

Part II

Guidance on using and interpreting the Human Rights Measurement Framework

3 The underlying legal framework: guidance and clarification

This chapter is essential reading prior to using the Human Rights Measurement Framework (HMRMF) and interpreting the HRMF evidence base as it provides guidance on the legal underpinnings of the HRMF project. The chapter is organised as follows: Section 3.1 provides background information on human rights that have explicit legal protection in UK domestic law (the Human Rights Act 1998 (HRA)). Section 3.2 provides an illustrative analysis of selected articles of the HRA. Section 3.3 provides information about additional human rights that are protected and promoted in other international treaties and instruments that the UK has signed and ratified (such as the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Convention on the Rights of the Child (CRC)).

3.1 The Human Rights Act 1998

The first five panels of the HRMF are based on human rights that have an explicit basis in domestic law, through the HRA. These are the panels covering:

- The Right to Life (HRA, Article 2)
- The Prohibition on Torture and Inhuman or Degrading Treatment or Punishment (HRA, Article 3)
- The Right to Liberty and Security of the Person (HRA, Article 5)
- The Right to a Fair Trial (HRA, Article 6)
- The Right to Respect for Private and Family Life (HRA, Article 8).

The HRA came into force throughout the UK on 2 October 2000. It makes most of the makes most of the human rights set out in the European Convention on Human Rights ('the Convention') enforceable in domestic law⁴ and, in Section 6, places a legal duty on all public authorities to act in a way which is not incompatible with Convention rights. A list of the key articles in the HRA is provided in Figure 6.

Prior to the HRA people in the UK who sought an effective remedy for breaches of their Convention rights had to seek redress from the European Court of Human Rights (ECtHR) rather than being able to directly access their rights in UK courts. Following the HRA, any person, corporate body, Non-Government Organisation (NGO), or group of individuals who believe that their rights have been infringed by a public authority can raise this in any existing procedure before a court or tribunal (criminal or civil). They can, alternatively, start proceedings under the HRA itself. It is not necessary to be a UK national in order to make a claim under the Convention and the remedies available for breach of Convention rights are wide and include damages. The time limit for bringing proceedings under the HRA is one year from the date of the act complained of, although this may be extended in some circumstances.

The domestic courts must take into account the case law of the ECtHR. They are not, however, bound by it. Any domestic court that ignores or declines to follow clear Strasbourg case law runs the risk of being challenged in the ECtHR. Therefore, in practice, the UK courts cannot develop standards that are below the existing human rights standards established by the ECtHR but there is nothing stopping them being more generous in rights terms than the ECtHR and developing its own case law under the HRA. The Convention represents a floor rather than a ceiling for the protection of human rights.

For all new legislation, the minister responsible for the bill must make a statement confirming that it complies with the Convention (or explaining why it does not). The courts must interpret legislation in a way that is compatible with the Convention where this is possible. However, they cannot overturn acts of parliament. Where it is not possible to interpret legislation so as to be compatible with the Convention, the high court and more senior courts will issue a declaration of incompatibility. The courts may strike down most subordinate or secondary legislation when not compatible with the Convention.

Figure 6: The Human Rights Act 1998

- The right to life (Article 2).
- The right not to be subjected to torture, inhuman or degrading treatment or punishment (Article 3).
- The right to be free from slavery and forced labour (Article 4).
- The right to liberty (Article 5).
- The right to a fair and public trial or hearing (Article 6).
- The right not to be subject to arbitrary or retrospective criminal penalties (Article 7).
- The right to respect for private and family life, home and correspondence (Article 8).
- The right to freedom of thought, conscience and religion (Article 9).
- The right to freedom of expression and to receive and impart information (Article 10).

Continued

Figure 6: The Human Rights Act 1998 (*continued*)

- The right to assembly and to associate with others, including in organisations like trade unions (Article 11).
- The right to marry and start a family (Article 12).
- The right not to be discriminated against (Article 14).
- The right to peaceful enjoyment of possessions and property (Protocol 1, Article 1).
- The right to education, including respect for the religious and philosophical convictions of parents (Protocol 1, Article 2).
- The requirement to hold free and fair elections (Protocol 1, Article 3)
- Abolition of the death penalty (Protocol 6, Article 1).

There is no entitlement to abuse rights to destroy, or unnecessarily limit the rights of others (Article 17).

Note: Rights are referred to by reference to the Articles in the European Convention on Human Rights.

Source: EHRC (2009: 23).

European Convention on Human Rights

At the regional level, the UK signed up to the European Convention on Human Rights in 1951. The Convention, which UK lawyers and civil servants helped to draft, was agreed after the Second World War by the Council of Europe.⁵ The Convention is enforced by the ECtHR based in Strasbourg.

The Convention is divided into ‘articles’, with Articles 2 to 14 setting out the human rights that are protected by the Convention. The Convention mainly deals with civil and political rights, although it should be noted that the interpretation of the rights reflects societal changes (see below regarding ‘living instrument’ aspect of the Convention). There are also supplementary protocols that have been agreed by the Council of Europe which states can sign up to. The UK is a party to a number of the protocols that guarantee additional rights (these include Protocols 1, 3 and 6).

Positive obligations

The Convention is continually being interpreted and developed; it is a set of standards which evolve with society, rather than setting out fixed standards which reflect the particular time at which they were enacted.⁶ Therefore, the Convention can sometimes impose a positive obligation on the state to protect rights, although this may not be explicitly stated in the text, such positive obligations are considered necessary for the effective operation of the right. An example of a positive obligation is the duty to take reasonable steps to protect the right to life, including by putting in place a legal framework

that protects Convention rights and in certain circumstances, take further steps to ensure those rights are effectively protected. As will be discussed below, the courts have established that such positive obligations exist, for example, in relation to Article 3 (the prohibition of torture), Article 2 (the right to life) and Article 8 (the right to respect for private and family life). Analysing the jurisprudence of the ECtHR, positive obligations may include a duty to:

- provide a reasonable level of resources to individuals in order to protect a Convention right
- prevent breaches, this may mean intervening to protect one individual from the actions of another
- provide information to those whose Convention rights are at risk and
- respond to breaches of Convention rights.

The duties of public authorities

Under Section 6 of the HRA all public authorities must act in a way that is compatible with the ECHR. 'Public authority' is not properly defined in the HRA, but parliament made clear that it was to be broadly interpreted. It includes all central and local government agencies, and includes hospitals, the prison services, and police and social services departments. It also includes courts and tribunals.

The notion of public authority was also intended by parliament to extend to private bodies such as companies or charities to the extent that they are carrying out a public function, for example, a private hospital or a care home acting under contract with a local authority. Private individuals, where they are not carrying out a public function, have no responsibility to protect Convention rights under the HRA. However, there is a positive obligation on public authorities to ensure that these rights are protected.

The devolved context

The HRA covers the UK, so human rights in Scotland and Wales are protected and promoted by it. In addition to this, the Scotland Act 1998 is an important aspect of legal protection of human rights in Scotland. Prior to the entry into force of the HRA in October 2000, human rights cases in Scotland were brought in respect of the executive acts from 20 May 1999 and in respect of Acts of the Scottish Parliament from 1 July 1999 (Wilson, 2010).

3.2 Overview of selected articles of the HRA⁷

This section provides an overview of Articles 2, 3 and 8 of the HRA and clarifies the nature and scope of the legal duties that flow from these rights.

Article 2

‘Everyone’s right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

The deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary:

- 1) in defence of any person from unlawful violence
- 2) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained
- 3) in action lawfully taken for the purpose of quelling a riot or insurrection.’

The right to life is considered to be fundamental.⁸ The ECtHR refers to the substantive and the procedural aspects of Article 2. The substantive aspect of Article 2 deals with the duties on states to secure life, and in turn entails two aspects:

- a negative duty to refrain from arbitrarily depriving anyone of their life except in the limited circumstances prescribed
- a positive duty under certain circumstances to take measures to ensure the protection of life.

The procedural aspect refers to the requirement that states have in place adequate legal and administrative systems to investigate, prosecute and punish those who take life intentionally. This procedural aspect also includes the duty on the state to provide a full and effective investigation into deaths which are within the ambit of Article 2.⁹

The right to life could be engaged where loss of life is caused or risked by the actions of state officials. If a state official (for example, a police officer, member of the armed forces or prison officer) intentionally takes the life of another person, this will always engage their right to life and any death caused by an agent of the state using force beyond that which is absolutely necessary under the provisions set out in Article 2.2 will amount to a violation. For example, in the McCann case, the ECtHR established that the use of force must be no more than what is absolutely necessary to defend persons from unlawful violence.

Article 2 also imposes a requirement for the state to take appropriate measures to safeguard life under certain circumstances. This includes a positive duty to provide a legal regime that effectively protects life and positive duties to take reasonable measures to protect life from certain identifiable threats. For example, Article 2 can impose positive obligations on public authorities to take preventive measures to protect an individual whose life is at risk from the criminal acts of another individual if the authorities have or ought to have knowledge of this risk.¹⁰ Public authorities are also under a positive duty to implement measures to protect life where there is a known risk in the detention context

(including where there is a risk from suicide) and to implement protective and safeguarding measures where there is a known risk to life in the context of mental health patients who are detained.

The procedural aspect of Article 2 requires effective investigations into the loss of life. Domestic law must, therefore, properly prohibit and punish killings, and unlawful killing must be subject to criminal sanctions. All deaths must be properly investigated and the law must be effectively implemented.

Other issues that could potentially engage Article 2 include inadequate protective regulation and, in the healthcare context, negligent healthcare provision and under certain circumstances, the withdrawal of life-saving treatment.

Article 3

‘No one should be subjected to torture or to inhuman or degrading treatment or punishment.’

This is an absolute right which means that the state can never justify interference with this right, not even in the case of national emergency, war or similar. The UK courts have established that dignity is at the core of the rights protected by Article 3 and that dignity is a ‘core value of our society’.¹¹

Conduct has to be very serious for it to breach Article 3 and the treatment must attain a ‘minimum level of severity’.¹² Whether this threshold is met will depend on the circumstances of the case, such as the duration of the treatment, its physical or mental effects and in some cases the sex, age and state of health of the victim.¹³

Article 3 covers three kinds of treatment: torture, inhuman treatment or punishment, and degrading treatment or punishment.

Torture is the most serious kind of ill treatment. The UN Convention Against Torture (CAT) defines it as having three elements:

- severe pain or suffering which can be either mental or physical, or both
- intentionally inflicted for the purposes of obtaining information, for punishment or to intimidate or discriminate against the person, and
- infliction by someone acting in an official capacity without the consent of the victim.

Inhuman treatment is less severe than torture and has been described as causing severe suffering, whether mental or physical. It could include serious physical assault or prolonged sexual and emotional abuse, particularly in relation to children. Hooding, wall standing, subjection to noise, sleep deprivation and deprivation of food and drink have been found to be inhuman treatment.¹⁴

Degrading treatment is conduct that grossly humiliates. It is designed to arouse in the victim feelings of fear, anguish, and inferiority capable of humiliating them and possibly breaking their physical or moral resistance.¹⁵ Discrimination based on race may in certain circumstances amount to degrading treatment.

Examples where Article 3 might be engaged include the general conditions of detention, including in the context of prison and juvenile custody; the general conditions of hospitals, residential homes and/or care homes and other institutions¹⁶; and the standard of domiciliary care provision.

In addition to the duty on the state not to subject individuals to torture, or inhuman or degrading treatment, Article 3 also imposes some positive obligations to prevent individuals from being subjected to such treatment. Under Article 3, where the state knew or ought to have known about the risk of vulnerable people suffering treatment covered by Article 3 at the hands of other private individuals, there is a positive obligation to act, for example, in cases of child abuse.¹⁷ Positive duties also prevent the removal of foreign nationals to a country where they are at risk of suffering Article 3 type treatment¹⁸ and the destitution of asylum seekers in relation to the level/type/lack of support provided by the state.¹⁹

Article 8

‘Everyone has the right to respect for his private and family life, his home and his correspondence.

There shall be no interference by a public authority with the exercise of this right except such as in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others.’

Article 8 protects four discrete interests: family life, private life, home and correspondence. It is a qualified right, which means it can be restricted in accordance with the limitation clause set out in the second paragraph of the text. The limitation takes account of the general public interest. To establish a breach of Article 8 it is necessary to show three elements:

- that there is private life, family life, home or correspondence being enjoyed or potentially being enjoyed but for the interference
- that there is an interference with the enjoyment of these rights, and
- that this interference is not in accordance with the law, necessary or proportionate.

Private life has been interpreted by the ECtHR as a person’s ‘physical and psychological integrity’.²⁰ It includes at least two elements: 1) the notion of an ‘inner circle’ in which the individual may live their own personal life as they choose; and 2) the right to establish and develop relationships with other human beings.²¹ The ECtHR has stressed that ‘the concept of ‘private life’ is broad and not susceptible to exhaustive definition’.²²

Examples of issues that fall within this concept include compulsory medical treatment²³ or forcible restraint; personal autonomy and a person's ability to establish and develop relationships with other people²⁴; sexual life and same sex relationships²⁵; personal identity, including name²⁶ and gender²⁷; the holding, use or disclosure of personal information, which includes access to information held by public authorities²⁸ and retention of information and samples by the state, for example, policies governing the retention of DNA samples by criminal justice agencies²⁹; and stop and search police powers.³⁰

Family life is interpreted broadly, in a way which does not allow legally recognised relationships to prevail over 'biological and social reality'³¹. Family life, therefore, includes marriage and other de facto relationships and is not confined to blood relatives, rather it is a 'question of fact' depending on the real existence of close personal ties.³²

Examples of issues that fall within the ambit of family life include being able to develop family relationships and, where a family is split up, the right to ongoing contact subject to the child's interest³³; the state's responsibility to protect children; and in deportation cases where a person has established or wishes to establish close family ties³⁴, although the UK courts have been reluctant to find that deportation is a violation of Article 8.

Home: The ECtHR has held that there is no abstract definition of home. What is important is the intention and attitude of the person to consider the place identified as the home as the place where they live or are settled or intend such.³⁵ The ECtHR has frequently established that the right protected by Article 8 is the right to respect for one's existing home and not a right to be provided with housing accommodation or better accommodation than is provided.

Examples of issues that fall within the ambit of home include Gypsy and Traveller caravan sites³⁶ and closures of care homes or hospital wards.³⁷

Correspondence has been interpreted widely to cover personal communications such as letters and telephone calls.³⁸

Positive obligations

Article 8 includes positive obligations to act in order to protect individuals' rights as well as negative obligations which require the state to refrain from taking certain action which interferes with the rights protected under Article 8.³⁹ Examples where positive obligations have been imposed include:

- Ensuring there are adequate legal remedies, including addressing barriers to access justice: *X and Y v the Netherlands* no. 8978/80 [1985] ECHR involved a failure by the state to prosecute a rape case. The law required the victim to make a complaint but in this case the victim was unable to do so because of her mental disability. The ECtHR, finding a violation of Article 8, established that states had a positive obligation to prosecute the perpetrator in cases involving abuse and the availability of civil remedies (for example, damages) was not sufficient to protect Article 8 rights.

- Providing support to disabled parents in order to maintain their right to a family life: *Kutzner v Germany* no. 46544/99 [2002] ECHR – the applicants’ two young children had been removed from their care because it was alleged that the parents’ ‘impaired mental development’ rendered them incapable of bringing up their children. There was no suggestion of any neglect or ill treatment. The children were separated from each other and eventually fostered. For the first six months they had no contact with their parents and thereafter it was restricted to one hour on a monthly basis. The ECtHR found a violation of the right to a family life, referring to the state’s positive obligations to take measures to facilitate the family’s reunion as soon as possible. These measures also included the provision of additional educational and other measures to support the family.
- Providing care arrangements for older and disabled people that respect Article 8. For example, in *R (Bernard) v London Borough of Enfield* [2002] EWHC 2287 (Admin) the UK courts held that the borough council had a duty to provide assistance to a disabled woman so that she could maintain basic physical and psychological integrity.

3.3 Other human rights treaties and instruments covered by the HRMF

In addition to the HRA, the HRMF covers other regional and international human rights treaties and instruments that the UK has signed and ratified. In using and interpreting the HRMF, it is particularly important to make an appropriate distinction between the legal status of human rights that are codified in the HRA and that have an explicit basis in domestic law (and which can be directly enforced in UK courts) and regional and international treaties that do not have an explicit basis in domestic law. Further details of these are provided below and in Appendix 1.

International human rights treaties

The UK has also signed and ratified a number of international human rights treaties such as the International Covenant on Civil and Political Rights (ICCPR), the ICESCR and the CRC. International human rights treaties that are not incorporated into domestic law cannot be directly enforced through the UK courts. As highlighted above, it is therefore critical, in using and interpreting the HRMF, to maintain an appropriate distinction between the legal status of those human rights that have an explicit basis in domestic law through the HRA, and human rights that are incorporated into international treaties and cannot be directly enforced by UK courts. Nevertheless, by signing and ratifying international human rights treaties, the UK has indicated its commitment to fulfil the obligations that flow from these instruments under international law. The fulfilment of international treaty obligations in the field of human rights is monitored by international committees such as the UN Human Rights Committee, the United Nations Committee on Economic, Social and Cultural Rights (UNCESCR) and the United Nations Committee on the Rights of the Child (UNCRC). These monitoring committees undertake standard setting in relation to their remits and evaluate countries’ performance on a periodic basis. The UK submits periodic reports to the monitoring committee and the committee’s evaluation of the UK’s performance in relation to the fulfilment of its obligations is set out in ‘concluding observations’. Some of the treaties are supplemented by optional protocols dealing with specific concerns which states can elect to sign up to. For example, the UK is a party to

the individual complaints procedure under the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and has also signed the optional protocol to the Convention on the Rights of People with Disabilities. Figures 7 and 8 provide further details of the core international human rights treaties that the UK is (and is not) signed up to and the bodies that monitor the UK's performance in complying with the obligations that flow from these treaties. Additional information is also provided in Appendix 1.

Figure 7: Core international human rights treaties

| | | Date | Monitoring body |
|-----------|--|------------------|------------------------|
| ICERD | International Convention on the Elimination of All Forms of Racial Discrimination | 21 December 1965 | CERD |
| ICCPR | International Covenant on Civil and Political Rights | 16 December 1966 | CCPR |
| ICESCR | International Covenant on Economic, Social and Cultural Rights | 16 December 1966 | CESCR |
| CEDAW | Convention on the Elimination of All Forms of Discrimination against Women | 18 December 1979 | CEDAW |
| CAT | Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment | 10 December 1984 | CAT |
| CRC | Convention on the Rights of the Child | 20 November 1989 | CRC |
| ICRMW | International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families | 18 December 1990 | CMW |
| | International Convention for the Protection of All Persons from Enforced Disappearance | 20 December 2006 | |
| CRPD | Convention on the Rights of Persons with Disabilities | 13 December 2006 | CRPD |
| ICESCR-OP | Optional Protocol of the Covenant on Economic, Social and Cultural Rights | 10 December 2008 | CESCR |
| ICCPR-OP1 | Optional Protocol to the International Covenant on Civil and Political Rights | 16 December 1966 | HRC |
| ICCPR-OP2 | Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty | 15 December 1989 | HRC |
| OP-CEDAW | Optional Protocol to the Convention on the Elimination of Discrimination against Women | 10 December 1999 | CEDAW |
| OP-CRC-AC | Optional protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict | 25 May 2000 | CRC |
| OP-CRC-SC | Optional protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography | 25 May 2000 | CRC |
| OP-CAT | Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment | 18 December 2002 | CAT |
| OP-CRPD | Optional Protocol to the Convention on the Rights of Persons with Disabilities | 12 December 2006 | CRPD |

Figure 8: UN human rights treaties to which the UK is a party⁴⁰

| Treaty | Status of UK (Yes=1, No=0) |
|---|-------------------------------|
| CERD | 1 |
| CCPR | 0 |
| CERD Article 14 | 1 |
| Optional Protocol | 0 |
| Second Protocol | 1 |
| ICESCR | 1 |
| Optional Protocol | 0 |
| CAT | 1 |
| CAT Article 22 | 0 |
| OPCAT | 1 |
| CEDAW | 1 |
| CEDAW Optional Protocol | 1 |
| CRC | 1 |
| CRC Optional Protocol on Armed Conflict | 1 |
| CMW | 0 |
| CRPD | 1 |
| CRPD Optional Protocol | 1 |
| CPPED | 0 |

Notes: The Convention on the Rights of Persons with Disabilities and its Protocol entered into force on 3 May 2008. The Convention for the Protection of All Persons from Enforced Disappearance is not yet into force.

International Covenant on Economic, Social and Cultural Rights

The HRMF draws in particular on the ICESCR. Three of the HRMF panels cover human rights that are codified in this instrument:

- The Right to the Highest Standard of Physical and Mental Health (Universal Declaration of Human Rights (UDHR), Article 25; ICESCR, Article 12)
- The Right to Education (UDHR, Article 26; ICESCR, Articles 13 and 14, CRC, Article 28; HRA, Protocol 1 Article 2)⁴¹
- The Right to an Adequate Standard of Living (CRC, Article 27; ICESCR, Article 11)

The ICESCR emerged out of the UDHR, alongside a similar treaty for civil and political rights (ICCPR) to imbue the rights established in the UDHR with binding obligations on states. It opened for signatures in 1966, with the two covenants coming into force in 1976. It has been repeatedly recognised and reaffirmed by the UN and its member states that the rights outlined in these two treaties are equal, interdependent and indivisible.

The UK was one of the earlier signatories of the ICESCR in 1968 and is obligated to ensure domestic legislation and measures are compatible with its obligations under this treaty. The UK is required to make regular reports to the treaty's monitoring committee on

compliance with its obligations and progress towards the realisation of the rights set out in the Covenant. The monitoring committee consists of independent experts, who raise concerns or recommendations to states through the 'concluding observations' of their reports on a state's progress towards the realisation of the rights in the treaty as well as producing 'general comments' which explain in greater detail how these rights are to be understood and realised.

The optional protocol to this treaty which would allow individuals to make direct complaints to the committee was adopted unanimously by the UN General Assembly in 2008 but has not yet entered into force, and the UK has yet to sign up to it.

The UK has bound itself to this treaty under international law – opening itself up to observations and potential criticisms from the monitoring committee, and shadow reports from NGOs or others highlighting areas of concern. However, the ICESCR is not directly incorporated in UK law, meaning that the rights enshrined within the treaty are not directly legally enforceable within UK law.

European regional arrangements

The Council of Europe, based in Strasbourg, has 47 member countries and was founded on 5 May 1949. It seeks to develop common and democratic principles throughout Europe based on the Convention and other reference texts on the protection of individuals. Among the core Council of Europe human rights treaties to which the UK is a party are the:

- European Convention for the Protection of Human Rights and Fundamental Freedoms
- European Social Charter
- European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
- Framework Convention for the Protection of National Minorities
- European Charter for Regional or Minority Languages
- Council of Europe Convention on Action against Trafficking in Human Beings.

Further details are provided in Appendix 1.

Chapter notes

- 4 The rights which are not included are those in Articles 1 and 13 which deal with access to an effective remedy for all those within the country's jurisdiction. The Government decided not to include these in the HRA as it considered that the HRA itself was the effective remedy accessible to all in the UK.
- 5 The Council of Europe was set up to safeguard and defend human rights, democracy and the rule of law across its 47 member states. It should not be confused with the European Union, although signing up to the European Convention is a pre-condition of European Union membership. The Council of Europe spans the European continent and includes countries such as Russia, Turkey and the Ukraine.
- 6 For example, the American Bill of Rights enshrines principles of equality; however, at the time of enactment gender equality had not been recognised or envisaged as part of the text, but subsequent application reflects the changing nature of society.
- 7 The subsection under Article 2 draws on Gerry (2011).
- 8 *McCann v UK* [GC] no. 18984/91 [1995] ECHR, para 147: '...as a provision which not only safeguards the right to life but sets out the circumstances when deprivation of life may be justified, Article 2 ranks as one of the most fundamental provisions in the Convention... one which, in peacetime, admits no derogation under Article 15. Together with Article 3, it also enshrines one of the basic values of democratic societies making up the Council of Europe.'
- 9 *McCann v UK* [GC] no. 18984/91 [1995] ECHR.
- 10 *Osman v UK* [GC] no. 23452/94 [1998] ECHR.
- 11 *R v East Sussex County Council Ex parte A, B, X and Y* [2003] EWHC 167 (Admin) (DRC – Intervener).
- 12 *Ireland v UK* no. 5310/71 [1978] ECHR.
- 13 *Costello-Roberts v UK* no. 13134/87 [1993] ECHR, para 30: 'Factors such as the nature and context of the punishment [or treatment], the manner and method of its execution, its duration, its physical and mental effects, and in some instances, the sex, age, and state of health of the victim must all be taken into account.'
- 14 *Ireland v UK* no. 5310/71 [1978] ECHR.
- 15 *Tyrer v UK* no. 5856/72 [1978] ECHR.
- 16 *R v East Sussex County Council Ex parte A, B, X and Y* [2003] EWHC 167 (Admin) (DRC – Intervener); *B v UK* no. 9480//82 [1987] ECHR.
- 17 *Z and others v UK* (GC) no. 29392/95 [2001] ECHR.
- 18 *Chahal v UK* (GC) no. 22414/93 [1996] ECHR.
- 19 *R v Secretary of State for Home Department ex parte Limbuela* [2005] UKHL 66.
- 20 *Botta v Italy* no. 21439/93 [1998] ECHR.
- 21 See, for example, *Connors v UK* no. 66746/01 [2004] ECHR and *Niemietz v Germany* no. 13710/88 [1992] ECHR.
- 22 *Pretty v UK* no. 2346/02 [2002] ECHR, para 61-62: 'It covers the physical and psychological integrity of a person. It can sometimes embrace aspects of an individual's physical and social identity. Elements such as, for example, gender identification, name and sexual orientation and sexual life fall within the personal sphere protected by Article 8. Article 8 also protects a right to personal development, and the right to establish and develop relationships with other human beings and the outside world...the Court considers that the notion of personal autonomy is an important principle underlying the interpretation of its guarantees.'
- 23 See, for example, *YF v Turkey* no. 24209/94 [2003] ECHR and *Glass v UK* no. 61827/00 [2004] ECHR.
- 24 *Bruggeman & Scheuten v Germany* no. 6959/75 [1977] EHRR 244 para 55: private life '...also secures to the individual a sphere in which he or she can freely pursue the development and fulfilment of his or her own personality'.
- 25 *Dudgeon v UK* no. 7525/76 [1983] ECHR: private life was held to include sexual life and laws which criminalised sexual activity between men is an interference with private life under Article 8.

- 26 *Burghartz v Switzerland* no. 16213/90 [1992] ECHR: legal restrictions on the names people can adopt engage Article 8.
- 27 *Goodwin v UK* (GC) no. 28957/95 [2002] ECHR: national laws which discriminate against transsexual people engage Article 8.
- 28 *Gaskin v UK* no. 10454/83 [1989] ECHR: access to social work files where this is necessary for the person to know about their early childhood. *Odievre v France* no. 42326/09 [2003] ECHR: access to information for adopted children about their biological parents.
- 29 *S & Marper v UK* (GC) nos. 30562/04 and 30566/04 [2008] ECHR: the policy of blanket DNA and fingerprint retention for all people suspected of committing criminal acts breached the right to private life.
- 30 *Gillan and Quinton v UK* no. 4158/05 [2010] ECHR: stop and search powers under Section 44 of the Terrorism Act 2000 breach the right to respect for private life because the power is so broad that it fails to provide safeguards against abuse.
- 31 *Kroon v the Netherlands* no. 18535/91 [1994] ECHR, para 40.
- 32 *Marckx v Belgium* no. 6833/74 [1979] ECHR.
- 33 *Whitear v UK* [1997] EHRLR 291: the interests of the child may require a parent's access to be restricted. *Johansen v Norway* no. 17383/90 [1996] ECHR: particular weight should be attached to the best interests of the child and that, depending on the seriousness of the issues, these may override those of the parent. In particular, the parent cannot be entitled to have such measures taken as would harm the child's health and development.
- 34 *Ciliz v The Netherlands* no. 29192/95 [2000] ECHR.
- 35 *Buckley v UK* no. 20348/92 [1995] ECHR.
- 36 *Buckley v UK* no. 20348/92 [1995] ECHR; *Connors v UK* no. 66746/01 [2004] ECHR.
- 37 *Coughlan & Ors v North & East Devon Health Authority* [1999] EWCA Civ 1871: the health authority attempted to move a disabled woman from her specialist NHS unit where she had lived for six years. Taking into account all the circumstances, including the health authority's desire to close the facility for budgetary reasons, the court considered that depriving somebody of her home without providing accommodation to meet her needs amounted to a breach of Article 8. It also considered that the authority had previously promised the applicant that she could remain there for life.
- 38 *Klass v Germany* no. 5029/71 [1977] ECHR.
- 39 *X and Y v the Netherlands* no. 8978/80 [1985] ECHR, para 23: '...although the object of Article 8 is essentially that of protecting the individual against arbitrary interference by the public authorities, it does not merely compel the State to abstain from such interference; in addition to this primarily negative undertaking, there may be positive obligations inherent in an effective respect for private and family life. These obligations may involve the adoption of measures designed to secure respect for private life even in the sphere of relations of individuals between themselves.'
- 40 As of 25 February 2010. Source: www2.ohchr.org/english/bodies/treaty/index.htm (accessed 26 February 2010).
- 41 The right to education is also set out in the ECHR Protocol 1 Article 2 and is incorporated into domestic law in the HRA. This is a more limited right than the broader right to education derived from the ICESCR.

4 Using and interpreting the Human Rights Measurement Framework: guidance and clarification

This chapter is essential reading prior to using the Human Rights Measurement Framework (HRMF) and provides guidance on interpreting the HRMF indicators and evidence base. Section 4.1 sets out the nature and scope of the HRMF evidence base and highlights the need for appropriate analysis and interpretation; Section 4.2 provides further guidance on the use and interpretation of the quantitative indicators within the HRMF; Section 4.3 provides further guidance on the use and interpretation of the qualitative indicators within the HRMF; Section 4.4 provides a worked example of one of the HRMF ‘indicator dashboards’ (focusing on the right to life).

4.1 What is being measured/monitored?

As discussed in Section 1.3, the HRMF evidence base brings together different types information for human rights analysis and assessments including:

- information about domestic human rights law and treaty ratifications
- information about human rights case law outcomes (i.e. violations/breaches)
- information about the regulatory and public policy framework that protects human rights
- concerns highlighted by domestic and international human rights monitoring bodies (for example, the Joint Committee on Human Rights (JCHR) and United Nations treaty monitoring committees)
- findings of investigations, inquiries and reviews
- issues raised by regulators, inspectorates and ombudsmen
- allegations and concerns raised by Non-Government Organisations (NGOs) and other civil society mechanisms such as media reports
- statistical information drawing on a wide range of administrative and social survey sources.

It is critical to understand that the HRMF is not intended as a violations counting system. Many of the indicators go beyond the concept of ‘legal enforcement’, ‘violations’ and ‘minimum compliance’. They aim to provide evidence of the incorporation of human rights standards into broader public policy and of the emergence of a so-called ‘culture’ of respect for human rights. Proactive public policy measures as well as broader societal developments can help to reduce the risks of legal breaches of human rights and may ultimately reduce the need for legal enforcement activities and case law. A key aim of the HRMF is to capture and convey evidence about broader progress of this type.

When using and interpreting the HRMF, attention should be given to interpreting the different types of information and evidence that are covered in the HRMF indicators and evidence base. Particular care should be taken to distinguish between those rights that are domestically enforceable through the Human Rights Act (HRA), and other rights which are set out in the various regional and international human rights instruments that the UK has signed up to. Further, whilst some of the indicators in the HRMF provide direct evidence on breaches and violations (for example, case law outcomes) other elements of the HRMF evidence base provide more general information about overall patterns and trends as well as background and contextual information on the broader picture in relation to which a human rights concern is being raised. It is critical that both the qualitative and quantitative indicators within the HRMF are appropriately interpreted in line with the guidance in this chapter.

4.2 Interpreting the qualitative information within the HRMF

The different types of information that are included within the HRMF evidence base are listed in Section 4.1. This section now runs through the different types of qualitative information within the HRMF evidence base. The intention is to provide further clarification and guidance on use and interpretation.

Information about domestic human rights law and treaty ratifications

Indicator 1 under each of the HRMF panels provides information about domestic human rights law and treaty ratifications. In using and interpreting the HRMF, particular care should be taken to distinguish between those rights that are domestically enforceable through the HRA, and other rights which are set out in the various regional and international human rights instruments that the UK has signed up to.

Information about human rights case law outcomes (breaches)

It is critical to understand that only two of the indicators in the ‘dashboard’ for each right capture and convey information about case law:

- Information about the principles established in case law is reflected in each of the HRMF panels under the second indicator
- Information about legal outcomes (i.e. specific information about violations/breaches) is reflected within each HRMF panel under the fifth indicator.

Consider the second HRMF panel which covers the prohibition on torture and inhuman or degrading treatment or punishment (HRA, Article 3). The second indicator captures the case law principles that are relevant under this panel. For example, the evidence base under the second indicator includes the principles established in the *Chahal* case (where the European Court of Human Rights (ECtHR) found that Article 3 prevents expulsion of an individual to a country where there are substantial grounds for believing that they might be tortured or where there might be inadequate protection against persecution). The fifth indicator captures the outcomes of key cases that are relevant under this panel. For example, the evidence base under the fifth indicator includes the finding of a violation/breach of Article 3 in the *Chahal* case.

Information about regulatory and public policy frameworks

The HRMF also provides information about regulatory and public policy frameworks that protect human rights. This includes primary law, policies, codes and guidelines and information about key regulators, inspectorates and ombudsmen as well as their key powers and responsibilities. For example, HM Inspectorate of Prisons (HMIP) for England and Wales provides independent scrutiny of the conditions for and treatment of prisoners and other detainees including those young offender institutions and immigration detention facilities. HMIP's work constitutes an important part of the UK's obligations under the Optional Protocol to the United Nations Convention against Torture and Inhuman and Degrading Treatment (including having in place regular independent inspection of places of custody). This responsibility is captured under the HRMF panels covering the right to life (HRA, Article 2) and the prohibition on torture and inhuman or degrading treatment or punishment (HRA, Article 3).

Information about concerns raised by national and international human rights monitoring bodies

Some of the evidence reported in the HRMF – whilst not focusing on case law – nevertheless captures and conveys concerns and issues highlighted by authoritative national and international human rights bodies. For example, the HRMF panel covering the prohibition on torture and inhuman or degrading treatment or punishment includes the findings of the JCHR relating to allegations of UK complicity in torture; concerns raised by the Equality and Human Rights Commission ('the Commission') concerning torture guidelines; and findings by the United Nations Human Rights Council (UNHRC) relating to secret detention and rendition. The panels covering the right to liberty and security of the person (HRA, Article 5) and the right to a fair trial (HRA, Article 6) include findings of the JCHR relating to pre-charge detention, secret evidence and control orders; findings of United Nations special rapporteurs relating to secret detention; and findings of the JCHR and the United Nations Committee on the Rights of the Child (UNCRC) relating to the detention of children and the use of Anti-Social Behaviour Orders (ASBOs). The panel covering the right to liberty and security of the person also includes research findings of the Commission relating to stop and search.

The findings of investigations, inquiries and reviews

The findings of investigations, inquiries and reviews are another key HRMF source. Examples for the HRMF panel covering the prohibition on torture and on inhuman or degrading treatment or punishment include the Independent Inquiry into UK Involvement with Detainees in Overseas Counter-terrorism Operations; and findings of the Stern Review relating to how rape complaints are dealt with by public authorities in England and Wales. Findings under the panel covering the right to liberty and security of the person include findings of the Government's Independent Review of Counter-Terrorism. Findings under the panel covering the right to respect for private and family life (HRA, Article 8) include the findings of the Home Affairs Select Committee relating to surveillance.

Findings of regulators, inspectorates and ombudsmen

The HRMF evidence base includes where appropriate findings of regulators, inspectorates and ombudsmen. Examples for the HRMF panel covering the prohibition on torture and on inhuman or degrading treatment or punishment include the findings of the National Council for Independent Monitoring Boards on *Slopping Out*; findings of the National Preventative Mechanism relating to detainees with mental health problems (including the use of restraint); and findings of the Commission for Social Care Inspection on the use of restraint in elderly care services. Examples for other panels include findings of HMIP Youth Justice Board concerning a worsening of the disproportionate representation of black and minority ethnic (BME) young people in custody (the panel covering liberty and security of the person, HRA, Article 5); findings of the Information Commissioner's Office relating to the use of personal information (the panel covering the right to respect for private and family life, HRA, Article 8); and the Care Quality Commission inspection findings examining whether elderly people receive essential standards of care, including whether they are treated with dignity and respect, and whether those that need help receive support with eating (the panel covering the right to the highest attainable standard of physical and mental health, Universal Declaration of Human Rights (UDHR), Article 25; International Covenant on Economic, Social and Cultural Rights (ICESCR), Article 12).

In some cases the criteria and frameworks adopted by regulators and inspectorates may correspond to legally enforceable human rights and to specific international human rights standards. For example, case law has emerged in relation to the practices of 'slopping out' in prisons (see 'case law outcomes' under the panel covering the prohibition on torture and inhuman or degrading treatment or punishment, HRA, Article 3); the National Preventative Mechanism reflects the standards that the UK has signed up to under the Convention Against Torture (CAT); and both HMIP England and Wales, and HMIP Scotland, explicitly link their inspection criteria to both domestic human rights law (i.e. the HRA) and to international human rights standards (for example, the provisions of the CAT). Other inspectorates and regulators are also increasingly adopting this approach. For example, as discussed above the Independent Police Complaints Commission (IPCC) provides a mechanism for discharging the positive duty to investigate deaths under Article 2 of the HRA and has undertaken a series of recent investigations relating to failure to protect for example in relation to homicide, domestic violence and anti-social behaviour. The Care Quality Commission has a Formal Memorandum of Understanding with the Commission that aims to ensure adequate regulation and inspection on equality and human rights in the health and social care context.

At the same time, it is imperative to understand that the HRMF evidence base draws on the work of regulators and inspectorates using their own criteria and frameworks. It is, therefore, critical that care is taken when using and interpreting the HRMF to maintain an appropriate distinction between the criteria and frameworks adopted by regulators and inspectorates on the one hand, and the breach of a legally enforceable human right on the other.

NGO and media reports and allegations

The HRMF also includes NGO and media reports. Participants in the HRMF Specialist Consultation argued that it is imperative to include NGO data within the HRMF since it would be wrong, in principle, to rely on official information and a state's version of events in the context of independent human rights monitoring and reporting. Building on this approach, Panel 3 includes evidence and analysis by Liberty on terrorism and pre-charge detention and evidence from Amnesty International on rendition and secret detention. Media reports of human rights violations are also admissible within the HRMF, such as the media allegations of torture reported in the evidence base under the panel covering the prohibition on torture and inhuman or degrading treatment or punishment (HRA, Article 3). We have only included information within the HRMF that we believe to be from a reliable and credible source. Nevertheless, it is essential that when using and interpreting the HRMF evidence base appropriate consideration is given to issues of quality and the different types of sources on which the HRMF draws.

4.3 Interpreting the quantitative information within the HRMF

The HRMF evidence base also includes statistical information drawn from a broad range of social survey and administrative sources. Statistical information of this type can play a number of different roles in human rights analysis and assessments, for example, by:

- providing direct information on human rights violations and prima facie evidence of human rights violations/deficiencies
- providing information about overall patterns and variations and evidence of the vulnerability/risks of different individuals and groups and of possible gaps and/or weaknesses in protection
- providing information about the outcomes of relevant regulatory and inspection processes (for example, routine statistical monitoring of the number of deaths in custody and/or following police contact) and of other relevant monitoring exercises
- providing relevant contextual and background information (for example, general population data on the prison population, on stop and search by ethnicity and data on public attitudes/understanding of human rights)
- meeting the data requests of international human rights bodies that monitor the implementation of international human rights treaties that the UK is signed up to (such as the UN Human Rights Committee, the United Nations Committee on Economic, Social and Cultural Rights (UNCESCR) and the UNCRC).

As with the qualitative indicators in the HRMF, important 'health warnings' apply to the interpretation of the HRMF quantitative indicators. All of the statistical evidence presented in this report should be carefully interpreted and used in line with definitions, terminology, interpretations and guidance set out by the original data providers, including guidance on the limitations and quality of the data, and in line with disclosure policy and rules. We have included as much supplementary information as possible in footnotes together with references to the original source of the data. However, readers and users of the HRMF

requiring further clarification on the interpretation of data are strongly advised to check whether the original source of the data includes a commentary and/or further guidance, or to follow up with the original data providers.

The status of the statistical evidence also requires careful examination and interpretation in the light of standard statistical methods and evidential thresholds (for example, for establishing improvements and retrogression over time and variations by population subgroup using standard tests for statistical significance). An example of the need for careful analysis applying standard methods of statistical analysis is given in Figure 9.

It is also important to understand that the statistics presented in this report are potentially of varying quality. Only some of the official statistics that are included have achieved national statistics' classification. Some of the administrative statistics might be subject to variations in recording and coding whilst others might be based on small numbers. We have included as much information as possible about the statistics that are included within the HRMF in footnotes. However, in some cases it may be necessary to consult original data sources or other relevant sources in order to resolve questions about quality and interpretation that may arise.

Official administrative and social survey data sources

Some of the HRMF indicators draw on official administrative and social survey data sources. Statistical evidence of this type can often add to human rights analysis by helping to identify overall trends and patterns, highlighting which individuals and groups may be particularly vulnerable, identifying risks of a specific breach of human rights, as ultimately determined by the courts, pointing towards gaps in protection and so forth. Administrative statistics can also be important for the purposes of monitoring and, in some cases, general population statistics can also help to shed light on the issue of disproportionality. However, it is imperative not to 'over-interpret' the statistical evidence that is included within the HRMF and to maintain a clear and appropriate distinction between statistical analysis on the one hand and legal analysis on the other.

Administrative statistics generated from specific monitoring exercises

The evidence base under the first HRMF panel covering the right to life (HRA, Article 2) includes statistical data on deaths in custody in the police and criminal justice context. Routine statistical monitoring is undertaken by relevant inspectorates in this area including routine monitoring of deaths in police custody which are published on an annual basis by the IPCC. Data of this type is useful for human rights monitoring purposes and has therefore been included within the HRMF evidence base. Similarly, the evidence base under the panel covering the prohibition on torture and inhuman or degrading treatment or punishment (HRA, Article 3) includes data derived from routine statistical monitoring of complaints to the police by category. Again, this data is included because it is useful for monitoring purposes.

Specialist social surveys run by regulators and inspectorates

Some of the quantitative indicators draw on the specialist social surveys run by regulators and inspectorates. For example, information on the conditions and treatment in prisons, secure units and asylum and immigration centres are included in the HRMF indicator set under the panels covering the prohibition on torture and inhuman or degrading treatment or punishment (HRA, Article 3) and the right to respect for private and family life (HRA, Article 8), based on the specialist surveys conducted by HMIP. Similarly, quantitative indicators of compliance with the Care Quality Commission's 'essential standards' framework, including statistics generated through specialist patient surveys, such as treatment with dignity and respect and support for nutritional needs during hospital stays, are included under the panel covering the right to the highest attainable standards of physical and mental health (UDHR, Article 25; ICESCR, Article 12). These statistics are again based on the inspection criteria adopted by the individual inspectorates, and should be used and interpreted in the light of the comments above.

General population surveys

The HRMF also draws on a range of other social surveys including general population surveys and user surveys. For example, the panel covering the prohibition on torture and inhuman or degrading treatment or punishment (HRA, Article 3) includes general population survey information on the prevalence of domestic violence derived from the British Crime Survey self-completion module together with administrative statistics on the number of instances reported to the police, the number of investigations carried out by the police, the number of cases going to court, and the outcomes of these cases. This information is particularly helpful in evaluating the implementation of Article 3 (including the positive duty to protect individuals from violations by third parties) and can usefully supplement case law analysis (for example, the findings in the *Opuz v Turkey* case) as well as the findings of investigations (for example, investigations into the failure to protect life conducted by the IPCC) by helping to identify overall trends and patterns in domestic violence, highlighting which individuals and groups may be particularly vulnerable and pointing towards gaps in protection. Nevertheless, it is imperative to maintain a clear and appropriate distinction between the statistical analysis of these overall trends and gaps, and the analysis of a legal violation of a human right, established through an appropriate judicial process given the specific facts of a case.

Figure 9: The need for careful analysis and interpretation of quantitative evidence using standard statistical methods: Illustration drawing on Office for National Statistics (ONS) deaths by place data

The Right to Life (HRA, Article 2) (Indicator 7, Tables 30 and 31) provides data showing the number of deaths and age-standardised rate per 1 million population from *c. difficile*, dehydration, falls, MRSA, pressure sores and septicaemia, by place of death with separate reporting of hospitals and care homes, England and Wales, 1997-2009 where: (a) the cause specified was the underlying cause of death; (b) the cause specified was mentioned on the death certificate. This data represents an important new development in data collection and the ways in which deaths are monitored and investigated and has been included as a complement to qualitative evidence within the HRMF that raises questions about the treatment of older people in hospitals and care homes. However, the interpretation of this data is not straightforward. The data provides information about general trends and overall patterns in deaths by place rather than ‘fact based’ information about any particular case (ONS, 2011b) and emphasise that the figures should be interpreted with caution for a number of reasons.

First, in order to understand patterns and trends it is necessary to look at data series covering cases where: (a) a specified cause (for example, dehydration, malnutrition, *c. difficile*, MRSA) is recorded as the underlying cause of death; (b) the specified cause was mentioned anywhere on the death certificate (either as the underlying cause or as a contributory factor). This is because in many cases involving dehydration, malnutrition, *c. difficile* and MRSA many of the deaths will be people who already have a serious illness, and it is this illness that is recorded as the underlying cause of death.

Second, the data does not provide enough evidence to support any conclusion about the quality of care within an establishment. For example, in relation to the data on deaths caused by malnutrition, the data does not establish what caused the malnutrition. There are of course many explanations as to why someone becomes malnourished: for example they may have cancer of the digestive tract, which means they cannot eat properly or cannot absorb nutrients; they may have suffered from a stroke or have advanced dementia which can cause difficulties chewing and swallowing; or they may abuse alcohol and so not eat properly. The deceased may also have been malnourished before they went into the establishment or have been in the establishment for a very short time, and the malnutrition may have also have nothing to do with not being fed properly.

Continued

Figure 9: The need for careful analysis and interpretation of quantitative evidence using standard statistical methods: Illustration drawing on Office for National Statistics (ONS) deaths by place data (*continued*)

Third, some of the deceased may have had several of the specified conditions. For example, an older woman with osteoporosis has fallen down and fractured her hip. Whilst in hospital she develops an infection, which leads to septicaemia and she is treated with antibiotics. She then develops *c. difficile* and dies. The underlying cause of death would probably be the osteoporosis, but septicaemia and *c. difficile* would also be mentioned on the death certificate. So this woman would appear in three columns of Table 31. It is therefore not possible to add up the numbers of deaths from different conditions in Table 31 in order to obtain a total number of deaths from all six causes, because this could count the same death several times.

Fourth, evaluation of trends requires the analysis of confidence intervals which are the standard evidential threshold used in statistics to determine whether a trend has increased or decreased significantly over time. For example, if we look at deaths from pressure sores in hospitals in Table 30, the numbers increased from 500 deaths in 1997 to 604 deaths in 2009, whilst the rates increased slightly from 6.1 to 6.4 deaths per million population. However, calculations based on small numbers of events are often subject to random fluctuations, and in order to make statements about trends it is necessary to analyse the confidence interval. In 1997 we can say that we are fairly sure that the rate was between 5.6 and 6.7; and in 2009 it was between 5.9 and 6.9. Because these two confidence intervals overlap (i.e. 5.9 is lower than 6.7) we cannot definitely say that the mortality rate was significantly higher in 2009 compared with 1997 – even though the numbers look slightly higher.

In contrast, Table 31 provides data on deaths where dehydration was mentioned anywhere on the death certificate by place. In care homes, the numbers increased from 65 in 2001 to 125 in 2009, whilst the rates increased from 0.7 to 1.1 deaths per million population. Taking account of the information provided by the confidence intervals we can be fairly sure that the rate in care homes was between 0.5 and 0.8 deaths per million population in 2001 and between 0.9 and 1.3 deaths per million population in 2009. Since the confidence intervals do not overlap we can legitimately conclude that the increase in this rate over time is significant in a statistical sense. In hospitals, the number of deaths increased from 587 in 2001 to 816 in 2009, whilst the rates increased from 6.5 to 7.8 deaths per million population. Given the confidence intervals we can be fairly sure that the rate was between 5.9 and 7.0 deaths per million population in 2001 and was between 7.3 and 8.4 deaths per million population in 2009. The confidence intervals do not overlap and again, we can legitimately conclude that the increase in this rate over time is significant.

Source: Based on ONS (2011b).

Disaggregation and separate identification of the position of at risk and vulnerable groups

Wherever possible, administrative and social survey statistics have been systematically disaggregated by characteristics such as age, gender, disability, religion and belief, race/ethnicity, sexual orientation, transgender status and social class. In addition, particular emphasis has also been put in the HRMF on identifying and bringing together administrative and social survey data sources that support separate monitoring of at risk/vulnerable groups, such as conditions of detention for prisoners under the panels covering the prohibition on torture and inhuman or degrading treatment or punishment (HRA, Article 3) and the right to respect for private and family life (HRA, Article 8); the number of asylum seekers and refugees who enter and leave detention under the panel covering the right to liberty and security of the person (HRA, Article 5); educational gaps for 'looked after children' (included in the evidence base under the right to education (UDHR, Article 26, ; ICESCR, Articles 13 and 14; CRC, Article 28 and Article 29; HRA, Protocol 1 Article 2); and the numbers of 'children in need' whose primary care need is recorded as low income (included in the evidence base under the panel covering the right to an adequate standard of living, UNCRC, Article 27; ICESCR, Article 11). However, even where a range of demographic variables are recorded and at risk/vulnerable groups are separately identified, the potential for both systematic disaggregation and for separating monitoring for at risk/vulnerable groups is limited by sample size and other factors such as the need to maintain anonymity, privacy and disclosure. For further discussion in relation to sample size, see Alkire et al. (2009). In relation to anonymity, privacy and disclosure, we have, generally speaking, been guided by the guidelines and policies set out by data providers.

4.4 Worked example: The right to life (HRA, Article 2)

Figure 10 provides details of the 'indicator dashboard' that has been developed and agreed for the right to life. This will now be used to illustrate how the HRMF indicator dashboards work.

Figure 10: Illustrative HRMF panel: the right to life⁴²

| Protection of the right to life by the state, its agents or bodies fulfilling a public function | | | |
|---|--|---|--|
| Indicators | Use of unlawful/arbitrary force by the state, its agents or bodies fulfilling a public function | | Effective investigation of all deaths covered by Article 2 |
| | Non-institutional context | Institutional context (covers prisons, police stations, secure units, detention centres, schools, health and social care settings, etc.) | |
| Structural | <ul style="list-style-type: none"> Indicator 1: Legal and constitutional framework for the protection of the right to life. Evidence base: Protection of the right to life in domestic law (including constitutional/'higher' law); status of ratification of relevant regional/international treaties. Indicator 2: Legal precedents, gaps and standard-setting. Evidence base: principles established in key cases (domestic and ECHR) and in international standard-setting processes; gaps in legal protection; non-implementation of legal judgements and recommendations. | <ul style="list-style-type: none"> Non-institutional context Institutional context (covers prisons, police stations, secure units, detention centres, schools, health and social care settings, etc.) | |
| Process | <ul style="list-style-type: none"> Indicator 3: Regulatory framework for the protection of the right to life. Evidence base: Identification of key regulators, inspectorates, ombudsman/spotlight responsibilities and powers, minimum standards and inspection/complaints-handling criteria. Indicator 4: Public policy framework for the protection of the right to life. Evidence base: Primary law policies, plans, targets and goals; training guidelines, codes; spotlight resource allocations; etc. | | |
| Outcome | <ul style="list-style-type: none"> Indicator 5: Outcomes of key judicial, regulatory and investigative processes. Evidence base: Case law outcomes; concerns raised by human rights monitoring bodies; outcomes of inspection, regulation and complaints procedures; outcomes of investigations, inquiries and reviews; key allegations by civil society organisation/reports in the media. Indicator 6: Spotlight statistics: Deaths in the police/criminal justice system context. Evidence base: Deaths during or following contact with the police (by category of death), within prisons, secure units, court cells, and immigration and asylum centres (covering deaths from natural causes, non-natural causes and self-inflicted deaths) and during transit. Indicator 7: Spotlight statistics: Deaths within health and social care institutions. Evidence base: Hospital Standardised Mortality Ratios (HSMRs); deaths through neglect, malnutrition, dehydration, pressure sores, avoidable/preventable and 'excess' deaths; variations in overall hospital mortality rates. Indicator 8: Spotlight statistics: Protection from third party violations – homicide within society, community and families. Evidence base: Homicide rates: by characteristic (age, gender, race/ethnicity, disability, etc.) and by category (with separate reporting of hate crime homicide, religious/racially incited homicide and domestic homicide, etc.). Indicator 9: Spotlight statistics: Premature mortality within families, community and society. Evidence base: Life expectancy and infant mortality rates by ethnicity, social class and area deprivation; maternal mortality rates; child accidental death rate by social class. Indicator 10: Spotlight statistics Public attitudes/experiences. Evidence base: Public attitudes towards, and understanding of, the right to life. | | |
| Indicators should be systematically disaggregated | | | |

As Figure 10 suggests, the right to life indicator dashboard includes a balance of structural, process and outcome indicators. This balance ensures that the evidence base under the right to life (HRA, Article 2) Panel incorporates information relating to the formal commitment to the human right in question in principle (through the Human Rights Act and additional regional and international instruments), the steps being taken by duty holders to discharge the obligations that flow from the right to life (for example, primary law, policy and guidance, and regulation, inspection and complaints-handling) and the results achieved in practice (in terms of the position and experiences of individuals and groups).

The right to life – structural indicators

The right to life indicator dashboard begins with two ‘**structural indicators**’ that provide evidence base on the formal commitment to protect and promote the right to life in England, Scotland and Wales.

Indicator 1: Legal and constitutional framework

Indicator 1 provides information on the formal commitment to the human right to life in principle through **codification in domestic law and ratification of international human rights instruments**. The HRA incorporates Article 2 of the ECHR and establishes an explicit basis for Article 2 in domestic law. Violations of Article 2 are therefore legally justiciable and the negative and positive duties that flow from Article 2 can be legally enforced through the domestic courts. Indicator 1 also provides information on additional regional and international instruments that the UK has signed up to, such as the International Covenant on Civil and Political Rights (ICCPR) and the International Convention on the Rights of the Child, that protect the right to life. The legal status of these instruments should be understood in the context of the discussion in Chapter 3.

For further details of the evidence base under Indicator 1, see Table 1.

Indicator 2: Legal precedents, gaps and standard-setting

The evidence under Indicator 2 identifies key **legal principles** that have been applied in judicial processes to determine whether a particular issue or concern meets the threshold for establishing a violation of Article 2 of the HRA. Article 2 establishes a negative obligation on duty holders to refrain from arbitrarily taking life. The evidence base under Indicator 2 includes information on principles that have been applied in determining the nature and scope of violations of this duty. For example, in the McCann case, the ECtHR established that the use of force must be no more than what is absolutely necessary to defend persons from unlawful violence. This principle is included in the evidence base under Indicator 2. For references and further examples, see Table 3.

Indicator 2 also provides information on key principles that relate to the positive duty to protect life under Article 2 of the HRA. The Courts have established that Article 2 creates positive duties to protect life, as well as negative duties to refrain from arbitrarily depriving individuals of life – and that the failure to undertake positive steps to protect life can meet the threshold necessary to establish a justiciable violation of Article 2. The McCann case is again important here, establishing that the obligation to ensure that everyone’s life is

protected by law has a procedural aspect whereby the circumstances of a deprivation of life receives public and independent scrutiny. A number of further principles that clarify the nature and scope of this procedural duty under Article 2 have been established through the domestic courts. For example, the principle that there should be an effective public examination by an independent official body into any death occurring in circumstances in which the substantive obligations of Article 2 may have been violated and agents of the state may be implicated; and the principle that a near suicide of a prisoner can trigger an obligation under Article 2 to conduct an investigation which is independent, prompt and involves the next of kin.

The positive duties under Article 2 can also require legislative and administrative measures to protect and safeguard life and the courts have established that the failure to undertake such measures can satisfy the threshold for justiciable violations of the right to life. In the Osman case the ECtHR established that the police were under a positive obligation to take reasonable steps to protect life where they knew or ought to have known of a real and immediate risk to life. In the domestic courts, the Savage case clarified the nature and scope of the responsibilities of dutyholders (in this case, an NHS Trust) to implement protective and safeguarding measures where there is a known risk to life in the context of mental health patients who are detained. The case established that for detained patients Article 2 can be breached when duty holders have the requisite knowledge, actual or constructive, of a real and immediate risk to a patient's life from self-harm and fail to do all that could reasonably have been expected of them to avoid or prevent that risk. In other key cases, the ECtHR has established that violations of Article 2 can arise in the context of the failure of duty holders to provide effective protection from violations by third parties. For example, Article 2 can be violated in the context of an explosion caused by a build-up of hazardous waste where there was no effective regulation and inspection, and in the context of the failure to protect women from life-threatening domestic violence. For references and further examples, see Table 3.

Indicator 2 also provides information on principles that are established in **authoritative international standard-setting processes**. These principles do not necessarily provide information on issues and concerns under the right to life that satisfy the threshold for legal justiciability under the HRA. However, the UK has signed up to a number of international human rights instruments and the bodies that monitor the implementation of these instruments have set out a number of principles that are relevant for monitoring and reporting on implementation. For example, the UK has signed up to the United Nations Covenant on Civil and Political Rights (UNCCPR) and the implementation of the UNCCPR in the UK is monitored by the United Nations Committee on Civil and Political Rights. The Committee's General Comment 6 suggests that the right to life should not be interpreted narrowly but rather as covering such issues as life expectancy and infant mortality. Information about the principle established in this international standard is also included in the evidence base under Indicator 2. For references and further examples, see Table 3.

In addition, **Indicator 2** provides information on **gaps in protection** under the right to life and information on **non-implementation of legal judgements**. The right to life is protected in the HRA and in a range of international instruments that the UK is signed up to. The JCHR highlighted in 2007 that there was protection available under UK law for circumstances where there has been a serious breach of the right to life as a result of the gross management failure of a private or public organisation, but no identifiable individual within the organisation can be proved to be responsible for the failure (see Table 5). Relevant new primary legislation is highlighted in Table 9.

The UK has not yet signed up to the individual complaints mechanism under the ICCPR First Optional Protocol. On the **non-implementation of legal judgements**, the JCHR has highlighted the delays in agreeing appropriate implementation measures, in particular in respect of establishing new independent inquiries, in cases relating to the use of force by the security services in Northern Ireland. For references and further examples, see Tables 5 and 6.

For further details of the evidence base under Indicator 2, see Tables 1, 2, 3, 4, 5 and 6).

The right to life – process indicators

The ‘process indicators’ under the right to life panel provide evidence on the steps being taken by duty holders to fulfil the obligations that flow from the right to life. There are two process indicators under the right to life.

Indicator 3: Regulatory framework

Indicator 3 provides spotlight information on the key regulators, inspectorates and ombudsmen that have powers and responsibilities relating to the right to life and the investigation/monitoring of deaths. The information here sheds light both on the processes that are available in England, Scotland and Wales for investigating and monitoring deaths in the police and criminal justice context and in other areas such as health and social care, as well as the findings of the bodies that are charged with relevant responsibilities, and the types of monitoring and inspection that are in place.

For example, in England and Wales the IPCC investigates deaths in police custody and/or following police contact and complaints; whilst the Prisons and Probation Ombudsman investigates deaths in prison custody. In the health and social care context, investigations into deaths are undertaken by a range of bodies including health authorities, coroners and others. The Care Quality Commission inspects on ‘essential standards of care’ that cover patient safety and quality and undertake responsive inspections and investigations relating to deaths, whilst the Health and Social Care Ombudsman undertakes complaints handling including those relating to deaths. Indicator 3 provides a mechanism for highlighting and bringing together spotlight information on the powers and responsibilities of key regulators, inspectorates and ombudsmen in relation to deaths, and for analysing these within a human rights framework.

The evidence base under Indicator 3 also includes some specific information on the ways in which some of the regulators, inspectorates and ombudsmen relate their own work to domestic and international human rights standards. For example, an IPCC submission to the JCHR notes that IPCC investigations enable the state to comply with the requirement under Article 2 for an effective independent investigation into any alleged breach by the police, and this information is included in the evidence base under Indicator 3. Information is also included on the ways in which HMIP England and Wales, and HMIP Scotland, relate their powers and remit to legally binding human rights standards (such as the positive duty to take reasonable measures to prevent suicide in prisons under Article 2) as well as to international standards such as those set out in the CAT.

For details of the evidence base under Indicator 3, see Tables 7 and 8.

Indicator 4: Public policy framework

Indicator 4 provides further information on the steps that are being taken to discharge the obligations that flow from the right to life, including legal, policy and other measures. The evidence based here brings together spotlight information on primary law, policies, plans, targets, goals, training, guidelines, codes and resource allocations. For example, relevant primary law includes the Criminal Law Act 1967 Part 1 Section 3, relating to the use of force in making arrest and legislation that protects individuals and groups from homicide. Policy guidance and training guidelines on the use of lethal force/potentially lethal force and the use of restraint have been issued by a number of bodies, and these are also included in the Indicator 4 evidence base. Examples for the prison and secure training centre context include Prison Services Policy (Prison Service Order (PSO) 1600 Use of Force) and Use of Force Training Manual; PSO 2700 Suicide prevention and self-harm management; PSO 2710 Follow up to deaths in custody; The Secure Training Centre (Amendment) Rules and the Ministry of Justice (MoJ) Physical Control in Care Training Manual. For references and further examples, see Table 10.

We have also included identifiable expenditure on social protection as an element of the evidence base under Indicator 4. There were a number of discussions in the HRMF Specialist Consultation regarding the role of resource indicators within the HRMF (for a detailed record, see Appendix 4). Whilst some participants highlighted the possible limitations of resource indicators, others highlighted the importance of resource allocations as one element of the 'positive steps' that duty holders can take to protect the right to life. The particular importance of expenditure on social care for children was highlighted in the context of statistics that reveal the increased vulnerability of under ones to homicide and potential gaps and weaknesses in protection (discussed under Indicator 8). Some participants suggested that expenditure on social care for adults is also particularly important in the context of the positive duty to protect the right to life. For these reasons, we have included information on general trends in identifiable expenditure on social protection within the evidence base under Indicator 4. We recommend that follow-up work is undertaken to identify specific expenditure streams on safeguarding children and adults, and on child and adult protection, in follow-up projects.

For further details of the evidence base under Indicator 4, see Tables 9 and 10.

The right to life – outcome indicators

The ‘**outcome indicators**’ under the right to life panel illustrated in Figure 3 provide evidence on results achieved and the position of individuals and groups in practice. The outcome indicators for the right to life dashboard brings together both qualitative and quantitative information on relevant outcomes from a range of official, authoritative and NGO sources.

Indicator 5: Outcomes of key judicial, regulatory and investigative processes

Indicator 5 is a qualitative indicator that provides a broad range of evidence about outcomes in practice including:

- case law outcomes that engage the right to life (i.e. violations/breaches)
- findings of authoritative national and international human rights bodies that relate to the right to life
- findings of other investigations, inquiries and reviews, and findings highlighted by regulators, inspectorates and ombudsmen, that relate to the right to life
- allegations and concerns raised by NGOs and other civil society mechanisms such as media reports.

The evidence base under Indicator 5 begins with information on **case law outcomes** where violations/breaches of human rights have been established through a judicial process. For example, the outcomes of McCann and Savage cases discussed already, where violations or breaches of Article 2 were established through the courts, are both included in the evidence base under Indicator 5. For references and further examples, see Table 11.

Alongside information on case law outcomes, the evidence base under Indicator 5 includes **issues and concerns highlighted by national and international human rights bodies**. For example, the evidence against this indicator includes the finding of the Joint Committee on Human Rights in its report *Deaths in Custody*, which examines the causes of deaths in custody and considers what may be done to prevent these deaths and to better protect the right to life (and other human rights) of vulnerable people held in the custody of the state. Findings of international human rights monitoring bodies relating to the right to life are also included in the evidence base under Indicator 5. These include concerns around child deaths in custody and concerns about the gap in infant mortality between the most and the least well-off groups highlighted by the UNCRC and findings of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) relating to maternal mortality rates among ethnic minorities and the high numbers of miscarriages and stillbirths for women from Traveller communities. For references and further examples, see Table 12.

The evidence base against Indicator 5 also includes findings by official inquiries, investigations and reviews. Examples include the findings of the Bloody Sunday Inquiry, which concluded that the unjustifiable firing by soldiers on Bloody Sunday caused the

deaths of 13 people and injury to a similar number, none of whom was posing a threat of causing death or serious injury. Other examples are the Inquest finding relating to the 14-year-old Adam Rickwood and the unlawful use of restraint which was found to be a contributing factor; and the findings of death reviews such as the reviews of 'preventable deaths' on behalf of Local Safeguarding Children Boards. Examples for Scotland include a review of Fatal Accident Inquiry (FAI) legislation undertaken in 2009 which recommended mandatory FAIs to cover work-related deaths, deaths of any person subject to compulsory detention by a public authority, and deaths of children being maintained in a 'residential establishment'.

The findings of regulators, inspectorates and ombudsmen are another key source under Indicator 5. Section 6 of the HRA establishes a duty on public bodies to comply with the HRA and in the McCann case discussed already, the ECtHR established that the obligation to ensure that everyone's life is protected by law includes a procedural aspect whereby the circumstances of a deprivation of life receives public and independent scrutiny. The relevance of the powers and responsibilities of the IPCC in this context was discussed above and the evidence base under Indicator 5 includes a number of findings of IPCC investigations such as the IPCC inquiry into the death of Ian Tomlinson relating to the alleged use of force by a police officer.

Other IPCC investigations that relate to the positive duty to protect life (including in the context of violations by third parties) are also reflected. For example, the IPCC investigation into the death of Rabina Bibi found that the police force failed by not dispatching police officers when an initial call for assistance was made contrary to force policy on domestic abuse. The IPCC investigation into the death of Fiona Pilkington highlighted the failure to implement a cohesive, structured and effective approach in the context of harassment/anti-social behaviour. The importance of including information relating to the failure to protect life in the context of domestic violence and disability hate crime was highlighted in the HRMF Specialist Consultation, and the evidence base here is intended to capture and reflect these concerns.

Broadening out from the police and criminal justice system context, the findings of other regulators and inspectorates that have powers and responsibilities to investigate and monitor deaths in England, Scotland and Wales are also included as evidence under Indicator 5. Examples include the findings of the Parliamentary and Health Service Ombudsman and the Local Government Ombudsman highlighting failures in the quality of health and social care services in the context of deaths of people with learning disabilities; findings of the Health Services Ombudsman relating to end of life care of older people; and findings in the investigation of 'excess deaths' in Mid Staffordshire NHS Foundation Trust by the Healthcare Commission (now the Care Quality Commission).

For references and further examples, see Tables 14, 15, 16 and 17.

Indicator 5 also includes spotlight information on allegations and concerns raised by NGOs and other civil society mechanisms such as media reports. Examples include concerns raised in Inquest's *Briefing on the death of Ian Tomlinson*, concerns around the deaths of six people with a learning disability in NHS care highlighted in the Mencap Death by

Indifference campaign and press and advocacy reports of deportation cases that raise issues and concerns under Article 2. For references and further examples, see Table 18.

For further details of the evidence base here under Indicator 5, see Tables 11, 12, 13, 14, 15, 16, 17 and 18.

Indicator 6: Spotlight statistics: Deaths in the police and criminal justice system context

The ‘outcome indicators’ under the right to life panel illustrated in Figure 3 also include a series of quantitative indicators that provide statistical information on key concerns and issues. The first of these, Indicator 6, includes data generated by a range of bodies that have responsibilities and powers relating to the investigation and monitoring of deaths in the police and criminal justice system context (including, for example, deaths during or following contact with the police, deaths from natural and non-natural causes (including suicide) within prisons, secure units, court cells, immigration and asylum centres and during transit).

For further details of the evidence base under Indicator 6, see Tables 19, 20, 21, 22, 23, 24, 25 and 26.

Indicator 7: Spotlight statistics: Deaths within health and social care institutions/ community care

This information under Indicator 7 is intended to provide a broader picture of the systems that are in place to investigate and monitor deaths in England, Scotland and Wales beyond the police and criminal justice context. Participants in the HRMF Specialist Consultation also highlighted the need for robust systems for investigating and monitoring deaths across the board, including within the health and social care context. For example, the evidence base under Indicator 7 includes data on variations in death rates by NHS Trusts. This data series has been included because we feel that it represents an important new development in the routine monitoring of deaths in the health and social care context. The inclusion of this data in the evidence base should be understood in the context of the findings of the investigation of ‘excess deaths’ in Mid Staffordshire NHS Foundation Trust by the Healthcare Commission (now the Care Quality Commission) (on which, see Table 16).

The evidence base under Indicator 7 also includes data on the number of deaths and age-standardised death rate per 1 million population from c. difficile, dehydration, falls, MRSA, pressure sores and septicaemia, with separate reporting for hospitals and care homes. These statistics also represent an important new development in ONS data collection and have been included as a complement to qualitative evidence within the HRMF on the treatment of older people in health and social care highlighted under the panels covering the right to life (HRA, Article 3); the prohibition on torture and inhuman or degrading treatment or punishment (HRA, Article 3); the right to respect for private and family life (HRA, Article 8); and the right to the highest attainable standard of physical and mental health (UDHR, Article 25; ICESCR, Article 12). However, it is critical to understand that statistics of this type require careful analysis and interpretation. Further guidance on the

use and interpretation of the HRMF evidence base drawing on the example of the ONS series on deaths by place is provided in Figure 9.

For further details of the evidence base under Indicator 7, see Tables 27, 28, 29, 30, 31 and 32.

Indicator 8: Spotlight statistics: Protection from third party violations – homicide within society, community and families

Indicator 8 provides statistical information on the prevalence of homicide by characteristic (by age, gender and ethnicity) and by category (with separate reporting of hate crime homicide, religious/racially incited homicide and domestic homicide). Participants in the HRMF Specialist Consultation put particular emphasis on the importance of positive duties to protect the right to life including in the context of violations by third parties and the importance of child homicide, domestic homicide, racially motivated homicide and hate crime homicide, were all highlighted during the course of discussions. The statistical information under Indicator 8 is intended to provide general information to inform this analysis on the prevalence of homicide, the vulnerability and risks of different individuals and groups, and possible gaps and/or weaknesses in protection. For example, Table 33 provides information on the homicide rate per million of the population by age and sex of victim, 1999-2000 to 2009-10 for England and Wales. The data shows that, for the population subgroups identified in the analysis, the greatest risk of homicide is for under ones and highlights the particular vulnerability of this group.

For further details of the evidence base under Indicator 8, see Tables 33, 34, 35, 36 and 37.

Indicator 9: Spotlight statistics: Premature mortality within families, community and society

Indicator 9 provides statistical information on other types of premature mortality within families, community and society including life expectancy and infant mortality rates by ethnicity, social class and area deprivation; maternal mortality rates; suicide rates; and child accidental death. The statistical information here is again intended to provide general information to inform this analysis on the prevalence of premature mortality within families, community and society, the vulnerability and risks of different individuals and groups, and possible gaps and/or weaknesses in protection. Data of this type is often requested by international bodies that monitoring the implementation of international human rights treaties that the UK is signed up to, such as the UN Human Rights Committee and the UNCRC. Participants in the HRMF Specialist Consultation put particular emphasis on disaggregation of this data by a broad range of characteristics including area deprivation. The inclusion of the data on child accidental deaths reflects participants' comments regarding differential vulnerability to road and traffic accidents and to fire both by social class and for particular population subgroups (for example, Gypsies and Travellers).

For further details of the evidence base under Indicator 9, see Tables 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61 and 62.

Indicator 10: Spotlight statistics: Public attitudes, understanding and experiences.

Finally, Indicator 10 provides information on public support for, and understanding of, the right to life. The evidence base here relates to population values and the ways in which the idea of human rights is embedded in broader culture.

For further details of the evidence base under Indicator 10, see Table 63.

Chapter notes

42 This is a shortened one page version of the right to life panel. The full version is provided in Chapter 5.