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## A Reply to David Richards' Review of Measuring Human Rights

### Abstract

Professor Richards highlights, in his generous review of our book *Measuring Human Rights* that one of the aims of the book is to bring to the forefront the importance of conceptualization before operationalization – that conceptual clarity (or lack of it) is at the heart of the problems concerning the measurement of human rights. He draws out three key issues from the book as the springboard for further discussion on measurement of the concept – a) the “Respect, Protect and Fulfill” (RPF) framework, b) the lack of reliable data sources, and c) the conceptual links between human rights, human development, and human security. Although Prof. Richards’ discussion of these issues is quite illuminating and very often along lines with which we agree, we believe that he misreads some arguments concerning each of these issues and, in some cases, mistakenly attributes them to *Measuring Human Rights*. At the risk of being somewhat pedantic, we would like to clarify these arguments and respond to his helpful suggestions for further research in the field.

### Keywords

Human rights, Measurement, Data, Conceptualization, Operationalization, Frameworks, Sources, Development

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## A Reply to David Richards' Review of *Measuring Human Rights*

Todd Landman and Edzia Carvalho

Professor Richards highlights, in his generous review of our book *Measuring Human Rights* that one of the aims of the book is to bring to the forefront the importance of conceptualization before operationalization – that conceptual clarity (or lack of it) is at the heart of the problems concerning the measurement of human rights. He draws out three key issues from the book as the springboard for further discussion on measurement of the concept – a) the “Respect, Protect and Fulfill” (RPF) framework, b) the lack of reliable data sources, and c) the conceptual links between human rights, human development, and human security. Although Prof. Richards’ discussion of these issues is quite illuminating and very often along lines with which we agree, we believe that he misreads some arguments concerning each of these issues and, in some cases, mistakenly attributes them to *Measuring Human Rights*. At the risk of being somewhat pedantic, we would like to clarify these arguments and respond to his helpful suggestions for further research in the field.

### The “Respect, Protect, Fulfill” framework

The first of the issues that Prof. Richards highlights is the RPF Framework that we utilize as a key element to clarify the term “human rights” conceptually. We concur with him that the positive-negative categorization of human rights is a false dichotomy. However, we disagree with his claim that the RPF framework can be reduced to this categorization (p. 2). The dichotomy suggests that some rights are solely negative in character, i.e. they can be enjoyed only if the state refrains from interfering in their enjoyment, while others are wholly positive in character, whereby they cannot be enjoyed unless states actively promote this state of affairs. We believe and display as best we can in Chapter 2 that this dichotomy does not hold either for the “negative” or “positive” rights. One of the ways we do this is by unpacking the RPF framework included in the UNDP’s *Human Development Report 2000* to show that the framework could be applied to all rights.

Taking the discussion on the RPF framework further, Prof. Richards suggests that the obligation to respect is, in no uncertain terms, sufficient for the protection of human rights of any category. We concur with this assessment; however, we believe that the RPF framework does not “creat[e] categories for categories’ sake” (p. 2). Rather, the framework adds an additional dimension of measurement to the structure-process-outcome matrix that is now widely accepted in human rights policy and advocacy circles. The latter frame of measurement could address any one of the three RPF pillars and be considered to present a complete picture of human rights. However, to take Prof. Richards’ example of torture (p. 2), a state may enact laws, implement policy, and achieve outcomes that prevent its agents from using torture and thus meet its obligation to respect the right not to be subjected to torture. However, these laws, policies, and practices would not be enough to stop the practice of torture without the state also meeting its obligation to fulfill this right through punitive standards, training programs for agents of the penal and judicial system, and institutional checks against the practice of torture. Similarly, Prof. Richards’ example of the state’s obligations to “protect” and “fulfill” undertaken by the U.S. during the civil rights’ movement would also serve as evidence for the value-added of the RPF framework.

His suggestion that *Measuring Human Rights* does not “address the problem of unequal resources across states for the implementation of such processes” (p. 2) is quite true; we chose this to be the case because we wanted to highlight the problems of developing specific measures of human rights in a way that would be accessible to a wider non-specialist audience. We also agree with Prof. Richards’ comment on the problem of tracing cause and effect of human rights-related policy and practice. Since publication of the volume, this issue has been dealt with by one of the co-authors elsewhere (Landman, Kernohan and Gohdes 2012); we would be happy to include a suitably accessible version of this research in any future edition of the book. Prof. Richards’ concern about measuring “noninterference” (p. 3) is also quite apt; we will certainly consider this issue in future research as well.

We also concur with Prof. Richards on the fallacy of thinking of states as unitary actors (p. 3). However, we do not think that the obligation to “respect” could lead one into accepting such a fallacy, any more so than the obligation to “protect” or “fulfill” could lead one into thinking the opposite. The RPF framework does not necessarily imply that the state is a unitary actor and in recent versions explicitly takes account of the principal-agent relationships that accrue within it (e.g. CCPR, 2004: para. 4). Indeed, the obligation to protect may well involve different organs of the state apparatus to oversee possible violations being committed by third parties relating to health, education, welfare, housing, security, among others. One need only think of the privatization of prisons in the United States as a stark example. Events-based and survey-based measures highlighted in Chapters 4 and 6 of *Measuring Human Rights* also pay particular attention to the identity of perpetrators as agents of the state and non-state armed groups and their relationships to the victims and other perpetrators. It is indeed telling that many examples of standards-based scales have not yet addressed the question of non-state perpetrators of human rights violations, while these other modes of measurement have.

### **Data Sources**

Prof. Richards’ comment on the comparatively little attention given to the discussion of the sources of standards-based and survey-based measures in *Measuring Human Rights* (p. 3) is well-taken. We chose not to delve in greater depth into these issues of measurement in order to retain the introductory character of the book and to keep it accessible to a wider audience. We felt that an overview of these issues would be sufficient to highlight the relevant problems concerning the bias and reliability of sources while providing a roadmap to those interested in finding out more. We did, however, address the question concerning the differences apparent from analysis of the political terror scale between coding from Amnesty International annual reports and US State Department Country Reports. We also highlighted the problems with opaque source referencing for the Freedom House scales.

Further, we agree wholeheartedly with Prof. Richards’ suggestions for the future directions that human rights research should proceed in: uncovering the extent and ways in which human rights are interdependent and the effect of this on their protection; the development of what Prof. Richards terms “a general theory of government respect for human rights” (p. 3); subjecting models of forecasting government respect and violation to further fine-tuning; including non-state actors into the normative and empirical research on the topic; and including “the rights of non-citizens” as a topic of research (pp. 3-4). Certainly, the last two recommendations are relevant for the clear conceptualization of the concepts, their operationalization, and the availability of reliable and valid

data sources; these are duly noted for future revisions of the volume. The first three proposals may be affected by the data and indicators that are utilized in the analysis but may not be explicitly relevant to the issue of measurement. We would like to resubmit for his consideration an additional direction for research in this field – the availability of data and measures of subnational (also called “sub-state”) protection of human rights (*Measuring Human Rights*, 89) to uncover the mask of states as unitary actors and to leave aside the fallacy of assuming that states protect rights equally across sub-national units.

### **Conceptual Links between Human Rights, Human Development, and Human Security**

We wholly agree with Prof. Richards’ characterization of current efforts to measure economic, social and cultural rights as being inadequate. However, we are not fully convinced by his suggestion of utilizing measures of human development and security as measures of human rights without disentangling the muddle that has developed between these concepts and their measures. His recommendation to “move past the language of interdependence and fully conceptually integrate the human rights / development / security frameworks in a single, dignity-centered approach” (p. 5) would certainly enhance the interaction and knowledge sharing between researchers and practitioners in these fields. It also has the potential to undo the tenuous conceptual clarity that exists between these controversial concepts. Moreover, while the affirmation and protection of human dignity is, as Prof. Richards alludes, at the heart of each of these concepts, the process, priorities, and moral weight that each concept carries in legal, political and social discourse varies across communities. We are concerned that with efforts to meld the concepts into a single conceptual and methodological framework, we might just dilute the potency and the legal institutional structures that contribute to the “power of human rights” and be none the richer for it.

### **References**

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Todd Landman, David Kernohan and Anita Gohdes (forthcoming, 2012) ‘Relativizing Human Rights’, *Journal of Human Rights*.