

The human right to education: a bottom-up or top-down project?

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Introduction and problem statement

"All human beings are born free and equal in dignity and rights"¹

- The first article of the UDHR signals two basic tenets of human rights:
 - Universality; all humans have rights, regardless of the country they live in
 - Inalienability; humans are born with rights, and cannot renounce them. Having rights is a natural part of being human.
- If human rights are indeed universal and inalienable, we can expect that people want to enjoy these rights, and will push for it to be legally codified.
- Human rights is thus a bottom-up project.
- This reading of the nature of human rights is not uncontroversial:
 - Universality; modern human rights were conceived in a Western-centric, colonial world and therefore reflect the Western agenda.²
 - Inalienability; rights have no meaning without a state to guarantee them. Therefore it is up to the state's discretion to legally grant rights and take them away.³
- Human rights is thus a top-down project.
- Why does this matter?
 - Human rights are a cornerstone of the current international legal and political order, with the UN as its standard-bearer.
 - Populist and authoritarian leaders routinely deny certain rights to certain groups, decrying rights as a top-down imperial instrument.
- The aim of this study is to empirically contribute to the debate on the sources of human rights, by
 - Focusing on the right to education;
 - Developing an index of human rights protection in national law; and
 - Testing this index using a multiple-principal agent model.

Measuring the right to education

- We developed a standards-based index to measure the extent to which the right to education is protected under domestic law ('structure-indicator')⁴
- The standard is the minimum core obligations pertaining education under the International Covenant on Economic, Social and Cultural Rights⁵
- The index has four equally-weighted indicators;
 - Is education recognized as a human right?
 - Is discrimination of any kind as to race, colour, sex, language, religion, political opinion, national or social origin, or property prohibited?⁶
 - Is primary education compulsory?
 - Is primary education free?

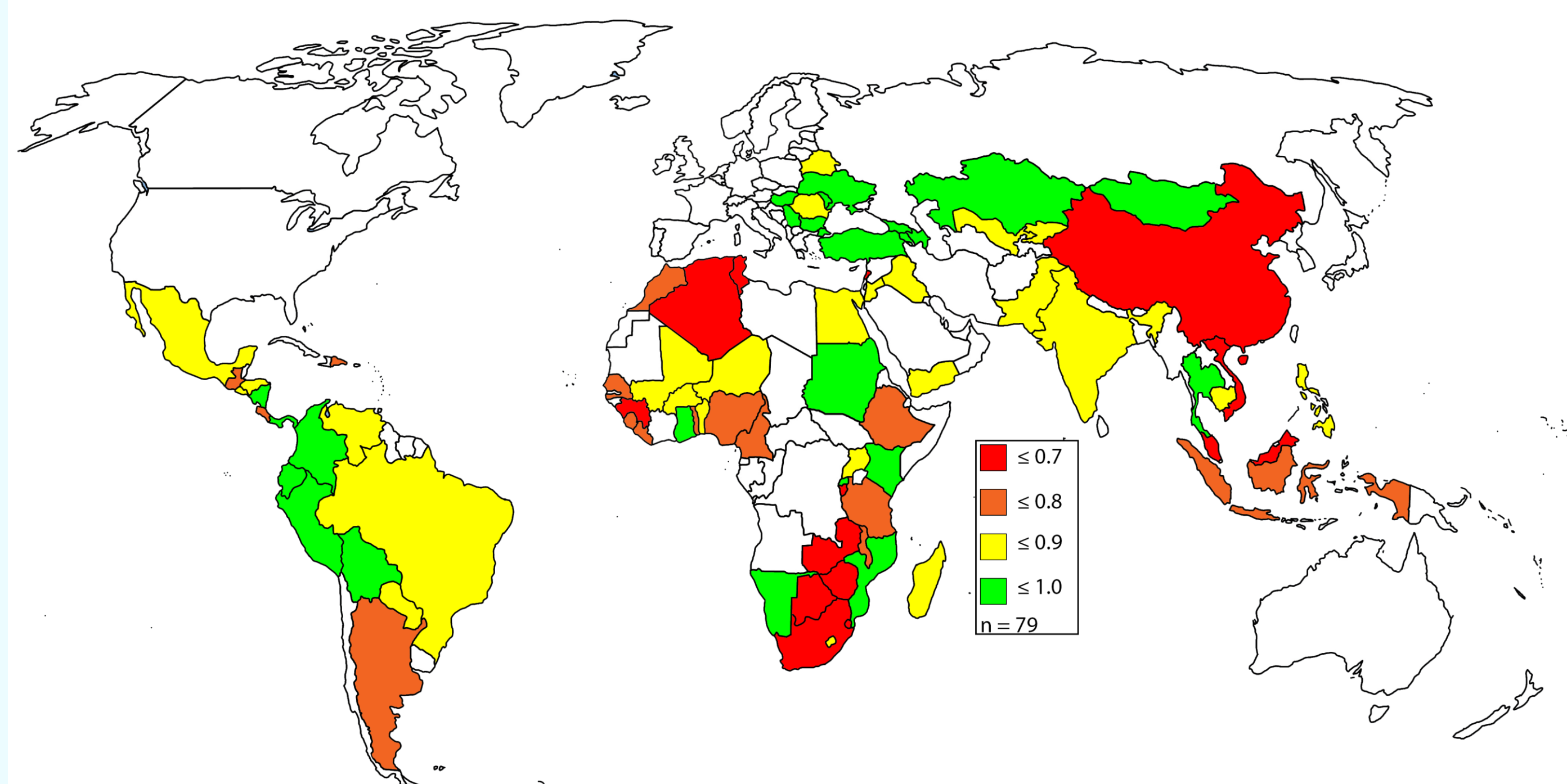


Figure 1: Legal protection of the right to education-score

Research design

- Multiple-principal agent model, with a state's government as the agent
- There are two principals:
 - The population, measured as the % of population that sees education as the most pressing issue of the country; and
 - The international human rights community, measured as the number of human rights treaties a state has ratified.⁷
- Their respective influence on the legal protection of the right to education is measured through OLS regression for 79 low- and middle-income countries.
- Controls include level of democracy, GDP/cap and population.

	Regressors	Coefficient	Robust SE
Independent	Opinion on education	0.297	0.300
	Treaties Ratified	0.0192	0.008 **
Region	MENA	0.0317	0.067
	Latin America	0.106	0.054 *
	South & East Asia	0.0823	0.049
	Former USSR	0.173	0.047 ***
R2: 0.362 Obs: 79 Significance levels: * p<0.10, ** p<0.05, *** p<0.01			

Table 1: Effect on legal protection of right to education-score (controls not shown)

Considerations

- In general, states have codified most aspects of the right to education.
- The positive significant effect of treaties ratified has two possible explanations:
 - The right to education is mainly pushed by the international community;
 - The disconnect between treaty ratification and human rights outcomes (as specified in the literature)⁷ is not as strong as we think it is.

References

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5. General Comment No. 3: The Nature of States Parties' Obligations, E/1991/23 C.F.R. (1990); General Comment No. 13 on the Right to Education, E/C.12/1999/10 C.F.R. (1999).
6. Since there are nine discrimination grounds, the indicator is divided in 9 sub-indicators.
7. The literature has shown that there is a disconnect between signing a treaty and improved human rights outcomes. There is thus no prior expectation that ratifying will automatically lead to a higher score. See *inter alia* Hafner-Burton, E. M., & Tsutsui, K. (2005). Human rights in a globalizing world: The paradox of empty promises. *American Journal of Sociology*, 110(5), 1373-1411; Hathaway, O. A. (2002). Do Human Rights Treaties Make a Difference? *Yale Law Journal*, 111(8), 1935-2033; Cole, W. M. (2012). Human Rights as Myth and Ceremony? Reevaluating the Effectiveness of Human Rights Treaties, 1981-2007. *American Journal of Sociology*, 117(4), 1131-1171.

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