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Prefácio
Celso Lafer

DIREITO AO DESENVOLVIMENTO

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ASSESSING STATE COMPLIANCE WITH OBLIGATIONS TO FULFILL ECONOMIC AND SOCIAL RIGHTS – A METHODOLOGY AND APPLICATION TO THE STATES OF BRAZIL¹

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– Conceptual issue – Background – Politics of human rights measurement – For
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Introduction

Development policies are designed to achieve specific goals, so how those goals are defined has profound implications for the types of policies pursued, and how progress is evaluated. If the

¹ Some sections reprinted from Fukuda-Parr, Lawson-Remer and Randolph (2009); and Randolph, Fukuda-Parr and Lawson-Remer with permission of the Journal of Human Rights.

sole metric of development is per capita GDP, and the ultimate end goal of policy makers is increasing GDP growth, then fundamental human rights can easily be violated in pursuit of this objective.² Moreover, per capita GDP is a profoundly inadequate proxy for the issues of development most relevant to people's lives, such as access to adequate food, availability of clean drinking water and sanitation facilities, and opportunities for education, health care, productive employment and several other necessities for a life of dignity and freedom. Development can be defined as a process of expanding substantive freedoms and dignity of the individual, and the realization of human rights (Sen 1999). Human Rights, and the Right to Development in particular, offer a more coherent normative framework for defining the objectives of development that are focused on people's lives. Moreover, human rights make clear the claims that people have to social arrangements — policies and institutions — that ensure the realization of rights. International and national human rights law institutionalizes the correlate obligations of the state to respect, protect and fulfill all rights of their citizens. In order to make human rights, and the right to development, a framework for formulating development policies, evaluating progress, and holding states accountable for their obligations, we need rigorous assessment tools.

The purpose of this paper is to present an index that measures the fulfillment of economic and social rights — the Economic and Social Rights Fulfillment Index (ESRF-I) — and applies it to assessing the performance of the 27 states of the Federal Republic of Brazil. The ESRF-I is a measurement tool to assess the extent to which states, as the primary duty-bearers of the human rights of their citizens, fulfill their obligations to realize economic and social human rights relative to the economic resources available to them.³ This approach provides an advance on the prevailing practice of relying on socio-economic indicators to assess the level of human rights fulfillment; these indicators reflect the enjoyment of a right by the rights bearer but do not reflect the perspective of the duty bearer. At the core of this index is the "Achievement Possibilities Frontier Methodology" to take

² Examples of human rights violations committed in pursuit of economic growth are well known and widespread. Stalin's Five-Year Plans, Mao's Great Leap Forward, and Pinochet's brutal pro-market dictatorship are just a few glaring historical cases.

³ See Fukuda-Parr *et al.* (2009) for initial elaboration of this methodology and Randolph *et al.* (2010) for its application to country performance.

account of the obligations of progressive realization by assessing achievement based on the historical record of achievements over the last 25 years. While the main ESRF-I methodology was developed to estimate rights fulfillment at the national level, this application disaggregates the level of fulfillment to the state level, providing evidence of human rights disparities within the country. Like the global Index, the Brazil ESRF incorporates core economic and social rights including the rights to decent work, education, adequate food, the highest attainable standard of health and adequate housing. Since national data were used in this exercise, some of the indicators used differ from those used in the global Index.

Brazil has been a state party to the International Covenant on Economic, Social and Cultural Rights (ICESCR) since 1992 (UNDP, 2007, p. 348). Brazil's ratification of the Covenant marks the legal recognition of the Brazilian state of its obligation to realize the economic and social rights of its citizens enumerated in the ICESCR as well as in the Universal Declaration of Human Rights and other international human rights instruments. Among these rights are the right to decent work (Art. 6 & 7), the right to adequate food and adequate housing (Art. 11), the right to the highest attainable standard of health (Art. 12) and the right to education (Art. 13). Recognizing that the realization of these rights is in part a matter of resources, states parties are obligated to "progressively realize" economic and social rights to the greatest extent possible given existing resources so long as advances in rights fulfillment are never regressive (ICESCR, 1966, Art. 3, Para 1). These international commitments to economic and social rights are further reinforced by domestic guarantees. The current constitution, which came into force in 1988 following the transition from military to civilian rule, guarantees the rights to education, social welfare, work, housing and health in Article 6 of the document. The rights of workers, including the right to a minimum wage and to unemployment insurance, are detailed in Article 7 (Brazil, 1988).

Although Brazil as a country performs relatively well in the global ESRF rankings, placing 14th out of 101 countries (Randolph *et al.* 2010), the results of this disaggregated state level ESRF Index values and rankings show that this is an average that obscures a wide range of performance. Moreover, performance does not depend solely on resources nor on the level of human development. Our findings highlight the strong performance in fulfilling economic

and human rights obligations on the part of relatively poorer states such as Paraná and the poor performance of higher income states, notably the Distrito Federal (Federal District),⁴ which was the richest state overall in GDP per capita terms and ranked 1st among all states in terms of the HDI in 2005 yet ranked 10th out of 27 states on our index.

Measurement of economic and social rights fulfillment – Conceptual issue Background

Attempts to develop measures to monitor human rights date back to the 1950s (Bollen 1986) but it was in the 1990s, in the context of increased use of quantitative methods and data in both social science research and in policy management, that literature began to emerge evaluating states on their compliance with human rights obligations. Notable were the works of Charles Humana (1992) on identifying indicators on all sets of human rights, of Herbert and Louise Spierer (1993) on the use of data and quantitative methods to establish evidence on human rights violations, of Cignarelli and Richards (CIRI) on political and civil rights data, and of scholars such as Audrey Chapman (1996), Hunt (2003), and Landman (2002) on conceptual issues. By now there is a rich literature on the conceptual and methodological approaches to measuring human rights.⁵

In response to an increasing demand for rigorous monitoring of State accountability for human rights obligations, new initiatives have emerged to develop indicator sets and more broadly, to make use of quantitative methods in human rights assessments. Recently, the UN Office of the High Commissioner for Human Rights (OHCHR 2008) has begun to develop proposals for indicator sets that can be used in UN processes.⁶ Quantitative indicators are being increasingly used in human rights advocacy and assessment by national and international civil society advocates, academics,

⁴ Brazil has 26 states and one “autonomous sub-national entity”, the Distrito Federal, which includes the capital Brasília and its outskirts. However, Brazilian record-keeping accords the Distrito Federal the same status as a state.

⁵ See overviews of the literature in Hertel and Minkler 2007 for economic and social rights, Landman 2004 for civil and political rights.

⁶ See Rosga and Satterthwaite, 2008 for a detailed analysis of the proposals.

and state monitoring agencies. However, these multiple efforts are tentative and there are no consensus indicators of human rights fulfillment. Moreover, the current and proposed use of indicators suffers from three limitations.

The first limitation is the use of subjective opinion based indicators, particularly with respect to civil, political and cultural rights. These rights are inherently difficult to quantify on the basis of counting observed variables. In the absence of direct observations, quantitative indicators are developed by coding qualitative reports, such as the reports of US State Department or Amnesty International.⁷ These indicators cannot be independently verified nor replicated, such that their legitimacy can be easily challenged.

The second common limitation is the focus on the right bearer perspective while neglecting the duty bearer perspective. Standard socio-economic indicators of human outcomes (such as infant mortality or school enrolment) are used as a proxy for fulfillment of social and economic rights. Such indicators go some way towards reflecting the extent to which a population is enjoying a particular social or economic right, but do not reflect the obligations of the duty bearer which are complex, as explained in the following sections of this paper. The fundamental conceptual difference between development progress and human rights fulfillment is that the latter entails not only the enjoyment of a right by individuals but a correlate obligation of duty bearers (Sen 2001).⁸ A conceptually adequate measure of human rights accountability therefore must reflect both improvements in the human condition and also the effort being made by the state to comply with its obligations (UNDP 2000; Raworth 2001; Cignarelli and Richards 2007).

The third limitation is the use of event or country specific data that does not permit comparison over time or place.⁹ Rigorous monitoring of state obligations to make sustained efforts cannot be made without evaluating trends over time. Comparison between countries or sub-national units such as provinces is an important

⁷ This is the methodology used for example by Freedom House.

⁸ See CESCR, General Comment 3, *The Nature of States Parties Obligations* (Art. 2, para. 1) (Fifth Session, 1990), UN Doc. E/1991/23, Annex III; Charter of the United Nations (San Francisco, 26 June 1945), 3 Bevans 1153, 59 Stat. 1031, T.S. No. 993, *entered into force* 24 Oct. 1945, Art. 1, para. 3; CCPR, General Comment 31, *The Nature of the General Legal Obligations Imposed on States Parties to the Covenant* (Art. 2) (2187th meeting, 21 March 2004), CCPR/C/74/CRP.4/Rev.6.

⁹ An example of this is the Metagora project, based at OECD, which was a major international effort to develop the use of indicators in human rights assessment.

approach to assessing whether a level of human rights enjoyment, such as primary school attendance, is realistically feasible. This is essential to the assessment of the state obligation to realize rights progressively, taking account of available resources. The principle of progressive realization recognizes that a country will be constrained in full realization of rights, such as the right to education, by the resources available. A primary enrolment rate of say 20% cannot be raised here and now to 100%, however committed a government may be, because it takes finance, skills, organization and time to build schools, train teachers and organize enrolment.

The aim of the ESRE-I is to overcome these limitations as far as is possible with the current state of the art in measurement methods and data availability, and to propose an agenda to address those that cannot be resolved. The index measures economic and social rights fulfillment and does not extend to civil, political and cultural rights. The index uses survey-based objective data from authoritative national and international series, rather than subjective assessments. The index captures both the right bearer and duty bearer perspectives, and the obligations of progressive realization of human rights subject to maximum available resources.

Politics of human rights measurement – For whom and for what purpose

Despite the benefits of quantitative measurement tools in assessing compliance with human rights obligations, many human rights advocates have argued against quantitative measures, particularly those that can be used to rank countries. In 2000, the *Human Development Report on Human Rights* (UNDP 2000) argued that a composite index would not be appropriate because of: lack of reliable data on many essential human rights such as political freedom and dimensions such as participation and transparency; and dangers of misuse, overuse and abuse for purposes other than building human rights accountability. In 2005, a 3 day workshop held at Harvard Carr Center that brought together nearly 50 leading members of the human rights community recommended against pursuing a composite index approach (Carr Center 2005). They argued that quantitative measures could be most useful when they are specific to a country and a context. They argued that meaningful comparisons were not possible because data gathering possibilities

vary from country to country. Both the *Human Development Report 2000* and the Carr Center Workshop were concerned that human rights advocacy should focus on specific issues at the country level and that country rankings could be 'fundamentally dangerous', such rankings could be politically explosive and could only be taken up to oversimplify human rights challenges.

These arguments assume that all sets of rights are difficult to measure, and that only states and NGOs of the North would use indicators or indexes. Some rights, notably civil, political and cultural rights, are inherently difficult to quantify but others are more measurable. In particular, socio-economic indicators are available and are being used in assessing economic and social rights (thought not systematically nor always appropriately). Human rights measures can be used by advocates in the South to hold their own governments to account just as international NGO networks can do. The political dynamic will depend on *what* measurement tool is developed and *who* uses it.

We are keenly conscious of these pitfalls. Yet we believe that a more coherent quantitative measurement tool of human rights fulfillment is needed than the development indicators that are currently being used in State monitoring and accountability frameworks. Recognizing the dangers of misuse, this paper aims to present a methodology with the following features: (i) use of objective survey based data that command widely held international legitimacy, rather than subjective opinion based data that may be more easily subject to bias; (ii) simple constructions that is accessible and easily interpreted for policy implications without specialized training in econometric methods; (iii) transparent in methodology and data source; (iv) relevant for use in evidence-based policy research and advocacy; and (v) utilizing appropriate level aggregation that is narrow enough in scope to capture rights in a manner meaningful for assessing policy effectiveness, but broad enough to give a summary assessment of overall state conduct.

Hence, we have decided to limit the scope of rights in this index to economic and social rights even though rights are indivisible and interdependent.¹⁰ Including only Economic and Social rights as the level of aggregation allows meaningful comparison among

¹⁰ Indivisibility and interdependence refer to the principle that human rights should be seen as a whole and not divided into different categories; each of the rights is of equal importance, the different rights do not conflict but are reinforcing, and should not be traded off one for another.

countries regarding this specific subset of human rights obligations, and mirrors the treaty-based division of international rights norms (*International Covenant on Economic, Social and Cultural Rights* versus the *International Covenant on Civil and Political Rights*). Moreover, *a priori* methodological considerations are more feasible to achieve for these rights than for Civil, Political and Cultural rights since many aspects of Economic and Social rights are more readily quantifiable, and survey based indicator sets already exist.

Recognizing the complex methodological challenges, the aim of this paper is not to resolve all the difficulties, but rather to contribute to the process of building rigorous approaches to human rights measurement. The proposed index thus has recognized limitations, yet is an important first step utilizing data that are currently available. Our goal here is to contribute to the longer term development of a methodology for measuring economic and social rights fulfillment by identifying the key conceptual and data gaps, and outlining a longer term agenda for research and data collection.

The social motivation of our effort is to develop a tool that can be used by advocates to advance the realization of human rights and a rights-based agenda to eradicate poverty. For this reason, the methodology has been designed so that it can be used by advocacy groups across the world. It is deliberately simple and transparent; uses data that are widely available and legitimated through national and international processes; is easy to interpret for policy makers; and aims at an appropriate level of aggregation that is narrow enough in scope to capture rights in a manner meaningful for assessing policy effectiveness, but broad enough to give a summary assessment of overall State conduct.

Rights holder and duty bearer perspectives in human rights assessment

A country's performance in terms of Economic and Social Rights (ESR) Fulfillment depends on both (i) the actual ESR outcomes people enjoy, as indicated by socio-economic statistics that proxy for particular rights, and (ii) a society's capacity for fulfillment, as determined by the amount of economic resources available overall to the duty-bearing state.

The relevant issue from the perspective of rights-holders is the extent to which one enjoys the fundamental ESRs guaranteed to

all people under international law. The core ESRs put forth by the Charter of the United Nations; the Universal Declaration of Human Rights; and the International Covenant on Economic, Social & Cultural Rights include: the right to food,¹¹ the right to education,¹² the right to adequate healthcare,¹³ the right to adequate housing,¹⁴ the right to decent work,¹⁵ and the right to social security.¹⁶ These are fundamental to a guarantee for meeting survival needs, and broadly refer to a right to a decent standard of living, employment, and minimum guarantees that would secure 'basic rights' (Shue 1980).

But the evaluation of Human Rights fulfillment cannot rely solely on a measure of the well-being of the individual. In contrast to development, the concept of human rights must be concerned with both the perspective of the duty-bearer and the perspective of the right-holder, in the context of the key principles of human rights that are explicit in international human rights instruments. International human rights instruments are grounded in the fact that particular entities have a duty to protect, promote, and fulfill specific rights;¹⁷ and the holders of these rights can correspondingly make claims on these duty-bearers.¹⁸ Therefore, evaluation of human rights fulfillment must address the extent of the obligation of the duty-bearers as well as the extent of enjoyment of rights-holders.

State governments have the duty to protect, promote, and fulfill the human rights of citizens and residents.¹⁹ These duties include obligations of conduct as well as result. The principles of equality and non-discrimination are at the core of all human rights obligations,²⁰ and require that all people be treated as ends in themselves and not merely as means to an end. The obligations are

¹¹ The right to food is guaranteed in the UDHR, Art. 25; CESCR, Art. 11; and CRC, Art. 24 and 27; and is discussed and clarified in CESCR, General Comment 12, *The Right to Adequate Food* (Art. 11) (Twentieth Session, 26 April – 14 May 1999), E/C.12/1999/5.

¹² UDHR, Art. 26; CESCR, Art. 13; and CRC, Art. 28.

¹³ UDHR, Art. 25; CESCR, Art. 12; CESCR, General Comment 14, *Right to the Highest Attainable Standard of Health* (Art. 12) (Twenty-second Session 25 April-12 May 2000), E/C.12/2000/4.

¹⁴ UDHR, Art. 21; CESR Art 11; General Comment 4; CERD Art 5e.

¹⁵ UDHR Art 23; CESR Art 6.

¹⁶ UDHR Art 22; CESR, Art 9.

¹⁷ *Supra*, note 4.

¹⁸ See, e.g., Human Rights Council Resolution 5/1, "UN Human Rights Council: Institution Building" (18 June 2007), establishing the *Human Rights Council Complaint Procedure* in compliance with General Assembly Resolution 60/251, "Human Rights Council" (Sixtieth Session, 3 April 2006).

¹⁹ See *Supra*, note 4.

²⁰ See CESCR, Art. 3, para 2; UDHR, Art. 1 and 2.

legally secured by international and national law,²¹ and measurement should be conceptually rooted in these commitments.

Under international law, the obligation of human rights fulfillment is one of progressive realization, and thus contingent on the availability of resources.²² The concept of 'progressive realization' is premised on the recognition that fulfilling ESR obligations requires economic resources, and the financial constraints faced by many developing countries may make simultaneous and immediate fulfillment of all ESR rights obligations impossible. States must strive to fulfill economic and social rights obligations to the maximum extent possible in the face of economic resource constraints.²³ Inherent in this idea of 'progressive realization', therefore, is the principle that countries with greater economic resources — and thus an increased capacity to devote more resources to food, education, health, and water & sanitation — have a correspondingly greater duty to ensure equitable and widespread enjoyment of ESR guarantees. Within a human rights framework States are the relevant duty-bearers; assessing ESR fulfillment means incorporating state capacity for fulfillment into the measurement of how well a country is doing in meeting its ESR obligations under international law.

Basic ESRF I Methodology

The basic ESRF I was developed to assess the fulfillment of economic and social rights for countries as the unit of analysis and takes into account five core economic and social rights: the right to food, education, health, adequate housing, and decent work.²⁴ The

²¹ In particular: Universal Declaration of Human Rights (10 Dec. 1948), U.N.G.A. Res. 217 A (III) (1948) [hereinafter UDHR]; International Covenant on Economic, Social and Cultural Rights (New York, 16 Dec. 1966) 993 U.N.T.S. 3, entered into force 3 Jan. 1976 [hereinafter CESCR]; International Convention on the Elimination of All Forms of Racial Discrimination (New York, 7 Mar. 1966) 660 U.N.T.S. 195, 5 I.L.M. 352 (1966), entered into force 4 Jan. 1969 [hereinafter CERD]; International Covenant on Civil and Political Rights (New York, 16 Dec. 1966) 999 U.N.T.S. 171 and 1057 U.N.T.S. 407, entered into force 23 Mar. 1976 [the provisions of article 41 (Human Rights Committee) entered into force 28 Mar. 1979] [hereinafter CCPR]; Convention on the Elimination of All Forms of Discrimination against Women (New York, 18 Dec. 1979) 1249 U.N.T.S. 13, 19 I.L.M. 33 (1980), entered into force 3 Sept. 1981 [hereinafter CEDAW]; Convention on the Rights of the Child (New York, 20 Nov. 1989) 1577 U.N.T.S. 3, 28 I.L.M. 1448 (1989), entered into force 2 Sept. 1990 [hereinafter CRC].

²² See CESCR, Art. 3, para 1.

²³ *Id.*

²⁴ A separate index for high income OECD countries, ESRF2, is proposed that uses indicators that are more meaningful in the context of countries with advanced economic and social development. Given data limitations, the ESRF-2 only takes into account four core rights: the right to food, education, health, and decent work.

core concept in the methodology is the Achievement Possibilities Frontier (APF) to assess the extent to which a country is meeting its obligation of progressive realization as the percentage of the feasible level of achievement given the country's resources and imposes a penalty on countries with resources sufficient to fully realize a given right but failing to do so.²⁵

The Achievement Possibilities Frontier (APF) approach constructs an APF for each indicator that specifies the value of the indicator that can feasibly be achieved at each per capita income level.²⁶ To do so, first using data from all countries for all years between 1990 and 2006 we plot the scatter of the indicator value, x , against per capita GDP in 2005 PPP\$. We then estimate the functional relationship defining the outer envelope of the scatter plot: $x_{\max} = f(y)$, where x_{\max} is a value of x on the outer envelope of the scatter plot.

The estimated frontiers show for each per capita GDP level the value of the indicator that *could* be achieved, given the state of knowledge regarding the social-economic policies that best promote economic and social rights. While this "technology" might be expected to change over the long-run, it is expected to be reasonably stable over the short to medium term. This feature enables valid comparisons over time of the extent to which economic and social rights obligations are being met, a feature essential to evaluating whether the principle of non-retrogression is upheld.²⁷ The ESRF Index is constructed by aggregating indices for each of the separate indicators. Thus the first step is to construct the index for each indicator, specifying the indicator index value as the percentage of the indicator value that could be achieved, given the country's per capita income level.

The next step is to adjust these values for countries with incomes sufficient to realize the maximum indicator value, x_p , but which fail to do so. The index value for these countries is the actual

²⁵ Our concept and methodology paper (Fukuda-Parr et al. 2009), explored several alternative methodologies of calculation for the ESRF Index. In this paper we use the Achievement Possibility Approach specified as Version 2B in that paper.

²⁶ Our Achievement Possibilities Frontier (APF) is analogous to the economists' single input, single output production function. It shows the maximum level of output (achievement on the indicator of concern) it is feasible to produce (using best practices) for any specified level of the input (GDP per capita).

²⁷ The principle of non-retrogression requires that States neither withdraw supports (legislation, policies, programs) or in other manner allow an economic, social or cultural right's level of realization to decline. For further information see Office of the High Commissioner for Human Rights, 1990.

percentage achievement minus a penalty. A number of alternative penalty formulas were explored and compared using an axiomatic approach in our previous paper. Here, we refine our methodology in two regards. First, we adjust the indicator scores to take into account differences between the theoretical and practical minimum indicator values. Second, we utilize a slightly modified version of our preferred penalty formula, formula F, which conforms to *ex ante* criteria regarding an appropriate penalty.

Once the indices for each indicator have been computed the rights indices are aggregated by averaging the relevant indicator indices. Finally, the individual economic and social rights indicators are aggregated into the ESRF-I using the following formula:

$$ESRF = [(Food\ Index^{1/\alpha} + Education\ Index^{1/\alpha} + Health\ Index^{1/\alpha} + Housing\ Index^{1/\alpha} + Work\ Index^{1/\alpha}) / 5]^{\alpha}$$

The value of alpha, α , determines the weight placed on rights dimensions where fulfillment falls shortest. In our analysis, we set $\alpha=1$ such that we weight all rights dimensions equally. If one computes the ESRF indices setting $\alpha>1$, then a higher weight is placed on the rights dimensions where fulfillment falls shortest.

Application of Methodology to states of Brazil

The basic ESRF-I methodology was initially developed using the country as the unit of analysis. The application to Brazil disaggregates the analysis and uses the state as the unit of analysis. The application also adapts the choice of indicators to those that are most appropriate to the context of Brazil. First, national GDP per capita in constant-dollar PPP terms was used as a proxy for resources available. In order to reflect the shared responsibility of both the federal and state-level governments to fulfill the economic and social rights of all Brazilians, we used the average of state-level GDP per capita and national-level GDP per capita for each state for each year from 1990 to 2006 as the resource indicator in this analysis. Second, we selected a variety of socio-economic indicators to represent the five groups of economic and social rights that the ESRF-I includes. These indicators are proxies and clearly cannot capture the entire breadth of the rights in question. However, they are the best representative indicators available. These data came primarily from institutions of the Brazilian government such as the *Instituto Brasileiro de Geografia e Estatística* ("The Brazilian Institute of Geography and Statistics" - IBGE) and the *Instituto de Pesquisa*

Econômica Aplicada ("The Institute for Applied Economic Research" - IPEA). Table 1 below summarizes the indicators included in our calculations for each of the five economic and social rights in question. More detailed information on the definitions and sources for each indicator are presented in Annex I.

TABLE 1
Indicators used

Economic and Social Right	Indicator for International Comparison	Indicators Used for Brazil
Right to Decent Work	Percent of the population living below the international poverty line	Percent of the population living below national poverty line
		Percent of the population working in vulnerable employment situations
Right to Education	Primary school completion rate Gross secondary enrollment rate	Net enrollment of 7 to 14 year-olds
	% not stunted	Percent of new-borns with low birth weights
Right to Adequate Food	Life expectancy at birth	Life expectancy at birth
	% births assisted by skilled health workers	Maternal mortality rate
Right to the Highest Attainable Standard of Health	Under-five mortality rate per 1,0	Under-five mortality rate
	Percent of population with access to improved sanitation	Percent of population with access to improved sanitation
Right to Adequate Housing	Percent of population with access to improved water source	Percent of population with access to improved water source
	Percent of population with access to improved water source	Percent of the population living in housing constructed out of durable materials

The crux of this methodology is to use historical data to determine what Fukuda-Parr et al. term the “achievement possibilities frontier” (APF). Creating an APF for each indicator involves using historical data about the levels of achievement attained by all the states at different levels of income from 1990 to 2006 to determine the best-possible levels of achievement possible at any given income level. These values then become the standard against which the performance of all states in all years are compared (Fukuda-Parr et al., 2009, p. 16-17). To begin, separate datasets were assembled for each indicator using the statistical modeling software package SPSS with outcome indicators for each state and each year matched with a corresponding adjusted GDP per capita value. A scatter-plot was then generated with adjusted GDP per capita as the independent variable and the outcome indicator as the dependent variable.²⁸ States which exhibited the highest levels of achievement for their level of income were identified as being on the “frontier” and thus representing the greatest level of achievement possible for that level of income.

Using the curve-setting algorithm within SPSS, a curve was then set to the frontier observations. In order to get the best-fitting curve, we considered not only adjusted GDP per capita but also the natural log and square of GDP per capita as well. Figure 1 below shows the scatter-plot with the APF curve superimposed. This function represents the best level of achievement for that particular indicator that we could expect for any given level of income, based on the historical experiences of the states of Brazil. In the case of the plot shown in Figure 3 below, the best-fitting curve for the data on under-five survival is an inverse function using the square of GDP per capita. This function was then used to calculate a “Frontier Value” for each state and each year that we had data for. These values represent the precise levels of achievement that we could expect that state to achieve in that year based on its income at the time. Please see Annex II for a list of functions set to each indicator.

²⁸ Indicators were inverted so that ascending values represented greater achievement. For example, poverty rates were expressed as ‘Percent of the population not poor,’ by subtracting the poverty rate from 100%.

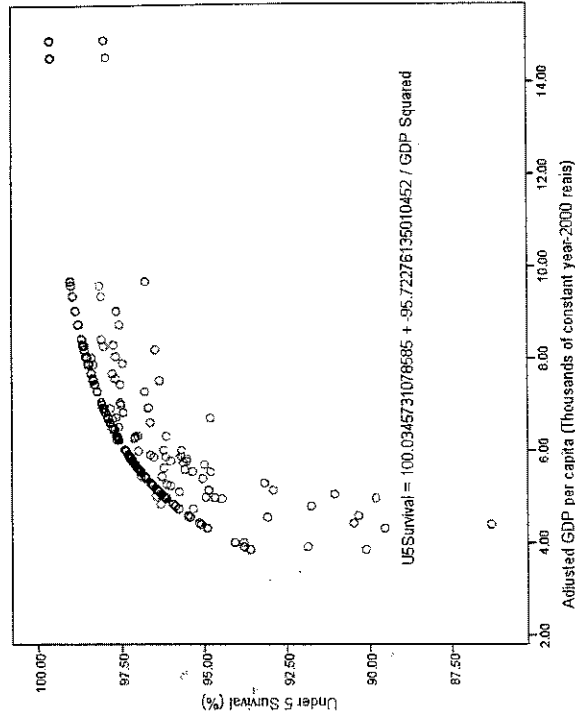


FIGURE 1 – Sample scatter-plot with achievement possibilities frontier applied.

Next we calculated the “rights fulfillment score” (X^*) of each state for each year, using the following calculation in which the minimum value is the lowest observed value for that particular indicator for any of the states of Brazil:

$$X^* = (100 \times (\text{Observed Value} - \text{Minimum Value}) / (\text{Frontier Value} - \text{Minimum Value}))$$

Finally, in the case of states which had a level of income which should have enabled them to achieve full realization of the right in question yet still fell short of that level of achievement, a penalty was applied to their X^* values. The calculation of the penalty was as follows, in which X_p represents the greatest possible X^* value (generally 100) and Y_p represents the level of income at which achievement should reach the highest attainable level according to the APF:²⁹

²⁹ This is a slight variation on Penalty F suggested by Fukuda-Parr et al in their initial methodology. This penalty raises the income exponent to a power of .5, thereby making the penalty on higher-income states which fail to achieve high results somewhat less severe than the original Penalty F.

$$X * \text{With Penalty} = ((100 * (X * p))^{((GDP \text{ per capita}) / Yp)^{(-5)}})$$

Calculating the final ESRF-I scores incorporates the X* values for all states which were not subject to the penalty and the outcome of the penalty calculation for all states which received it. First, rights sub-scores were calculated for each state for the last year data was available as follows:

$$\text{Right to Decent Work Sub - Score} = \frac{\text{Population Not Poor } X * + \text{Workers Not Vulnerable } X *}{2}$$

$$\text{Right to Education Sub - Score} = \text{Net Enrollment of 7 to 14 Year - Olds } X *$$

$$\text{Right to Food Sub - Score} = \text{Percent New - Borns with Normal Birth Weight } X *$$

$$\text{Right to Health Sub Score} = \frac{\text{Life Expectancy } X * + \text{Maternal Survival } X * + \text{US Survival } X *}{3}$$

$$\text{Right to Housing Sub - Score} = \frac{\text{Sanitation Access } X * + \text{Water Access } X * + \text{Durable Housing } X *}{3}$$

Finally, the ESRF values for each state were calculated by finding the average of the five rights sub-scores as follows:

$$\text{Aggregate ESRF - I} = \frac{\text{Work + Education + Food + Health + Housing Subscores}}{5}$$

Findings

The findings of our application of the ESRF-I methodology to the states of Brazil are summarized in Table 2 below which lists the states of Brazil in order from highest to lowest score on our index with data for each on per capita income, HDI score, and percentage of the population living above the poverty line to offer some context.

Our index highlights the achievements of medium and low-income states which manage to achieve significant results in realizing economic and social rights while also exposing the failure of higher-income states to achieve more given the level of resources available to them. For example, the southern state of Santa Catarina

which tops the rankings based on our index is the 4th richest state in GDP per capita terms. Three states that rank in the top third of the ESRF-I rankings, Minas Gerais (4th), Goiás (7th) and Mato Grosso do Sul (8th) place in the middle third of states ranked by GDP per capita. Two states from the bottom third of the income-distribution, Rio Grande do Norte (14th) and Paraíba (17th) manage to finish in the middle-third of the ESRF-I rankings. On the other hand, while the Distrito Federal lead the country in terms of GDP per capita and the HDI, the District comes in only 10th on our index. Similarly, the state of Mato Grosso, which is the 9th richest state in GDP per capita terms, finishes in the middle-third of our ESRF-I rankings in 13th place.

TABLE 2
States of Brazil by ESRF-I Rank

(continue)

	ESRF Rank	ESRF Value	Per Capita Income (constant 2000 thousands of reais)	State HDI Value	Percentage of Population Above Poverty Line
Santa Catarina	1 st	95.601	9,283	0.840	92.96%
São Paulo	2 nd	92.743	11,605	0.833	86.65%
Paraná	3 rd	91.688	6,547	0.800	85.18%
Minas Gerais	4 th	91.687	7,812	0.820	83.21%
Rio Grande do Sul	5 th	91.441	8,495	0.832	83.12%
Espirito Santo	6 th	90.674	9,045	0.802	86.25%
Goiás	7 th	90.028	5,914	0.800	85.53%
Mato Grosso do Sul	8 th	89.955	6,292	0.802	86.78%
Rio de Janeiro	9 th	89.610	10,505	0.832	83.78%
Distrito Federal	10 th	89.468	22,322	0.874	84.34%
Rondônia	11 th	88.175	4,981	0.776	71%
Sergipe	12 th	86.023	4,488	0.742	58.52%
Mato Grosso	13 th	85.972	7,332	0.796	83.52%
Rio Grande do Norte	14 th	85.537	4,009	0.738	60.73%

	(conclusão)				
Amapá	15 th	85.372	5,072	0.780	69.97%
Roraima	16 th	84.460	5,387	0.750	61.37%
Paraiíba	17 th	83.732	3,269	0.718	57.92%
Amazonas	18 th	83.542	7,022	0.780	64.10%
Pará	19 th	83.016	3,705	0.755	61.78%
Ceará	20 th	82.266	3,346	0.723	55.29%
Acre	21 st	82.130	4,180	0.751	58.62%
Tocantins	22 nd	81.990	4,280	0.756	64.82%
Bahia	23 rd	81.949	4,109	0.742	55.76%
Piauí	24 th	81.621	2,501	0.703	50.43%
Pernambuco	25 th	80.848	3,875	0.718	51.52%
Alagoas	26 th	78.125	3,066	0.677	45.06%
Maranhão	27 th	74.265	2,747	0.683	46.71%

Sources: GDP per capita and poverty data from IPEA, 2009. HDI data from UNDP Brazil, 2005.

What this fundamentally reveals is that none of the states of Brazil area fully meeting their obligations to fulfill economic and social human rights. However, states generally had more success meeting their obligations to fulfill the rights to food, health and education than they had with the right to decent work and the right to adequate housing. Figure 5 below shows the rights sub-scores for all the states as well as their final ESRF-I values, with minimum and maximum values for each column in bold. The ranges in values for each column demonstrate which rights obligations have proven most difficult to meet. Sub-scores for the right to decent work ranged from 39.73 in Maranhão to 97.18 in Santa Catarina and sub-scores for the right to adequate housing range from 61.06 in Acre to 97.87 in São Paulo. In contrast, sub-scores for the rights to education, adequate food and health vary only from about 80 to near 100.

TABLE 3
Rights Sub-Scores for All States and Final ESRF-I Values

	Decent Work	Education	Adequate Food	Health	Adequate Housing	ESRF Values
Acre	70.42	91.46	93.44	94.28	61.05	82.13
Alagoas	55.59	93.37	92.58	80.99	68.10	78.13
Amapá	76.17	98.02	91.20	90.61	70.86	85.37
Amazonas	65.75	91.24	92.86	91.19	76.67	83.54
Bahia	53.41	92.81	91.09	94.58	77.85	81.95
Ceará	53.22	97.80	92.85	92.11	75.35	82.27
Distrito Federal	85.45	87.51	82.95	94.79	96.63	89.47
Espirito Santo	83.42	92.89	90.91	95.06	91.29	90.67
Goiás	84.07	96.51	91.58	98.15	79.82	90.03
Maranhão	39.73	91.03	93.16	84.68	62.72	74.27
Mato Grosso	78.47	93.18	92.56	93.57	72.08	85.97
Mato Grosso do Sul	87.93	97.87	92.35	97.87	73.95	89.96
Minas Gerais	87.38	91.70	86.44	99.11	93.80	91.687
Pará	61.26	92.30	90.48	87.27	73.77	83.02
Paraiíba	56.41	95.75	94.16	89.60	82.73	83.73
Paraná	86.14	96.41	88.87	96.38	90.63	91.688
Pernambuco	57.53	93.68	91.91	85.69	75.42	80.85
Piauí	44.45	100.00	93.79	90.36	79.51	81.62
Rio de Janeiro	84.45	87.42	86.21	92.15	97.81	89.61
Rio Grande do Norte	67.22	96.22	92.60	91.19	80.46	85.54
Rio Grande do Sul	83.12	95.37	86.55	96.51	93.66	91.44
Rondônia	80.49	92.48	95.01	93.15	79.74	88.18
Roraima	59.48	94.11	91.10	90.26	87.35	84.46
Santa Catarina	97.18	96.87	89.64	99.01	95.31	95.60
São Paulo	89.17	94.93	85.77	95.97	97.87	92.74
Sergipe	60.10	94.16	90.98	91.76	93.11	86.02
Tocantins	60.07	98.04	93.70	93.32	64.82	81.99

In interpreting these results, it is imperative to bear in mind that the X^* scores and the subsequently calculated rights sub-scores measure the extent to which obligations are being met *relative* both to the range of historical attainment in Brazil itself and to the level of resources available to each state. Our findings with the education indicator for net enrollment of 7 to 14 year-olds present an illustrative example. This indicator was the sole educational indicator in our study and our analysis of historical trends showed that states of Brazil have historically been able to achieve high levels of enrollment at relatively low levels of income. The best-fitting APF for these data was an inverse function³⁰ which predicted that enrollment should hit a peak of 100% at an adjusted GDP per capita level of about R\$8,391.29. In 2006, both Piauí, the poorest state overall, and the Distrito Federal, the richest, had about 96% of their 7 to 14 year-olds enrolled in school. However, Piauí ended up with a score of 100 while the Distrito Federal received only 87.51 on this indicator. Given Piauí's meager resources, the frontier value for the state was 95.1%, slightly lower than 95.68% enrollment rate that Piauí actually achieved in 2006. Since the actual value exceeded expectations, Piauí's X^* rights fulfillment score for this right is 100.

The role of the penalty in determining the final X^* scores for the more affluent states comes to bear in this example. The premise of the penalty is to reduce the fulfillment scores of states that have the resources necessary to fully meet their rights obligations but which still fail to do so. The adjusted GDP per capita level for Piauí was far below Y_p , so no penalty was applied to its X^* score. However, in the Distrito Federal, that state's high income gave it a frontier value of 100%. Its actual achievement in 2006 however was only 95.81%, giving it an X^* score of 90.48. Since the adjusted GDP per capita level in the Distrito in 2006 was well above the level at which full enrollment should have been achieved (Y_p), the penalty was applied here. Therefore, the actual final X^* score for the Distrito Federal for education was 87.51, calculated as follows:

$$X^* \text{ With Penalty} = (100 \times ((X^* - p)))^{((GDP \text{ per capita})/Y_p)^{(-5)}} \quad (-5)$$

³⁰ The precise function was $Net \text{ Enrollment} = 102.72593 + \left(\frac{-192.130501}{GDP \text{ per capita}^2} \right)$

In the above calculation, X^* is the initial X^* score, X^*p is the highest X^* value achieved (Piauí's 100 in this case), GDP per capita is the value for 2006 and Y_p is the income level at which full achievement of the right in question should be reached which was R\$8,391.29 in this case.

Our findings also show that the ESRF-I produces results which differ significantly from comparing states on the basis of their GDP per capita or HDI scores alone. Figure 2 below shows a scatter-plot of the ESRF scores compared to adjusted GDP per capita income for the states of Brazil. There is a positive correlation but it is a moderate one, with a Pearson's Correlation of .602 (significant to .01). ESRF scores and HDI correlate positively but even more weakly, as shown in Figure 3 below.

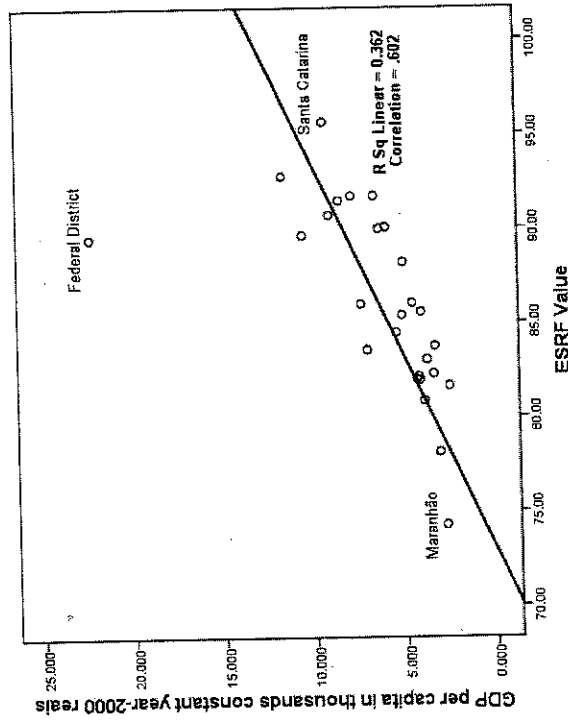


FIGURE 2 – The Relationship between ESRF Values and State Per Capita Income

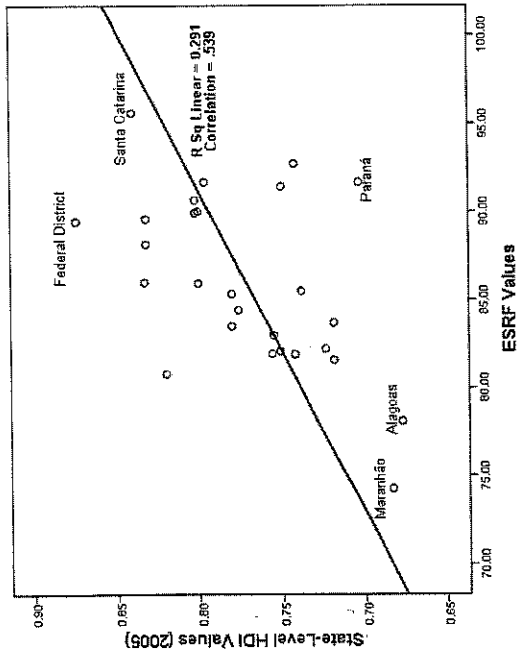


FIGURE 3 – The Relationship between ESRF Values and State-Level HDI Values

One relationship which stands out is a very strong and positive correlation between ESRF values and the percentage of the population that lives above the national poverty line. This relationship, shown below in Figure 4, has a Pearson's Correlation of .926 and is significant to the .01 level.

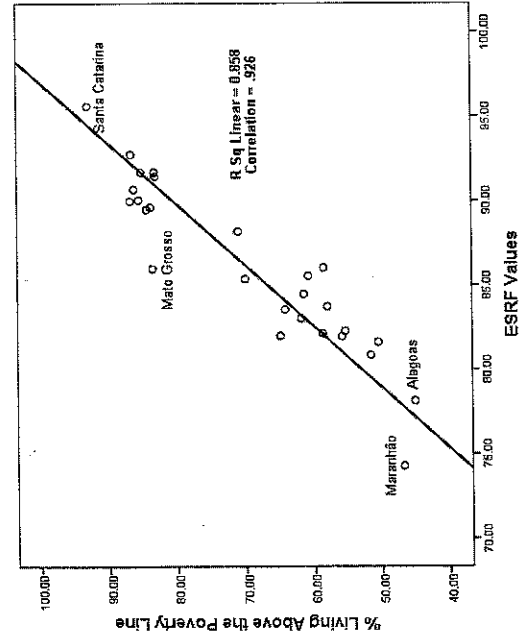


FIGURE 4 – The Relationship between ESRF Values and Population Above the Poverty Line

Discussion and Questions for Further Research

After completing the calculations for the ESRF values for each state, we compared the values with several other indicators to explore possible linkages with other economic and social trends. As mentioned above, there was a very strong relationship between poverty rates and ESRF values. Urbanization was also shown to have a moderate and positive relationship with ESRF values. However, it should be noted that Brazil is a highly urbanized country overall. The population of even the least-urbanized state, Maranhão is still almost 60% urban and the most populous state, São Paulo, is 93.41% urbanized. Another interesting relationship is that between ESRF values and income inequality. At the national level, Brazil's Gini coefficient of inequality in the income distribution of .57 is among the highest in the world. However, among the states of Brazil, state-level Gini coefficients range from .462 in Santa Catarina (1st in our ranking) to .6236 in Alagoas (26th in our ranking). The correlation between ESRF values and Gini coefficients is a negative one of moderate strength with a Pearson's Correlation of -.601. This means that states which score more highly on our index also tend to have a more equitable distribution of income, suggesting that states which make the most effort to realize the rights of their citizens relative to their available resources are also making efforts to see that income is distributed more equally. However, for the sake of perspective even Santa Catarina, the most egalitarian state in terms of distribution of income, still has a higher Gini coefficient than that of neighboring Uruguay (.449) or even the United States (.408) (UNDP, 2007, p. 281-282).

Finally, state scores on our ESRF-I also correlate both strongly and negatively with the percentage of the population which is Afro-Brazilian. This hints at the importance that race continues to play in Brazil today. For example, a 2005 report by researchers with UNDP Brazil presented separate HDI values for whites and for Afro-Brazilians. Their results revealed that, although there were large disparities in human development within both groups across income levels and geographic lines, the HDI for whites was .814, comparable to the national HDI scores of countries like Costa Rica and Kuwait while the HDI for Afro-Brazilians was only .703, close to the HDI score for the entire country in the mid-1980's and comparable to the HDI score of Uzbekistan today (UNDP, 2007, p. 235-236; UNDP Brazil, 2005, p. 58).

Non-discrimination is a key human rights principle and one that should be a part of any measure of the realization of economic and social rights. Our attempts to take race into account in our application of this methodology to Brazil were hampered by a lack of data disaggregated by race for the indicators we used. Indeed, as the 2005 UNDP Brazil report noted, Brazilian race policies have historically paid little formal attention to race in legislation and record-keeping, stressing a race-neutral image of a multi-cultural Brazilian national identity instead (UNDP Brazil, 2005, p. 36, 46-47). However, as the disaggregated HDI suggests, Brazilians of African descent enjoy a far lower level of human development than their white counterparts. While our calculations were not able to incorporate this explicitly, it is noteworthy that our ESRF values for the states of Brazil correlate negatively and strongly with the percentage of state population that is Afro-Brazilian. Put another way, states which scored highly on our index tended to be those states which had the smallest percentage of Afro-Brazilian citizens. This relationship had a Pearson Correlation of -.822 which was statistically significant to the .01 level.

Indeed, Bahia, a state which is overwhelmingly Afro-Brazilian, came in 22nd out of 27 states in our index while Santa Catarina, the state with the smallest proportion of Afro-Brazilians, came in 1st. Brazil's long historical experience with slavery as well as more recent rural-to-urban internal migrations have no doubt played a role in shaping the contemporary geographical distribution of populations of different races across the country and have doubtlessly played a role in shaping and calcifying some of the economic, political and social inequalities that persist along racial lines as well (UNDP Brazil, 2005, p. 19-25). However, it is nevertheless of note that states which are making the most of their available resources to realize the economic and social rights of their citizens are those in which Afro-Brazilians are least-likely to live.

While disaggregated raw data was not available for most indicators in our study, we did have income poverty data disaggregated by race for two years, 1991 and 2000. We applied the nationally-determined poverty APF to these data and compared the resulting disaggregated X* scores for all states. In no state did the extent of fulfillment of the obligation to eliminate poverty among blacks match efforts to eliminate poverty among whites. In some states, such as Alagoas and Maranhão, X* scores for poverty for whites were almost twice what they were for Afro-Brazilians. This suggests

that states are coming much closer to fulfilling their obligations to realize the economic and social rights of whites than they are for Afro-Brazilians and that there is indeed a precarious gap in rights fulfillment between the two groups on at least this indicator.

Although this index adds an important new dimension to the monitoring of the fulfillment of human rights obligations, it needs to be complemented with other indicators to make a fuller assessment of the human rights situation. It is particularly important to consider factors such as participation, equality and non-discrimination, and structural and process aspects of human rights obligations. However, as our experiment with racially disaggregated income poverty data shows, better data disaggregated by race and also gender can enable the researcher to undertake ESRF analyses which can expose inequality and discrimination. For other aspects of human rights, the ESRF-I supplements other existing human rights measures and reporting mechanisms³¹ which tend to focus on legislative and institutional protections, processes for human rights protection and redress and data on the negative obligations to respect and protect human rights by permitting insight into the positive obligation to progressively realize economic and social human rights in a way that permits cross-state comparisons.³²

Conclusions

Over the last decade, the Brazilian state has taken important measures to act on its economic and social rights obligations. Policies such as *Fome Zero* and its flagship CCT program *Bolsa Família* were initially introduced as policies to help speed the progressive realization of these basic rights by making assistance available to all who needed it (de Brito, 2008, p. 188). Various other policy initiatives have been implemented to help advance the realization of economic and social rights including the National Qualification Plan to improve employment opportunities for Afro-Brazilians, indigenous people and women, the National School Fund Program which distributes free daily meals to 37 million public school students, and the launch of the National Housing of Social Interest System which

³¹ See, for example, country and civil society reports submitted to the UN Committee on Economic and Social Rights or the human rights indicators being developed by OHCHR.

³² Although this analysis is specific only to the states of Brazil, the ESRF-I was initially designed for application to international cross-country analysis.

is responsible for upgrading the quality of housing and urbanizing informal slum developments across the country (Committee on Economic, Social and Cultural Rights, 2009, para 3).

Our application of the ESRF-I methodology to the states of Brazil exposes considerable inter-state variation in the efforts that have been made. Although no state is fully meeting its obligations in this regard, states such as Santa Catarina, São Paulo, Paraná, Minas Gerais and Rio Grande do Sul, among other high-scoring states, are coming closer to meeting their economic and social human rights obligations than other states, including much higher-income states such as the Distrito Federal and Rio de Janeiro. Overall, states struggle the most to meet their obligations to progressively realize the right to decent work and the right to adequate housing while achievements towards realizing the rights to education, to adequate food and to the highest attainable standard of health were generally more promising. This may reflect the effectiveness of the state programs such as *Bolsa Família* which prioritize reducing poverty and realizing the rights to education and health.

Our analysis suggests that states which make the most effort to meet their economic and social human rights obligations are also the most effective at keeping the number of people living below the poverty line low and at reducing income inequality. They also tend to be more heavily urbanized and to have smaller minority populations. In addition to these correlations, our research suggests that the quality of local governance, citizen participation in setting budgetary priorities being one component of this, may also contribute to higher ESRF scores. Our results differ significantly from rankings based on GDP per capita alone or the HDI, demonstrating the utility of the ESRF-I as a measure of the progressive realization of economic and social human rights. However, other qualitative and quantitative measures are necessary to paint a more complete picture of economic and social human rights fulfillment in Brazil.

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ANNEX I

Indicators Used in the ESRF-I Calculations

(continua)

Right	General Indicator	Time Frame	Definition	Source	Minimums and Maximums
	Poverty rate	1990 – 2007 (skips 91, 94 and 2000)	Proportion of people with household incomes below the national poverty line	IPEA*	15% not poor (Piauí, 1983) 93% not poor (Santa Catarina, 2006)
			One of the three different definitions of the level of informality offered by Ipeadata based on IBGE's National Household Survey (PNAD). This rate corresponds to the result of the following division: (informal workers + own-account workers) / (formal workers + informal workers + own-account workers + employers).		
Decent Work	Vulnerability in employment (III)	1992 – 2007 (skips 94 and 2000)		IBGE*	17% employed formally (Maranhão 1995, 1998) 64% employed formally (Distrito Federal 1996, 1998, 2004, 2005, 2006)

(continua)

Education	Net enrollment of 7 – 14 year-olds	1990 – 2007 (skips 91, 94 and 2000)	Ratio of the number of young people aged 7 to 14 attending school to the total number of youths of those ages	IPEA*	56.1% enrollment = 56%(Alagoas, 1981) 98.62% enrollment (Santa Catarina, 2006)
Food	Low birth weight	1994 – 2005	% of babies born from pregnancies 36+ weeks who weighed below 2.5Kg over the total birth rate (live births only)	MS/ SVS	51.62% = 51% normal birth weight (Sergipe, 1994) 95.9% (Rondônia, 2000)
	Life Expectancy	1991 – 2006	Life expectancy at birth	IBGET	59.7 years = 59 years(Alagoas, 1991) 75.11 years (Distrito Federal, 2006)
Health	MMRa	2000, 2005 (2 years only)	MMR (per 100,000 live births)	CBBCD via Unicef Brasil†	99.9015% survival (Piauí, 2005) 99.973% survival (Paraíba, 2000)
	U5MRa	1991, 2005, 2006 (3 years only)	U5MR (per 1,000 live births)	IBGE via Unicef Brasil†	86.33% survival (Alagoas, 1991) 98.4% (Rio Grande do Sul, 2006)

(continua)

	Access to improved sanitation	1980 – 2007 (skips 91, 94 and 2000)	% of people living in permanent private housing with access to a sewerage or drainage network or septic system	IPEA*	1% with access (actually .538 but rounded up in this instance) (Tocantins, 1996)				
	Access to improved water source	1990 – 2007 (skips 91, 94 and 2000)	% of people in households with piped water connections to the general network or to a well or spring	IPEA*	16% with access (Maranhão, 1982)				
Housing	Durable housing materials	1990 – 2007 (skips 91, 94 and 2000)	% people who live in durable housing. Durable housing is defined as those in which the roof and walls are made of durable materials.	IPEA*	33% in durable housing (Maranhão, 1983)				
Income Measure	GDP per capita	1990 – 2006	Per capita state-level GDP in thousands of constant 2000 Reais, deflated with the "Deflator Implícito do PIB Nacional"	IBGE*	100% (Roraima, 1990)				

	State-Level HDI	2005		UNDP Brazil \$					
Additional Variables	Total Population, Urban Population and Total Afro-Brazilian Population	2000		IPEA*					
	State-level Gini coefficients	2006		IBGE*					

*Retrieved from the databases of IPEA, 1 February, 2009 available at <http://www.ipeadata.gov.br>

† Retrieved from the databases of the Ministério da Saúde, 1 February, 2009 available at <http://tabnet.datasus.gov.br>

‡ Obtained by special arrangement from UNICEF Brazil

§ Retrieved from the website of UNDP Brazil, 20 July, 2009 available at <http://www.pnud.org.br/home>

(conclusão)

ANNEX II

Functions and Y(p) Values for All Indicators

Indicator	Function	Penalty Applied when GDP per capita is > of =
% Not Poor	$y = \left(107.7736821883518 + \left(\frac{-866.0685110336664}{GDP \text{ per capita}^2} \right) \right)$	R\$10.678,82
% Workforce in Formal Employment	$y = \left(69.72513339931665 + \left(\frac{-434.503891172549}{GDP \text{ per capita}^2} \right) \right)$	n/a
Net Primary Enrollment	$y = \left(102.726593 + \left(\frac{-192.130501}{GDP \text{ per capita}^2} \right) \right)$	R\$8.391,29
% New-Borns with Normal Birth Weight*	y = 95.9	R\$5.160
Life Expectancy	$y = \left(76.73422911171755 + \left(\frac{-141.2617114474047}{GDP \text{ per capita}^2} \right) \right)$	n/a
Maternal Survival*	y = 99,9739	R\$4.550
Under-5 Survival	$y = \left(100.0345791078585 + \left(\frac{-95.72276135010452}{GDP \text{ per capita}^2} \right) \right)$	R\$7.652,54
% with Access to Improved Sanitation	$y = \left(103.1866803694899 + \left(\frac{-802.7568408264116}{GDP \text{ per capita}^2} \right) \right)$	R\$15.871,67
% with Access to Improved Water Source	$y = \left(113.252099294585 + \left(\frac{-714.5404709377362}{GDP \text{ per capita}^2} \right) \right)$	R\$7.342,96
% Living in Housing Constructed with Durable Materials	$y = -686.249485673126 + (984.5662565377468 \times GDP \text{ per capita}) + (-307.289452564886 \times GDP \text{ per capita}^2)$	R\$4.540,33

* Income was found to matter little in the realization of high levels of normal birth-weight babies and maternal survival. Frontiers for these indicators are therefore linear, equal to the highest level of achievement for any state in any year. Penalties were applied to all states and all years with incomes equal to or higher than that of the best-performer.

ANNEX III

Rights Sub-Scores for All States and Final ESRF-I Values

	Decent Work	Education	Adequate Food	Health	Adequate Housing	ESRF Values
Acre	70.42	91.46	93.44	94.28	61.06	82.13
Alagoas	55.59	93.37	92.58	80.99	68.10	78.13
Amapá	76.17	98.02	91.20	90.61	70.86	85.37
Amazonas	65.75	91.24	92.86	91.19	76.67	83.54
Bahia	53.41	92.81	91.09	94.58	77.85	81.95
Ceará	53.22	97.80	92.85	92.11	75.35	82.27
Distrito Federal	85.45	87.51	82.95	94.79	96.64	89.47
Espírito Santo	83.42	92.69	90.91	95.06	91.29	90.67
Goiás	84.07	96.51	91.58	98.15	79.82	90.03
Maranhão	39.73	91.03	93.16	84.68	62.73	74.27
Mato Grosso	78.47	93.18	92.56	93.57	72.09	85.97
Mato Grosso do Sul	87.93	97.67	92.35	97.87	73.95	89.96
Minas Gerais	87.38	91.70	86.44	99.11	93.80	91.687
Pará	61.26	92.30	90.48	97.27	73.77	83.02
Paraná	56.41	95.75	94.16	89.60	82.73	83.73
Paraná	86.14	96.41	88.87	96.38	90.64	91.688
Pernambuco	57.53	93.68	91.91	85.69	75.42	80.85
Piauí	44.45	100.00	93.79	90.36	79.52	81.62
Rio de Janeiro	84.45	87.42	86.21	92.15	97.81	89.61
Rio Grande do Norte	67.22	96.22	92.60	91.19	80.46	85.54
Rio Grande do Sul	83.12	95.37	86.55	98.51	93.66	91.44
Rondônia	80.49	92.48	95.01	93.15	79.75	88.18
Roraima	59.48	94.11	91.10	90.26	87.35	84.46
Santa Catarina	97.18	96.87	89.64	99.01	95.31	95.60
São Paulo	89.17	94.93	85.77	95.97	97.87	92.74
Sergipe	60.10	94.16	90.98	91.76	93.11	86.02
Tocantins	60.07	98.04	93.70	83.32	64.82	81.99

ANNEX IV

ESRF-I Brazil Results and Most Recent-Year Indicators

(continua)

	ESRF Values	GDP per capita in thousands of constant year-2000 reais	Net Poor (% population above national poverty line)	Formal Employment (% population not working in vulnerable employment)	Net Enrollment of 7 to 14 year-olds
Acre	82.13	4.180	58.62	47.34	93.62
Alagoas	78.13	3.066	45.06	40.13	93.24
Amapá	85.37	5.072	69.97	48.05	97.06
Amazonas	83.54	7.022	64.10	46.81	95.33
Bahia	81.95	4.109	55.76	35.21	94.11
Ceará	82.27	3.346	55.29	33.10	95.35
Distrito Federal	89.47	22.322	84.34	63.86	95.81
Espirito Santo	90.67	9.045	86.25	53.03	96.72
Goiás	90.03	5.914	85.53	47.92	96.99
Maranhão	74.27	2.747	46.71	26.40	91.92
Mato Grosso	85.97	7.332	83.52	47.34	96.30
Mato Grosso do Sul	89.96	6.292	86.78	51.52	97.71
Minas Gerais	91.687	6.547	85.18	52.64	95.29
Pará	83.02	3.705	61.78	36.58	93.52
Paraíba	83.73	3.269	57.92	33.65	94.44
Paraná	91.688	7.812	83.21	55.32	97.90
Pernambuco	80.85	3.875	51.52	40.34	94.24
Piauí	81.62	2.501	50.43	26.73	95.68
Rio de Janeiro	89.61	10.505	83.78	57.24	94.65
Rio Grande do Norte	85.54	4.009	60.73	42.92	95.41

(conclusão)

Rio Grande do Sul	91.44	8.495	83.12	53.75	97.71
Rondônia	88.18	4.981	71.00	50.80	94.68
Roraima	84.46	5.387	61.37	39.91	95.64
Santa Catarina	95.60	9.283	92.96	62.28	98.62
São Paulo	92.74	11.605	86.65	61.20	97.91
Sergipe	86.02	4.488	58.52	39.97	94.99
Tocantins	81.99	4.280	64.82	35.62	96.42

ESRF-I Brazil Results and Most Recent-Year Indicators

(continua)

	Normal Birth Weight (%)	Life Expectancy at Birth	Maternal Survival	Under-Five Survival (%)	Sanitation Access (%)	Water Access (%)	Durable Housing (%)
Acre	93.11	71.1	99.9542	96.16	38.44	54.29	91.41
Alagoas	92.57	66.36	99.9472	93.18	27.83	68.96	96.33
Amapá	92.22	70.06	99.9366	97.09	28.23	81.84	97.87
Amazonas	93.12	71.32	99.9469	96.79	56.55	82.26	93.07
Bahia	92.1	71.72	99.929	95.79	49.50	75.38	96.30
Ceará	92.72	69.93	99.9179	96.28	40.54	76.18	94.50
Distrito Federal	91.17	75.11	99.9566	98	94.07	96.07	98.91
Espirito Santo	92.6	73.42	99.9466	97.74	73.79	97.09	98.56
Goiás	92.52	73.1	99.964	97.66	35.72	97.64	99.09
Maranhão	92.83	67.24	99.9086	94.86	49.18	60.73	72.73
Mato Grosso	93.18	72.85	99.9141	97.53	33.86	89.68	95.31
Mato Grosso do Sul	92.87	73.47	99.9443	97.84	22.05	98.17	96.55
Minas Gerais	90.56	74.37	99.9679	97.53	75.27	95.46	99.51
Pará	91.73	71.67	99.9409	97	52.84	64.71	83.05

	(conclusão)						
Paraná	93.28	68.64	99.9736	95.04	48.28	80.40	97.75
Paraná	91.73	73.8	99.9339	97.77	69.00	98.89	98.17
Pernambuco	92.39	67.91	99.954	94.99	39.35	77.95	96.67
Piauí	93.11	68.55	99.9015	96.46	61.20	63.31	89.94
Rio de Janeiro	91.06	72.75	99.9368	97.65	90.15	98.36	95.54
Rio Grande do Norte	92.69	70.1	99.9465	95.53	44.98	83.15	97.88
Rio Grande do Sul	90.94	74.75	99.9443	98.4	78.57	98.13	98.38
Rorodônia	93.87	70.93	99.9466	97.1	47.06	88.90	94.60
Roraima	92.25	69.62	99.9484	97.69	70.90	85.14	95.19
Santa Catarina	92.18	75.03	99.9669	98.1	83.74	98.34	98.50
São Paulo	91.06	73.94	99.9646	98.16	91.05	99.14	99.26
Sergipe	92.08	70.6	99.9492	95.69	72.23	89.04	97.65
Tocantins	93.23	70.99	99.9279	96.63	20.54	81.23	91.01

All figures are for 2006 except Maternal Survival (2005) and Normal Birth Weight (2005 except data for Tocantins which are from 2004)

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DIREITO AO DESENVOLVIMENTO E JUSTIÇA DE TRANSIÇÃO – CONEXÕES E ALGUNS DILEMAS

Inês Virgínia Prado Soares

Sumário: 1 Introdução – 2 Direito ao desenvolvimento – 2.1 Desenvolvimento como direito humano – 2.2 Desenvolvimento como direito humano – A Declaração sobre o Direito ao Desenvolvimento (ONU, 1986) e alguns outros documentos internacionais – 2.3 Direito ao desenvolvimento com direito fundamental – A Constituição de 1988 – 3 Justiça de transição – 3.1 Breves considerações sobre justiça de transição e deveres do Estado perante a comunidade internacional – 3.2 Justiça de transição e o cumprimento das obrigações pelo Estado brasileiro – 4 A abordagem de direitos humanos para o direito ao desenvolvimento e para a justiça de transição – 5 Enfrentando alguns dilemas no olhar conjunto para o direito ao desenvolvimento e a justiça de transição – 5.1 Direitos indivisíveis e seu custo social e econômico – 5.2 Diferenciação entre as políticas públicas sociais e o cumprimento das obrigações da justiça de transição – 5.3 O mensurável fica no passado e o desenvolvimento caminha para o futuro...

1 Introdução

O estudo da relação entre direito ao desenvolvimento e fatores sociais, econômicos e políticos é cada vez mais essencial para a compreensão das práticas democráticas e da efetividade dos direitos humanos no Estado de Direito. É sob esta ótica que o presente capítulo analisará os dilemas comuns ao direito ao desenvolvimento e ao conjunto de ações, abordagens e mecanismos estabelecidos na democracia após a transição de um período de graves violações de direitos humanos (conjunto este que se convencionou chamar de justiça de transição).¹

¹ Para compreender os limites conceituais da justiça de transição ver: BICKFORD, Louis. *Transitional Justice*. In: HORVITZ, Leslie Alan; CATHERWOOD, Christopher. *Encyclopedia of genocide and crimes*