

MAASTRICHT UNIVERSITY

European Master's Degree in Human Rights and Democratisation

A.Y 2014/2015

**THE USE OF INDICATORS FOR PROMOTING AND MONITORING THE
IMPLEMENTATION OF ECONOMIC SOCIAL AND CULTURAL RIGHTS**

**Towards the construction of Human Rights Indicators in the area of economic, social
and cultural rights**

An analysis of the reporting system under Article 19 of the Protocol of San Salvador

Author:

ANA MARÍA MÉNDEZ JARAMILLO

Thesis supervisor:

Prof. GUSTAVO M. AROSEMENA SOLÓRZANO

ABSTRACT

The use of qualitative and quantitative indicators has become an increasingly used tool in the human rights community at the international, regional and national level. Nevertheless, the term “indicator” has been used indistinctly to refer to, for instance, the assessment of human development issues, the different data-generating mechanisms, as well as the existing instruments used to analyse realisation of human rights. In light of this, the construction of an adequate conceptual framework to identify specific indicators with a human rights-based approach has become a necessity, especially for measuring *efforts* of States when implementing its human rights obligations.

Acknowledging the existence of a gap between the formal adjudication of Economic, Social and Cultural Rights and their uneven levels of enjoyment, this thesis suggests the construction of an appropriate concept of *Human Rights Indicators*, as a mechanism for strengthening their implementation. The analysis will be based on two measurement models: the model proposed by the Office of the United Nations High Commissioner for Human Rights in 2012, to be applied in the universal system of human rights; and the one approved by the Organisation of American States in 2012, and afterwards in 2014, to be applied in the Inter-American system of human rights, with regards to the periodic reports on the progressive measures taken by States to ensure the rights contained in the Protocol of San Salvador.

TABLE OF CONTENTS

INTRODUCTION	1
1. WHAT ARE HUMAN RIGHTS INDICATORS?	6
1.1. Defining Human Rights Indicators	6
1.2. Measuring Human Rights?	8
1.2.1. Events-based measures	9
1.2.2. Standards-based measures	12
1.2.3. Survey-based measures.....	16
1.2.4. Socio-economic and administrative statistics	18
1.3. Addressing the types of Human Rights Indicators proposed by the OHCHR... 20	
1.3.1. Structural indicators	21
1.3.2. Process indicators.....	22
1.3.3. Outcome indicators	24
2. WHAT IS NEEDED FOR AN INDICATOR TO TRULY BE A HUMAN RIGHTS INDICATOR IN THE CONTEXT OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS?.....	26
2.1. Theories regarding the use of Development Indicators to measure ESCRs	28
2.1.1. “Sameness” theory	28
2.1.2. “Proxy” theory.....	30
2.1.3. “Separateness” theory	31
2.1.4. Separateness as the best theory -- Differences between Development Indicators and Human Rights Indicators in the context of ESCRs.....	33
2.2. Requirements for an indicator to be a Human Rights Indicator in the context of ESCRs	37
2.2.1. Anchoring indicators – normative content of ESCRs.....	39
i. Identifying specific attributes of ESCRs	40
ii. Core content approach.....	42

iii. Concept of “progressive realisation” and “maximum of available resources”	43
2.2.2. Types of Obligations in ESCRs	45
2.2.3. Reference to cross-cutting human rights principles.....	47
2.2.4. Should indicators for CPRs and ESCRs be based on the same methodology?	49
3. CRITICAL ANALYSIS: INDICATORS UNDER ARTICLE 19 OF THE PROTOCOL OF SAN SALVADOR - THE REPORTING PROCEDURE OF THE INTER-AMERICAN SYSTEM OF HUMAN RIGHTS.....	55
3.1. A new version of Human Rights Indicators in the reporting procedure provided in Article 19 of the Protocol of San Salvador	58
3.1.1. Including three conceptual categories in the selection of the structural, process and outcome of Human Rights Indicators	60
i. Incorporation of the right.....	60
ii. States capabilities	62
iii. Financial context and budgetary commitment	64
3.1.2. Reference to cross-cutting human rights principles.....	65
i. Equality and non-discrimination	66
ii. Access to Justice	68
iii. Access to Information and Participation	71
3.2. Should indicators for CPRs and ESCRs be based on the same methodology? ..	72
3.3. Is there a duty for applying the system of indicators developed by the WG?	76
4. CONCLUSION	83
5. BIBLIOGRAPHY	86
6. ANNEXES	93