THE HUMAN RIGHTS INSTITUTE

University of Connecticut

Economic Rights Working Paper Series

Tracking the Historical Evolution of States' Compliance with their Economic and Social Rights Obligations of Result: Insights from the Historical SERF Index

Susan Randolph
University of Connecticut

Patrick Guyer
American Human Development Project

Working Paper 18

November 2011

The Human Rights Institute
University of Connecticut
Thomas J. Dodd Research Center
405 Babbidge Road, U-1205
Storrs, CT, 06269, USA

Email: humanrights@uconn.edu
Tel: 860-486-8739
Fax: 860-486-6332
http://www.humanrights.uconn.edu/

Tracking the Historical Evolution of States' Compliance with their Economic and Social Rights Obligations of Result: Insights from the Historical SERF Index

by

Susan Randolph
University of Connecticut

and

Patrick Guyer
American Human Development Project

Abstract: *The International Covenant for Economic Social and Cultural Rights*, ICESCR, commits states to *progressively realize* the economic and social rights enumerated in the Covenant. This poses a challenge to measurement. It is not enough to assess the extent to which rights are enjoyed in a country or whether rights enjoyment has increased over time. Evaluating the extent to which a State is compliant with its obligations of result at any given time requires that one assess the level of rights enjoyment *relative* to the extent of the state's obligation at that time. In as much as a state is obligated to fulfill economic and social rights to the *maximum of available resources*, the level of a state's obligation depends on its resource capacity, and this changes over time. Thus, the *principle of progressive realization* poses two challenges to gauging the extent to which countries are compliant with their obligations of result under the Covenant. First, a country's level of obligation must be benchmarked at the initial time period of concern and second, the country's level of obligation must be benchmarked as its resource capacity evolves over time. A key insight of the 2010 *Human Development Report* is the tremendous improvement over the past thirty some years in the enjoyment of critical economic and social rights. But the resource capacity of most countries has increased as will implying their capacity to improve rights enjoyment has expanded. Here we adapt the SERF Index methodology (Fukuda-Parr et al. 2009, Randolph et al. 2010) to examine whether country's fulfillment of their economic and social rights obligations of results have improved or deteriorated over the past four decades. That is, we consider whether the enjoyment of economic and social rights has increased in relation to the capacity to expand rights enjoyment.

1. Introduction

This paper introduces the Historical Social and Economic Rights (SERF) Fulfillment Index. The Historical SERF Index adapts the methodology developed by Randolph, Fukuda-Parr, and Lawson-Remer[1] to examine trends in the extent to which countries have met their obligations of result under the *International Covenant for Economic, Social, and Cultural Rights* (ICESCR)[2]. Other approaches used to monitor countries' compliance with their obligations of result consider only the level of rights enjoyment. However, the ICESCR's *principle of progressive realization* specifies that a country's level of obligation depends on its resource capacity and that they must fulfill economic and social rights to the *maximum of available resources*. Countries with a lower resource capacity have a lower level of obligation so that a given level of rights enjoyment may be consistent with fully meeting its obligations of result, that same level of rights enjoyment in a richer country will imply it is seriously deficient in meeting its obligations of result.

The SERF Index methodology allows us to assess a country's compliance with its obligations of result taking into account both the extent to which the substantive economic and social rights enumerated in the ICESCR are enjoyed and the extent of a country's level of obligation to ensure each substantive right. The key innovation of the SERF Index methodology

---

[1] Randolph, Susan, Sakiko Fukuda-Parr, Terra Lawson-Remer (2010). 'Economic and Social Rights Fulfillment Index: Country Scores and Rankings.' *Journal of Human Rights*, 9.3, 230-261; See Randolph, Fukuda-Parr, and Lawson-Remer (2010); Fukuda-Parr, Sakiko, Terra Lawson-Remer, and Susan Randolph, SERF Index Methodology: Version 2011.1, Technical Note http://www.serfindex.org/data/; Fukuda-Parr, Sakiko, Terra Lawson-Remer and Susan Randolph (2009). 'An Index of Economic and Social Rights Fulfillment: Concept and Methodology.' *Journal of Human Rights*. 8: 195-221.

[2] United Nations (1966). International Covenant on Economic, Social and Cultural Rights (ICESCR). Adopted 16 December 1966, General Assembly Resolution 2200 (XXI), U.N. GAOR, 21st Session, Supp. No. 16, U.N. Document A/6316 (1966), 993 U.N.T.S. 3 (*entered into force* 3 January 1976).

is the specification of Achievement Possibility Frontiers, APFs, which rigorously map what is feasible to achieve using best practice for countries with different resource capacities. Thus, the twin aspects of the ICESCR's *principle of progressive realization* can be addressed: (1) the extent to which a country is ensuring the level of rights enjoyment that is reasonably feasible given its resource capacity at any given time, and (2) whether a country is improving its performance over time relative to its expanding resource capacity.

The paper's organization is as follows. The next section summarizes the basic SERF Index methodology and explains how the SERF Index is adapted in light of the limitations of available data covering the past forty years. The third section examines trends in the average achievement of countries on the composite Historical SERF Index and its underlying component right indices. The fourth section probes deeper and considers the variation in performance across countries, identifying those instances when the ICESCR's *principle of non-retrogression* has been violated as well cases of exceptional performance. A key question is whether countries that emphasize devoting current resources to meeting their economic and social rights (ESR) commitments do so at the expense of generating additional resources that could enable even greater ESR enjoyment in the future. The fifth section addresses this question. The final section offers some concluding observations.

2. The SERF Index Methodology and Construction of the Historical SERF Index

The "Principle of Progressive Realization" enunciated in Article 2.1 of the *International Covenant for Economic Social and Cultural Rights* (ICESCR) requires countries to commit the maximum of their available resources to fulfill their economic and social rights obligations

(United Nations 1966). Thus, in assessing the extent to which countries meet their obligations of result one needs to assess the level of rights enjoyment *relative to the level of the country's obligation*. Socio-economic indicators are now readily available for the vast majority of countries that can be used to specify the extent to which a country's people enjoy relevant aspects of the substantive rights enumerated in the ICESCR. Specifying a country's level of obligation has proven more problematic. It necessitates that a different level of obligation be specified for each country at any given time according to each country's resource capacity at that time.

In practice, the monitoring body of the ICESCR, the Committee on Economic, Social, and Cultural Rights (CESCR), evaluates a country's performance with regard to its obligations of result on the basis of the country's achievement on relevant socio-economic indicators reflecting rights enjoyment relative to benchmarks or targets, with the countries themselves enjoying considerable discretion over just where their benchmarks are set. In the absence of an evidence-based conceptual model of what can reasonably be achieved by countries with different resource capacities, as Omani[3] points out, countries are able to set low benchmarks that effectively allow them to avoid meeting their commitment to provide the highest level of rights enjoyment feasible within the constraints of their current resource capacity. A "scoping" process, whereby the CESCR has greater input on the specification of benchmarks to ensure they reflect what is reasonably feasible is one potential solution, but as Chapman[4]laments, the

[3] Osmani, S.R. (2000). "Human Rights to Food, Health, and Education". *Journal of Human Development.* (1 (2) 273-298.

[4] Chapman, Audrey (2007). "The Status of Efforts to Monitor Econoic, Social and Cultural rights". In S. Hertel, and L. Minkler (eds.) *Economic Rights: Conceptual, Measurement, and Policy Issues.* Cambridge: Cambridge University Press.

CESCR has neither resources to pay for the necessary independent economic analyses required, nor the time and expertise to undertake the necessary analyses themselves. The SERF Index methodology provides a solution to this problem.

The key innovation of the SERF Index methodology (Fukuda-Parr, Lawson-Remer, Randolph 2009, 2011; Randolph, Fukuda-Parr, Lawson-Remer 2010) is the construction of an Achievement Possibility Frontier, APF, for each relevant socio-economic indicator, that benchmark's the level of achievement feasible for any level of resources. In so doing, it closes the "escape hatch". Here we briefly summarize how the Achievement Possibility Frontiers are constructed and used to specify the extent to which a country is fulfilling its obligations of result with regard to any given aspect of a substantive economic or social right.

Achievement Possibility Frontiers and Performance Indicator Scores

Achievement Possibility Frontiers (AFPs) are specified for relevant socio-economic indicators by first constructing a scatter plot of achievement on the indicator against per capita GDP (measured in constant PPP$), our indicator of resource capacity, using data from all countries over the 1990-2008 period. Frontier observations, the observations lying on the outer envelope of the scatter, are then identified, and econometric techniques used to fit a curve to these boundary observations. For example, since children who don't have access to sufficient micro and macro nutrients become stunted, the percentage of children under 5 who are not stunted (low height for age) can be used as an indicator of the enjoyment of the right to food. Figure 1 shows the scatter of observations (black ovals) for all countries over the period on this indicator against the country's per capita GDP (2005 PPP$) at the time. The fitted

Achievement Possibility Frontier (red circles) shows the level of achievement on the indicator that is feasible using best practices consistent with country experience at any given level of resource capacity.

Separate APFs are fitted to each indicator selected to measure a relevant aspect of rights enjoyment. The APF assumes that the knowledge of the policies and practices for transforming resources into rights enjoyment is stable over the medium term for each selected indicator. The Achievement Possibility Frontiers for different indicators increase at different rates as per capita income rises reflecting differences in the feasibility of transforming resources into the enjoyment of the different right aspects. They also peak at different per capita income levels, indicating that it is feasible to completely fulfill some aspects of some rights at lower per capita income levels than others. In essence, the frontiers map the rate at which it is feasible to transform resources into the enjoyment of the various right aspects.

A country's level of obligation at a given time with regard to any given aspect of a right (in the above example, access to food with sufficient macro and micro nutrients) is then measured as the frontier value of the relevant APF at the country's per capita GDP level at the time. The striking difference in rights enjoyment levels among countries with similar per capita GDP levels reveals the substantial difference in the extent to which countries fulfill the different aspects of the substantive rights "to the maximum of [their] available resources" as obligated under Article 2.1 of the ICESCR. A *performance indicator score* for a given country and time period is calculated as the ratio of the country's score on the indicator at a given time (in the above example, the percentage of children in the country that are not stunted) to the value of the APF for the country's per capita GDP level in the year concerned. So for example, if a country with a per capita income level of $10,000 (2005 PPP$) achieved a score of 72% of children are not stunted, and the APF value for $10,000 were 90% of children not stunted, its performance indicator score would be calculated as (72/90)= 80% . Adjustments to this score are made to normalize the observed range of scores across indicators and to penalize countries with income more than sufficient to reach the maximum feasible score on an indicator but failing to do so.[5]

Indicators of the Rights Enjoyment Level

The ICESCR along with the CESCR's General Comments enumerate six substantive economic and social rights – the right to education, health, food, housing, work, and social security.[6] Within the constraints of available data, we select socio-economic indicators reflecting the most relevant attributes of each substantive right to measure the level of rights enjoyment. Beyond concept validity, a number of additional criteria governed our choice of indicators including data reliability, public accessibility, comparability across countries and over time, and whether the indicator was based on objective information (as opposed to subjective judgment) and generated using a transparent methodology. We also sought to identify bellwether indicators, and indicators gauging the percentage of the population enjoying the right aspect (as opposed to the average enjoyment level in the population).

[5] See Randolph, Fukuda-Parr, and Lawson Remer (2010) and Fukuda-Parr, Lawson-Remer and Randolph (2011) for details on these procedures note 1 above.

[6] The right to property is also identified in the Covenant but not considered here since compliance with it is more appropriately addressed as a procedural right.

Ultimately, indicator selection involved striking a balance between country coverage both within and across time periods, the most relevant challenges to fulfilling a given right, and discrimination in achievement across countries. Since high income OECD countries collect different data and have faced different challenges with regard to fulfilling ESR over the past few decades, as is the case for the cross-sectional SERF Index, we specify two separate Historical SERF Indices, one for most countries, our Core Historical SERF Index, and a Supplemental SERF Index for high income OECD countries. Table 1 shows the indicators used to measure each right for both variants of the Historical SERF Index.[7] Data limitations precluded our taking into account the right to social security, and in the case of our Supplemental index, the right to housing as well. Because our Historical SERF Index looks back to the decade of the 1970s, we were unable to take advantage of several desirable series used in the cross-sectional SERF Index.

As Table 1 shows, in the case of several rights, indicators are available to track multiple aspects of the right (e.g., three indicators are used to reflect enjoyment of the right to health for core countries), while for others only a single indicator is available (eg., a single bellwether indicator is used to reflect enjoyment of the right to food). When only a single indicator is used to assess enjoyment of a substantive right, the adjusted performance indicator score is itself is the right index. So for example, in the case of our Core Historical SERF Index, the adjusted performance indicator score for the % of children that are not stunted is at the same time the Core Historical Right to Food Index. When multiple indicators are used to reflect enjoyment of

[7] Fukuda-Parr, Lawson-Remer, and Randolph 2009 and 2011 (see note 1 above), discuss the link between specific indicators and the right aspect they reflect in some detail.

a substantive right, the average of the adjusted performance indicator scores concerned constitutes the Right Index. So for example, in the case of the Core Historical SERF Index, the Core Historical Right to Education Index is the average of the adjusted performance indicator scores for the primary school completion rate and the gross secondary school enrollment rate. The aggregate Historical SERF Index (both Core and Supplemental) is itself the weighted average of the component Right Indices. Figure 2 schematically demonstrates the construction of the Historical SERF Index. For our purposes here, we set the weights all equal to 1 so that the Historical SERF Index becomes the simple average of the component Right Indices.

We compute the Historical SERF Index for four separate decades, or waves as we call them. The decade of the 1970s covers the period 1971-1980, that for the 1980s covers the period 1981 to 1990, and so forth. Country observations on the indicators used to construct the historical SERF Index are not generally available for every year, and the year in which data on a particular indicator is available differs by country. In constructing the Historical SERF Index, we select the observation on each indicator falling as close to the "5's" (1975, 1985, 1995, 2005) as possible resulting in a single observation for each decade.

In the sections that follow, we consider the extent to which commitments to progressively realize economic and social rights have been met. The Historical SERF Index allows us to consider two important but distinct aspects of progressive realization. First, at any given time, is a country fulfilling its economic and social rights obligations of result to the maximum of its available resources? Second, are countries fulfilling their obligations of result to a greater extent over time, to the same extent over time, or is the principle of non-retrogression being violated?

3. Global Performance and Trends

The big story is that on average countries are meeting their commitments to fulfill economic and social rights to an increasing extent. But there is still much progress to be made. Figure 3 tracks the average score on the Core Historical SERF Index and the Core Historical Component Right Indices for countries that have data for any wave.[8] With regard to the aggregate Core Historical SERF Index and the Core Historical Right to Work Index, the average country score is only shown for the decades of the 1980s, 1990s and 2000s (Waves 2, 3, and 4) in view of the small number of countries with sufficient data to compute the index for the decade of the 1970s. The average score on the aggregate Core Historical SERF Index rose from 63.1 to 72.8 between 1985 and 2005 with the pace of improvement accelerating somewhat over the last decade. On average, the core countries scored highest on the Right to Work Index although this is the one index that failed to show consistent improvement across the decades – the average score fell three points between 1985 and 1995, and then recovered but did not surpass its 1985 value in 2005. The standard for decent work implicit in the Right to Work

[8] A parallel analysis was conducted using the average values for those countries for which it was feasible to compute the Core Historical Right to Health, Food, Housing, and Education indices for all four waves and the Core Historical Right to Work Index and the aggregate Core Historical SERF Index for the last three decades. The difference in averages for each given wave is quite small; with a small but noticeable increase in the rate of improvement over time on the Core Historical Right to Food and Health Indices, and a small decrease in the rate of improvement over time on the Core Historical Right to Education Index. See Annex A, Figure 1 for graphs comparing the variants.

Index is the bare minimum for human dignity, yet by 2005 on average countries only provide minimally decent work to three quarters of those they feasibly could, given their resources.

Core countries dramatically improved the extent to which they meet their commitments to fulfill their citizen's and resident's rights to education and housing; the rights they were most deficient in fulfilling in 1975. The average score on the Core Historical Right to Education Index increased from 35 to 72; that for the Core Historical Right to Housing Index from 48 to 75 between 1975 and 2005. Progress in fulfilling the rights to health and food increased in tandem, rising quite rapidly between 1975 and 1985, but at a slower pace thereafter. The average score on the Core Historical Right to Health Index rose from 56 to 75 between 1975 and 2005 while that on the Core Historical Right to Food Index rose from 57 to 74. Although consistent progress was made in the extent to which countries met their commitments to fulfill the rights to health, education, housing, and food across the four waves, with the exception of the Right to Housing, progress slowed between 1985 and 1995. Overall there is convergence in the extent to which countries are fulfilling the different substantive economic and social rights, but countries continue to be doing substantially less than what is reasonably feasible. On average countries could feasibly increase their scores on each of the component right indices by a third again.

High income OECD countries had a considerably higher SERF Index score some 40 years ago than core countries— roughly 80% versus 60%--and they too experienced progress over the subsequent 40 years although they only increased their absolute score by half as much. That is, although high income OECD countries enjoyed increased enjoyment of economic and social rights, the gains, relative to what they feasibly could have been given the extent to which their resource base expanded, were smaller than in the case of the core countries. To an important degree, this reflects high levels of achievement on some basic rights. High income OECD countries are currently approaching 100% achievement in meeting their obligations of result with regard to the basic aspects of the rights to education, health, and food incorporated in the Supplemental Historical SERF Index. Figure 4 shows the trend in the Supplemental Historical SERF Index along with the trend in the component right index scores for all high income OECD countries with data.[9] The variation in performance across rights was greater at the outset (40 years ago) for high income OECD countries than for core countries, but as was the case for core countries, the greatest gains are observed for the right to education. On average, the score on the Supplemental Historical Right to Education Index increased nearly 35 percentage points between 1975 and 1995; the pace then decelerated such that the gain was only 2 percentage points between 1995 and 2005. One might well argue that given the high level of achievement on the Supplemental Right to Education Index by 1995 (averaging 95%), the fall in the rate of gain is to be expected. However, even if one enriches the index to include information on the quality of education by incorporating country scores on an indicator of the quality of education, the Program for International Student Assessment (PISA), the average gain between 1995 and

[9] A parallel analysis was conducted using the average values for those countries for which it was feasible to compute the Supplemental Historical Right to Health, Food, and Education indices for all four waves and the Supplemental Historical Right to Work Index and the aggregate Supplemental Historical SERF Index for the last three decades. The difference in averages for each given wave is quite small; with a small but noticeable increase in the rate of improvement since 1995 in the aggregate Supplemental Historical SERF index, a noticeable decrease in the Supplemental Historical Right to Food Index, and a slightly higher level of the Supplemental Right to Work Index. See Annex A, Figure 2 for graphs comparing the variants.

2005 is minimal.[10] Further, upon doing so, the average score falls nearly 10 percentage points indicating challenges remain to fully realizing the right to education in high income OECD countries.

The rise in the Supplemental Historical SERF Index over the 40 years to an important degree reflects the substantial gains in education. To be sure, progressive realization is the norm for the right to health, but the gains were small; the Supplemental Right to Health Index rose from 93% to 96% over the 40 years. However, with regard to the right to food and the right to work, high income OECD countries regressed. The average score on the Supplemental Right to Food Index fell slightly (from 97% to 95%) over the 40 years and the Supplemental Right to Work Index fell markedly (75% to 61%). Although in 1975, high income OECD countries were most deficient in terms of fulfilling their obligations of result with regard to the right to education, by 2005, the greatest deficiency was observed for the right to work. Fulfilling commitments to ensure the right to work emerge as the greatest challenge for high income OECD countries.

4. Variation in Performance Across Countries.

On average and in the aggregate, both core and high income OECD countries not only increased the level of economic and social rights enjoyment, they expanded the level of rights enjoyment more rapidly than their capacity to fulfill right enjoyment increased. That is, they

[10] PISA scores are not available for 1970s or 1980s and so the quality aspect cannot be incorporated into the Supplemental Historical Right to Education Index for 1975 or 1985. If one incorporates the average of the math and science PISA score as a component of the Supplemental Historical Right to Education Index for 1995 and 2005, the average score on the Index falls from 92 to 85 in 1995 and from 95 to 86 in 2005. The average gain in this alternative Supplemental Right to Education Index across high income OECD countries, however, is less than one percentage point (85.0 to 85.8) for countries that have the necessary data on either wave 3 or 4, less for countries that have data on both waves 3 and 4.

progressively realized their economic and social rights obligations of result in the full sense of the term. This achievement implies that the substantial rise in the global average per capita income level and accordingly countries' capacity to fulfill economic and social rights was increasingly directed towards fulfilling economic and social rights. The average trends, however, mask wide variation in performance across countries.

Countries in Europe and Central Asia tend to score highest on the Core Historical SERF Index and underlying component right indices and those in Sub-Saharan Africa lowest as can be seen from figure 5 with regard to the Core Historical Right to Health index. The latter is of particular concern since it implies that despite the lower level of obligation in the face of their lower resource capacity, the extent to which Sub-Saharan African countries fulfill their obligations of result is lower—a double loss in the extent to which people living in this region enjoy basic economic and social rights. This is not to say that countries in Europe and Central Asia uniformly meet their commitment to fulfill basic economic and social rights to a greater extent and those in Sub-Saharan Africa do so to a lesser extent. Nor is it to say that progress over time has been lower. There is wide variation in the level and trend in performance within regions. Take the case of performance on the Core Historical Right to Education Index within Sub-Saharan Africa (figure 6). By 1985, Mozambique achieved over 90% of the feasible value given its resource capacity, but then regressed dramatically to half that score. Malawi, on the other hand showed steady progress, raising its score from less than 30% of the feasible value to over 80% of the feasible value. Lesotho's score hardly budged over the 40 years and bobbled around 55% of the feasible value.

Although progress was the norm, many countries failed to uphold the principle of non-retrogression. Table 2 shows the number of countries that violated the principle of non-retrogression by decade for both core and high income OECD countries. Retrogression was common. Despite the fact that on average progress was greatest on the Core Historical Right to Education Index, over a third of the countries showed retrogression on this index between 1985 and 1995. Many countries progressed in one decade only to regress in a subsequent decade (or visa versa). In general, retrogression was more common between 1985 and 1995 and between 1995 and 2005 than it was between 1975 and 1985 for core countries. For some countries achievement relative to the feasible level was lower in 2005 than in 1995 (second column) implying retrogression over the whole period. Many high income OECD countries violated the principle of non-retrogression as well. That is, the increase in the level of rights enjoyment did not increase (and sometimes decreased) at the same rate as their capacity to fulfill rights increased. With regard to the rights to education and health, retrogression in the high income OECD countries never extended over the whole 40 year period. However, with regard to the rights to food and work, retrogression was the rule across each decade and over the entire 40 year period in high income OECD countries.

Table 3 shows the countries whose score on the Core Historical SERF Index and Core Component Right Indices increased the most over the whole period (column 2), and in each decade (columns 3, 4, and 5). Table 4 provides the same information with regard to the Supplemental Historical SERF Index and underlying right indices. Quite a number of countries showed a dramatic increase in their index scores even in the face of rapidly rising per capita income and accordingly a rapidly rising level of obligation. For example, Qatar, Kuwait, and

Oman dramatically improved their score on the Core Historical Right to Education Index. Other countries showed substantial gains despite very limited gains in per capita income. That is to say, they raised the level of rights enjoyment relative to the feasible level given their limited resource capacity, although the absolute level of rights enjoyment remained low in those countries with low per capita income levels. The gains shown by the top performing high income OECD countries were far more modest except with regard to the right to education. Not surprisingly, in the case of both core and high income OECD countries progress was greatest for those countries that were most deficient in meeting their economic and social rights obligations at the outset.

The last columns of Tables 3 and 4 show the countries with the top scores on the Historical SERF Indices and underlying right indices in 2005 for core and high income OECD countries, respectively. Although no country achieved 100% on the Core Historical SERF Index, quite a number of countries achieved a score of 100% on the Core Historical Component Right Indices. Countries in Eastern Europe and Central Asia tend to score highest on the Core Historical SERF Index and several, but not all of the underlying right indices; Latin American countries and countries in East Asia and the Pacific topped the list with regard to the Core Historical Right to Health Index. The Scandinavian countries achieved the highest scores on the Supplemental Historical SERF Index although none achieved a score of 100%. By 2005, the majority of high income OECD countries achieved scores of 100% on the Supplemental Historical Right to Education Index implying that all people in these countries enjoy access to a basic education. Japan, Iceland and Italy hold top scores on the Supplemental Historical Right to Health Index.

The high scores achieved by some developing countries reflect low levels of obligation in the face of their limited resource capacity. This raises the question of whether rights enjoyment would have increased more over the four decades had they focused their efforts on increasing per capita income rather than improving rights enjoyment within the constraints of their limited resources. More generally, a key question is whether countries that emphasize devoting current resources to meeting their economic and social rights commitments do so at the expense of generating additional resources that could enable even greater enjoyment of economic and social rights in the future. It is to this question that we turn now.

5. Do Countries Direct Resources to Meeting Economic and Social Rights Commitments at the Expense of Growth?

One way to examine the question of whether countries that prioritize meeting their economic and social rights commitments over growth grow more slowly is to examine trends over time in countries growth and rights performance. Here we divide countries along two dimensions: (1) those with SERF Index scores above or below the median score and (2) those with average annual per capita GDP growth rates during the decade above or below the median score, and look at their transition pattern between the decades of the 1990s and 2000s. We classify countries that are in the bottom half of countries with regard to both their SERF Index score in 1995 and their average annual per capita GDP growth rate during the decade as being caught in a vicious cycle, hypothesizing that their low score on the SERF Index impedes per capita income growth further limiting available resources for expanding the enjoyment of economic rights over time. We classify countries that are in the top half of countries with regard to both their SERF index score and their average annual per capita GDP growth rate during the decade as being in a virtuous cycle. Our hypothesis is that a high SERF Index score may foster faster per capita income growth increasing resources to further expand rights enjoyment. Countries that appear to have prioritized growth over meeting their commitments to fulfill economic and social rights are those that have above median growth rates over the decade, but below median SERF index scores. We call these “growth-lopsided” countries. Countries that appear to have prioritized meeting their commitments to fulfill economic and social rights over growth are those that have above median scores on the SERF Index, but below median growth rates. We call these countries “SERF-lopsided”.

To test our hypothesis that fulfilling economic and social rights commitments and economic growth may be mutually reinforcing, we examine where countries end up in the subsequent decade (2000s) that start in either the vicious or virtuous quadrant in the initial decade (1990s). Eleven countries were in the vicious quadrant in the 1990s. Of these, 63.6% failed to escape the vicious quadrant in the 2000s; their SERF Index scores and per capita GDP growth rates were below the median levels during the 2000s. Of the remaining countries, 18.2% became growth-lopsided, 9.1% SERF-lopsided, and 9.1% succeeded in achieving the virtuous quadrant. On the other hand, of the 11 countries that started out in the virtuous quadrant, 63.6% remained in the virtuous quadrant in the subsequent decade, with 18.2% becoming SERF-lopsided, 9.1% becoming growth- lopsided and 9.1% falling into the vicious quadrant. These transition patterns indicate that meeting economic and social rights commitments reinforces growth.

To attain the virtuous cycle, is it better to focus on growth or meeting economic and social rights commitments first? To gain some insight into this question, we consider the transition paths of the “lopsided” countries. Of the 16 countries that were growth-lopsided in the 1990s, only one converted to the virtuous cycle in the subsequent decade; 50% converted to the vicious quadrant. In contrast, of the 16 countries that were SERF-lopsided in the 1990s, 56% converted to the virtuous quadrant in the subsequent decade with an additional 31% remaining SERF-lopsided and just 6% falling into the vicious quadrant. Focusing available resources on meeting economic and social rights commitments offers better prospects for both future growth and enhanced economic and social rights enjoyment in the future. Directing available resources to foster growth at the expense of meeting economic and social rights obligations is likely to lead to both poor growth outcomes and lower levels of economic and social rights fulfillment in the future.

6. Concluding Remarks

The International Covenant on Economic, Social and Cultural Rights, ICESCR, commits governments to progressively fulfill the economic, social and cultural rights recognized in the Covenant and to commit the maximum of available resources to that end. Alston and Quinn call this standard of *progressive realization,* as it has come to be known, the “linchpin of the whole Covenant”.[11] Yet it has simultaneously complicated and frustrated efforts to monitor countries’ fulfillment of their economic and social rights (ESR) obligations and is in no small part responsible for economic, social and cultural rights’ relative lack of traction. It not only implies

[11] Alston, Philip and Gerald Quinn (1987) Nature and Scope of States Parties’ Obligations under the International Covenant on Economic, Social and Cultural Rights. *Human Rights Quarterly.* 9 (2): 156-229.

that a given country's level of obligation with regard to ESR fulfillment increases over time, but also that different countries face a different level of obligation. In effect, the difficulty in making the standard of progressive realization operational has provided an escape hatch for countries to avoid meeting their obligations of result. It has also frustrated identification of the policy regimes and circumstances that best facilitate the fulfillment of economic and social rights.

The SERF Index methodology introduced by Randolph, Fukuda-Parr, and Lawson-Remer[12] specifies an evidence based methodology that allows one to identify the level of rights enjoyment that is reasonably feasible for countries with different resource capacities to achieve. Here we adapt this methodology to construct an Historical SERF Index that overcomes the challenge of gauging the extent to which countries are compliant with their obligations of result under the Covenant by benchmarking each country's level of obligation as it has evolved over the past forty years with regard to the different substantive economic and social rights.

Our findings are encouraging. The big picture is that in general countries are meeting their economic and social rights obligations of result to an increasing degree and in general, the gains have been pronounced. The average score on the Core Historical SERF Index (covering all but the high income OECD countries) has increased by ten percentage points since 1985, and that on the underlying right to education, housing, health, and food indices by thirty-seven, twenty-seven, nineteen, and seventeen percentage points, respectively, since 1975. The only substantive right for which progress has been absent is the right to work. Despite the gains

[12] See Randolph, Fukuda-Parr, and Lawson-Remer (2010) and Fukuda-Parr, Lawson-Remer and Randolph (2009 and 2011) in note 1 above.

shown, substantial progress remains to be achieved. On average the core countries had achieved just over seventy percent of what is reasonably feasible by 2005. Average achievement among high income OECD countries as assessed by the Supplemental Historical SERF Index is higher—over eighty-five percent of what is reasonably feasible in 2005—but progress over the forty years has been more limited and traces primarily to the progressive realization of the right to education and specifically access to basic education; retrogression has been the rule with regard to the rights to food and the right to work in the high income OECD countries.

The big picture with regard to average progress, masks substantial variation across countries; retrogression both overall and with regard to specific substantive rights was common especially over periods of a decade. This raises fundamental questions concerning the factors that account for the difference in outcomes. Among the many factors that are likely in play, we examined one key question here, whether countries face a trade-off between (1) fulfilling economic and social rights obligations today and (2) expanding the resource capacity that can enable greater enjoyment of economic and social rights in the future. The evidence here is that far from retarding per capita income growth, fulfilling economic and social rights obligations today tends to promote per capita income growth and thus the capacity to further expand the enjoyment of economic and social rights in the future. The variation in performance observed by country and within countries over time raises many more questions concerning the policy regimes and circumstances that best facilitate the fulfillment of economic and social rights. Answering these questions will require a concerted research effort.

Figure 1:

Achievement Possibilities Frontier—Percentage of Children that are Not Stunted

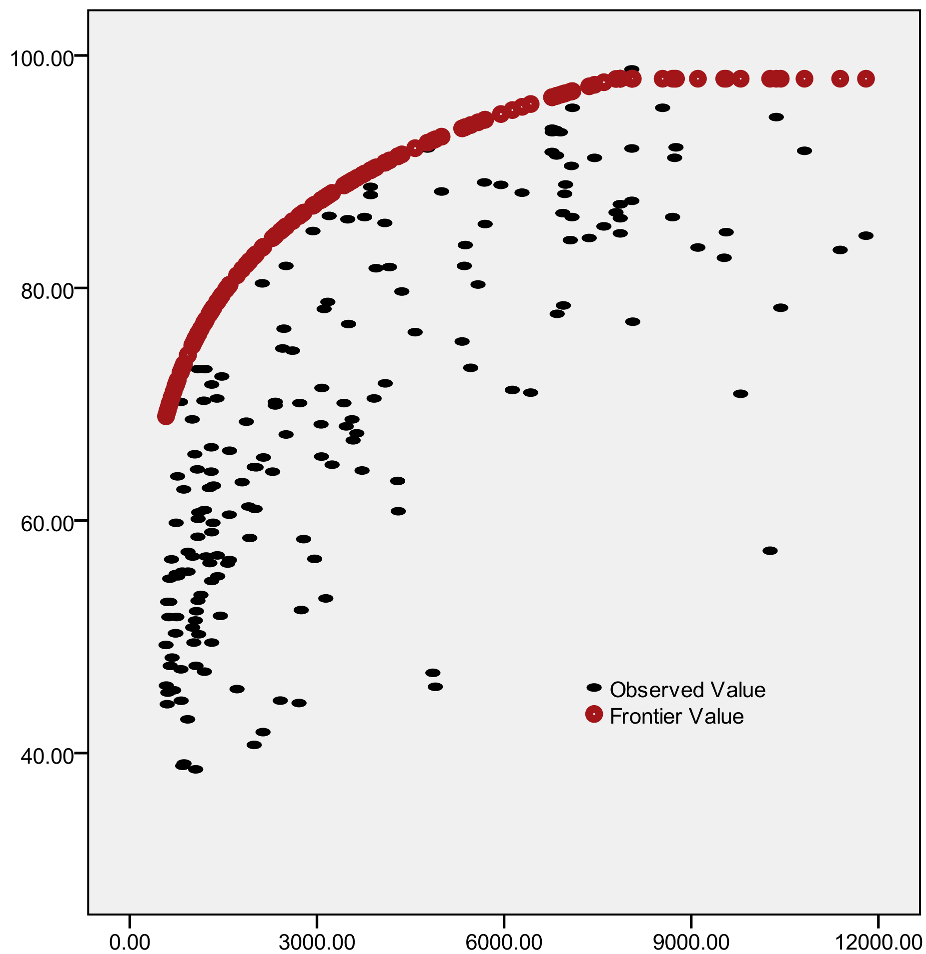


Figure 2: Construction of the SERF Index

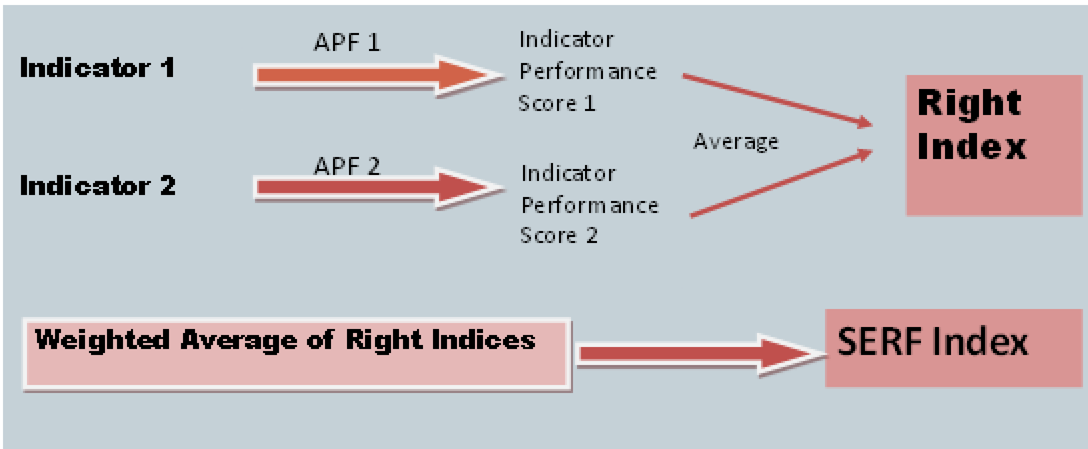


Figure 3: Average Score on Core Historical SERF Index and Component Right Indices: Countries with Data for Any Wave

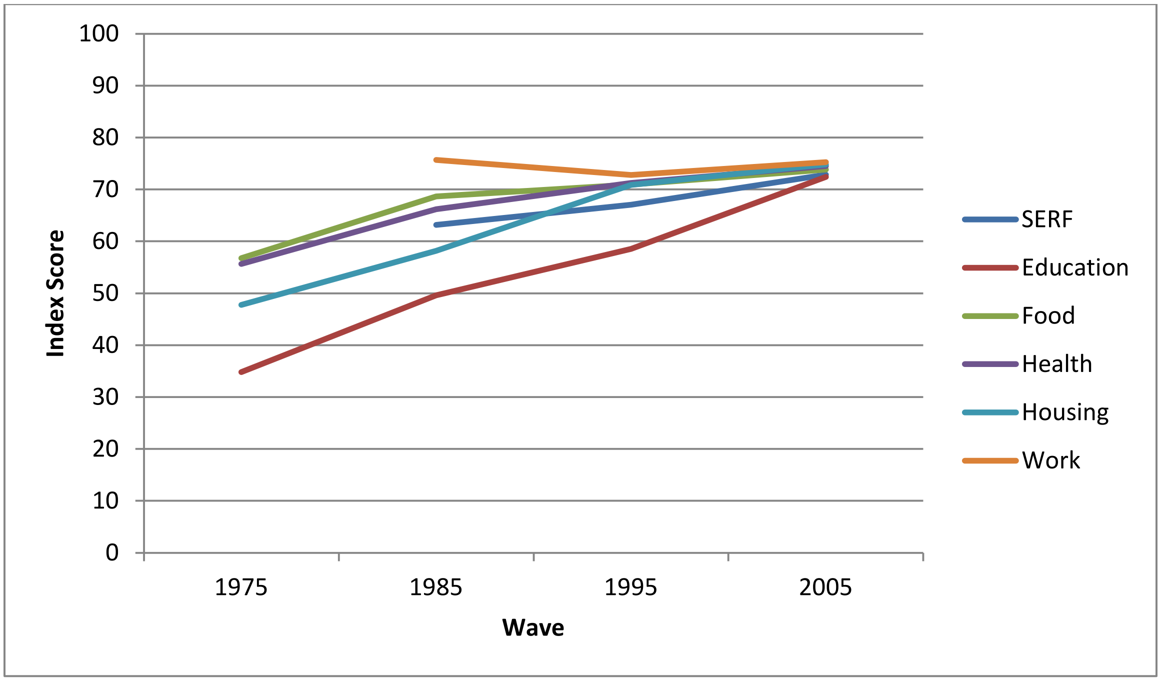


Figure 4: Average Score on Supplemental Historical SERF Index and Component Right Indices: High Income OECD Countries with Data for Any Wave

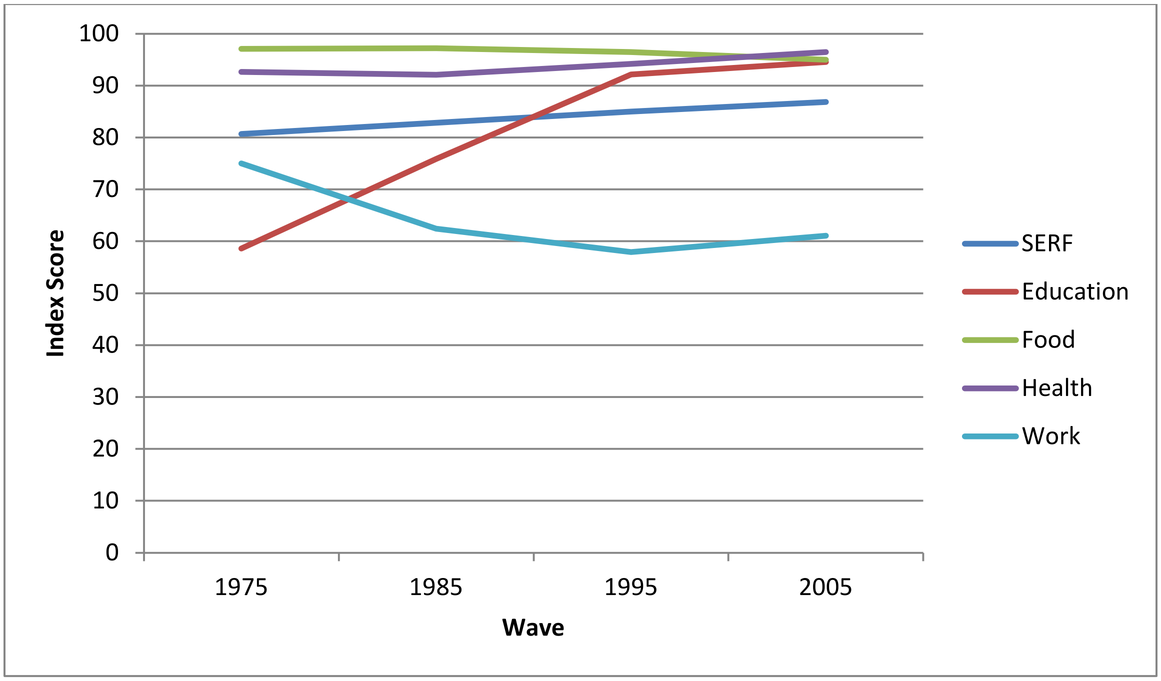
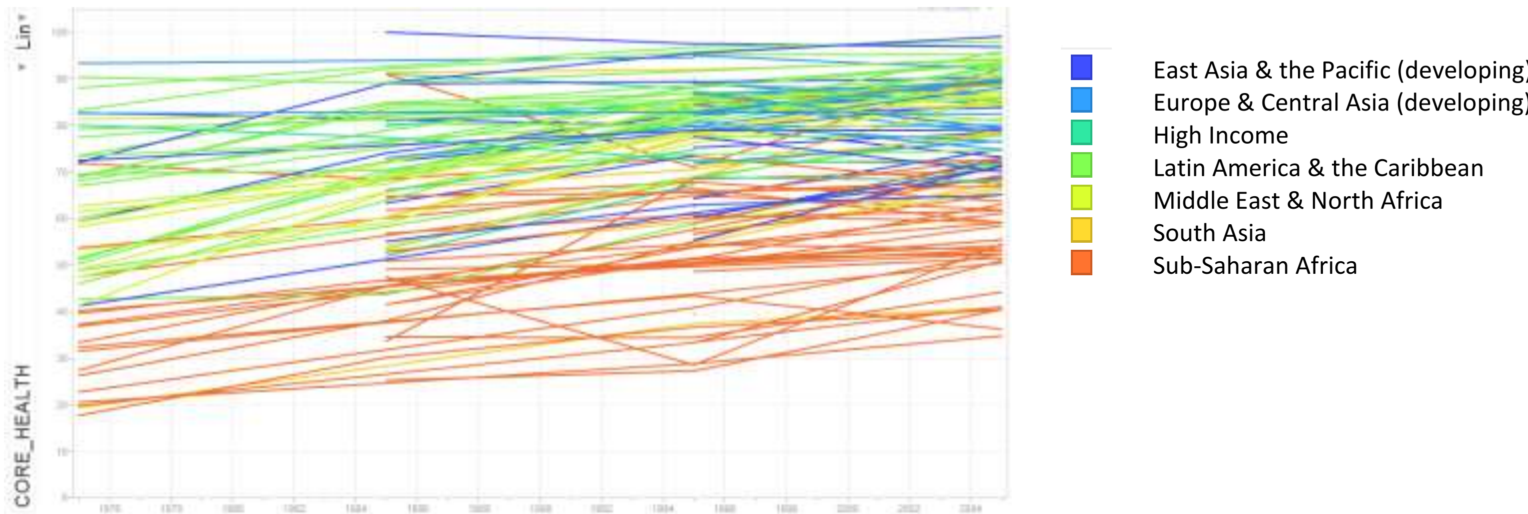
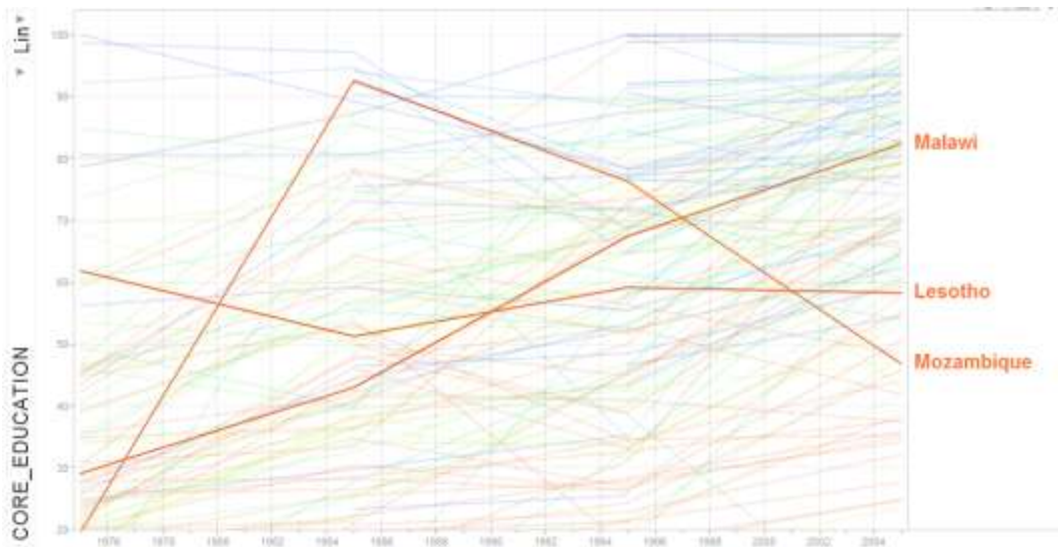


Figure 5: Trends in Core Historical Right to Health Index[a]



[a]Each line tracks a single country

Figure 6: Variation in Performance on Core Historical Right to Education Index Within Region[a]



[a]Each faded line tracks a single country. The highlighted lines track the countries indicated.

Table 1: Historical SERF Index Indicators of Rights Enjoyment Level by Right

Social or Economic Right	Core Historical SERF Index	Supplemental High Income OECD Country Historical SERF Index
Right to Food	Stunting Rate (100 - % low height for age)	Normal Birth Weight Rate (100 – % newborns < 2500 grams)
Right to Education	Primary school completion rate; Gross secondary school enrollment rate;	Gross secondary school enrollment rate
Right to Health	% child (under 5) survival rate; Life expectancy at birth; Contraceptive Use Rate	% child (under 5) survival rate; Life expectancy at birth
Right to Adequate Housing	% rural population with access to improved water source	Data not available
Right to Decent Work	% not absolutely poor (% with income > $2 per day, 2005 PPP$)	% not relatively poor (% with income > 50% of median income); % unemployed not long-term (>12 months) unemployed

Table 2

Number of Countries Failing to Uphold the Principle of Non-Retrogression

Historical SERF Index and Component Right Indices

Index	1975-2005	1975-1985	1985-1995	1995-2005
Core Historical Indices				
Core Historical SERF	0/1	0/1	3/24	10/54
Core Historical Right to Education	7/86	9/87	35/99	17/124
Core Historical Right to Food	3/16	0/13	20/52	34/96
Core Historical Right to Health	3/51	3/35	7/71	24/116
Core Historical Right to Housing	4/73	21/71	22/106	36/136
Core Historical Right to Work	3/4	0/2	27/50	29/81
Supplemental Historical Indices				
Supplemental Historical SERF	1/4	1/5	5/14	5/21
Supplemental Right to Education	0/25	0/25	1/28	7/31
Supplemental Right to Food	17/25	13/25	21/29	24/30
Supplemental Right to Health	0/28	18/28	1/31	0/31
Supplemental Right to Work	4/4	5/5	13/15	8/22

Table 3

Top 5 Countries Showing Improvement

Core Historical SERF Index and Component Right Indices

Index	Most Improvement				Wave 4 Top Scores
	1975-2005	1975-1985	1985-1995	1995-2005	
Core Historical SERF	Insufficient Data	Insufficient Data	Guatemala (22.7) Dominican Republic (14.2) Sri Lanka (11.5) Bangladesh (11.2) Thailand (11.1)	The Gambia (23.2) Vietnam (16.7) Indonesia (15.0) Nepal (14.4) Honduras (13.4)	Ukraine (95.3) Belarus (94.0) Uruguay (93.4) Jordan (92.8) Chile (92.6)
Core Historical Right to Education	Qatar (89.3) Liberia (83.4) Kuwait (83.3) Oman (69.7) Sierra Leone (68.2)	Guatemala (40.7) Rwanda (32.5) Mauritania (21.5) Thailand (19.6) Chile (16.7)	Afghanistan (54.9) Cyprus (52.2) United Arab Emirates (51.8) Brazil (47.1) Burundi (39.5)	Kuwait (55.5) Eritrea (52.4) Saudi Arabia (48.4) Qatar (46.9) Togo (41.0)	Score of 100: Brazil, Liberia, Tajikistan, Democratic Republic of Congo, Dominica, Grenada, Tonga, Seychelles
Core Historical Right to Food	Nepal (49.6) Pakistan (47.8) El Salvador (44.3) India (43.3) Philippines (41.0)	El Salvador (31.1) Tunisia (30.2) Philippines (25.7) Trinidad & Tobago (18.0) India (16.2)	Pakistan (33.1) India (30.3) Vietnam (19.9) Bhutan (18.4) Peru (17.6)	Bangladesh (38.2) Mauritania (34.9) Indonesia (29.6) Nepal (28.6) Uzbekistan (27.6)	Kyrgyz Republic (100) Ukraine (100) Moldova (100) Togo 99.8) Chile (99.4)
Core Historical Right to Health	Nicaragua (50.0) Malawi (45.8) Algeria (43.5) Honduras (39.9) Peru (39.2)	Algeria (24.4) El Salvador (19.3) Honduras (19.3) The Gambia (18.0) Nicaragua (17.9)	Liberia (34.8) Iraq (19.1) Nicaragua (18.7) Malawi (17.0) Bangladesh (16.9)	Rwanda (26.0) Mauritius (21.3) Nepal (17.8) Niger (17.6) Malawi (17.0)	Vietnam (99.1) Costa Rica (99.0) Cuba (97.9) China (96.9) Nicaragua (96.0)
Core Historical Right to Housing	Maldives (87.0) Saudi Arabia (74.8) Nepal (64.4) Paraguay (63.2) Thailand (57.2)	Saudi Arabia (56.3) United Arab Emirates (45.6) Paraguay (44.4) Chile (33.3) Iran (33.2)	Maldives (59.8) Oman (50.9) Bangladesh (47.7) Guatemala (46.9) Argentina (39.1)	Afghanistan (23.3) Paraguay (21.3) Malawi (21.2) Timor-Leste (19.1) Lao PDR (18.8)	Score of 100: Bulgaria, Malta, Cyprus, Oatar, Singapore, Barbados
Core Historical Right to Work	Insufficient Data	Insufficient Data	Guatemala (40.7) Rwanda (32.5) Mauritania (21.5) Thailand (19.6) Chile (16.7)	The Gambia (52.3) China (31.3) Vietnam (26.6) Romania (25.4) Pakistan (25.1)	Score of 100*: Croatia, Ukraine, Bosnia & Herzegovina, Belarus, Kazakhstan, Serbia, Russian Federation, Latvia, Azerbaijan, Togo, Seychelles, Lithuania

*Excludes countries with an obligation of 0 in view of per capita income levels that are too low (below $725) to bring anyone above the $2 poverty line in the absence of inequality.

Table 4

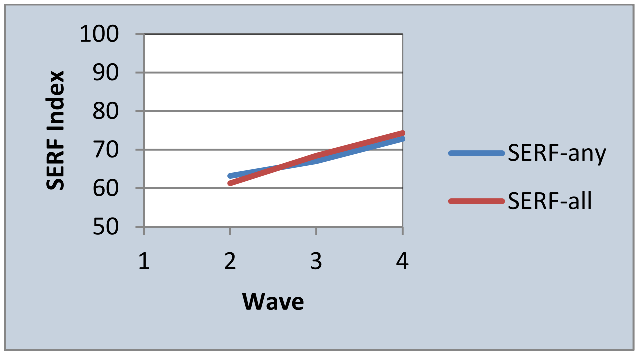
Top 3 Countries Showing Improvement and Best Performing Countries

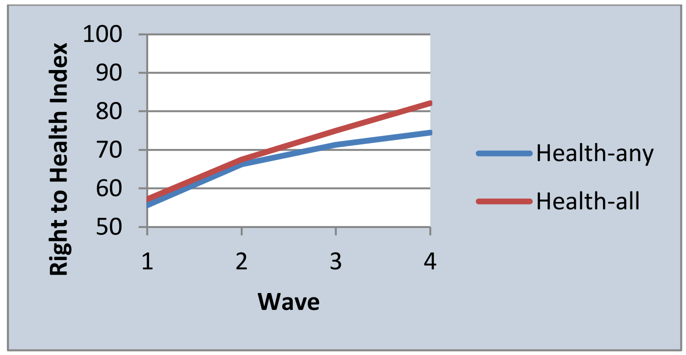
Supplemental Historical SERF Index and Component Right Indices

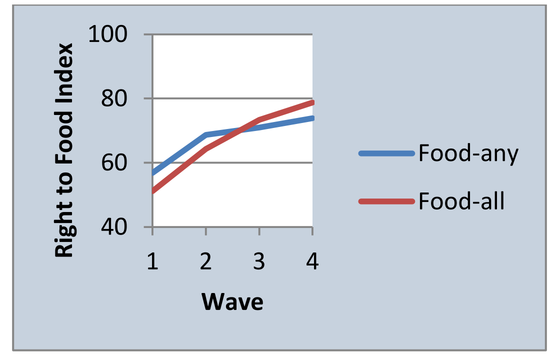
Index	Most Improvement				Wave 4 Top Scores
	1975-2005	1975-1985	1985-1995	1995-2005	
Supplemental Historical SERF	Spain (11.9) Sweden (8.9) Canada (5.8)	Spain (6.8) Canada (5.1) United States (4.2)	United Kingdom (9.0) France (7.4) Sweden (6.8)	Italy (10.3) Hungary (4.8) Greece (4.4)	Sweden (95.2) Norway (95.0) Finland (92.9)
Supplemental Right to Education	Portugal (68.6) Spain (62.9) Italy (59.5)	Spain (40.8) Republic of Korea (40.3) Netherlands (38.5)	Portugal (74.4) United Kingdom (41.4) New Zealand (39.0)	Luxembourg (34.2) Italy (30.5) Greece (21.9)	Score of 100: Sweden, Norway, Finland, Denmark, Canada, Australia, Netherlands, United Kingdom, Spain, Ireland, Germany, Greece, Belgium, France, Iceland, Japan, New Zealand
Supplemental Right to Food	Hungary (5.2) Luxembourg (3.5) Poland (2.2)	Hungary (2.3) Canada (1.9) Italy (1.7)	Hungary (3.1) Poland (2.5) Luxembourg (2.3)	Luxembourg (3.2) Denmark (1.3) Poland (1.1)	Sweden (100) Finland (100) Iceland (100)
Supplemental Right to Health	Republic of Korea (10.1) Iceland (6.6) Portugal (5.4)	Republic of Korea (3.8) Iceland (1.1) Spain (0.76)	New Zealand (3.5) Austria (3.5) Greece (3.3)	Republic of Korea (3.8) Iceland (3.3) Estonia (3.2)	Japan (99.4) Iceland (99.0) Italy (98.4)
Supplemental Right to Work	No country with data progressed	No country with data progressed	Denmark (16.3) Luxembourg (15.3) All others with data regressed	United Kingdom (18.0) Norway (13.0) Spain (12.9)	Norway (95.0) Sweden (95.2) Korea (90.5)

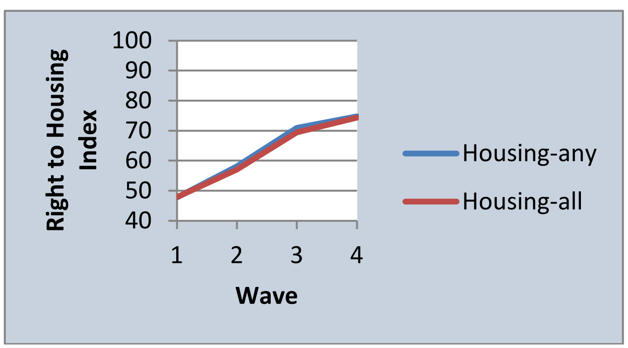
Annex A

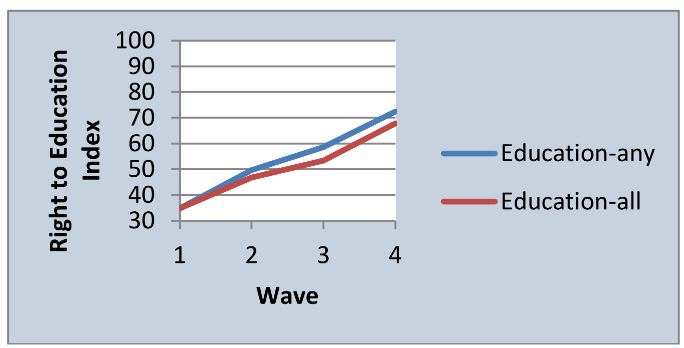
Figure 1: Average Core Historical SERF Index and Component Right Indices Trends: Countries with Data on Any Wave versus Countries with Data on All Waves

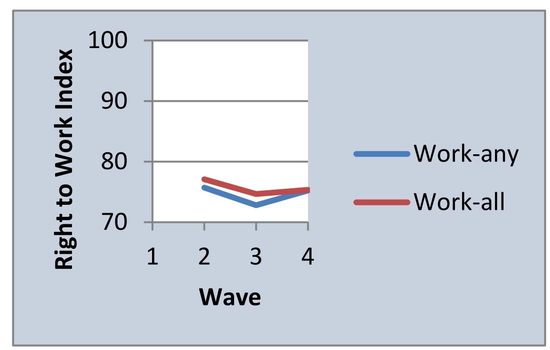












Annex A

Figure 2: Average Supplemental Historical SERF Index and Component Right Indices Trends: Countries with Data on Any Wave versus Countries with Data on All Waves