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Developing a capability list for the Equality and Human Rights Commission: The problem of domain selection and a proposed solution combining human rights and deliberative consultation

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Developing a capability list for the Equality and Human Rights Commission: The problem of domain selection and a proposed solution combining human rights and deliberative consultation[i]

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Abstract. The paper considers a key challenge that arises in developing and applying the capability approach as a basis for multidimensional poverty and inequality analysis in Britain - namely, the question of how to specify set of central and valuable capabilities in terms of which inequality between individuals and groups can be conceptualised and appraised. The paper examines the treatment of the problem of domain selection (or 'identification') within the capability framework and sets out a two-stage methodology for identifying a capability list involving (1) the derivation of a "minimum core" capability list from the international human rights framework; (2) supplementation and refinement of the minimum core capability list through a process of deliberative consultation with the general public and individuals and groups at risk of discrimination and disadvantage. This methodology has recently been applied to generate a capability-list that will provide a foundation for the work of the new British Equality and Human Rights Commission. The informational requirements of the Commission's independent monitoring system (the "Equality Measurement Framework") are explored and the development and application of a practical monitoring tool (the "substantive freedom matrix") are finally discussed.

1. Introduction and overview

The literature on poverty and inequality analysis has expanded in recent years to include an important body of work addressing the issue of multidimensionality. Following seminal contributions by Sen (e.g. 1970, 1976, 1985ac, 1992, 1993a, 1997, 2002) and Anand and Sen (1997), there is now widespread agreement on the necessity of multidimensional approaches of poverty and inequality evaluation, and on the merits of the capability approach as a possible framework for taking multidimensional poverty and inequality analysis forward. Recent contributions in the broader literature have extended the methodologies available for undertaking multidimensional poverty and inequality analysis, extending the techniques available in income-focussed frameworks to the multidimensional context, and setting out new methodologies for moving forward (e.g. Tsui (2002), Bourguignon and Chakravarty (2003), Dutta, Pattanaik and Xu (2003), Atkinson (2003), Bourguignon (2006), Maasoumi and Lugo (2006, 2008), Bourguignon and Ferreira (2007), Brandolini (2008) and Alkire and Foster (2008)). Nevertheless, despite the advances, recognition of the necessity of multidimensionality raises a series of problems that require further examination. These include: (1) the identification of relevant dimensions; (2) the construction of corresponding indicators and the understanding of their metrics; (3) the aggregation of various dimensions into a single measure of wellbeing; (4) how to incorporate the analysis of freedom[ii].

The current paper focuses on problem (1) whilst addressing in passing some broader issues that fall within the scope of problems (2) (3) and (4). Specifically, the paper examines how the problem of domain selection is handled in the capability approach (via the mechanism of a capability list) and sets out a two-stage methodology for agreeing a list of central and valuable capabilities involving (1) the derivation of a core capability list from the international human rights framework; (2) supplementation and refinement of the core list through a process of deliberative consultation with the general public and individuals and groups at risk of discrimination and disadvantage. The proposed methodology builds-on the method of human rights based capability selection and reflects the insistence in the capability framework that the process of identifying central and valuable capabilities should be

embedded in broader processes of moral reasoning and democratic discussion and debate. The paper explores how the proposed two-stage procedure has been applied in practice to develop a capability list covering ten central and valuable domains of freedom and opportunity (full details are provided in appendix 1).

The paper arises in the context of a project to develop and apply the capability approach as a basis for equality monitoring in 21st century Britain. The project arises as a consequence of the mandate and responsibilities of the British Equality and Human Rights Commission (EHRC) which became operational in October 2007. The EHRC was established by the Equality Act 2006 and is a permanent and independent institution with a statutory responsibility to monitor social outcomes from an equality and human rights perspective (by developing indicators and evaluating progress in a triennial 'state of the nation' report). In order to discharge this legal duty, the Commission is developing an independent monitoring system (the 'Equality Measurement Framework') that will enable the position of individuals and groups to be monitored and appraised. Following the recommendations of the earlier Equalities Review, the capability approach was been adopted as a theoretical underpinning for the Equality Measurement Framework. The current paper reports the methodology for developing an agreed capability list that was applied in the foundational stages early stages of the development of the Equality Measurement Framework in a series of projects commissioned by the Equalities Review and EHRC[iii].

The remainder of the paper is organised as follows. Section 2 examines the capability framework and the methodological options for specifying lists of central and valuable freedoms and opportunities that have been discussed in the capability literature. Section 3 provides an overview of the two-stage procedure for domain selection developed for the EHRC involving (1) derivation of a core capability list from the international human rights framework; (2) supplementation and refinement of the core list through a process of deliberative consultation. Section 4 provides further details of the stage-1 methodology and section 5 provides further details of the stage-2 methodology. Section 6 examines how the capability list agreed as a result of the implementation of the two-stage procedure is being used as a foundation for the development of the Commission's independent monitoring system (the Equality

Measurement Framework). The informational requirements of the Equality Measurement Framework are addressed; and the development and application of a practical monitoring tool (the "substantive freedom matrix") are discussed. Section 7 concludes.

2. Developing and applying the capability approach: The problem of domain selection (or 'identification')

A key challenge in developing and applying the capability approach as a basis for multidimensional poverty and inequality analysis is to specify and justify a capability set - a list of the central and valuable freedoms and opportunities in terms of which the position of individuals and groups is to be evaluated and compared. The question of how to specify a capability list has been widely debated in the literature on the capability approach and corresponds to the first of three major conceptual challenges discussed in the broader literature on multidimensional poverty and inequality analysis (that is, the problem of domain selection or 'identification'). On what basis should judgements of this type be made?

The starting-point for addressing this issue is generally taken to be Sen's treatment of the capability approach, which emphasises the understanding of the capability approach as 'substantively incomplete'. According to this interpretation, the specification and acceptance of central and valuable capabilities (rather than other focal variables such as income, resources or subjective wellbeing) as the appropriate focal variable for interpersonal comparisons in multidimensional poverty and inequality analysis is independent of agreement on a fixed and pre-determined specification of the domains of freedom and opportunity that are to 'count' for the purposes of interpersonal comparison (or of agreement of a process by which such an agreement can be secured). Capability space is formally consistent and combinable with different several different substantive theories of value and a range of different 'background' or 'supplementary' ethical and social theories and approaches, and there is no theoretical reason for resolving the problem of domain selection *prior* to the adoption of capability space. Where there is no such agreement (or limited agreement) evaluation can nevertheless proceed on the basis of methodologies such as dominance reasoning and the partial order approach[iv].

The understanding of the capability approach as "substantively incomplete" underlies Sen's notorious reluctance to endorse a specific ("final" or "fixed") list of central and basic capabilities on the basis of which the capability approach can be extended and applied. There are two key points here. The first relates to the principle that the formulation of a capability list should be firmly embedded in ongoing processes of democratic deliberation and public reasoning. Capability list formulation ought not, therefore, to be viewed as a technocratic process or a matter for 'pure theory' - but as one open to challenge and revision, and in which broader process of moral reflection, democratic deliberation and participatory decision-making have a central and prominent role. Second, different lists of central and basic capabilities may be suitable for different purposes (evaluating poverty and inequality, measuring human development, specifying certain basic human rights, appraising injustices etc.) and in different contexts (to take account, for example, of scientific advances such as information and computer technology). Public reasoning and democratic discussion and debate are necessary for selecting relevant capabilities and weighing them against each other in each context; and the problem of domain selection should be treated as *open* and *flexible*, rather than fixed and pre-determined (Sen 2004a, 77).

This treatment of the problem of domain selection (as well as the emphasis on deliberative and participatory processes in the broader literature below) raises a critical methodological question - how can the conditions necessary for fair and democratic deliberation be achieved in practice? Resource constraints are a key concern here, as well as the underlying power structures and conditioned expectations that can influence and limit deliberative and participatory processes. Furthermore, from a human rights perspective, an important concern is that deliberative and participative processes that are in practice limited, constrained and imperfect may have outcomes that are inconsistent with human rights principles. As will be discussed in section 5, it may be necessary to introduce decision-rules that explicitly address this scenario.

In the broader literature, Nussbaum has argued that Sen's position is too vague and that both the theoretical development and practical application of the capability approach requires the development of a specific capability list. The capability list

proposed by Nussbaum is a comprehensive list (in the sense that it aims to capture all central and valuable capabilities) rather than an orientated list (designed for a particular purpose or context) derived from philosophical reasoning, and has been adopted as a foundation for empirical studies on the capability approach (e.g. Anand 2005 *et. al*). However, various concerns have been expressed in the literature regarding its derivation. Robeyns (2003, 2005) suggests that, given the links between Nussbaum's List and the Anglo-American philosophical tradition, the List might be inappropriate in particular contexts (including in the selection of quality of life indicators) and might lack the legitimacy required for political and policy decisions. There is, Robeyns suggests, a valid analytical distinction between lists that are identical in substantive terms, but that are derived under different procedural conditions. Furthermore, there is a need for the development of new approaches that focus not on the specification and justification of final substantive lists, but rather on procedural sensitivity and conditions of fair representation and democratic deliberation under which lists of this type should be agreed (2003, 2005: 9-11).

Robeyns goes on to set out four key principles that can serve as a general good practice research guidelines for developing and applying the capability approach. These are: (1) explicit formulation of capability lists **(**capability lists should be explicit, discussed and defended); (2) methodological justification (the method by which a list is generated should be clarified and open to scrutiny); (3) explicit differentiation between ideal and pragmatic capability lists (enabling transparency in relation to feasibility constraints arising from data gaps and political and economic factors); (4) exhaustion and non-reduction (important dimensions should not be omitted). These guidelines suggest that before the capability approach is applied in practice, explicit agreement should be reached about the domains of freedom and opportunity that are to be treated as 'important' given the evaluative purpose and the context at hand. Agreement is required in substantive terms (i.e. the nature and scope of the list of central and valuable capabilities to be adopted) and in terms of process (i.e. the procedure by which the list of central and valuable capabilities is to be agreed) (2005: 15).

Alkire (2007) addresses the following question. If multidimensional poverty is to be viewed as capability deprivation, and multidimensional inequality is to be viewed as

capability inequality, then what methods do researchers in practice adopt in determining the selection of domains? Alkire suggests that there is little agreement amongst economists on this issue, and lists five possibilities (1) existing data or convention; (2) normative assumptions about what people value or should value (based, for example, on philosophical theory or religion); (3) public 'consensus' (e.g. human rights, the Millenium Development Goals); (4) on-going deliberative and participatory processes (periodically eliciting the values and perspectives of stakeholders); (5) empirical evidence regarding people's values (including, for example, the *World Values Survey* and *Voices of the Poor* project initiated by the World Bank). Alkire suggests that considerations regarding data availability and adequacy (an element of option 1) is an insufficient justification for domain selection and is inconsistent with the good practice principles discussed above.

3. The Equality and Human Rights Commission project: How was the problem of domain selection resolved?

Recent work commissioned by the Equalities Review and the Equality and Human Rights Commission aims at developing and applying the capability approach as a basis for equality monitoring in 21st century Britain. The problem of domain selection and the question of how to agree a capability list in terms of which multidimensional deprivations and inequalities between individuals and groups are to be evaluated and judged were key issues addressed in the foundational stages of this work. Building on Robeyn's Guidelines, it has been necessary to reach agreement both in terms of the *substantive content* of a capability list (i.e. in terms of the nature and scope of the central and valuable freedoms and opportunities to be included) and in terms of *process* (i.e. in terms of the underlying procedure by which the capability list should be generated). The need for an *explicit* methodology for generating a capability list that would strike a balance between concerns about the Nussbaum model (focussing on the problem of legitimacy) and concerns about a Sen-type approach (including resource constraints and the possible influence of existing power structures and conditioned expectations on processes that aim, in principle, to satisfy the conditions of democratic deliberation and debate).

In an attempt to strike this balance, a two-stage procedure for agreeing a capability list was developed for the EHRC project. Stage 1 involved deriving a core list of central and valuable capabilities from the international human rights framework - building on international existing normative agreements arrived at through procedures that are at least in part democratic and deliberative. International treaties in the field of human rights create legally binding international obligations on state parties (both individually and collectively through international assistance and co-operation) and have been adopted by the vast majority of states, with the number of state parties approaching quasi-universal and universal levels by 2008. These international standards can be viewed as providing an appropriate the basis for the identification and justification of a core list of central and basic capabilities that are critically important for a life based on equal dignity and worth. For the purposes of the EHRC project, a list of central and core capabilities was derived from the two major international human rights treaties - the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), which create obligations on states to fulfil civil and political rights such as the human right to life and to a free and fair trial, and to progressively realize social, economic and cultural rights such as the human right to an adequate standard of living, to adequate food and nutrition, to safe water and sanitation, to adequate health care facilities and to education.

Adopting the international human rights framework as a pragmatic starting point for the development of an agreed capability list had a number of clear advantages in the context of the projects undertaken for the Equalities Review and EHRC. Firstly, it builds on processes of international consensus-building on the central and basic freedoms which are of value in human life, and that are at least in part deliberative and democratic (as opposed to reflecting the view of a single expert or experts). Secondly, it responds to the concerns raised by some respondents to the consultation on the Equalities Review Interim Report that the capabilities approach should be linked more clearly to human rights. Thirdly, it demonstrates the way in which human rights and the capabilities framework can be mutually reinforcing and has the potential to draw together the equality and human rights aspects of the remit of EHRC. However, human rights-based capability selection also has a number of important limitations. Lack of democratic participation in the development of

international human rights standards and the pre-existing power structures underpinning the international legal framework are key concerns. Another issue is whether a human rights-based capability list might be too general (that is, in need of orientation, given context and purpose) and too 'minimalist' (both in terms of domains and levels). Human rights based capability selection also raises some important practical issues - such as the failure in Britain to incorporate the ICESCR into domestic law[v].

In order to address the limitations of human rights-based capability selection discussed above, Stage 2 of the two-stage procedure involved the *supplementation* and *refinement* of the human rights-based capability list by a process of democratic deliberation and debate - giving the general public and those at risk of discrimination and disadvantage a defining role in identifying and justifying the selection of central and basic capabilities. In implementing this second stage, Ipsos-MORI were commissioned to undertake a programme of intensive research on capability selection with both the general public and with individuals and groups at particularly high risk of experiencing discrimination and disadvantage. The research exercise had four specific aims: (1) to provide evidence of public priorities on capabilities (2) to identify any differences in priorities held by individuals and groups with different characteristics (3) to compile a list of central and valuable capabilities based on the views of the general public and 'at risk' individuals and groups (4) to facilitate the supplementation and refinement of the human rights-derived capability list. Whilst the research exercise was constrained by the time scale and resources available, it nevertheless involved around two hundred participants, including two full-day workshops with members of the general public, shorter workshops with groups of people at particular risk of discrimination and disadvantage (including lesbian, gay and bisexual people; people with a physical impairment; people from different ethnic minority groups; teenagers; elderly people and their carers; non-English speaking Pakistani women from lower social classes; and Scottish and Welsh participants); and a series of in-depth interviews (with individuals from different religions and faiths; people with sensory impairments and mild learning difficulties; and transsexual people) (Table 1)[vi].

As a result of the implementation of this two-stage procedure, a capability list comprising 10 domains of central and valuable capabilities has been adopted by EHRC as a foundation for its independent monitoring system (the Equality Measurement Framework). Full details are provided in the Appendix to this paper[vii]. The list of central and valuable freedoms is open and revisable and will be updated at regular intervals by the EHRC.

Table 1

The programme of deliberative consultation

	Characteristics of individuals and groups	**Location and format**	**Number of participants**
1	General public	London and Edinburgh, 2 x full day	60
2	Lesbian, gay and bisexual people	London, 2 hours	8
3	People with mobility impairments	Bristol, 1.5 hours	8
4	Teenagers (13-16)	Bristol, 1.5 hours	8
5	People from ethnic minority groups	Birmingham, 2 hours	8
6	Parents and children	Stockport, half day	9 children, 18 parents
7	Elderly people and carers	Newcastle, half day	32
8	Pakistani women	Leicester, 3 hours	10
9	Bangladeshi men	London, 3 hours	6
10	People with sensory impairments	Depth interviews, 1 hour	2
11	Dyslexic person	depth interview, 1 hour	1
12	Sikh, Muslim and Jewish people	Depth interviews, 1 hour	4
13	Young adults	East Anglia, paired depth interviews	4
14	Transgender people	various; paired depth interviews *2	4
Total			**182**

4. Human rights-based capability selection: Theoretical underpinnings and practical application

Stage one of the two-stage procedure discussed in section (3) draws on the method of human rights-based capability selection theorized in Vizard (2006 Chapter 7, 2007), which involves partially eliminating the 'substantive incompleteness' of the capability approach by introducing a background or supplementary theory of human rights. Although the idea of human rights is itself contested, the international human rights framework can provide a pragmatic terrain of consensus in which this method can be developed and applied, with the domains of freedoms and opportunities that are taken to be important for the purposes of evaluation and inter-personal comparison being derived from key international treaties such as the ICCPR and the ICESCR. The method of human-rights based capability selection suggests that international human rights treaties of this type can be characterised as affirming the value of certain underlying states of being and doing - and, therefore, as being associated with an "underlying" or "implicit" basic capability set[viii]. The international human rights framework is viewed as providing evidence of a partial value ordering over freedoms and opportunities - where the freedoms and opportunities recognised in international human rights law are attributed a positive value (but are not ranked) and all other freedoms and opportunities are zero weighted[ix].

Human-rights based capability selection builds on the treatment of the capability approach and human rights by Sen and Nussbaum, whilst placing more emphasis on the direct and explicit role that the *actual* international human rights framework can play in the specification and justification of the list of basic and central capabilities. The idea of human rights figures in Sen's research agenda in five key ways. First, Sen has emphasised capability space as an analytical framework in which the achievement of human rights in practice can be examined and appraised. The concentration of capability space on the central and valuable capabilities that are actually within a person's reach shifts the focus of rights-analysis away from the examination of rights that are formally guaranteed in law, towards substantive rights and the realization and exercise of rights in practice (2002, 632-651). Second, Sen has repeatedly discussed the central importance of a small number of basic capabilities that are of general relevance for social justice and social assessment, and the pragmatic role that the idea

of human rights can play vis-à-vis agreement in a core set capabilities of this type (Sen 2004b, 2005). Third, Sen has developed the idea of capability-rights, with "[m]inimal demands of well-being (in the form of basic functionings, e.g. not to be hungry) and of well-being freedom (in the form of minimal capabilities, e.g. having the means of avoiding hunger)" being viewed as rights that "command attention and call for support" (1985: 217; 2005). Fourth, Sen's recent work has addressed the importance of extending the theory and practice of human rights beyond the legal domain, including an emphasis on the importance of 'imperfect obligations' to promote human rights - even where the claims are not legally codified (e.g. Sen 2000). Fifth, in linking the capability approach to the idea of human rights, Sen has emphasised that human rights selection should itself be viewed in terms of an ongoing process of democratic deliberation and public reasoning rather than in terms of a fixed and final list. In order to guide this process, a theory of 'objective public reasoning' under free and fair conditions is required (Sen 2004b, 2005). Sixth, empirical work in economics has focussed on the analysis importance of human rights for public policy (with human rights figuring among the variables and policy interventions that influence the capability-achievements of individuals and groups) (e.g Drèze and Sen 2002: 347-379)[x].

Nussbaum (1995, 1997, 1999, 2003, 2004, 2006) also places central emphasis on the correspondences between the capability approach and the idea of human rights, with central and basic capabilities characterised as "fundamental entitlements" that should be protected in all constitutions and included among the fundamental purposes of social co-operation as objects of collective obligation at both the national and the international levels (2003, 2004: 13). Nussbaum has placed emphasis on the importance of codification and the correspondences between her capability list and internationally recognized human rights, with protection for liberty of conscience and religious observance built into element 6; non-discrimination and protection for freedom of assembly and speech into element 7; and political participation and protections of free speech and association into element 10 (2003: 41-42). Finally, in analysing the links between the capability approach and human rights, Nussbaum (2003: 38, 2004: 13) suggests that the "value added" of the capability framework over the human rights framework relates to the contested nature of the idea of human

rights, and to the need to develop a framework for assessing human rights in terms of the states of being and doing that people actually can in practice realize (or achieve)[xi].

In practical terms, human rights-based capability selection involves moving beyond the stated positions of Nussbaum and Sen, working backwards (or inductively) from the actual standards recognized in core international human rights treaties to a set of underlying (or implicitly defined) states of being and doing that are protected and promoted in international law. For example, international recognition of the human right to an adequate standard of living under Article 25 of the Universal Declaration, Article 11 of the International Covenant on Economic and Social Rights and Article 27 of the CRC is viewed as providing a basis for including the capability to achieve an adequate standard of living in a capability set of this type. The generalisation of this approach provides a basis for specifying and justifying a "human rights-based capability set" human rights based capability set that covers a range of central and valuable capabilities, from bodily integrity, adequate nutrition and health, to self-respect and that can have legitimacy in many circumstances[xii].

Human rights-based capability lists are particularly suitable for human rights advocacy purposes - when a minimal list of central and basic capabilities with universal validity is required. In addition, human rights based capability lists have a more general application in providing a pragmatic point of departure for the development of more extensive capability lists. They can be usefully viewed, for example, as providing the 'minimum irreducible core' of other (acceptable and less basic) capability-lists, and as a point of departure for developing capability lists that are suitable in a wide range of contexts and for a wide range of applications and purposes. This methodology has the advantage of building on established processes of international consensus-building that are already in part deliberative and democratic, and can be combined with other processes and methods (e.g. philosophical, social scientific, participatory and \ or democratic and deliberative processes and methods, and \ or by invoking other types of pragmatic consensus).

5. Deliberative consultation: Aims, objectives and aggregation rules

The deliberative research exercise undertaken in stage two of the two-stage procedure discussed in section 3 aimed to elicit in-depth attitudinal information on values. The deliberative consultation was intended to shed light on *why* people have particular views, and *how* these views relate to demographic characteristics and the experiences of the respondents concerned; and the research findings should be viewed as providing information about a range of views held by the public, but not as statistically significant. The research design was intended to reflect the principle set out in the literature on democratic deliberation and debate - that the deliberative process should not simply be about the aggregation of *existing* preferences and values, but about the evolution of preferences and values through processes of democratic engagement, reflection and debate (Crocker 2004, 2005). A key advantage of deliberative consultation as opposed to other methods is that it is designed to access participants' considered values and beliefs, based on discussion with others and impartial information provided by the facilitators. This contrasts with the outputs from focus groups or survey data on public attitudes, which represent the immediate reactions of the public to an idea or viewpoint. The results of a deliberative consultation are therefore not as superficial as an opinion poll, and are a better indication than can be gleaned from other methods of the underlying values of the public, given relevant information, and time and encouragement to reflect and discuss.

Participants in the deliberative consultation responded to two main research exercises. The first aimed to provide evidence about participants' *unprompted* responses to the capability domain problem - with participants invited to discuss and reflect upon what is needed for a person to flourish in Britain today and to lead a life that they value and would choose. Using a large sheet of paper with a small person drawn in the middle, participants were invited to describe (with pictures, words on post-its, etc) what things a person would need to be able to be or to do to in order to live a really good life in Britain in the 21st century. The results of this main exercise were used by Ipsos-MORI as a basis for generating a 'spontaneous' list of capabilities. In the depth interviews, participants also discussed the capabilities that they had had / had not had in life and what impact this had on them so far. The second main exercise was responsive and aimed to provide evidence about participants' *prompted* responses to a human rights-based capability list. For events (1)-(5) and (10-12), a plain English version of the list of capabilities derived from the international human rights framework was used as a

stimulus for further discussion and comparison with the spontaneously generated list. Participants were invited to review the selection from the human rights-based capability list, comparing it with their own spontaneously-generated list and making any comments or revisions[xiii]. For events (7)-(9) and (13-(14), the second main exercise was based on the provisional capability list developed for the Equalities Review Final Report. In event (6), children re-examined the provisional list for children developed following round 1, comparing it to the CRC and the Every Child Matters framework[xiv].

The possibility of conflicts between the stage-1 capability list and the stage-2 capability list raises the critical question of whether the capability list derived from the international human rights framework, or the capability list derived from the deliberative consultation, should take precedence in the event of conflict. Given the relatively small sample size involved in the deliberative research exercise, and the authoritative, legal and quasi-universal status of internationally recognized human rights standards, it was agreed that a decision-rule would be applied whereby the human rights based capability list agreed in stage-1 would "trump" the stage-2 capability list in the event of conflict. In total, three aggregation rules were applied in developing the combined list.

- **Aggregation rule I: Support and endorsement.** Many elements on the lists of capabilities spontaneously generated by the general public and across individuals and groups of all characteristics overlapped with the human-rights-based list, including, for example, safety, health (including mental health), education (including lifelong learning and compulsory schooling), independent living, having a good work environment, the importance of family, privacy, participation and being able to change things, self respect, being yourself, freedom of religion and belief, and protection from the law. This overlap between the spontaneously generated list and the human rights based list, together with support for elements of the human rights-based list when presented with it, were taken to indicate support for and endorsement of elements of the human rights-based capability list.

- **Aggregation rule II: Supplementation and refinement.** *Additional* and *refined* elements of human flourishing identified and specified through the deliberative consultation were taken to expand the human rights-based capability list. That is, where participants suggested additional elements or refined (in the sense of more specific or fully developed or orientated categories) the additional elements were taken to supplement and refine the human rights-based capability list. For example, in the first round of the deliberative consultation, participants highlighted the importance of creativity and intellectual fulfilment; access to information technology; recognising the importance of the opportunity to do things with others (whether family, friends or community); personal development, self-esteem and the ability to hope for the future; and of broadening the work domain to reflect the importance of care. In addition, participants highlighted the importance of a cluster of variables such as tolerance, community cohesion, community relations, multiculturalism and solidarity. The capability list was supplemented and refined to reflect this emphasis following the first round of the deliberative consultation (for example, with the addition of 'other valued activities' to supplement the work domain; of the opportunity to form and be a member of civil organisations and solidarity groups; and with inclusion of 'being yourself in public spaces')[xv].

- **Aggregation rule III: The principle of the minimum irreducible core.** Where there was conflict between a human rights based capability list and a deliberative consultation, a trumping rule - the principle of the 'minimum irreducible core' - should be applied. According to this principle, the human rights-based capability list specifies a minimum capability list. In the event of a conflict between internationally recognized human rights standards and the views of individuals and groups elicited through deliberative consultation, the former is taken to 'trump' the latter. This principle was applied in relation to the ability to form and join a trade union, with trade union formation and membership retained in the final form of the capability list proposed, notwithstanding this element being viewed as non-essential in a number of the deliberative events.

The deliberative consultation with a group of non-English-speaking Muslim Pakistani women from low social class backgrounds was particularly interesting and important, because this was a group who most people would consider to be at high risk of social exclusion, disadvantage and discrimination. They are also a group who might be expected to have a distinctive cultural perspective. In practice, the aspects of life mentioned spontaneously by the women in the first part of the deliberative workshop were very similar to those mentioned by other groups. They included, among others things:

- living in an area free from crime and drugs
- living in a good environment, without pollution
- good health and access to healthcare
- good education, including learning English and job skills
- a decent job (but *not* having to work out of sheer necessity)
- being able to look after you parents
- social activities for Muslim women and across communities
- a government which listens to us and meets our needs
- police who come when called.

In particular, it was interesting to note that paid employment was regarded as an important capability, despite the very low employment rates among women in this socio-demographic group in general. The key seemed to be the quality of the job (offering job satisfaction, with a good manager), being free from discrimination (for example in recruitment, and being able to keep head covered), and being secure from harassment in the workplace. Moreover, the women felt that they should not be forced to work, through economic necessity or by law, given that some already had onerous domestic responsibilities. The second exercise prompted discussion about problems in the domestic sphere. Among other things, the women highlighted the importance of: greater control over personal spending, doing things and making decisions independently, including not having to have to request permission from husbands / in-laws; a peaceful (non-violent) atmosphere at home; having domestic work appreciated and valued; sharing domestic work. In response to the legal security domain, the women mentioned the importance of stability in the legal framework, for example

with respect to the laws governing citizenship. While they felt learning English was an important capability (this was mentioned spontaneously in the first exercise) they did not feel it should be a requirement of citizenship[xvi].

6. The Equality Measurement Framework

The Equality Measurement Framework (EMF) is being developed as an independent monitoring system that will enable the EHRC to discharge its statutory duty to monitor social outcomes from the equality and human rights perspective, by developing indicators and evaluating progress in a triennial 'State of the Nation' report. The EMF has three key building-blocks (Figure 1).

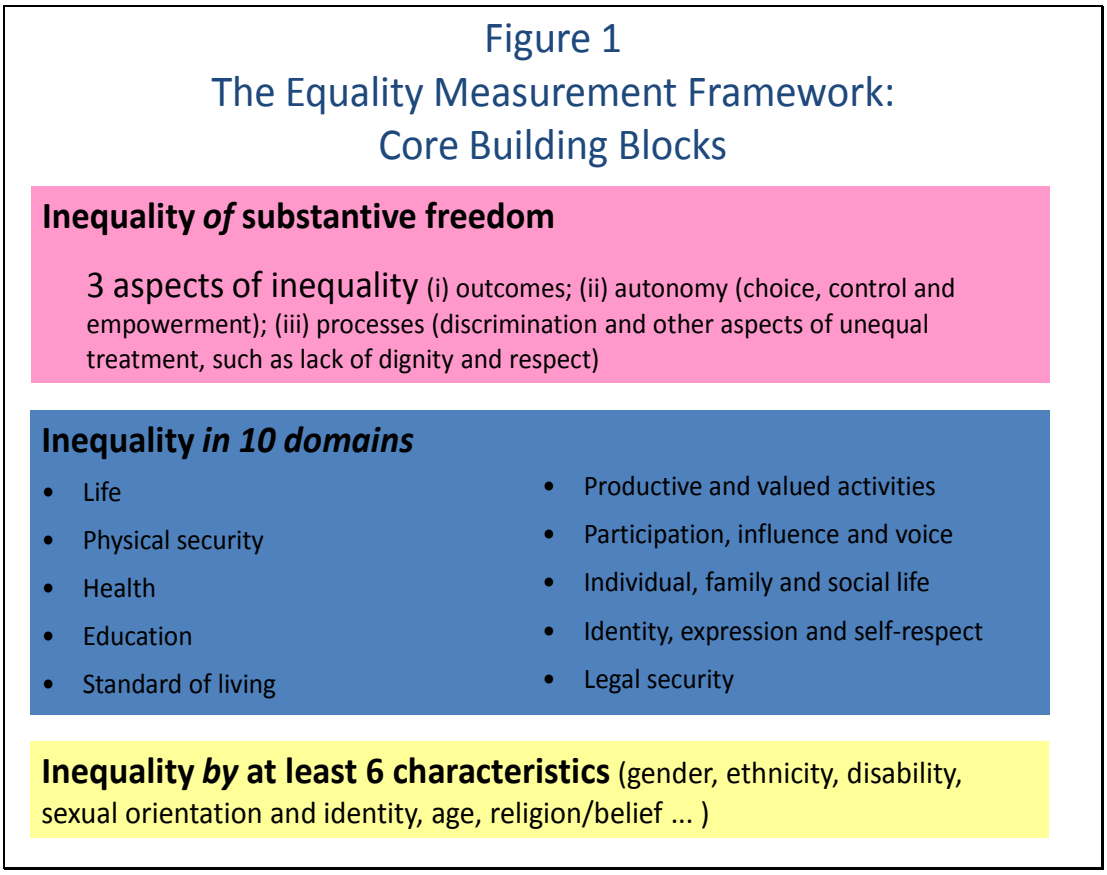
- The first building-block is that the focal variable of the EMF is specified as central and valuable capabilities rather than other informational focuses (such as income, resources, subjective wellbeing, primary goods etc). This is taken to imply an informational base that covers three irreducible aspects of inequality: inequality of *outcome* (inequality in the central and valuable things in life that individuals and groups actually in practice achieve), inequality of *autonomy* (choice, control and empowerment) and inequality of *process* (discrimination and other forms of unequal treatment, such as lack of dignity and respect). Therefore, in developing and applying the EMF, information about outcomes (or "achieved functionings") should be supplemented by information about autonomy and information about process.

- The second building-block is that the capability list discussed in sections 3-5 will be used as a foundation for the Equality Measurement Framework. Hence the Equality Measurement Framework covers the 10 domains of freedom and opportunity specified in the capability list.

- The third building block specifies the inequality characteristics with which the Equality Measurement Framework will be concerned. This minimum list of characteristics reflects the 'protected grounds' in the Equality Act 2006 (gender, ethnicity, disability, sexual orientation and identity, age, religion/belief) and can be readily extended. Other characteristics could be

added; social class would be an obvious candidate for inclusion, given its historical and contemporary significance in Britain in determining deprivations and inequalities across a range of domains.

Figure 1
The Equality Measurement Framework:
Core Building Blocks

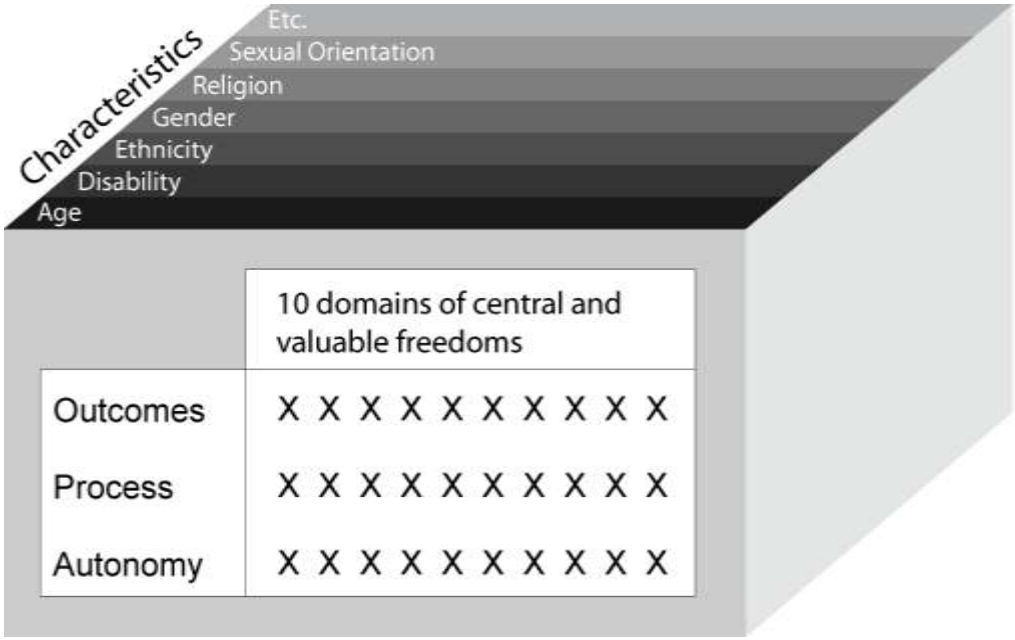


An important principle guiding the development of the EMF is that the complex informational structure reflected in the three building-blocks discussed above should be preserved rather than simplified in subsequent analysis. In line with this principle, rather than pursuing a strategy of "collapsing" or "reducing" the 10 domains specified in the capability list, multidimensionality is to be captured and formalised through the development and application of a "substantive freedom matrix" which will provide as full information as possible about the capabilities of individuals and groups in Britain within and across the 10 relevant domains. The 'substantive freedom matrix' will be a 3D matrix where the rows represent the three aspects of inequality discussed above (outcomes, autonomy and process) and the columns represent the 10 domains in which inequality matters (as specified in the list of central and valuable freedoms).

The layers (or tiers) of the matrix represent the characteristics of the groups of particular concern (gender (including transgender), ethnicity, disability, age, sexual orientation, and religion and belief) and combinations of characteristics (to capture intersectional group concerns) (see Figure 2). For example, the substantive freedom matrix could be used to evaluate the position of older people in the health domain in terms of their outcomes (their health status), autonomy (do they experience choice and control in relation to their medical treatment, including issues of information and consent) and process (do older people experience explicit discrimination or other forms of unequal treatment, such as a lack of dignity and respect).

Figure 2

The 'substantive freedom matrix'



In populating the SFM, both objective and subjective indicators will be permissible. It is sometimes thought that subjective indicators are only applicable when interpersonal comparisons are made on the basis of subjective wellbeing (utility, preference satisfaction, happiness, user satisfaction and experience etc.) rather than on the basis of central and valuable capabilities. However, subjective indicators can also play an important evaluative role in the capability framework, and a range of subjective indicators (including, measures of individual satisfaction, perception and experience)

could potentially be used. The possibility of adaptive and conditioned expectations is of course built into the analytical structure of the capability approach - and where adaptive and conditioned expectations are a possibility, the capability approach explicitly recognizes that self-reported information may not be a sufficient basis for comparing the position of individuals and groups. For example, national data on dignity and respect in healthcare provision suggest that suggest that the experience of older people is *not* significantly lower that other population groups. However, the broader evidence suggests that there is a strong possibility of adaptive and conditioned expectations here; and the capability approach recognizes that self-reported information of this type should be subjected to further scrutiny and probing[xvii].

How will the demanding informational requirements of the SFM be managed? Summary measures cannot capture the nature and scope of deprivation and inequality within each domain, and in populating the SFM, a number of detailed indicators will be required on a domain-by-domain basis. At the same time, it will be necessary for the purposes of the Commission's triennial 'state of the nation' report to focus attention on key messages, priorities and concerns, and for this reason the SFM will be developed and applied using a system of spotlight and roving indicators. Spotlight indicators may be selected that remain constant over a number of years, allowing monitoring of progress (or lack of progress) over time, whilst roving indicators, varying from year to year, could be drawn from the sub-headings in the list of central human freedoms, including those which are especially relevant for particular sub-groups, for example children. Together, the indicators will provide information on outcomes for each of the 10 domains, supplemented by information on autonomy and process. However, spotlight and roving indicators should *not* be confused with summary measures; and should not be viewed as attempting to provide a complete reflection of the nature and scope of deprivation and inequality within each domain.

There are currently *no* plans to reduce the multidimensional domains set out in the SFM into a single index. Three distinct aggregation strategies for multidimensional analysis discussed in Brandolini (2008:5-8): supplementation strategies (with no attempt being made to reduce the complexity of the phenomena under consideration, and the constituents of freedom and opportunity being examined one by one; (2)

comprehensive non-aggregative strategies (which make comparisons on basis of an entire vector of functionings (dominance methods, but also including, for example, factor analysis); (3) fully aggregative strategies (construction of a summary composite indicator to which a range of standard univariate techniques can be applied). The development and application of the EMF will focus on a combination of supplementation strategies and comprehensive non-aggregative strategies rather than fully aggregative strategies. In the broader literature on multidimensional poverty analysis, key contributions have questioned the advantages of combining attributes capture multidimensionality by reducing multidimensional attributes into a single index that is then treated as a uni-dimensional poverty measure. A range of possible methods for preserving rather than reducing multidimensionality are currently being explored; and these provide both possibilities and challenges for the development and application of the EMF over the coming years.

Whilst it is not possible here to engage with this broader literature, the critical dependence of the EMF on the idea of human rights is likely to have important implications for the choice of methodologies and techniques. For example, the "essentialist" approach to multidimensional poverty analysis discussed in Tsui (2002:73-74), Bourguignon and Chakrobarty (2003) and Bourguignon (2006: 90-91) proposes that multidimensional deprivation is evaluated on the basis of independent minimum thresholds in each domain, with limits on substitution between domains. According to this approach, individuals are regarded as deprived if they are below a cut-off in at least one domain (however significant their capability achievement in other domains). There seems to be good reasons for adopting this approach to multidimensional poverty evaluation in developing and applying the EMF, given the emphasis on human rights, and the insistence of the human rights-based approach on the intrinsic value of each domain and the essential nature of each constituent element of human dignity and worth. The "essentialist" approach is in turn consistent with the union method and the strong poverty focus axiom set out in Bougingon and Chakrobarty (2003), which could in fact be interpreted as a human rights-based axiom, highlighting the intrinsic value and essential nature of each domain, and imposing a limit on trade-offs and substitution.

Alkire and Foster comment that the union approach is generally acknowledged to be overly inclusive and may lead to exaggerated estimates of poverty (2008: 1). Whilst defending the importance of valuing dimensional deprivations *per se*, they nevertheless suggest that the description of an individual with income above a minimum threshold but education below a minimum threshold as "poor" may not be "unambiguously acceptable" because it may be reflective of something other than poverty (2008:8). For this reason, they introduce a new identification procedure with a dual-cut off method that is sensitive not only to the presence of deprivation within a specific dimension, but also to the number of dimensions over which deprivation is experienced (by introducing the requirement of "dimensional monotonicity"). In the context of the EMF, which is critically dependent on the idea of human rights, the description of an individual who is deprived in a single but critical domain such as education as capability-poor seems both intuitive and reasonable (a scenario made possible using the Alkire-Foster identification procedure with the cross-dimensional cut-off set to k=1). Notwithstanding the possible limitations of the union method - and the methodological problems and technical challenges arising from the "curse of dimensionality" - recognition of the intrinsic value and importance of each domain of freedom and opportunity seems to be the only plausible starting-point for the EMF given the evaluative purpose at hand - namely, the development of the remit and responsibilities of a national Equality and Human Rights Commission.

7. Conclusions

The paper has set out proposals for development and application of the capability approach as a foundation for multidimensional inequality analysis in 21st century Britain. It has discussed a capability-based definition of equality and has set out a two-stage procedure for specifying a capability list comprising 10 domains of central and valuable capabilities. Whilst not being without its limitations, it is hoped that the proposed capability list:

- Satisfies good practice guidelines regarding the development of an explicit capability list, with the possibility of critical scrutiny of both the content and the process by which the capability list is generated;

- Builds on international human rights standards that reflect processes that are at least in part democratic and participatory, and has developed and extended these processes with a local deliberative consultation;
- Strikes a balance between the poles represented by Nussbaum and Sen in the capability list debate (the poles being philosophical capability selection on the one hand, and democratic discussion and debate on the other).

Finally, the paper has discussed a series of proposals for developing and applying an Equality Measurement Framework, including the development and application of a human freedom matrix as a practical monitoring tool. There are four key challenges in taking the development of the Equality Measurement Framework forward. First, further methodological work is needed to develop indicators of autonomy (choice and control)[xviii]. Second, relevant indicators of outcomes, process and autonomy, including a set of spotlight and roving indicators, will be selected through a process of specialist consultation with experts and stakeholders. Third, multidimensional poverty and inequality analysis will proceed within domains by social identity characteristic, within domains by combinations of social identity characteristics, and across domains by social identity characteristic. Fourth, the analytical framework will be extended to incorporate the analysis of underlying causes and policy interventions.

It has often been remarked that the capability approach is informationally demanding. The framework proposed in this paper is no exception. Our objective is to strike a balance between reflecting the rich conceptual apparatus of the capability approach and pragmatism, so that the framework can quickly begin to be put to use. The risk is that in seeking to meet the demands of both policymakers and theoreticians, one fully satisfies neither. This is a risk we have to take if the capability approach is to become a tool for practical monitoring and evaluation of multidimensional poverty and inequality.

Appendix

The list of central and valuable freedoms for adults

The capability to be alive
including, for example, being able to:
- avoid premature mortality through disease, neglect, injury or suicide
- be protected from being killed or murdered

The capability to live in physical security
including, for example, being able to:
- be free from violence including sexual and domestic violence and violence based on who you are
- be free from cruel, inhuman or degrading treatment or punishment
- be protected from physical or sexual abuse (especially by those in positions of authority)
- go out and to use public spaces safely and securely without fear

The capability to be healthy
including, for example, being able to:
- attain the highest possible standard of physical and mental health, including sexual and reproductive health
- access to timely and impartial information about health and healthcare options, including contraception
- access healthcare, without discrimination and in a culturally sensitive way
- be treated medically, or subject to experiment, only with informed consent
- be assured of patient confidentiality and be free from the stigmatisation associated with some health conditions
- maintain a healthy lifestyle including exercise, sleep and nutrition
- live in a healthy and safe environment including clean air, clean water, and freedom from pollution and other hazards

The capability to be knowledgeable, to understand and reason, and to have the skills to participate in society
including, for example, being able to:
- attain the highest possible standard of knowledge, understanding and reasoning
- be fulfilled and stimulated intellectually, including being creative if you so wish
- develop the skills for participation in productive and valued activities, including parenting
- learn about a range of cultures and beliefs and acquire the skills to participate in a diverse society, including learning English
- access education, training and lifelong learning that meets individual needs
- access information and technology necessary to participate in society

The capability to enjoy a comfortable standard of living, with independence and security
including, for example, being able to:

- enjoy an adequate and secure standard of living including nutrition, clothing, housing, warmth, social security, social services and utilities, and being cared for and supported when necessary
- get around inside and outside the home, and to access transport and public places
- live with independence, dignity and self-respect
- have choice and control over where and how you live
- have control over personal spending
- enjoy your home in peace and security
- access green spaces and the natural world
- share in the benefits of scientific progress including medical advances and information and technology

The capability to engage in productive and valued activities
including, for example, being able to:
- have a decent paid job, with support where necessary
- care for others, including children and parents
- do something useful and have the value of your work recognised even if unpaid
- have rest and leisure, including holidays, and respite from caring responsibilities
- choose a balance between paid and unpaid work, care and leisure on an equal basis with others
- work in just and favourable conditions, including health and safety, fair treatment during pregnancy, maternity and paternity, fair pay, reasonable hours, and freedom from harassment or discrimination
- not be forced to work in a particular occupation or without pay
- not be prevented from working in a particular occupation without good reason

The capability to enjoy individual, family and social life
including, for example, being able to:
- develop as a person
- develop your moral outlook and other beliefs
- formulate and pursue goals and objectives for yourself
- hope for the future
- develop and maintain self-respect, self-esteem and self-confidence
- have a private life and some personal space, including protection of personal data
- access emotional support
- know that someone will look out for you
- have peace of mind
- form intimate relationships, friendships and a family
- celebrate on special occasions
- be confident that your primary relationships will be treated with dignity and respect
- spend time with, and care for, others, including wider family
- enjoy independence and equality in primary relationships including marriage
- be free in matters of sexual relationships and reproduction
- enjoy special support during pregnancy, maternity and paternity

The capability to participate in decision-making, have a voice and influence

including, for example, being able to:

- participate in decision-making and make decisions affecting your own life independently
- participate in the formulation of government policy, locally and nationally
- participate in non-governmental organisations concerned with public and political life
- participate in democratic free and fair elections
- get together with others, peacefully
- participate in the local community
- form and join civil organisations and solidarity groups, including trade unions

The capability of being and expressing yourself, and having self-respect
including, for example, being able to:

- have freedom of conscience, belief and religion
- have freedom of cultural identity
- have freedom of expression
- communicate, including using information and communication technologies, and use your own language
- engage in cultural practices, in community with other members of your chosen group or groups and across communities
- have self-respect
- live without fear of humiliation, harassment, or abuse based on who you are
- be confident that you will be treated with dignity and respect
- access and use public spaces freely

The capability of knowing you will be protected and treated fairly by the law
including, for example, being able to:

- know you will be treated with equality and non-discrimination before the law
- be secure that the law will protect you from intolerant behaviour, and from reprisals if you make a complaint
- be free from arbitrary arrest and detention
- have fair conditions of detention
- have the right to a fair trial
- access to affordable and high-quality information and advocacy as necessary
- have freedom of movement
- have the right to name and nationality
- own property and financial products including insurance, social security, and pensions in your own right
- know your privacy will be respected.

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Endnotes

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[ii] These four problems were highlighted in the call for papers for the session on measuring wellbeing at IARIW 2008.

[iii]The Equalities Review was an independent enquiry into the causes of long-term inequality in Britain, commissioned by former Prime Minister Tony Blair. The final report of the Review, Fairness and Freedom, put forward a capability-based definition of equality; accepted the proposed capability list; and recommended that all public bodies use the proposed capability measurement framework to "agree priorities, set targets, and [to] evaluate progress towards equality"). It further recommended that the framework be used by the Equality and Human Rights Commission to inform its regular 'state of the nation' report' (see Equalities Review (2007, Chapter 1;109-111; Annex A) and EHRC (forthcoming).

[iv]See, for example, Sen 1985abc; 1987a, 34; 1992 46-134; 1993, 33-49; 1997, 203-209).

[v] See Vizard and Burchardt (2007, section 3) for further discussion of the legal position in Britain. The possible limits of human rights-based capability selection also include unresolved theoretical debates and the question of whether all the human rights in the Universal Declaration can be adequately represented in capability space. In an important interpretative clarification, Sen (2005) contends that whilst many human rights can be viewed as capabilities, certain process freedoms cannot be adequately analysed in the capability framework. This proviso relates to the important distinction between process freedom (i.e. whether valued outcomes are arrived at through the free decisions of the person involved) and opportunity freedom the opportunity aspect of freedom (a person's ability to achieve valued outcomes) (on which, see footnote x). Sen (2002: 587) also explicitly recognises the overlaps between the two aspects of freedom. For example, if a person values achieving something through free choice or through a fair choice (e.g. wanting to win an election fairly, rather than just winning) then the process aspect will have a direct bearing on the opportunity aspect of freedom. Building on this area of potential overlap, the working assumption of this paper has been that where human rights are shown to be highly valued (e.g. through recognition in the international human rights framework and deliberative consultation), they figure in the assessment of the opportunity aspect of freedom, and can be analysed in the capability framework. Nevertheless, the EMF recognises that information about the opportunity aspect of freedom (a person's ability to achieve valued outcomes) may require supplementation with information about process freedom (i.e. whether valued outcomes are arrived at through the free decisions of the person involved).

[vi]Ipsos-MORI was commissioned to undertake two rounds of deliberative consultation. Full details of the research findings are given in Ipsos-MORI (2007), Vizard and Burchardt (2007) and Burchardt and Vizard (2008). An overview of deliberative research methods and a full discussion of the theoretical and practical limitations of deliberative research is provided in Burchardt and Stewart (forthcoming).

[vii] A separate capability list was developed for children was developed, drawing on: (2) the international human rights instruments discussed above; (2) the derivation the UN Convention on the Rights of the Child (CRC); deliberative consultation with parents and children; the Every Child Matters Framework. See Burchardt and Vizard (2008) for further details.

[viii]On the understanding of international human rights standard as elliptical statements involving underlying or implicit capabilities, see Vizard (2007).

[ix] This capability can then be viewed as being protected and promoted in international human rights law by complex clusters of negative and positive rights and correlative duties (claims, immunities, liberties, powers etc.) that characterise the relevant prohibitions on actions, as well as the positive actions that should be performed by governments and other international obligation holders (though positive support, assistance and aid).

[x]This approach reflects Sen's (1993a, 2002: 9-13, 583-695; 2004b; 2005: 152-3) characterisation of freedom as a complex and pluralist concept involving irreducible elements that relate to: (1) the process aspect of freedom and (2) the opportunity aspect of freedom. The process aspect is concerned with whether or not a person is free to take decisions his or her self, taking note of (1.1) immunity from interference by others and (1.2) the scope for autonomy in individual choices. The opportunity aspect focuses on the actual freedom a person has to achieve those things she has reason to value, taking note of (2.1) the nature and scope (or adequacy) of the opportunities offered and (2.2) their relation to individual objectives and goals. Individual preferences are relevant for both of these perspectives. However, the assessment of the process aspect of freedom can involve going beyond the importance

that a person may attach to processes that are critical for her own freedom and take into account the procedural relevance of social concerns such as rights and justice.

[xi]The 'value added' of the capability approach for understanding the distinction between formal rights and substantive rights is further developed in Fredman (2006a).

[xii] Details of ratification and accession are given in Vizard and Burchardt (2007) Box 12.

[xiii]See Equalities Review (2007: Appendix A).

[xiv] See footnote vi and vii for details.

[xv]Full details of the changes to the list arising from the deliberative consultation in round are given in Vizard and Burchardt 2007, section 2.3). For details of the changes arising from round 2, see Burchardt and Vizard (2008).

[xvi] See Burchardt and Vizard (2008) for a fuller discussion of the second round of deliberative consultation research findings.

[xvii]For supporting statistics see Healthcare Commission (2006: Appendix E). In fact, the issue of *lack* of dignity and respect in the treatment of older people in healthcare provision is currently a major concern human rights concern See, for example, Joint Committee on Human Rights (2007), Healthcare Commission (2007) and Healthcare Commission *et al* (2006).

[xviii] See Ibrahim and Alkire (2007) for a useful discussion of survey-based indicators of autonomy.