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495 Indicators and benchmarks

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



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