
The powerful impact of statistics creates four caveats in their use:

- **Overuse** – Statistics alone cannot capture the full picture of rights and should not be the only focus of assessment. All statistical analysis needs to be embedded in an interpretation drawing on broader political, social and contextual analysis.

- **Underuse** – Data are rarely voluntarily collected on issues that are incriminating, embarrassing or simply ignored. One European social worker in the 1980s, complaining about the lack of data on homeless people, remarked, 'Everything else is counted – every cow and chicken and piece of butter.' Even when data are collected, they may not be made public for many years – and then there may be political pressure on the media not to publicize the findings.

- **Misuse** – Data collection is often biased towards institutions and formalized reporting, towards events that occur, not events prevented or suppressed. But lack of data does not always mean fewer occurrences. Structural repression is invisible when fear prevents people from protesting, registering complaints or speaking out.

- **Political abuse** – Indicators can be manipulated for political purposes to discredit certain countries or actors. And using them as criteria for trade or aid relationships would create new incentives to manipulate reporting.

### 3.2 The use of indicators by the Committee on Economic, Social and Cultural Rights and the IBSA methodology for monitoring compliance with economic and social rights

An even more ambitious view is that indicators could be used by the Committee on Economic, Social and Cultural Rights to breathe new life into its monitoring of the implementation of the International Covenant on Economic, Social and Cultural Rights, by a process through which each State party would identify its priorities with the Committee, and set well-defined objectives to be achieved by the time of the submission of its next report. The methodology is referred to as ‘IBSA’ since it involves four steps: (a) the choice of appropriate *indicators*; (b) the choice, at national level, of *benchmarks*, i.e. objectives to be realized within a defined time framework; (c) *scoping*, i.e. the discussion of those benchmarks between the Committee and the State concerned, with a view both to adopting objectives ambitious enough and to being realistic; (d) *assessment*, following the expiration of the time-period concerned, taking as a departure point whether the benchmarks agreed upon have been achieved. Already in its first general comment, the Committee on Economic, Social and Cultural Rights had referred to the usefulness of benchmarks being adopted by States parties to the Covenant, in order to enable monitoring of progress towards time-bound targets (see General Comment No. 1, *Reporting by State Parties* (1989), para. 6). This is also what the Committee on Economic, Social and Cultural Rights refers to, more explicitly, in the following general comments:

Right to health indicators and benchmarks

57. National health strategies should identify appropriate right to health indicators and benchmarks. The indicators should be designed to monitor, at the national and international levels, the State party’s obligations under article 12. States may obtain guidance on appropriate right to health indicators, which should address different aspects of the right to health, from the ongoing work of WHO and the United Nations Children’s Fund (UNICEF) in this field. Right to health indicators require disaggregation on the prohibited grounds of discrimination.

58. Having identified appropriate right to health indicators, States parties are invited to set appropriate national benchmarks in relation to each indicator. During the periodic reporting procedure the Committee will engage in a process of scoping with the State party. Scoping involves the joint consideration by the State party and the Committee of the indicators and national benchmarks which will then provide the targets to be achieved during the next reporting period. In the following five years, the State party will use these national benchmarks to help monitor its implementation of article 12. Thereafter, in the subsequent reporting process, the State party and the Committee will consider whether or not the benchmarks have been achieved, and the reasons for any difficulties that may have been encountered.


Indicators and benchmarks

53. To assist the monitoring process, right to water indicators should be identified in the national water strategies or plans of action. The indicators should be designed to monitor, at the national and international levels, the State party’s obligations under articles 11, paragraph 1, and 12. Indicators should address the different components of adequate water (such as sufficiency, safety and acceptability, affordability and physical accessibility), be disaggregated by the prohibited grounds of discrimination, and cover all persons residing in the State party’s territorial jurisdiction or under their control. States parties may obtain guidance on appropriate indicators from the ongoing work of WHO, the Food and Agriculture Organization of the United Nations (FAO), the United Nations Centre for Human Settlements (Habitat), the International Labour Organization (ILO), the United Nations Children’s Fund (UNICEF), the United Nations Environment Programme (UNEP), the United Nations Development Programme (UNDP) and the United Nations Commission on Human Rights.

54. Having identified appropriate right to water indicators, States parties are invited to set appropriate national benchmarks in relation to each indicator [see E. Riedel, ‘New Bearings to the State Reporting Procedure: Practical Ways to Operationalize Economic, Social and Cultural
Rights – the Example of the Right to Health’ in S. von Schorlemer (ed.), Praxishandbuch UNO. Die Vereinten Nationen im Lichte globaler Herausforderungen (Heidelberg: Springer Verlag, 2002), pp. 345–58. The Committee notes, for example, the commitment in the 2002 World Summit on Sustainable Development Plan of Implementation to halve, by the year 2015, the proportion of people who are unable to reach or to afford safe drinking water (as outlined in the Millennium Declaration) and the proportion of people who do not have access to basic sanitation.] During the periodic reporting procedure, the Committee will engage in a process of ‘scoping’ with the State party. Scoping involves the joint consideration by the State party and the Committee of the indicators and national benchmarks which will then provide the targets to be achieved during the next reporting period. In the following five years, the State party will use these national benchmarks to help monitor its implementation of the right to water. Thereafter, in the subsequent reporting process, the State party and the Committee will consider whether or not the benchmarks have been achieved, and the reasons for any difficulties that may have been encountered (see General Comment No.14 (2000), para. 58). Further, when setting benchmarks and preparing their reports, States parties should utilize the extensive information and advisory services of specialized agencies with regard to data collection and disaggregation.

This methodology was first conceptualized in 2002 primarily by Eibe Riedel, a member of the Committee on Economic, Social and Cultural Rights, in a partnership between the University of Mannheim and the international NGO FIAN (Foodfirst Information and Action Network), using the right to adequate food as an example. Riedel provides the following summary of the four steps involved and of the advantages of the approach:

**Eibe Riedel, ‘The IBSA Procedure as a Tool of Human Rights Monitoring’, paper prepared for a joint project between the chair of Professor Riedel and FIAN international (no date):**

With regard to the first step, human rights indicators involve the State Party acceptance of relevant indicators as agreed upon through close cooperation with NGOs and relevant specialized agencies that contribute to the effective mainstreaming of human rights in their respective domains.

The next step, national benchmarks, are subsequently set by States Parties which enable a differentiated approach to the vastly differing situations in which most countries find themselves.

The third step, scoping, involves a discussion with the Committee of the State Party established benchmarks, in order to arrive at a consensus about them.

The previous three steps form the basis for the final assessment step that occurs during the dialogue stage between the State Party and the Committee in preparation for the drafting of the latter’s Concluding Observations.

The advantage of this four-step IBSA-procedure lies in the truly cooperative and interactive spirit between States Parties, the Committee, specialized agencies, and NGOs wherein a more focussed and meaningful discussion can take place. This new approach is premised on the
assumption that article 2(1) of the Covenant places an unequivocal legally binding duty on all States Parties, the intensity of which is balanced against the objective situation in which States Parties find themselves. Here, while all States must strive to realize all Covenant rights, poorer countries’ obligations depend on an assessment of their specific country situations. For example, with reference to the Millennium Development Goals (MDG)-indicator 'Proportion of population with access to improved sanitation', while State Party A, belonging to the group of least developed nations, may have to demonstrate that its percentage of population with access to such a sanitation improved from 50% to 60% during a given reporting period, State Party B, belonging to the group of the most highly developed countries may have to demonstrate that its literacy rate improved from 92% to 95% during that same reporting period. At the subsequent State reporting period five years later, if State A, on assessment by the Committee proved to have reached only a 52% level of improved sanitation, 8% short of the benchmarked 60%, certain mitigating factors may be taken into consideration. Here, had State Party A allocated more resources to food care, or a natural disaster beset the nation upsetting State Party resource allocations, the Committee might still be inclined to praise the State Party A for its progress under difficult circumstances. On the other hand, during the same reporting period, had State Party B achieved an 96% improved sanitation in the absence of mitigating factors, although objectively achieving a much more substantial gain than State Party A, the Committee would still be free to criticize State Party B for not fulfilling its set benchmark. Although, at first glance, the aforesaid example may appear to impose a double standard, this is not the case as, in fact, it simply means that in setting benchmarks, realistic targets have to be agreed, and once agreed, are critically assessed at the next reporting stage. In essence, this means that both States Parties A and B owe fulfilment obligations. However, should they fall short of their benchmarked goals, the onus is on each State Party to prove why these targets were not or could not be met.

This exercise involves the prioritization of a constructive dialogue over an adversarial violations approach. Within this context, only in situations where a State Party wilfully violated its Covenant duties, or obligations, would the Committee in fact, recommend effective measures to redress the grievances caused by such violations.

... These benchmarks will be recruited from all the different categories of indicators, that is outcome benchmarks, structural benchmarks and process benchmarks. Particularly well suited for the benchmarking are the outcome indicators with their result-oriented character. On the other hand, it can be doubted that structural and process benchmarks would be helpful for the monitoring process. These doubts are based on the fact that many structural and process indicators are not obligatory by themselves, the state having a margin of discretion as how to realize the esc-rights. But this discretion requires that the state identifies goals (benchmarks) and the legislative intent (structural benchmarks), and the implementation effort (process benchmarks), and the journey is the reward.

... In cases where benchmarked targets are not met, the Committee can examine State Party reasons for such non-fulfilment. In such circumstances, civil strife and natural catastrophes undoubtedly will act as mitigating factors. It will be interesting to differentiate between the three categories of indicators: If the state has failed to meet structural benchmarks (e.g. because it did not implement a scheduled consumer protection law), the state will hardly be able to exculpate itself, as these structural measures are mostly resource-independent. The non-compliance with set process benchmarks, by contrast, will more often be approved by the Committee, as the assessment has to take into consideration the often resource-intensive
aspect of these benchmarks. Finally, the Committee has to undertake a critical assessment of the outcome benchmarks. For instance, it may be very difficult to criticize a State’s noncompliance of a particular outcome situation, if the state has met its structural and process obligations. A comprehensive assessment also requires to take the factors into account that the state can not or can only influence with a great difficulty.

... The IBSA process thus has a Janus-type appearance: it looks back, in order to assess the past reporting period; it looks forward, in order to target future developments in the fuller realization of rights. Looking back, it may force the State party to candidly assess for itself, why certain targets were not met, or could not be met, and this will enable the State party to set realistic new benchmarks for the next reporting period.

3.3 Indicators in the Inter-American system

On 16 November 1999, the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador) (O.A.S. Treaty Series No. 69 (1988)) entered into force. Although the Protocol lists a number of social and economic rights which the States parties undertake to observe, this is subject to a progressivity clause, making the implementation of the rights dependent on the available resources: the parties ‘undertake to adopt the necessary measures, both domestically and through international cooperation, especially economic and technical, to the extent allowed by their available resources, and taking into account their degree of development, for the purpose of achieving progressively and pursuant to their internal legislations, the full observance of the rights recognized in this Protocol’ (Art. 1). In addition, only the right to form and join trade unions (Art. 8(a)) and the right to education (Art. 13) may be adjudicated through the filing of individual petitions (Art. 19(5)). All the rights listed are the subject of reporting by the States parties to the Protocol, however: the reports submitted by States are transmitted to the Inter-American Economic and Social Council and the Inter-American Council for Education, Science and Culture in order that they be examined, together with information provided by specialized organizations of the Inter-American system. In their annual reports submitted to the OAS General Assembly, the Inter-American Economic and Social Council and the Inter-American Council for Education, Science and Culture include a summary of the information received from the States parties to the Protocol and the specialized organizations concerning the measures adopted in order to ensure respect for the rights acknowledged in the Protocol itself and their general recommendations.

Inter-American Commission on Human Rights (IACHR), Guidelines for Preparation of Progress Indicators in the Area of Economic, Social and Cultural Rights (OEA/Ser/L/V/II.129 Doc. 5, 5 October 2007):

[Article 19 of the Protocol of San Salvador provides that States parties shall submit periodic reports on the progressive measures they have taken to ensure due respect for the rights set