

MEASURING HUMAN RIGHTS



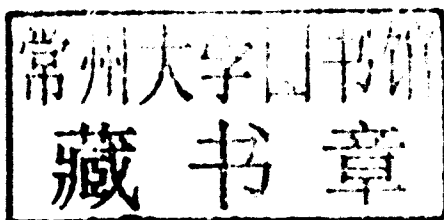
Todd Landman and Edzia Carvalho

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1 Introduction

This book is about measuring human rights. Its 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 over five billion people around the world in a multitude 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. 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. This book 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.

Moreover, the book is committed to developing new and reviewing the many different existing ways in which measurement can capture the lived empirical experience of human rights in order that scholars and practitioners can conduct the best systematic analysis of human rights problems and puzzles around the world. It recognizes that the lived experiences of human rights are not always known to the observer, but in following the tradition of the social sciences and statistics, it argues that methods for measurement and analysis can use samples of information about the known patterns in the human rights experience to make inferences about those that are not known. As the book shows, careful attention to the source materials, bias, error, coding of the source

2 Introduction

material and other significant methodological concerns can equip human rights analysts with the necessary tools to capture and analyse in systematic fashion significant human rights problems in ways that will lead to their enhanced protection in the future.

We thus see this book as grounded in a particularly *pragmatic* approach on the functions and dimensions of human rights that have provided important starting points for their measurement. The remainder of this chapter provides a background to the development of human rights measurement, the different functions and uses for it, a brief overview of the different types of human rights measures and an outline of the rest of the chapters in the book. We believe that this book represents an important milestone in the ongoing development of human rights measurement in particular, and in the struggle for human rights in general, since the best way to understand problems is to measure them, analyse them and provide solutions to them.

Background developments

The measurement and monitoring of human rights has been a mainstay activity of human rights non-governmental organizations (NGOs) primarily for advocacy purposes and since the 1980s has become increasingly important for a wide range of human rights scholars and practitioners working across the broad spectrum of human rights issue areas from many different disciplinary perspectives. Human rights NGOs such as Amnesty International and Human Rights Watch use monitoring systems to track the degree to which international human rights treaties have been implemented, to alert the international community about egregious violations of human rights, to mobilize different constituencies around particular human rights issues and to advocate for additional standard setting in the international law of human rights. The discipline of political science has arguably had the largest impact on the development and analysis of human rights measures, which has been complemented and, in some instances, surpassed by cutting-edge work in the NGO sector. Since the behavioural revolution in the social sciences in the 1930s and 1940s, political science has sought to measure and analyse political *violence* from state and non-state actors, an effort that has since the 1980s turned to systematic analysis of the *causes and consequences of cross-national variation in human rights protection around the world* (e.g. McCamant 1981; Mitchell and McCormick 1988; and Landman 2005a). Complementing these developments, scholars have published collections and reviews of human rights measures produced by academics and non-governmental organizations (Claude 1976; Jabine and Claude 1992) and efforts to collate and assess the quality of human rights measures continue to be carried out (e.g. see Green 2001; Landman and Häusermann 2003; Landman 2004, 2006, 2009).

Since the publication of *Human Rights and Statistics* (Jabine and Claude 1992), there have been an increasing number of efforts to measure *more and different* categories of human rights (e.g. the Cingranelli and Richards

Human Rights Data Project at www.humanrightsdata.com), and there have been a variety of international conferences and workshops on human rights measurement sponsored by professional academic organizations (e.g. the 2004 Chicago workshop organized by the Human Rights Section of the American Political Science Association and the 2005 conference on economic and social rights organized by the Human Rights Institute at the University of Connecticut) and international organizations (e.g. the 2000 conference on human rights and statistics in Montreux, followed by similar summits in ensuing years in Merida, Munich and Brussels). The most recent and cutting-edge advances in human rights measurement have come from the non-governmental sector, especially those organizations working with truth commissions around the world. In particular, the work of the Human Rights Data Analysis Group (HRDAG) at the American Association for the Advancement of Science in Washington, DC (and now the Benetech Initiative in Palo Alto, California) has been instrumental in developing systematic techniques for the measurement and analysis of large-scale human rights violations across a range of different country contexts, most notably Peru, Colombia and East Timor (see Ball et al. 2003; Guzmán et al. 2007; Silva and Ball 2007).

The increasing provision and availability of human rights measures has led to a new demand within the international human rights and donor communities, such as the United Nations (UN), the World Bank, and the aid ministries in the US (USAID), UK (DFID), Sweden (SIDA), Canada (CIDA) and Denmark (DANIDA) to integrate human rights assessment into overall policy formulation and aid allocation strategies. Donors such as DFID in the UK use human rights assessment in their aid programming to find ways in which different aid modalities can address particular needs within partner countries to improve the human rights situation, while at the same time address larger questions of poverty reduction. In contrast, the Millennium Challenge Account uses human rights measures as an incentive to allocate aid to those countries that can demonstrate improvements in their human rights performance. In addition, the Office of the High Commissioner for Human Rights (OHCHR) in Geneva has been engaged in a long-term process of consultation with international experts to provide matrices of human rights indicators for use in state party reports to the treaty monitoring bodies, while the United Nations Development Programme's (UNDP) Oslo Governance Centre has produced guides on measures of good governance and human rights for use in their own country offices, as well as across the donor community more generally (see UNDP 2004, 2006).

Taken together, there is clearly a need for greater clarity about and attention to the measurement of human rights, while demand for human rights measures is unlikely to subside any time soon. This present volume is the first book-length treatment of the topic since the publication in 1992 of *Human Rights and Statistics: Getting the Record Straight* (Jabine and Claude 1992) and, therefore, represents a significant stocktaking and synthesis of the developments in this important field of work. We believe that our effort offers

a number of distinct advantages that move the debate on measurement forward. First, it presents an assessment and analysis with one authorial voice rather than a collection of chapters collated by a set of editors. We have thus been able to draw together the burgeoning literature on human rights measurement and provide a synthesis in ways that have not yet been done. Second, it draws explicitly on the extant international law of human rights to derive the content of human rights that ought to be measured and therefore attempts to establish a stronger foundation and justification for the measurement strategies we cover. Third, it contains a comprehensive methodological framework for operationalizing this human rights content into human rights measures, which draws on larger debates about measurement in the social sciences. Fourth, it has separate chapters on the methods, strengths and weaknesses of events-based, standards-based and survey-based measures, as well as socio-economic and administrative statistics. Fifth, it covers measures of civil, political, social, economic and cultural rights, while recognizing the many challenges that remain for their measurement. Finally, in addition to standard bibliographic references, the book also includes lists of sources and locations for extant data sets useful for the measurement of human rights.

The purpose of measuring human rights

Human rights measures serve a variety of important and inter-related functions across the academic and non-academic sectors of the human rights community, including:

- 1 Contextual description and documentation
- 2 Classification
- 3 Monitoring
- 4 Mapping and pattern recognition
- 5 Secondary analysis and policy prescription
- 6 Advocacy and political dialogue

Contextual description and documentation provide the raw information for monitoring carried out primarily by non-governmental organizations, as well as for developing and deriving standardized measures of human rights. Measures will include locally-based and rich descriptive statistics covering human rights violations, conditions and perceptions, as well as the activities of state and non-state actors that have a bearing on human rights. Many human rights organizations offer annual reports on different regions, countries and human rights issues, all of which use in some degree different types of human rights measures. Second, *classification* allows for the differentiation of rights violations across their different categories and dimensions, and for grouping states and regimes into different categories. Such a move is one level above pure descriptive analysis and begins to group observations about human rights together into ‘classes’ of things that can then be compared and analysed (see Landman 2000, 2002, 2003, 2008).

Third, human rights measures can be used for *monitoring* the degree to which states respect, protect and fulfil the various rights set out in the different treaties to which they may be a party. Such monitoring is typically done over time, where the availability of human rights measures increases the possibility of making larger analytical statements about the changing human rights situation within a particular region, country, part of a country, or for particular groups of people, such as migrants, ethnic minorities, women, the poor, etc. For example, the OHCHR has been working on detailed matrices of human rights indicators that can be used for state party reporting to the various UN treaty monitoring bodies, while human rights measures seem particularly apt for state party reporting under the new Universal Periodic Review (UPR) process in the Human Rights Council.

Fourth, measures can be used for *mapping and pattern recognition*, where time-series and spatial information on the broad patterns of violations within and across different countries can be compared (e.g. human rights performance within less-developed countries). Fifth, and related to the fourth function, human rights measures are essential for *secondary analysis*, which is carried out by social scientists such as hypothesis-testing, prediction and impact assessment; the inferences from which can be fed into the policy making process. Typical social science analysis uses human rights measures to test for the significance of relationships between and among human rights and other variables, such as democratic institutions, levels of economic growth and inequality, the involvement in domestic and international conflict, and a range of other relevant variables that may account for the variation in the protection of human rights (Landman 2005a, 2006a: 93–106). Findings that are upheld statistically in the presence of control variables and other tests can then lead to the formulation of policy responses dedicated to improving human rights. In addition, such secondary analysis can be used to examine the degree to which a particular policy intervention has had a direct or contributory effect on a particular human rights problem (see Landman 2006a: 126–39).

Finally, human rights measures can serve as *important advocacy tools* at the domestic and international level by showing the improvement or deterioration in rights practices around the world. Human rights organizations and inter-governmental organizations with a mandate to work on human rights use human rights measures to press for change in particular regions and countries, while international donor agencies and donor countries increasingly see human rights measures as a crucial aspect of their work in analysing areas of government performance that can be improved or areas of governance that are in need of foreign assistance through the extension of aid and other support (see Chapter 3 in this volume). Moreover, the accumulation of information on human rights protection in the world and the results of systematic analysis can serve as the basis for the continued development of human rights policy, advocacy, education and political dialogue, as more and more indicators, results of different kinds of analyses and research outputs enter the public domain (Rubin and Newberg 1980: 268; Claude and Jabine 1992: 5–34).

These different purposes for human rights measurement, while significant enterprises in and of themselves, should not be seen as mutually exclusive. Rather, they should be seen as progressive and cumulative, effectively building from one to the next to provide a complete process of assessment and analysis. For example, an advocacy project that wants to demonstrate the presence of ethnic discrimination in the access to adequate healthcare and to advocate for the necessary legal and policy reforms will necessarily engage in many of these different functions of measurement. The advocacy element of the project would necessarily rely on the results of some form of secondary analysis of health statistics, which is predicated on the collection, monitoring and mapping of these statistics. In this way, what appears to be a simple advocacy project, can actually involve quite extensive use of the different functions of measurement outlined here.

Overview of the book

With this background and preliminary look at how human rights measures are used, we can now introduce the main structure of the book and highlight the essential contributions of each chapter. We have made every attempt to organize the book in a way that each chapter builds on the previous chapters with a fair degree of cross-referencing within the text and comparisons between the strengths and weaknesses of different measures. The process of social science measurement comprises a series of common methodological components, such as source material, sampling, coding, reliability tests and analysis, while the measures themselves provide different ways of capturing in quantitative fashion the many categories and dimensions of human rights. There is, thus, a common set of concerns addressed in each chapter while the many differences of each kind of measure are discussed at length. These concerns and discussions are complemented throughout with examples from existing work on measuring and analysing human rights from the academic and non-academic sectors.

To begin our exposition of different methods for measuring human rights, Chapter 2 shows how the substantive content of human rights has evolved since the promulgation of the 1948 Universal Declaration of Human Rights. The chapter 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 categories (i.e. civil, political, economic, social and cultural), which have different dimensions grounded in the notion of state obligations to respect, protect and fulfil. In this way, we argue that all rights comprise 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 of states to 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 *realization*, 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 organizing and human rights *principles* that deepen the understanding of implementation of human rights and the processes involved in their realization. These principles include availability, accessibility, adaptability and acceptability in reference to the implementation of human rights policies, and non-discrimination, participation, progressive realization and effective remedy in the processes involved in human rights policies.

The framework for the substantive content of human rights developed in Chapter 2 is then taken as the starting point for what Chapter 3 calls the ‘moment of measurement’, which comprises a series of levels or steps that draw on the seminal work on social science measurement developed by Adcock and Collier (2001) in the *American Political Science Review*. These levels include the *background concept* (human rights), the *systematized concept* (the content of particular human rights), the development of *indicators* (the measures that feature throughout the book), and the actual assigning of *scores on units* (e.g. countries, sub-national units and individuals). The chapter argues that many existing human rights measures have gone through these different levels to varying degrees and then outlines the different types of measures that have been developed over the past few decades. These types of measures include *events-based* (i.e. counting violations or human rights related events), *standards-based* (i.e. coding narrative human rights reports into comparable scales), *survey-based* (i.e. individual-level data on perceptions of or experiences with human rights), and *socio-economic and administrative statistics* that capture different elements of the policy process. The chapter concludes by arguing that there are multiple measures that capture the various dimensions of the different human rights delineated in our framework.

Chapters 4 through 7 then discuss in depth the assumptions, genesis, development, use, strengths and weaknesses of each type of human rights measure. Chapter 4 shows how events-based measures of human rights draw on the larger tradition of events analysis in the social scientific work on political violence. The development of this kind of measure has been undertaken primarily by non-governmental organizations, in particular the American Association for the Advancement of Science and Benetech, in which the ‘who did what to whom’ model has been developed to deconstruct human rights events into their constitutive parts and quantified in ways that have proved vital for human rights analysis in truth commissions and international criminal tribunals. Chapter 5 shows how standards-based measures code source material on human rights conditions within countries to provide comparable data for cross-national and time-series data sets, which have then been used for mapping,