, Oxford. 30
- Vizard, P. (2005) 'The contributions of Professor Amartya Sen in the field of human rights', *LSE STICERD Research Paper No. CASE 091*, [<http://sticerd.lse.ac.uk/dps/case/cp/CASEpaper91.pdf>], accessed 5 September 2010.
- Vizard, P. (2007) 'Specifying and justifying a basic capability set: should the international human rights framework be given a more direct role?', *Oxford Development Studies*, 35(3), pp. 225-229. 35
- Welling, (2008) 'International indicators and economic, social and cultural rights', *Human Rights Quarterly*, 30, pp. 933-958. 40

