



Indicators – Benchmarks – Scoping – Assessment

Background Paper

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1. Introduction

The idea to institutionalize the use of human rights indicators and benchmarks in order to refocus and streamline the process of state reporting before the Committee on Economic, Social and Cultural Rights (the Committee) was forged at the beginning of the new millennium and gained momentum pre-dominantly through the so-called IBSA project, a joint initiative of the German federal government and the University of Mannheim. The acronym “IBSA” stands for Indicators Benchmarks Scoping and Assessment.

Between 2004 and 2009, this initiative took the shape of two government funded research projects with the mandate to identify – as an entry point – indicators for the right to adequate food, as stipulated by article 11 of the International Covenant on Economic, Social and Cultural Rights (the Covenant), and then follow up by starting a process of practical validation of the identified indicators. The first of the two projects produced a list of 37 right to food indicators with corresponding indicator descriptions. With a six-month piloting phase at its core, the second project engaged in an on-going process of validating and fine-tuning this indicator list – finally arriving at 25 indicators. In addition, this project intensified the conceptual elaboration of the other essential element of IBSA: the setting and scoping of benchmarks as concrete reference points for state implementation efforts.

The purpose of this paper is to give an idea of how the two main procedural components of the IBSA mechanism, bench-marking and scoping, might look like in practice. The methodological approach proposed shall be

considered a starting point for further debate and elaboration among State party representatives, Committee members and other actors involved in international human rights monitoring. Potential benefits for the process of state reporting are outlined.

2. IBSA as a tool for human rights monitoring

The IBSA mechanism essentially contains four elements: (1) Indicators representing the (core) content of the respective Covenant rights, (2) the use of Benchmarks as target points for implementation of these rights, (3) the process of Scoping enabling joint ownership of the mechanism by the States parties as well as the Committee, and (4) Assessment as periodic examination of the mechanism’s results.

a) Characteristics of human rights monitoring

Any mechanism to guide the implementation of internationally guaranteed human rights should feature some distinct characteristics qualifying it as a *human rights*-based mechanism.

Firstly, such mechanism should be geared towards the obligations, both general and specific, emanating from each individual human right. As an indicator-based mechanism, IBSA, faces the challenge of doing justice to these state obligations when it identifies indicators and corresponding benchmarks. The indicators have to not only cover all essential issues surrounding the right at hand, but also have to convey relevant information that enables stake-holders to examine whether the state is successfully engaging in efforts to meet its obligations, without infringing upon the principle of non-discrimination. Further-more,

indicators need to reflect the essential attributes of economic, social and cultural rights (esc-rights), i.e. adequacy, availability and accessibility. Only then can they embrace the full scope of the content of these rights, beginning with the mini-mum core content defined by the Committee's General Comments.

IBSA also has to encompass some under-lying principles fundamental to the concept of human rights. These principles are represented by the acronym 'PANTHER': **P**articipation – **A**ccountability – **N**on-discrimination – **T**ransparency – **H**uman dignity – **E**mpowerment – **R**ule of law. This cluster of seven principles is complemented by the overarching principle of the indivisibility of all human rights. Subsequently, each indicator and benchmark has to embrace and incorporate these principles.

b) Functions of human rights monitoring

While accounting for the above mentioned characteristics, IBSA is designed to function as a monitoring mechanism facilitating not only the State parties' reporting duties, but further promoting the implementation of human rights at the national level. It has to: (1) capture information on the existing structural conditions for implementation, the process of implementation as well as on the out-comes of such processes; (2) measure progressivity; and, (3) identify and give priority to disadvantaged and marginalized persons or groups of persons.

c) Levels of human rights monitoring

Finally, the IBSA mechanism should ideally transcend its status as a module for the state reporting procedure before the Committee, and be further developed into an instrument

that can give guidance at the regional and national levels, as the regional and national levels and the international level are inter-dependent and permanently interacting. On the one hand, international monitoring looks at the domestic implementation of international obligations, and aims to serve as a tool to encourage the improvement of national processes. Moreover, due to its potential to collect different examples of implementation experiences from around the world, IBSA can serve as a forum to identify global gaps or structural challenges for better implementation and eventually seek for solutions to global problems through renewed global standard setting (such as through General Comments). On the other hand, regional human rights systems can also serve to generate and encourage better implementation of human rights at the national level on the basis of the common regional implementation issues, which can determine such implementation in a specific continent or group of countries with, for example common socio-economic and political problems or similar administrative capacities. Existing regional standards, as well as regionalized good practices, may also play a role.

3. IBSA as a module in the process of state reporting

At its core, IBSA is designated to work as a module in the process of state reporting. According to article 16(1) of the Covenant, every state that becomes a party to this treaty accepts the obligation to regularly report "on the measures which they have adopted and the progress made in achieving the observance of the rights recognized herein." With the United Nations' Economic and Social Council

(ECOSOC) resolution 1988/4 of 24 May 1988, a regular reporting period has been established. States are required to report two years after entry into force of the Covenant for the State party concerned followed by reports every five years thereafter. This reporting period is also reflected in the Committee's rule of procedure 58, which was adopted by the treaty body itself in 1990. Through its resolution 1985/17 of 28 May 1985, and in line with article 17(1) of the Covenant, the ECOSOC had set up the Committee with its mandate to monitor States parties' implementation efforts.

The content of the reports, which are submitted according to the above-mentioned provisions, is guided by the Reporting Guidelines of the Committee last revised in 2008. The IBSA procedure, as a new reporting module, should primarily be seen in conjunction with the second part of state reports; the treaty-specific document. The expected content of state reports is outlined throughout the Guidelines. For example, paragraph 2 of the Guidelines states that:

" the treaty-specific document submitted to the Committee on Economic, Social and Cultural Rights...should contain specific information relating to the implementation, in law and in fact, of articles 1 to 15 of the Covenant, taking into account the general comments of the Committee, as well as information on recent developments in law and practice affecting the full realization of the rights recognized in the Covenant. It should also contain information on the concrete measures taken towards that goal, and the progress achieved, including – except for initial treaty-specific documents – information on the steps taken to address

issues raised by the Committee in the concluding observations on the State party's previous report, or in its general comments."

This paragraph hints at possible entry points for the use of indicators, as it speaks of implementation in law, concrete measures taken, and progress achieved.

The general requirements for the treaty-specific document are complemented by instructions concerning the individual provisions of the Covenant. An overall examination of these instructions leads to the conclusion that the application of indicators would be compatible with the existing *modus operandi* of state reporting. Furthermore, it would also promise to enhance the effectiveness and sustainability of the process by reshaping and specifying the focus of the reporting instructions. As a consequence, indicators (and benchmarks) have the potential to positively impact the practice of constructive dialogue, in particular during the assessment of the reports by the Committee, thereby providing a more clear-cut structure and the possibility to concentrate on those issues that are most relevant for the particular situation of the reporting state.

Despite the fact that the global recognition and implementation of esc-rights has greatly benefited from more than two decades of reporting practice, the process is far from perfect and still faces several challenges. These challenges range from the backlog of reports waiting to be examined by the Committee, to the unwillingness or inability of many states to submit their reports in due time, and to the unmanageable reporting burden states see themselves confronted with. The reporting process can certainly improve its focus and

coherence with regard to the content of the reports and the questions that are asked during the Committee sessions. Unfortunately, some States produce qualitatively deficient reports that: (a) are incomplete; (b) evade the direct answer of Committee questions; (c) only superficially address material issues; and/or, (d) are out-of-date as they refer to facts and figures that have long since changed. The unsatisfactory nature of the reporting system may also be symptomatic of the lengthy backlog of reports pending Committee review.

However, this situation is further complicated by:

- (a) The limited resources of smaller developing states to produce initial or periodic reports;
- (b) Countries that lack the technical expertise to draft such reports; and/or,
- (c) Countries not availing themselves of the periodic report advisory services made available by the OHCHR.

The Committee formulates, after nine hours of dialogue with individual States parties, concluding observations and recommends specific courses of action open to the former that would assist in the realization of their commitments.

Unfortunately, States parties often fail to implement Committee recommendations; a circumstance that will not be adequately addressed until the Committee has adopted a more formalized follow-up procedure to measure compliance or non-compliance with recommendations. Finally, the State reporting system is complicated by the fact that, of the 160 States party to the Covenant, a significant proportion has either completely declined to satisfy their reporting commitments or are

many years behind in their reporting obligations.

4. Benchmarking and Scoping as core elements of IBSA

Against this background, the main objective of the IBSA mechanism is to provide stakeholders involved in the state reporting process with a tool that seeks to overcome the above-mentioned challenges. The state reporting procedure would greatly benefit from a monitoring tool that would substantially increase its efficiency, practicability and transparency.

To this end, the Committee has already started to embrace the idea of indicator-guided monitoring and, in all its General Comments since No. 14 on the right to health, has proposed to engage in a four-step discussion of:

- (a) Human rights indicators;
- (b) Nationally set benchmarks;
- (c) Scoping; and
- (d) Assessments.

Indicators offer States parties concrete reference points with regard to identifying certain problem areas. They are compiled by the Committee in close cooperation with UN Specialized Agencies and other actors from the UN system, such as Special Rapporteurs and Independent Experts.

Benchmarks are suggested by the State party to the Committee, placing particular emphasis on prioritized problem areas which may differ from state to state depending on the prevailing socio-economic situations of each state and which may or may not coincide with the compiled indicators.

Scoping involves the Committee and the State party discussing the state proposals and agreeing on specific benchmarks that are both reasonable and ambitious. Here, the Committee may also draw upon information provided by UN Specialized Agencies and other sources.

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 Concluding Observations. The main advantage of this four-step procedure lies in the cooperative and interactive interplay between States parties and the Committee. This interaction enables a more focused and meaningful discussion of the relevant issues.

Fittingly, the two core elements of IBSA are represented by the middle two letters of the acronym. The practical success of the mechanism as such depends on whether stakeholders are able to fill these two elements with substance. To this end, the first element of the mechanism, human rights indicators, can provide valuable assistance.

a) Benchmarking

The process of benchmarking may look like this: The State party due to report may choose either to select benchmarks for a particular right for which no specific indicator list so far exists, or for those rights for which indicator lists are available it may base its benchmarks on these lists choosing those issues which it deems to be of immediate importance at the national level, and for which it intends to set concrete targets. In submitting its next periodic report, the State party assesses its own targets that were to be met during the reporting cycle, outlining whether those targets have been

met, or the reasons for non-fulfillment. By describing the actual country situation in the State report, the State party also considers how an improvement of existing conditions might be achieved. This is a delicate exercise, and may often entice the State party to set benchmarks too low, so as to avoid admitting at the end of the reporting cycle that the targets set have not been realized or only to a limited and insufficient extent. The advantage of benchmarking by the State party lies in enabling the setting of priority concerns which the State party itself considers to represent particularly important problems. In practice, the Committee's pre-sessional working group would ask States parties due to appear before the Committee to identify priority areas and to set corresponding implementation targets for the upcoming reporting cycle. During or at the end of the dialogue in Geneva, the relevant States parties would inform the Committee of its decisions. Upon consideration of the States parties' priority areas and targets the Committee would in turn initiate the process of scoping coordinated by its respective country rapporteur.

b) Scoping

During scoping process, the designated country rapporteur, through the Secretariat of the Committee, will inform the Specialized Agencies and other relevant stakeholders about the State party proposals and request their comments. Such comments are taken up by the country rapporteur who will look at the selected problem areas and the corresponding benchmarks and decide whether the proposals can be confirmed as acceptable or whether modifications should be suggested to the State party. In this regard, both components of a State party proposal – the identified problem

area, as well as the target level contained in the benchmark – may be modified.

The country rapporteur then proceeds to transmit the Committee's position to the State party, usually represented by its Permanent Mission in Geneva. The Permanent Mission will be asked to confirm, until the next Committee session, with the government at home whether a newly proposed problem area or a higher/modified benchmark is politically and economically feasible and acceptable. In case the scoped benchmark is accepted the scoping process is complete; i.e. the yardstick for the examination of the next state report is set. If the newly identified or targeted benchmark is not accepted by the State party, the State party and the country rapporteur may, within the time frame mentioned above, engage in further negotiation. If no agreement can be reached, either on the problem area or on the specific targets set, the Committee may, nevertheless, pick up the issue during the next dialogue with the State party.

5. The added value of IBSA

The IBSA mechanism has a Janus-faced appearance: it looks back, in order to assess the past reporting period; it also looks forward, in order to target future developments aimed at the fuller realization of rights. Looking back, it may impress upon the State party the need to candidly assess for itself why certain targets were not met or could not be met. This will enable the State party to set realistic new benchmarks for the next reporting period.

In fact, since each human rights indicator reflects specific data with regard to structures, processes or outcomes related to the analyzed right, the analysis of those indicators should allow the competent state authorities to better

identify which particular measures or lack thereof are responsible for (a) the failure to realize the right altogether, and/or (b) for retrogressive trends in its realization, and/or (c) for stagnation with regard to the obligation to achieve progressively the realization of those dimensions of the right which are not immediately obligatory. As a result, the analysis should enable state authorities to design and adopt corrective measures in order to bring state policies in line with international human rights obligations.

Indeed, as result of the IBSA Project, the indicators identified as the most relevant indicators for the right to food are accompanied by so-called "explanatory sheets". These sheets contain, among other elements, a rationale identifying the relationship between the specific indicator and the human rights obligations, principles and legal content of the right, as well as with the respective Voluntary Guidelines on the Right to Food. Therefore, if a state official interpreting the information gathered by a specific indicator identifies negative data (for example non-existing policy or a negative quantitative statistic) he or she can use the indicator description to better understand which state obligations, human rights principles or legal elements of the rights are affected by the situation reflected by the negative data, and with which policies described in the Right to Food Guidelines are in connection. Moreover, other elements such as disaggregation criteria, contribute to identify patterns of discrimination, while comparing periodically gathered information can contribute to identify retrogression or stagnation in the realization of a right.

In short, the analysis of information gathered by IBSA Indicators (or other human rights indicator lists along with their respective

description sheets or meta data sheets) promises:

(a) To identify the public policies which are related to or rather affect the realization of a specific human right,

(b) To serve for a more transparent and human rights based policy analysis and

(c) To stimulate capacity building processes for policy makers, monitoring authorities and other stake holders.

Moreover, it should be taken in account, that some of the Indicators identified by the IBSA project for the right to food, and some of the indicators identified by the OHCHR for this and other rights, are now used as indicators for the Millennium Development Goals, this simplifies monitoring information collection, since the information gathered for development monitoring can also be used during the human rights analysis,

The advantages of employing benchmarks and indicators in relation to more effective monitoring and implementation of esc-rights are self-evident: in utilizing these tools the role of States parties in relation to variable obligations of conduct and process would be strengthened.

The IBSA procedure may considerably simplify and streamline the task of state reporting by prioritizing a select few problem areas for main reporting while the article-by-article reporting may be substantially condensed, say 50% for the benchmarked target areas and 50% for all other Covenant rights issues.

IBSA also would serve to show that varying circumstances, specific to the individual parties to the Covenant, prevail. By employing indicators and benchmarks, the Committee, as a monitoring body, may also enhance its own

effectiveness. More-over, it would provide a standardized procedure capable also of being applied nationally, thus substantially contributing to better implementation of Covenant obligations at the domestic level.

If after the five-year period a state is able to prove that it has reached the proposed benchmarks it can demonstrate in front of the international and national communities a true commitment to the ICESCR. If benchmarks are not reached the causes of the state's failure to do so have to be examined and new benchmarks for the next reporting period have to be defined. In this process of assessment, it can make use of Committees advice or recommendations on how to better perform the respective public policies towards the realization of the respective esc-rights.

Moreover, this approach allows the Committee to detect whether non-compliance is due to states' lack of will or efficiency, or whether it is due to external factors, as, for example, international economic or political factors, bringing to the Committee's attention certain global issues, which go beyond the responsibility of one specific state.

To conclude, IBSA does not pretend to entirely replace the existing narrative state reports, but to better focus the constructive dialogue. IBSA promotes the identification of priorities on the basis of the most problematic aspects of each right's implementation in a specific country context; those aspects in turn being identified with the help of indicators.

Since IBSA aims to be a voluntary process being applied by the state and not a mandatory mechanism, it respects states' margin of discretion. Nevertheless, using it can show states' good will in a better performance of

public policies toward Covenant's implementation, aligning public policies with international human rights standards.

Moreover, if a state chooses to make use of the IBSA procedure, it could benefit by focusing its report, avoiding the compilation of very general information, which sometimes makes the assessment of state policies towards ICESCR implementation difficult. By setting concrete priority areas the state will not merely have a clearer picture of what to expect during the constructive dialogue, it will also be able to focus its energy on more effective information gathering and presentation, in contrast to presenting very general information. Analysis other issues, which are not included in the benchmarking but overcome or become relevant during reported period could be called through information provided by UN-Special Agencies, national human rights institutions and in parallel reports provided by civil society organizations.

Furthermore, for some states the IBSA approach can be attractive as it allows them to move away from the violations approach and to show their general interest in complying with the Covenant by dedicating its general public policies to the human rights cause. Also, as concluded from the testing phase in Colombia, because of its "technical nature" the IBSA approach and the use of indicators in general can be extremely useful in polarized situations.

As a general added value, the very process of collecting and assessing data generates debate at both the national and international level, keeping ESCR issues on the agenda and possibly leading state and civil society actors towards prioritization these issues.

6. The road ahead: Identifying the steps forward

All the work invested during the phase of the IBSA project dedicated to the identification of indicators for the right to food and the test in three countries, as well as the revision of the indicator lists and descriptions according to the piloting experiences has shown that interest in utilizing the IBSA procedure at national level is there. In some cases, as for example in Colombia, the IBSA project has brought useful input to an ongoing national process on adoption of indicators for the right to food. IBSA contributed to a better focus on those human rights indicators that are manageable for state authorities, and brought elements from the international discussion into the national process, thereby increasing coherence with the ICESCR.

Also at the international level, the final symposium on the second phase of the IBSA project held in Berlin in 2009, as well as subsequent invitations received by the IBSA team to present the initiative have not only shown stakeholders' general interest in applying human rights indicators for public policy monitoring, but also in the use of a methodology which combines the idea of indicator-based monitoring with the setting of benchmarks as concrete targets for each state's national policy towards the realization of esc-rights.

In light of the momentum the IBSA initiative has gained in recent years, it is now essential to determine which are the most logical and effective next steps in order to launch the actual process of practically implementing IBSA. For the different stakeholders who have been involved in the project in some way or

function, the most important aspects of IBSA are its participatory character, as well as its practicability in terms of accommodating the indicators and benchmarks to the diverse realities one encounters in each country. Moving beyond the identification of manageable and meaningful indicators, each step taken to operationalize the “BSA” phase of the procedure should not only intensify governments’ involvement and ownership, but also continue on the path of country piloting, in order to detect possible weaknesses or obstacles and to arrive at a procedure, which is practicable and valuable, for the states in their quest for better implementation of human rights.

The information reflected by the indicators identified for the right to food may point towards states’ non-compliance with immediate obligations (specifically regarding the issue of discrimination reflected by disaggregated information), as well as their progressive obligations. Operationalizing the “BSA” components of the procedure should take into account that benchmarking and scoping will just refer to progressive obligations. Immediate obligations cannot be benchmarked and cases of continuous non-compliance will be subject to critical observation by the Committee.

In order to define further steps, it should also be noted that in some countries the “soil” is better prepared for piloting the “BSA” components, as certain countries have already been working on the identification of human rights indicators for their national context. That is the case for the three countries where the IBSA indicator list on the right to food was piloted (Colombia, Ghana and Spain), but also for some other countries where the OHCHR

has been collaborating with national human rights institutions (e.g. Guatemala, Ecuador, México, Nepal).

Against this background and taking into account the discussions with state representatives during a July 2010 conference organized by the **Friedrich Ebert Foundation in Geneva**, the most important next step in order to evaluate the possibility of introducing IBSA as a general methodology for the Committee on Economic, Social and Cultural rights would be the piloting in at least 5 states (possibly Colombia, Spain and Ghana, along with two Asian countries, e.g. the Philippines and Nepal). Such piloting should be accompanied by the availability (publication) of an IBSA manual containing guidelines on the identification of indicators, a user-friendly explanation of human rights-based monitoring, and the illustration of the IBSA procedure as a whole. Ideally, the piloting process would not be restricted to just one right, but make use of the full spectrum of esc-rights for which indicators have been identified by the OHCHR and the IBSA team. Should the Committee and the governments participating in the piloting deem that impossible, focusing on one right would, of course, be a viable option as well.

The piloting should be initiated by the Committee by approaching the respective national authorities and inviting them to take part in the process. Initial information, conversations and capacity building events should be held either in Geneva or in the countries themselves. Once the respective authorities accept to take part in the piloting process, broader capacity building activities (workshops, distribution of the manual, individual advice) should be carried out involving respective stakeholders to define the

piloting methodology and the piloting strategy, defining clear goals, tasks, responsibilities and a work plan to be implemented.

Since the success of monitoring processes relies on the validity of the delivered information it would be essential for the Committee to have other sources which allow it to compare the information received from the state. Therefore it would be very important to guarantee the participation of civil society organizations at national level, bringing alternative information to the piloting process.

In addition to the proposed piloting phase for “BSA”, other activities to promote the initiative and to motivate other states to take part in the

process would be:

- To elaborate a flow chart explaining the process by visualizing it;
- Further formal events inviting states. It would be desirable to not just invite state missions in Geneva, but also specialized officers working on monitoring and preparation of reports at the national level;
- To link universities and academic institutions to the process which could support the states in the elaboration of reports based on IBSA and in the information gathering;
- Continue cooperating with the OHCHR.

Berlin / Geneva, September 2010