Acknowledgements

LSE Human Rights Futures are acting as unpaid partners on the HRMF project and we are extremely grateful to Francesca Klug and Helen Wildbore for their advice, comments and support. Initial in-depth project interviews on the role of human rights indicators have been undertaken with Nick Hardwick, Anne Owers and Frances Butler. Their input has helped us to develop the project framework and we hope will provide a basis for project case studies. Jack Finegan has provided excellent administrative assistance, and Anne Maree Payne has provided excellent research assistance. Responsibility for errors and misunderstandings remains with the authors.
List of Acronyms

AP Action Plan
BIHR British Institute of Human Rights
CASE Centre for Analysis of Social Exclusion
CIRI Cingranelli-Richards
CCTV Closed Circuit Television
CEDAW Convention on the Elimination of Discrimination Against Women
CESCR Committee on Economic, Social and Cultural Rights
COs Country Offices
CSOs Civil Society Organisations
DCSF Department for Children, Schools and Families
DH Department of Health
DNA Deoxyribonucleic Acid
ECHR European Convention on Human Rights
ECtHR European Court of Human Rights
EHRC Equality and Human Rights Commission
EMF Equality Measurement Framework
EU European Union
FRA Fundamental Rights Agency
FREDA Fairness, Respect, Equality, Dignity and Autonomy
GDI Gender Related Development Index
GDP Gross Domestic Product
GEM Gender Empowerment Measure
GEO Government Equalities Office
GNI Gross National Income
HDI Human Development Index
HIV Human Immunodeficiency Virus
HM Her Majesty’s
HMIP Her Majesty’s Inspectorate of Prisons
HPI Human Poverty Index
HR Human Rights
HRA Human Rights Act
HRJRMAMP Human Rights Joint Risk Assessment and Management Plan
HRMF Human Rights Measurement Framework
HURIDOCS Human Rights Information and Documentation Systems
ICCPR International Covenant on Civil and Political Rights
ICERD International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR International Covenant on Economic, Social and Cultural Rights
LSE London School of Economics
MDG Millennium Development Goals
MoJ Ministry of Justice
MP Member of Parliament
MSP Member of the Scottish Parliament
NGOs Non-Government Organisations
NHRIs National Human Rights Institutions
NHS National Health Service
OHCHR Office of the High Commissioner for Human Rights
ONS Office of National Statistics
<table>
<thead>
<tr>
<th>Acronym</th>
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<tr>
<td><strong>OPM</strong></td>
<td>Office for Public Management</td>
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<td><strong>PCT</strong></td>
<td>Primary Care Trust</td>
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<td><strong>SHRC</strong></td>
<td>Scottish Human Rights Commission</td>
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<tr>
<td><strong>SMART</strong></td>
<td>Specific, Measurable, Attainable, Relevant, and Time-framed</td>
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<td><strong>UDHR</strong></td>
<td>Universal Declaration of Human Rights</td>
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<tr>
<td><strong>UK</strong></td>
<td>United Kingdom</td>
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<tr>
<td><strong>UN</strong></td>
<td>United Nations</td>
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<tr>
<td><strong>UNCESCR</strong></td>
<td>United Nations Committee on Economic, Social and Cultural Rights</td>
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<td><strong>UNCRC</strong></td>
<td>United Nations Committee on the Rights of the Child</td>
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<td><strong>UNDP</strong></td>
<td>United Nations Development Programme</td>
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<td><strong>UNHCHR</strong></td>
<td>United Nations High Commissioner for Human Rights</td>
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<td><strong>UNHRC</strong></td>
<td>United Nations Human Rights Council</td>
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<tr>
<td><strong>VAW</strong></td>
<td>Violence Against Women</td>
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<td><strong>VCS</strong></td>
<td>Voluntary and Community Sector</td>
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<tr>
<td><strong>WGI</strong></td>
<td>Worldwide Governance Indicators</td>
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<td><strong>WHO</strong></td>
<td>World Health Organisation</td>
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Developing a Human Rights Measurement Framework (HRMF)

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1 Introduction and Overview

This Background Paper provides information for participants in the Specialist Consultations on the Human Rights Measurement Framework (HRMF). It sets out our methodology and provides a literature review of international good practice on the development of human rights indicators, covering the OHCHR Conceptual and Methodological Framework and other sources.

1.1 Background to the HRMF Project

The background to the HRMF Project is the decision of the Equality and Human Rights Commission (EHRC or “the Commission”) in partnership with the Scottish Human Rights Commission (SHRC) to move ahead with the development of a set of indicators that can help to provide an understanding of the state of human rights in Britain. The Human Rights Measurement Framework (HRMF) will provide a conceptual and empirical basis for monitoring the human rights position of individuals and groups, identifying key challenges, setting priorities for action, and evaluating progress over time.

The Framework arises in the context of the duty of the Commission to promote equality and human rights by (1) monitoring the law and (2) by monitoring outcomes (or ‘results’) by developing indicators and evaluating progress in a triennial report to Parliament. In order to discharge this duty, the Commission is developing independent monitoring systems covering the various aspects of its mandate and responsibilities (equality, human rights, good relations). Collectively, the Measurement Frameworks will provide an overarching basis for monitoring the equality and human rights position of individuals and groups and for discharging the Commission's statutory responsibilities and mandate.

Previous research work that inputs into the EHRC Measurement Framework includes the development of the Equality Measurement Framework (EMF) (for details, see Alkire et al 2009). The domains of the EMF were derived from the international human rights framework and include a number of indicators that we believe capture and reflect human rights principles and concerns. These include, for example, physical security for people resident or detained in institutions (including elder abuse and other abuse of the non-private household population); treatment with dignity and respect during hospital stays; satisfaction with police complaints procedures; and the numbers of victims of rape, domestic violence and hate crime, compared to the number of cases detected, and the number of successful prosecutions.

Nevertheless, from the human rights perspective, the EMF is limited in certain important respects. In particular, international best practice suggests coverage of three types of human rights indicators: (1) structural indicators; (2) process indicators; and (3) outcome indicators. However, categories (1) and (2) were beyond...
the scope of the EMF consultation.\(^2\) In addition, the EMF provides for systematic disaggregation related to the characteristics in the Equality Act 2006 (ethnicity, gender, age, religion and belief, disability, sexual orientation, transgender) together with social class.\(^3\) However, human rights standards provide a more general prohibition of discrimination and point to the need to explicitly develop and agree a formal list of vulnerable groups for monitoring purposes (e.g. Gypsies and Travellers, adults and children detained or resident in public and private institutions etc). The development of the Framework provides an opportunity to develop and agree a more complete set of human rights indicators and a list of vulnerable groups of this type.

In parallel developments, the findings and recommendations of the Commission’s Human Rights Inquiry also raise the need for the development and agreement of a more complete set of human rights indicators. Background research for the Inquiry concluded that public sector organizations are generally not collecting detailed information on the benefits of human rights activities in a systematic way (OPM 2008: 93). The Inquiry concluded that further work is required to help public sector organisations to establish human rights performance management regimes. It recommended that the Commission should work with regulatory bodies and inspectors to develop appropriate targeted human rights indicators to measure the extent to which public bodies are adopting a human rights approach (Equality and Human Rights Commission 2008b9:184).

Finally, the UK’s expanding human rights commitments generate a need for the Framework. The starting-point for thinking about human rights standards in England, Scotland and Wales is the Human Rights Act 1998. In addition, the UK has signed and ratified a range of regional and international human rights treaties, including the International Covenants on Civil and Political Rights and Economic, Social and Cultural Rights and the Convention on the Rights of the Child. The UK has been criticized on numerous occasions for having inadequate statistical systems for monitoring the human rights position of individuals and groups and for making such information available to civil society and international human rights monitoring mechanisms (most recently for example comments of the UN Committee on the Rights of the Child following UK Country Report, UNCRC 2008: 12). The development of a set of human rights indicators for England, Scotland and Wales presents an opportunity to remedy this situation.

### 1.2 Purposes of the HRMF

The purposes of the HRMF, as agreed by the EHRC and the SHRC, are as follows:

- To produce a credible and objective methodology with which to measure compliance with and progress towards implementation of the human rights framework in Britain

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\(^2\) There is an overlap of terminology here, with EMF/OHCHR categories ‘outcome’ and ‘process’ referring to different underlying concepts. The possibility of confusing arising from this overlapping terminology needs to be addressed as the project proceeds.

\(^3\) The Equality Act refers to race, but the term ethnicity was adopted for the purposes of the EMF disaggregation in line with ONS and census based classification schemes. Social class is not referred to in the Act but as agreed as an additional disaggregation characteristic with EHRC and GEO.
1.3 Our methodology

Our methodology has involved refining and adapting the Conceptual and Methodological Framework of the Office of the High Commissioner for Human Rights (OHCHR) for the UK context. We believe that this approach will result in a high quality and analytically focussed research output that will build on recognized international best practice while fully reflecting and incorporating particular human rights issues and concerns in England, Scotland and Wales. The types of modifications to the OHCHR good practice prototype that have been undertaken include: focus on the Human Rights Act (HRA), focus on section 6 HRA duties (as discussed in Chapter 2), focus on key human rights concerns in England, Scotland and Wales, enlargement of the OHCHR conceptual grid to incorporate additional columns covering a set of human rights indicators for public services (as highlighted by the Human Rights Inquiry) and protection of particular vulnerable groups (such as protection of the vulnerable in care homes).

Following internal consultation and external road testing of the analytical framework with the Advisory Group and the Project Management Group, the next step in the development of the HRMF is to achieve maximum possible agreement on a set of human rights indicators and measures to populate the Framework for England, Scotland and Wales. In order to achieve this objective, a specialist consultation with stakeholders and subject experts is being undertaken.

- The principle aim of the specialist consultation is to reach maximum possible agreement on a shortlist of approximately 50 ‘spotlight’ indicators and associated measures that can be used to ‘populate’ the HRMF for England, Scotland and Wales
- For Scotland and Wales, an additional aim is to identify matching sources (the provisional shortlist of indicators and measures focuses on England)
- We are also recording other feedback and comments, for example, on the definition of a human rights indicator, on the panels, on language, on coverage of vulnerable groups, on the types of data that should be covered, etc.

The research team has prepared a provisional short-list of indicators and measures for each panel, as a basis for discussion at the Specialist Consultation. The short-list will be revised as a result of the specialist consultation, and a data gathering exercise will be undertaken, based on the agreed set of indicators and measures.

1.4 Overview of this report
This (draft) literature review is our first project output on the HRMF project. The methodological framework we are developing has five key inputs. These are:

1. The framework for the protection and promotion of human rights in the UK (Chapter 2 and Appendix 1)
2. The findings and recommendations of the EHRC Human Rights Inquiry (Chapter 3)
3. The approaches taken by the Scottish Human Rights Commission (Chapter 4)
4. The development of the Equality Measurement Framework (Chapter 5)
5. The knowledge and experiences on the ground of the British Institute of Human Rights (Chapter 6)

Chapter 2 reviews the first key input into the HRMF project – the framework for the protection and promotion of human rights in the UK. The anchoring for the project is the Human Rights Act (1998) and the nature and scope of the HRA is reviewed. The notion of positive obligations and the duties of public authorities are highlighted, and analyses of selected Articles (namely, Articles 2, the right to life; Article 3, protection from torture or to inhuman or degrading treatment or punishment; and Article 8, right to a private and family life, home and correspondence) are presented. Whilst the focus of Chapter 2 is the HRA, the UK is also party to a number of regional and international human rights instruments, which are also covered in the HRMF project. These are summarized with further details provided in Appendix 1.

Chapter 3 reviews the second key input into our thinking – the implications of the findings and recommendations of the EHRC Human Rights Inquiry. Background research for the Inquiry concluded that public sector organizations are generally not collecting detailed information on the benefits of human rights activities in a systematic way (Office for Public Management [OPM] 2008: 93) and the Inquiry concluded that further work is required to help public sector organisations to establish human rights performance management regimes. Further, it was recommended that the Commission should work with regulatory bodies and inspectors to develop appropriate targeted human rights indicators to measure the extent to which public bodies are adopting a human rights approach (EHRC 2009d: 184). The Chapter reviews the nature and scope of these findings and recommendations and the research evidence on which they are based.

Chapter 4 highlights the recent work of the Scottish Human Rights Commission (SHRC), including the human rights priorities which emerged from a three month nationwide consultation undertaken in 2008-2009, and the experience of the SHRC in applying the PANEL framework, analysed through consideration of the case study of The Scottish Hospital.

Chapter 5 examines the development of the Equality Measurement Framework (EMF). The Chapter begins by setting out the central elements of the EMF and exploring how these relate to and build on human rights standard and principles. The short-list of 50 indicators for adults that is being used with the EMF is highlighted and the feedback on human rights issues generated by the EMF consultation events is
reviewed. Finally, the recommendations and findings of the EMF report are considered from the human rights perspective.

Chapter 6 focuses on the fourth key input - the experiences and work on the ground of the British Institute of Human Rights. These include the particular focus on Articles 2, 3 and 8 of the Human Rights Act as entry-points for the protection and promotion of human rights, as well as specific recommendations on the development of human rights indicators. Following the development of the EMF, the British Institute of Human Rights organized a seminar on the development of human rights indicators, and the Chapter examines the recommendations and suggestions highlighted at the Seminar. Findings from this event are summarized.

Chapter 7 provides an overview of the sixth key input into our work - international good practice on the development of human rights indicators. The OHCHR Conceptual and Methodological Framework is examined first. This provides the starting-point for the current project and the central focus for our methodology, which emphasises the key distinction between structural, process and outcome indicators, and the need to cover all three types of indicator as the development of the HRMF is taken forward. However, there is a rapidly increasing number of international initiatives in this area, and these are also reviewed, with a particular emphasis on drawing out the insights and lessons for the HRMF project.
2

The framework for the protection and promotion of human rights in the UK

The starting-point of the HRMF project is the framework for the protection of human rights in the UK. The domestic law framework is based on the Human Rights Act 1998, which is explored in this Chapter. In addition, the UK has signed and ratified a significant number of regional and international human rights treaties and other instruments. Further details of these are provided in Appendix 1.

2.1 The Human Rights Act

At the domestic level, the Human Rights Act 1998, which came into force in the UK on 2 October 2000, places all public authorities in the UK under a duty to respect the rights it contains in everything that they do. The Human Rights Act protects everyone in the UK, without any exceptions. The Human Rights Act has two main aims:

i) To bring most of the human rights contained in the European Convention on Human Rights into UK law.

ii) To bring about a new culture of respect for human rights in the UK. Human rights are not just about the law and taking cases to court. They are relevant to many of the decisions people make and the situations people experience on a daily basis. The government intended the Human Rights Act to place human rights at the heart of the way public services are delivered.

A list of the key Articles in the Human Rights Act is provided in Appendix 1.

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.4 The ECHR is enforced by the European Court of Human Rights (ECtHR) based in Strasbourg, France.

The Convention is divided into ‘Articles’, with Articles 2 to 14 setting out the human rights that are protected by the ECHR. The ECHR 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 ECHR). 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 the First, Third and Sixth Protocols).

Positive Obligations

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4 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 across the European continent and includes countries such as Russia, Turkey and the Ukraine.
The ECHR is a living instrument, which means that it 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. Therefore, the ECHR can sometimes impose a positive obligation on the state to protect rights, although this may not be explicitly stated in the text of the Convention, such positive obligations are considered necessary for the effective operation of the right. A positive obligation, for example, this might be to protect one individual from harm caused by another individual. Such positive obligations exist 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 European Court of Human Rights, positive obligations may include:

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

**The Human Rights Act 1998**

The Human Rights Act (‘HRA’) makes most of the human rights set out in the ECHR enforceable in domestic law. Prior to this people in the UK who sought an effective remedy for breaches of their Convention rights had to seek redress from the European Court rather than being able to directly access their rights in UK courts. The HRA came into force throughout the UK on 2nd October 2000. Importantly, the HRA not only make Convention rights enforceable in the UK courts it also places a duty on all public authorities to act in a way which is not incompatible with Convention rights. The HRA therefore also aims to ensure human rights are seen as important beyond the court room, putting the individual at the centre of decisions taken by public authorities.

**2.2 How the HRA works**

- **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.

- Any person, corporate body, non-governmental organisation, 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.

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5 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.

6 The rights which are not included are the article 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.
criminal or civil. They can, alternatively, start proceedings under the Human Rights Act itself. It is not necessary to be a UK national in order to make a claim under the Convention. 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 Courts must interpret legislation in a way that is compatible with the ECHR 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 ECHR, 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 ECHR.

- **For all new legislation, the Minister responsible for the Bill must make a statement confirming that it complies with the ECHR** (or explain why it does not).

- **The domestic Courts must take into account the case law of the European Court of Human Rights.** 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. There is nothing stopping our own courts being more generous in rights terms than the ECtHR and developing its own case law under the HRA. The ECHR represents a floor rather than a ceiling for the protection of human rights.

**A note on public authorities:** 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, as 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.

**2.3 Analysis of Selected Articles of the HRA**

**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:

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

The right to life is considered to be a fundamental. The ECtHR refers to the substantive and the procedural aspects of Article 2. The substantive deals with the duties on state to secure life, which entails two aspects 1) a duty not to deprive anyone of his or her life save in the limited circumstances prescribed, and 2) a duty to take positive measures to ensure the protection of life. The procedural aspect refers to the need for states to 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.

The right to life could be engaged where loss of life is caused or risked by the actions of state officials (e.g. police, army or prison officers) through deliberate taking of life, inadequate protective regulation, negligent health care provision, where life saving treatment is withheld, euthanasia and humane deprivation of life.

As human rights law primarily deals with relations between the state and the individuals, if a state official (e.g. police, army or prison officers) intentionally takes the life of another person, this will always engage their right to life. Determining whether such a situation will breach Article 2 will depend on whether it occurs within the limitations set out in Article 2, and that the force used was no more than was necessary.

The duty to take reasonable measures to protect life includes imposing 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. In relation to medical treatment the positive obligation does not extend to the provision of medical treatment in all circumstances; there is no absolute obligation to treat if such treatment would be futile. The ECtHR has held that scope of the positive obligation under Article 2 must be interpreted in a way which does not impose an impossible or disproportionate burden on public authorities.

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7 McCann v UK (1995) 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.’

8 McCann v UK (1995)
9 Osman v UK (1999)
10 However, in this context it is important to consider Article 14 issues in conjunction with Article 2 as decisions about access to treatment on the basis of discrimination may constitute a breach of the Convention rights.
11 See for example NHS Trust A v Mrs M, NHS Trust B v Mrs H, (2000) and North Staffordshire combined Healthcare Trust v Dorothy Humphries (2001)
12 For example see Osman v UK para 110 ‘...the scope of the positive obligation must be interpreted in a way which does not impose an impossible or disproportionate burden on the authorities.’
resources. However, they must operate their discretion in accordance with Article 2 and Article 14. Further, Article 2 is not concerned with the quality of life; it therefore does not confer a right to die or to enlist the aid of another in bringing about one’s own death. 13 Thus there is a distinction between the taking of one’s own life by one’s own act and the taking of life through intervention or with the help of a third party and a distinction between the cessation of life-saving or life-prolonging treatment and the taking of action lacking medical, therapeutic or palliative justification.

**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’. 14

Conduct has to be very serious for it to breach Article 3 and the treatment must attain a ‘minimum level of severity’. 15 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. 16

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. 17

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13 Pretty v UK (2002)
14 A and others v East Sussex County Council and Another (2003)
15 Ireland v UK (1978)
16 Costello-Roberts v UK (1993) 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.’
17 Ireland v UK
**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. Discrimination based on race may in certain circumstances amount to degrading treatment.

Examples where Article 3 might be engaged include the general conditions of a hospital, residential home or care home, and other institutions, 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. Positive duties also prevent the removal of foreign nationals to a country where they are at risk of suffering Article 3 type treatment and the destitution of asylum seekers in relation to the level/type/lack of support provided by the state.

**Article 8: Right to a private and family life, home and correspondence**

‘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.

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18 Tyrer v. UK (1978)
19 See for example A and others v East Sussex County Council and Another (2003); B v UK (1983)
20 East African Asians v UK (1973)
21 Z and others v UK (2001)
22 Chahal v UK (1996)
23 R v Secretary of State for Home Department ex parte Limbuela (2005)
Private life: has been interpreted by the ECtHR as a person’s ‘physical and psychological integrity’. It includes at least two elements: 1) the notion of an ‘inner circle’ in which the individual may live his own personal life as he chooses; and 2) the right to establish and develop relationships with other human beings. The ECtHR has stressed that ‘the concept of “private life” is broad and not susceptible to exhaustive definition’. Examples of issues that fall within this concept include compulsory medical treatment or forcible restraint; personal autonomy and a person’s ability to establish and develop relationships with other people; sexual life and same sex relationships; personal identity, including name and gender; the holding, use or disclosure of personal information, which includes access to information held by public authorities and retention of information and samples by the state, for example policies governing the retention of DNA samples by criminal justice agencies; and stop and search police powers.

Family life: is interpreted broadly, in a way which does not allow legally recognised relationships to prevail over ‘biological and social reality’. 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. 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 on-going

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24 Botta v Italy (1998)
25 See for example Connors v UK and Niemitz v Germany (1992)
26 Pretty v UK (2002) 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.’
27 See for example YF v Turkey (2004) and Glass v UK (2004)
28 Bruggerman & Scheuten v Germany (1977) 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’
29 Dudgeon v UK (1983): 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.
30 Burghartz v Switzerland (1994): legal restrictions on the names people can adopt engage Article 8
31 Goodwin v UK (2002) national laws which discriminate against transsexual people engages Article 8.
32 Gaskin v UK (1989): access to social work files where this is necessary for the person to know about their early childhood. Odievre v France (2004): access to information for adopted children about their biological parents.
33 Marper v UK (2008): the policy of blanket DNA and fingerprint retention for all persons suspected of committing criminal acts breached the right to private life.
34 Gillan and Quinton v the United Kingdom (2010): stop and search powers under section 44 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.
35 Kroon v the Netherlands (1995) para 40
36 Marckx v Belgium (1979)
contact subject to the child’s interest;\textsuperscript{37} the state’s responsibility to protect children; and in deportation cases where a person has established or wishes to establish close family ties in the UK,\textsuperscript{38} 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.\textsuperscript{39} 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 sites\textsuperscript{40} and closures of care homes or hospital wards.\textsuperscript{41}

**Correspondence:** The concept of correspondence has been interpreted widely to enable personal communications such as letters and telephone calls communications.\textsuperscript{42}

**Positive obligations:** Article 8 includes negative obligations which require the state to refrain from taking certain action which interferes with the rights protected under Article 8 and positive obligations to act in order to protect individuals’ rights.\textsuperscript{43} Examples where positive obligations have been imposed include:

- Ensuring there are adequate legal remedies, including addressing barriers to access justice: X and Y v Netherlands (1985) 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 (e.g. damages) was not sufficient to protect Article 8 rights.

\textsuperscript{37} Whitear v UK (1997): the interests of the child may require a parent’s access to be restricted. Johansen v Norway (1996): 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.

\textsuperscript{38} Cliliz v The Netherlands (2000)

\textsuperscript{39} Buckley v UK (1989)

\textsuperscript{40} Buckley v UK (1989); Connors v UK (2004)

\textsuperscript{41} R v North and East Devon Health Authority ex parte Coughlan (1999): 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.

\textsuperscript{42} Klass v Germany (1979)

\textsuperscript{43} X & Y v The Netherlands (1986) 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 additional 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.’
• Providing support to disabled parents in order to maintain their right to a family life: Kutzner v Germany (2002) 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.

• Provide care arrangements for older and disabled people that respect Article 8. For example in R (Bernard) v Enfield London Borough Council (2003) 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.

2.4 Derogations and reservations

Derogations

Article 15 ECHR allows states to derogate (or ‘suspend’) from most, although not all,44 of the Convention rights. However, Article 15 sets out conditions which any derogation must meet in order to be compatible with the ECHR:

• only if there is a ‘war or other emergency facing the life of the nation’
• only if the measures which require derogation are strictly necessary to deal with the emergency and are not more extensive than necessary for that purpose
• where the measures taken are not compatible with other international obligations
• where the Council of Europe, through its Secretary General, is informed of the measures taken and why they are necessary, and is told when the measures are no longer in effect and the derogation is ended.

The ECtHR has held that the war or other emergency conditions means that there is ‘an exceptional situation of crisis or emergency which affects the whole population and constitutive a threat to the transited life of the community of which the State is composed’.45 The ECtHR has also set out characteristics of a public emergency, including: 1) it must be actual or imminent; 2) its effects must involve the whole nation; the continuance of the organised life of the community must be threatened; 4) the crisis or danger must be exceptional, in that the measures or restrictions ordinarily permitted under the ECHR are plainly inadequate.46 The ECtHR permits a

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44 For example rights under Article 3 (freedom from torture, inhuman and degrading treatment), Article 4(1) (prohibition of slavery and forced labour), Article 7 (no punishment without law).
45 Lawless v Ireland No 3 (1979-80) para 28
46 Greek Case (1969)
wide margin of appreciation on whether there is such a threat. Examples have included the conflict situation in Northern Ireland and Kurdish conflicts in Turkey. Section 1(2) of the HRA makes it clear that the Convention rights which it brings into UK are to have effect subject to any derogations or reservations made by the UK. Section 14 HRA provides for existing derogations to be continued and for new derogations to be made. This is subject to the conditions in section 16 HRA which provides that derogations must be approved by Parliament and where they have not been renewed derogations will lapse after five years. For example, following the terrorist attacks of 11 September 2001 the UK Government derogated from its obligations under Article 5 (1) (f) on the basis that there was a ‘public emergency’ in the UK. Article 5 (1) (f) limits the right to liberty by permitting detention of persons who the Government plans to deport or extradite. The Anti-terrorism, Crime and Security Act 2001 provided for the indefinite detention of foreign nationals, without trial or charge, who were suspected international terrorists, and who could not be deported without breaching Article 3. However this derogation was declared incompatible by the UK courts because it was not a proportionate means of achieving the aim sought and could not therefore fall within Article 15 ECHR.

The 2001 legislation was repealed and the UK withdrew its derogation. The Prevention of Terrorism Act 2005 was subsequently enacted, which put in place the control orders regime. The PTA legislation provides for two different types of control order: derogating and non-derogating. Derogating control orders are deemed to involve measures which conflict with the protections set out in Article 5 of ECHR. They therefore can only be made if there is a derogation in place from the whole or part of Article 5. As yet no derogation has been made so as to permit a derogating control order.

Reservations

Article 57 of the ECHR permits States to make reservations, which is to decide at the time of signature or ratification that it will not be bound by a specific provision of the ECHR. Article 57 does not permit reservations ‘of a general character’ and any reservation must ‘contain a brief statement of the law concerned’. The ECtHR can determine whether a reservation is valid according to Article 57. The ECtHR has held that in order to comply with Article 57 a reservation requires ‘precision and clarity’, ‘must not be use terms which ‘are too vague or broad for it to be possible to

47 Under the ECHR States have a duty to secure Convention rights within their jurisdiction; it is down to each State to choose which measures to take to secure these rights. The margin of appreciation recognises the degree of freedom accorded to States in determining the way(s) Convention rights are secured, in order to take into account the different standards and conditions that may apply in different countries. The existence and extent of the margin of appreciation for any given Convention right is not fixed, it will be a matter for the ECtHR to determine on the basis of a number of factors including the existence (or not) of common ground on the issue among the law of the State Parties and the importance and nature of the right.

48 Lawless v Ireland No 3 (1979-80) and Brannigan and McBride v UK (1994)
49 Aksoy v Turkey (1997)
51 A (FC) and others (FC) v Secretary of State for the Home Department (2004)
52 However, it should be noted that the control order regime has been subject to criticism based on human rights laws, and in June 2009 the House of Lords found that the control order regime breached the Article 6 right to a fair trial: Secretary of State for the Home Department v AF and another (2009).
determine their exact meaning or scope'; additionally failure to provide a brief statement of the law can invalidate a reservation.53

The UK has entered a reservation to the second part of Article 2 Protocol 1. Section 15 of the HRA recognises the reservation made to the second part of Article 2 Protocol 1 ECHR and section 17 provides that the responsible Government minister (i.e. responsible for education matters) must review the reservation every five years. According to the reservation, the UK will respect the right of parents to ensure that education is in conformity with their religious and philosophical convictions 'only in so far as it is compatible with the provision of efficient instruction and training, and with the avoidance of unreasonable public expenditure'.54 Although the validity of this reservation has not been directly challenged in the ECtHR, there is some doubt about the validity of this reservation in light of developing Convention law on reservations.55

2.5 Other human rights treaties and instruments covered by the HRMF project

In addition to the HRA, the UK is a party to a number of European regional and international human rights treaties and instruments. Further details of these are provided below and in Appendix 1.

European regional arrangements

The Council of Europe, based in Strasbourg (France), has 47 member countries and was founded on 5 May 1949. It seeks to develop throughout Europe common and democratic principles based on the European Convention on Human Rights 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:

- 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

Core international human rights treaties

There are nine core international human rights treaties. Each of these treaties has established a committee of experts to monitor implementation of the treaty provisions

53 Belilos v Switzerland (1988) paras 52-9
54 The reservation closely follows the wording of s 9 of the Education Act 1996.
55 This was suggested by the European Human Rights Commission in S.P. v UK (1997). The Commission, no defunct, was part of the ECtHR procedures.
Developing a Human Rights Measurement Framework (HRMF)

by its States parties, and some of the treaties are supplemented by optional protocols dealing with specific concerns. Table 1 below provides further details.

Table 1: Core international human rights treaties

<table>
<thead>
<tr>
<th>Treaty</th>
<th>Date</th>
<th>Monitoring Body</th>
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</thead>
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<td>ICERD</td>
<td>21 Dec 1965</td>
<td>CERD</td>
</tr>
<tr>
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<tr>
<td>CRC</td>
<td>20 Nov 1989</td>
<td>CRC</td>
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<td>CRMW</td>
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<td>CMW</td>
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<tr>
<td>International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families</td>
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<tr>
<td>CESCR - OP</td>
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<td>OP-CRC-AC</td>
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<td>OP-CRPD</td>
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Among the core UN human rights treaties to which the UK is a party are:

- International Covenant on Economic, Social and Cultural Rights
- International Covenant on Civil and Political Rights;
- International Convention on the Elimination of Racial Discrimination;
- International Convention on the Elimination of all forms of Discrimination against Women and Optional Protocol;
- Convention Against Torture and other forms of cruel, inhuman and degrading treatment or punishment and Optional Protocol;
- Convention on the Rights of the Child;

Table 2 provides details of (1) the position of the UK in relation to its ratification (and failure to ratify) core UN human rights treaties and optional protocols. Further details of UK ratifications etc are provided in Appendix 1.

**Table 2: UN Human Rights Treaties to which the UK is a party**

<table>
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<th>Treaty</th>
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<td>2nd Protocol</td>
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</tbody>
</table>


### 2.6 Note on the devolved context

Human rights in Scotland and Wales are protected and promoted by the Human Rights Act (1998) which covers the UK. 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 Human Rights Act in October 2000, human rights cases in Scotland were heard through the courts of the UK. Further details of the devolved context are provided in Appendix 1.

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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.\textsuperscript{57}

\textsuperscript{57} Wilson (2010)
3

The findings of the EHRC Human Rights Inquiry

This Chapter reviews the second major input into our thinking - the findings and recommendations of the EHRC Human Rights Inquiry. Background research for the Inquiry concluded that public sector organizations are generally not collecting detailed information on the benefits of human rights activities in a systematic way (Office for Public Management [OPM] 2008: 93) and the Inquiry concluded that further work is required to help public sector organisations to establish human rights performance management regimes. Further, it was recommended that the Commission should work with regulatory bodies and inspectors to develop appropriate targeted human rights indicators to measure the extent to which public bodies are adopting a human rights approach (EHRC 2009d: 184). The Chapter reviews the nature and scope of these findings and recommendations and the research evidence on which they are based.

3.1 The legal duty of the EHRC to protect and promote human rights

The starting point for the EHRC Human Rights Inquiry is section 3 of the Equality Act 2006, which establishes the legal obligation of the Commission to promote:

- People’s ability to achieve their potential, unrestricted by prejudice or discrimination;
- The respect and protection of every individual’s human rights;
- Respect for the dignity and worth of each individual;
- Equal opportunity to participate in society; and
- Mutual respect between groups based on understanding and valuing diversity, and shared respect for equality and human rights (EHRC 2009d:11)

Section 9 of the Equality Act elaborates by specification that:

1. ‘The Commission shall, by exercising the powers conferred by this Part:
   a. Promote understanding of the importance of human rights.
   b. Encourage good practice in relation to human rights.
   c. Promote awareness, understanding and protection of human rights.
   d. Encourage public authorities to comply with section 6 of the Human Rights Act 1998 (c. 42) (compliance with Convention rights).

2. In this Part “human rights” means—
   a. The Convention rights within the meaning given by section 1 of the Human Rights Act 1998, and
   b. Other human rights.’ (EHRC 2009d:12)

The Inquiry puts central emphasis on the rights protected in domestic law by the Human Rights Act (1998).
Developing a Human Rights Measurement Framework (HRMF)

The analytical framework of the Inquiry puts central emphasis on the everyday situations in which the Human Rights Act might apply. The following illustrative list is included in the Inquiry Report (EHRC 2009:26):

- ‘Not being able to eat properly while in hospital or a care home (Articles 2 and 8).
- Provision of facilities or food which do not meet religious or cultural needs (Article 9).
- Abuse or neglect of older, those who are learning disabled or other vulnerable people (Articles 2 and 3).
- Lack of respect for privacy on a hospital ward (Article 8).
- Disproportionate use of stop and search powers against young black males and other ethnic minorities (Article 14).
- Not respecting gay and lesbian partners as next of kin and inheritors of tenancies (Article 8 and 14).
- Excessive surveillance of law-abiding people (Article 8).
- Loss of personal data by public officials (Article 8).
- Curfews preventing law-abiding young people from going out at night (Article 8).
- Failures by the authorities to protect people from being stalked and harassed (Articles 2, 3 and 8).
- Not being sufficiently protected from domestic violence (Articles 2, 3 and 8).
- Not being allocated suitable housing for special needs that have been identified (Article 8).
- Bullying of all kinds in schools (Articles 3 and 8).
- Disregard of gay and lesbian couples in adoption policies (Article 14).
- Unexplained death in prisons, police stations and psychiatric hospitals (Article 2).
- Wearing religious symbols or dress at work or in schools (Article 9 and Protocol 1, Article 2).
- Inadequate provision for children with special educational needs (Protocol 1, Article 2 and Article 14).
- Refusal to permit the staging or broadcasting of artistic works (Article 10).
- Refusal to allow people to attend a demonstration (Articles 10 and 11).’

The Inquiry Report further highlights that the Human Rights Act imposes certain ‘positive obligations’ on public bodies:

‘Where the Convention rights incorporate the impositions of a positive obligation on the UK, that positive obligation is also placed upon public authorities that are subject to the Act’ (Baroness Andrews 2009, quoted in EHRC 2009d:28).

In analysing the nature and scope of positive obligations of this type, the Inquiry Report notes that in addition to not infringing upon human rights outlined in the Act, the Courts have determined that the state must proactively act to prevent abuse in order to meet these positive obligations. This mean ensuring ‘that proper systems are in place and that operational measures are taken in certain circumstances to protect people’s human rights’ (EHRC 2009d:28). The Inquiry suggests that in the
way the Human Rights Act can serve as the basis for the planning and delivery of public services. The following examples of positive obligations on public authorities are listed in the Report (EHRC 2009d:28):

- ‘The need for an effective police force and criminal justice system to protect people from violence from others and to protect life when there is a known or foreseeable real and imminent threat to the life of an individual.
- The need for an independent investigation following a death in custody or allegations of violent abuse by police officers or others, and the duty to give reasons to a person detained by a public authority.
- To have a fair and independent court system (and to provide legal aid if the right to a fair trial requires it).
- To ensure that the law protects people from others who want to unnecessarily interfere with their private and family life.
- Protecting specific groups who would otherwise not be able to exercise their fundamental human rights, for example, through adjustments to accommodation or social facilities.
- To protect freedom of expression (for instance, when the premises of a newspaper are threatened with violence).
- Where conflicting groups wish to exercise their right to peaceful protest, to ensure both can exercise that right where possible.
- The right to an effective remedy if other rights have been violated.
- The right to vote, to free elections, to a secret ballot and to be a candidate’.

3.2 Human Rights Inquiry Evidence Base

The findings and recommendations of the Human Rights Inquiry were based on a number of key research inputs. These are as follows:

The impact of a human rights culture on public sector organisations – lessons from practice

First, the Human Rights Inquiry sought to increase knowledge and understanding of the pathways to embedding a “human rights culture” in the public sector. A research project (EHRC, 2009f) was undertaken to identify and explore the impact of a human rights culture on public sector organisations, and to identify the outcomes of different human rights initiatives. A detailed study of five organisations – the Welsh Assembly Government, National Policing Improvement Agency, London Borough of Southwark, Mersey Care NHS Trust, and Age Concern Cymru and Age Concern England – was undertaken. This informed the Findings and Recommendations of the Inquiry, discussed below.

The role and experience of inspectorates, regulators and complaints handling bodies in promoting human rights standards in public services

Second, the Human Rights Inquiry sought to increase knowledge and understanding of the role that the statutory public authorities that inspect, regulate and monitor public services have in promoting human rights standards. A research project (2009g) was undertaken to examine the work of regulatory bodies and inspectorates in embedding human rights practices in their own
work, as well as considering their role in promoting good practice within the services that they regulate and inspect. The research further considered the experiences these statutory bodies have had in promoting human rights standards in public services, the challenges that they face and what is required to overcome the challenges. Again, the evidence that was gathered informed the Findings and Recommendations of the Inquiry, discussed below.

**Evaluating the impact of selected cases under the Human Rights Act on public services provision**

Third, the Human Rights Inquiry sought to increase knowledge and understanding of the case law developed by the European Court of Human Rights applying the European Convention of Human Rights, and by the UK courts since the Human Rights Act came into force in 2000. The particular focus of this exercise was to establish the principles that have been developed regarding the treatment of individuals by UK public authorities. The selected cases included individuals with particular vulnerabilities or who faced particular hurdles in accessing their rights, and cases that were ‘strategic’ in the sense that they had important and wide implications and might require changes to commonplace policy or practice (2009a).

**Public perceptions of human rights**

Fourth, the Human Rights Inquiry sought to increase knowledge and understanding of public attitudes towards human rights. The objective here was to provide a benchmark of quantitative evidence on public attitudes towards human rights, human rights principles and the Human Rights Act, as well as more in-depth qualitative evidence on the reasons underlying attitudes. ‘A face-to-face Omnibus Survey was carried out among a representative sample of 1,994 people aged over 16, across different locations in England and Wales, between 14 and 21 August 2008. These locations were chosen to be representative of the whole country by region, class and demographic characteristics. Computer Assisted Personal Interviewing was used to carry out the interviews. (EHRC 2009e) In addition to undertaking a representative general population survey, ‘deliberative workshops’ were held with members of the general public, with attention to their diversity of age, gender, work status, ethnic background, social class, and care responsibility. Interviews and mini-groups were held with members of minority groups including people from ethnic and sexual minorities, people who are learning disabled or physically disabled, teenagers and a single older person and their carer.

**3.3 Human Rights Inquiry Findings and Recommendations**

Key Findings and Recommendations of the Inquiry that have particular implications for the HRMF project are summarized in Box 1.
Box 1: Human Rights Inquiry: Selected Key Findings

**General Findings**
- ‘Human rights are not merely abstract concepts – they are also an effective tool for delivering organisational success and better services to the public. A true understanding of human rights as a tool to improving people’s lives in not widespread: there is a general consensus that improved knowledge and understanding is essential’ (2009d:141).

**Effectiveness of the Human Rights Act**

**Section 3.2: Recommendations**
1. Human Rights need to be mainstreamed into the work of all those who provide relevant public services.
2. Human rights specific language should be used, in addition to the language of values, such as respect, fairness, and dignity, to facilitate the development of a better understanding of human rights.
3. Where appropriate, government departments should include human rights more explicitly in the standards applicable to public services.

**Section 3.3: Commission actions**
- Working with regulators and inspectors and with governmental departments, local authorities and other public bodies, the Commission will help provide guidance and support to implement a human rights approach institutionally.
- The Commission will monitor and promote examples of good practice in the public sector. Where the evidence of successful outcomes are clear, the Commission will encourage the wider roll-out of successful initiatives.
- The Commission will encourage and monitor progress on the inclusion of human rights in standards of service for public authorities.

**Improved Service Delivery**

**Section 5.1: Findings**
- Where public service providers had adopted a ‘human rights approach’ to service delivery (rather than a basic compliance approach) they reported improved services, better and more coherent delivery procedures and heightened staff morale. For instance, schools which have adopted a human rights approach have experienced a reduction in school exclusions and improved pupil behaviour. Classroom teachers reported that they felt less frustrated and exhausted and they had more energy and job satisfaction. A National Health Service trust has adopted a human rights approach and has involved mental health service users in making recruitment decisions, and in playing a role on various management teams. This approach was found to have an overwhelmingly positive effect on the health of those service users, the quality of care, and a change in the culture of the organisation.

**Section 5.2: Recommendations**
Where appropriate, public authorities and voluntary and community sector groups should mainstream human rights into their decision making processes, strategies and business plans, as well as into their relevant policies and practices. Service providers should be able to demonstrate the effects of such mainstreaming to the inspectorates and regulators, where relevant.
It’s not about litigation
Section 6.1: Findings

- Many positive changes to people’s lives and the services they receive are made using the principles enshrined in the Human Rights Act, without recourse to the courts. For example, a voluntary organization told us that they managed to persuade social services that an elderly lady who has Alzheimer’s and is blind, should be allowed to stay in a nursing home close to her husband and family.

Duties on public authorities and those who inspect them
Section 8.1: Findings

- The duty on public authorities not to act incompatibly with the Human Rights Act, has sometimes produced a ‘compliance only’ culture in some public authorities. Witnesses recommended that there should be a new statutory duty to promote human rights, similar to the duties imposed by anti-discrimination legislation, to create an integrated approach to equality and human rights.

- Where ombudsmen, inspectors and regulators are able to cooperate, and to share information relating to individual human rights cases (subject to necessary privacy protections), there is a greater opportunity to deliver a better service for service users. There is, in many cases, an absence of measurable human rights targets in public sector business planning. Consequently, there is insufficient investment of resources and performance management, contributing to a failure to identify the benefits of a human rights approach to service provision.

- Whilst, as public bodies, some inspection and audit bodies have taken steps to incorporate human rights standards into their audit and inspection processes, there is no duty on them to do so. However, it is clear that inspection and audit processes have a vital role in ensuring that people’s human rights are protected.

In addition, a number of specific references were also made in the Findings and Recommendations of the Inquiry to the use of indicators for monitoring and regulations. For example, under strategic and business planning, the Inquiry notes that it received evidence from a range of public authorities that have used a human rights framework and set of standards in planning and delivering services. The positive impact of this was established by the Inquiry through a range of case studies, including the Human Rights in Healthcare initiative and the Hampshire schools project; Rights, Respect and Responsibility. However, in order to overcome lack of joined-up working, there is a need for enhanced co-ordination between public authorities in any given locality. This would mean that the human rights framework informs the design of publics service agreements so that all public authorities – fire
and rescue services, primary care trusts, police and local council – in that area could ensure that human rights considerations were embedded in their planning and business processes. Work is also required to help organisations in the public sector ‘to establish what a performance management regime that embedded human rights might look like’ (2009d:120-121).

In relation to regulatory, audit and inspection bodies the Inquiry recommended (under Section 8.3 ‘Commission actions’) that the EHRC should:

xi. Assist public authorities to develop mechanisms to integrate positive obligations under the Human Rights Act with their work on public sector duties.

xii. Work with regulatory bodies and inspectors to develop appropriate targeted human rights indicators to measure the extent to which public bodies are adopting a human rights approach.

Finally, the Inquiry found that organisations are not collecting information about the benefits of human rights approaches in a systematic way, and that indicators being used to track progress tend to be concerned with activities, rather than outcomes. It found that further work is required to help organisations in the public sector establish what a performance management regime that embeds human rights would look like. A performance framework would need to include:

a. Some clear human rights objectives and priorities.

b. A range of indicators to measure performance against these objectives.

c. Incorporation of objectives and indicators into corporate performance ‘dashboards’, departmental / service and team objectives, and individual performance expectations and appraisals.

d. Regular reporting of progress to senior management teams, governing bodies, and to users and the public’ (2009d:184).
4

The Experience of the Scottish Human Rights Commission

4.1 The Scottish Human Rights Commission’s Consultation on the development of its Strategic Plan

The Scottish Human Rights Commission (SHRC) was established by the Scottish Commission for Human Rights Act 2006, to promote human rights and to encourage best practice in relation to human rights.

In late 2008 the Scottish Human Rights Commission launched a nationwide consultation on the development of its first strategic plan. Two main methods were used to collect views on the draft framework: an online questionnaire, and a series of consultation meetings organised by the Commission across the length and breadth of Scotland. 18 meetings were organised in locations across the country from Dumfries to Lerwick, Dundee to Stornoway.

Key thematic priorities
Participants raised a very wide range of rights, groups and issues which they felt that the Commission should address, including:

Rights
1. Right to the Highest Attainable Standard of Physical and Mental Health
2. Right to life
3. Right to privacy
4. Right to adequate housing
5. Right to an adequate standard of living
6. Right to education
7. Economic, Social and Cultural Rights (collectively)
8. Civil and Political Rights (collectively)
9. Right to freedom of movement
10. Right to freedom of speech
11. Right to freedom of assembly
12. Right not to be tortured or inhumanly or degradingly treated or punished
13. Prohibition of discrimination

Groups of Vulnerable People (in approximate order of priority)
1. Children & Young People
2. Older people
3. Asylum seekers/ refugees
4. Gypsy travellers

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5. Carers  
   a. Unpaid carers, b Care home workers
6. People living in care (especially older people, mental health patients and young people)
7. Disabled people
8. People with disfigurements
9. Marginalised men
10. Fathers without rights
11. Victims of crime
12. Homeless people
13. Workers
14. Black and Minority Ethnic (BME) groups
15. Migrant workers
16. Prisoners (especially in relation to mental health problems; older people and young people in adult prisons)
17. Members of Faith communities
18. People living with addictions
19. People with Autistic Spectrum Disorder
20. People with learning difficulties
21. Vulnerable adults
22. Lesbian, Gay, Bisexual and Transgendered (LGBT) people (especially young people)
23. People with language issues  
   a. English not 1st language, b. Gaelic speakers
24. People with literacy problems
25. People who face bullying

**Core Thematic Areas**
1. Disability
2. Mental health services
3. Care services
4. Poverty
5. Domestic Abuse (especially where the violence is against the male)
6. Equality
7. Inadequate housing
8. Racism
9. Acknowledgement and Accountability Forum (for adult survivors of child abuse)
10. Bullying in school
11. Climate change environment
12. Homophobia
13. Human Trafficking
14. Islamophobia

Considering how the Commission should identify its focus among these themes, participants highlighted the need for transparency in decision making, evidence-based choices, and the need for the Commission to develop a set of objective
Developing a Human Rights Measurement Framework (HRMF)

criteria for prioritisation. A more specific suggestion also emerged, that the Commission approach thematic priorities through a new lens, a common threat to human rights that affects a range of rights, groups and issues

The findings of the consultation process formed the basis of the development of the Commission’s first Strategic Plan. The Strategic Plan was drafted during April and May 2009. The four strategic priorities that emerged from the consultation process were:

1. promoting and protecting human dignity in Scotland;
2. addressing emerging human rights issues;
3. bringing human rights to life;
4. supporting human rights in the world.60

In addition to informing the SHRC Strategic Plan 2008-201261, the analysis from this consultation has also been used to help to determine projects, objectives and activities which are set out in the SHRC Operational Plan 2008-2010.62

4.2 The Commission’s use of the PANEL (Participation, Accountability, Non-Discrimination, Empowerment, Legality) approach

The Scottish Human Rights Commission have utilised the PANEL approach (participation, accountability, non-discrimination, empowerment and legality), a rights-based approach is based on international human rights standards and directed to protecting human rights63. The SHRC has used the PANEL approach for three reasons

1) it is increasingly internationally recognised;
2) it gives due regard to the centrality of accountability;
3) it requires an explicit link to human rights law, and draws in the full range of legal obligations.

The Commission piloted PANEL in evaluating the experience of The State Hospital (see detailed case study in 4.3 below). The SHRC has also applied the PANEL approach in different settings – human rights and care with Scottish Care Commission, care providers, older people; acknowledgement and accountability of historic child abuse, and climate change and human rights. The Scottish Government is also utilising PANEL in its adult protection work, in its climate change strategies; in its health directorate.64

60 http://www.scottishhumanrights.com/abouthumanrights/ourwork
61 http://www.scottishhumanrights.com/research/ourpublications/article/strategicplan
62 http://www.scottishhumanrights.com/research/ourpublications/article/operationalplan
63 Mokhiber, C.G. (2010)
64 Wilson (2010)
4.3 Case Study: The State Hospital

The State Hospital, located in Lanarkshire, is the high security forensic mental health hospital for Scotland and Northern Ireland. It provides psychiatric care in conditions of high security, for persons with mental illness who are compulsorily detained under mental health or criminal law. In 2000, a critical report by the Mental Welfare Commission into the treatment and care of a particular patient, allied with the NHS Board’s drive to build on the changing culture throughout the 90s, prompted The State Hospital to conduct a fundamental examination of its human rights practice. A decision was taken to use the Human Rights Act as a vehicle for cultural change, to put the human rights of everyone – staff, patients, carers and family members – at the heart of The State Hospital’s services.

Following a decision by the Board to adopt a human rights based approach, The State Hospital established a Human Rights Working Group led by senior management and involving clinical and non-clinical members of staff. The Group underwent training in human rights with a human rights expert who helped them to identify specific human rights which were relevant to The State Hospital.

Following approval from The State Hospital research committee the Commission worked with national and international experts on mental health, human rights and research methodology, as well as a research consultant, to develop a methodology and indicators for the evaluation. There are a number of human rights which are relevant to understand the obligations of Governments and local authorities in order to promote, protect and fulfil human rights of individuals or groups. The commission decided to focus on a particular range of human rights instruments for this the development of the indicators for the evaluation including mental health standards, mainly:

- Human Rights Act
- Mental Health legislation i.e. Mental Health (Care and Treatment) (Scotland) Act 2003
- European Convention on Human Rights
- International Covenant on Economic, Social and Cultural Rights
- International Covenant on Civil and Political Rights
- Convention on the Rights of Persons with Disabilities;

The research included a review of documents related to the adoption of a human rights-based approach including internal policies; one to one interviews and focus groups with staff, patients and carers and a comparison with other human rights based approach projects and evaluations.

Findings:

A Human Rights Based Approach is better for everyone
The adoption of a human rights based approach was successful in supporting a cultural change from an institution where rights were largely “left at the door”, and with a “them and us” culture, towards an organisation with a more positive and

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65 Wilson (2010)
constructive atmosphere with mutual respect between staff and patients. This had led to increased staff and patient engagement, increased work-related satisfaction amongst staff and increased satisfaction amongst patients over their care and treatment.

**Taking a rights based approach reduces risks**

By proactively adopting a human rights based approach an organisation can reduce its risks of having to react to critical media comment, negative public perceptions or legal proceedings, when its policy and practice is shown to breach human rights. Prior to the adoption of a rights based approach The State Hospital was concerned about the potential for negative publicity and the expense associated with individual cases. Clarity and predictability on limitations of rights through use of simple tests introduced by the HRBA (“Is it legal? Is it necessary? Is it proportionate?”) can lead to a greater understanding amongst everyone.

**Human rights are the foundation for other duties**

Since the Human Rights Act all relevant legislation has to be read through the lens of human rights. Taking a human rights based approach at The State Hospital made delivering on other duties a less daunting process. It laid the foundations for the integration of new equality, freedom of information and mental health duties. In particular The State Hospital experience demonstrates that human rights can provide a bedrock for implementing equality duties. The evaluation also shows the importance of maintaining a clear link to the Human Rights Act in practice.

The evaluation of The State Hospital provides clear lessons for the integration of human rights into other public authorities in the health and social care sectors as well as others.

**4.4 Specialist Consultation, Edinburgh**

Further detailed input on the Scottish context will be sought through the HRMF Specialist Consultation process.
5
The development of the EMF

The Equality Measurement Framework (EMF) is intended to monitor social outcomes from an equality and human rights perspective, providing a baseline of evidence to inform policy priorities and helping to identify inequalities that need further investigation. As a result of this study, 48 indicators have been identified across the 10 domains. The Equality Measurement Framework is being developed by the Equality and Human Rights Commission (the Commission), together with the Government Equalities Office (GEO) and in consultation with the Scottish Government, the Welsh Assembly Government and others, to monitor and evaluate progress towards achieving equality and human rights in Britain. The Commission has a legal duty to monitor, evaluate and report on progress towards equality and human rights in Britain, taking account of age, disability, ethnicity, gender, transgender, religion or belief, and sexual orientation. The EMF is being used by the Commission to discharge this statutory responsibility.

5.1 Overview of the EMF and the Short-List of Indicators for Adults

The development of the EMF has drawn on three key inputs: the theoretical underpinning of the capability approach developed by Amartya Sen; the international human rights framework; and extensive consultation with the general public, individuals and groups at risk of discrimination and disadvantage. The core building-blocks of which are summarized in Box 2 below.

- **Focus on substantive freedom.** The first building-block set out in Box 2 is the focus of the Measurement Framework on substantive freedom (or capabilities, the central things in life that people can actually do and be). This provides a theoretical anchoring in the capability approach and clarifies the focus of the Framework on real freedoms and opportunities rather than other focal variables (such as income, resources, opportunities narrowly construed, subject well-being or happiness etc).

- **Outcomes, treatment and autonomy.** The second building-block is that the EMF aims to capture three distinct aspects of inequality that can arise between individuals and groups. These are: inequality of outcome – that is, inequality in the central and valuable things in life that individuals and groups actually achieve; inequality of process – reflecting inequalities in treatment through discrimination or disadvantage by other individuals and groups, or by institutions and systems, including lack of dignity and respect; and inequality of autonomy – that is, inequality in the degree of empowerment people have to make decisions affecting their lives, how much choice and control they really have given their circumstances.
Box 2: EMF Conceptual Framework: Core building blocks

**Focus on substantive freedom** (or capabilities, the central and valuable things in life that people can actually do and be)

**Evaluation of 3 aspects of the position of individuals / groups**

(i) outcomes (what people are actually doing and being)
(ii) treatment (discrimination, dignity and respect)
(iii) autonomy (empowerment, choice and control)

**Capability list (10 domains, derived from int. human rights framework / deliberative consultation)**

<table>
<thead>
<tr>
<th>Core building block</th>
<th>Third building block</th>
</tr>
</thead>
<tbody>
<tr>
<td>Life</td>
<td>Productive and valued activities</td>
</tr>
<tr>
<td>Physical security</td>
<td>Participation, influence, voice</td>
</tr>
<tr>
<td>Health</td>
<td>Individual, family and social life</td>
</tr>
<tr>
<td>Education and learning</td>
<td>Identity, expression, self-respect</td>
</tr>
<tr>
<td>Standard of living</td>
<td>Legal security</td>
</tr>
</tbody>
</table>

**Disaggregation characteristics** (gender, transgender, ethnicity, disability, sexual orientation, age, religion/belief, social class.....)

- The capability list. The third building-block is a list of 10 critical areas or domains of life, in terms of which the position of individuals and groups is evaluated. Developing and agreeing a list of central and valuable freedoms and opportunities for adults has been a two-stage process. First, the international human rights framework was used to draw up a core list of what those central and valuable freedoms might be. Second, this list was supplemented and refined through a process of deliberative consultation – a programme of workshops and interviews with the general public and with individuals and groups at high risk of discrimination and disadvantage. Ten domains or areas of life that are centrally important were identified through this two-stage procedure. These are:
  - Life;
  - Health;
  - Physical Security;
  - Legal Security;
  - Education and Learning;
  - Standard of Living;
  - Productive and Valued Activities;
  - Individual, Family and Social Life;
  - Identity, Expression and Self-respect; and
  - Participation, Influence and Voice.
Other, more specific, freedoms are listed under each heading. The full capability list for adults can be found in Alkire et al (2009).

- **Disaggregation by at least eight characteristics** The fourth building block is systematic disaggregation at least by age, disability, gender, transgender, ethnicity, religion and belief, sexual orientation and social class. These characteristics reflect the statutory responsibilities and concerns of the Commission and partner bodies such as the GEO, the Scottish Government and the Welsh Assembly. Additional disaggregation characteristics such as family type, asylum and refugee status can also be used with the Framework. Combinations of characteristics can also be used to identify intersectional group concerns, that is those that cut across different characteristics (such as being an Asian woman, or an older man).

The EMF is represented in Box 3 as a 3D matrix where the rows represent the three aspects of inequality (outcomes, autonomy and process) and the columns represent 10 domains of central and valuable freedoms. The layers of the matrix represent the different characteristics of the groups of particular concern such as gender, ethnicity, etc. The Matrix provides a conceptual grid that clarifies how the EMF will be used for monitoring purposes. For example, the EMF could be used to evaluate the health position of older people in terms of their: outcomes (i.e. their actual health status); process, exploring whether older people experience explicit discrimination or other forms of unequal and detrimental treatment, such as a lack of dignity and respect; autonomy, questioning if they experience choice and control in relation to their medical treatment, including issues of information and consent.

**Box 3: EMF Conceptual Grid - 3D 'Substantive Freedom' Matrix**

```
<table>
<thead>
<tr>
<th>Disaggregation Characteristics</th>
<th>10 domains of central and valuable freedoms</th>
</tr>
</thead>
<tbody>
<tr>
<td>Age</td>
<td>X X X X X X X X X X X X</td>
</tr>
<tr>
<td>Disability</td>
<td>X X X X X X X X X X X</td>
</tr>
<tr>
<td>Ethnicity</td>
<td>X X X X X X X X X X X</td>
</tr>
<tr>
<td>Religion</td>
<td>X X X X X X X X X X X X</td>
</tr>
<tr>
<td>Gender</td>
<td>X X X X X X X X X X X X</td>
</tr>
<tr>
<td>Transgender</td>
<td>X X X X X X X X X X X X</td>
</tr>
<tr>
<td>Social Class</td>
<td>X X X X X X X X X X X X</td>
</tr>
<tr>
<td>Intersectionalities</td>
<td>X X X X X X X X X X X</td>
</tr>
</tbody>
</table>

Inequality in 10 Domains
L - Life
P - Physical security
H - Health
E - Education
S - Standard of living
Pv - Productive and valued activities
Pi - Participation, influence and voice
If - Individual, family and social life
Ie - Identity, expression and self-respect
Ls - Legal security

"Freedom and opportunity that people have to live a life that they value and would choose.
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A key objective has been to populate the EMF Matrix set out above with an agreed set of indicators and to provide an evidence base on the central and valuable freedoms opportunities achieved by individuals and groups in England, Scotland and Wales. In 2007, a specialist consultation was undertaken in order to reach maximum possible agreement on a set of 48 indicators and associated measures for England, Scotland and Wales for adults across the 10 EMF domains. Underlying sources for this exercise included both national general population surveys and administrative statistics. Key data gaps in national statistics (such as those around the monitoring of elder abuse) were also identified through the consultation exercise. The full project report on the selection of indicators for adults, including technical details, provisional data and recommendations on data development, is available on the Commission’s website (Alkire et al 2009). A summary of the short-list of indicators for adults and the associated measures that were identified and agreed through this process is given below. A similar specialist consultation to agree a similar indicator set for children and young people is also currently underway.\textsuperscript{66}

**Summary of the short-list of indicators for adults**

**A. LIFE**

**Indicator 1: Life expectancy**

1.1 (E,S,W): Period life expectancy at birth, and ages 20, 65 and 80

**Indicator 2: Homicide**

2.1 (E,S,W): Homicide rate
2.2 (E,W): Domestic homicide rate (with separate reporting of relationship of victim to principal suspect, including partner homicide)
2.3 (E,W): Homicides involving sharp implements and shootings
2.4 (E,W): Racially motivated, religiously motivated and homophobic homicide

**Indicator 3: Other specific-cause mortality rates**

3.1 (E,S,W): Cardiovascular disease mortality rate (age-standardised)
3.2 (E,S,W): Cancer mortality rate (age-standardised)
3.3 (E,S,W): Suicide rate
3.4 (E,S,W): Accident mortality rate

**Indicator 4: Death rates from non-natural causes for people resident or detained in public or private institutions**

4.1 (E,W): Deaths from non-natural causes during or following police custody
4.2 (E,S,W): Self-inflicted deaths in prisons
4.3 (E,W): Deaths from non-natural causes for people resident or detained in health or social care establishments (*under development*)

\textsuperscript{66} The indicator set that was identified and agreed upon for adults as a result of the specialist consultation relate to inequality of outcome and inequality of process. Indicators for adults relating to inequality of autonomy require more methodological development and are the subject of a separate project. To date, a survey module setting out proposed indicators has been cognitively tested and piloted, and provisional results are currently being analysed. See Burchardt et al (forthcoming) for further details.
B. HEALTH

Indicator 1: Limiting illness, disability and mental health
1.1 (E,W): Percentage who report a long-standing health problem or disability that substantially limits their ability to carry out normal day-to-day activities
1.1 (S): Percentage who report a long-standing illness that substantially limits their ability to carry out normal day-to-day activities
1.2 (E,S,W): Percentage who report poor mental health and well-being

Indicator 2: Subjective evaluation of current health status
2.1 (E,S,W): Percentage who report poor current health status

Indicator 3: Dignity and respect in health treatment
3.1 (E,W): Percentage with low perceptions of treatment with dignity and respect in healthcare
3.1 (S): Percentage with low perceptions of treatment with dignity and respect in healthcare (under development)
3.2 (E,W): Percentage reporting lack of support for individual nutritional needs during hospital stays

Indicator 4: Healthy living
4.1 (E,S,W): Percentage who are living a healthy lifestyle, covering (a) smoking (b) alcohol (c) physical activity (d) consumption of fruit and vegetables (e) body mass
4.2 (E,W): Percentage who are living in an area with less favourable environmental conditions

Indicator 5: Vulnerability to accidents
5.1 (E,S,W) Accident & Emergency accident and injury rate, by location (under development)

C. PHYSICAL SECURITY

Indicator 1: Violent crime
1.1 (E,S,W): Percentage that are victims of violent crime (all types)
1.2 (E,W,S): Percentage that are victims of violent crime involving knives, sharp stabbing instruments and guns
1.3 (E,W): Percentage that are victims of sexual violence (with separate reporting of rape and assault by penetration, including attempts, and other sexual violence)
1.3 (S): Percentage that are victims of sexual violence (with separate reporting of rape, including attempts, and sexual assault)
1.4 (E,W): Percentage that are victims of domestic violence (with reporting of relationship of victim to principal suspect, including partner violence)
1.4 (S): Percentage that are victims of partner violence

Indicator 2: Hate crime
2.1 (E,W,S): Percentage that are victims of hate crime (race)
2.2 (E,W,S): Percentage that are victims of hate crime (religion)
2.3 (E,W,S): Percentage that are victims of hate crime (age)
2.4 (S): Percentage that are victims of hate crime (gender)
2.5 (E,W,S): Percentage that are victims of hate crime (disability)
2.6 (E,W,S): Percentage that are victims of hate crime (sexual orientation)
2.7(E,W,S): Percentage that are victims of hate crime (transgender) (under development)

Indicator 3: Physical security for people resident or detained in public and private institutions
3.1 (E,W,S): Elder abuse and other abuse of the non-private household population (under development)

Indicator 4: Fear of crime
4.1 (E,W,S): Percentage that feel very unsafe or unsafe being alone at home and/or in local area
(during the day and after dark)

4.2 (E,W): Percentage that feel very worried / worried about physical attack, sexual assault, intimidation and acquisitive crime
4.2 (S): Percentage that feel very worried / worried about physical attack, sexual assault and acquisitive crime

D. LEGAL SECURITY

Indicator 1: Offences reported and brought to justice: rape, domestic violence and hate crime
1.1 (E,W): The number of cases of rape estimated from general population survey sources, compared with the number of cases reported to and recorded by the police, and the number of legal cases successfully prosecuted
1.2 (E,W): The number of cases of domestic violence estimated from general population survey sources, compared with the number of cases reported to and recorded by the police, and the number of legal cases successfully prosecuted
1.3 (E,W): The number of cases of hate crime estimated from general population survey sources, compared with the number of cases reported to and recorded by the police, and the number of legal cases successfully prosecuted

Indicator 2: Equal treatment by the police and criminal justice system (objective and subjective measures)
2.1 (E,W): Percentage (a) stopped on foot or in vehicles (b) stopped and searched
2.1 (S): Percentage who had contact with police because they were stopped in a car, on a motorcycle or on foot, to be asked questions or searched
2.2 (E,W): Percentage who are confident that the criminal justice system (police, CPS, courts, prison and probation service) (a) meets the needs of victims (b) respects the rights of those accused of an offence and treats them fairly
2.2 (S): Percentage who are confident that the Scottish criminal justice system provides (a) equal access to the legal system for all (b) serves all communities of Scotland equally and fairly (c) provides an appropriately high standard of service for victims of crime (d) provides an appropriately high standard of service for witnesses
2.3 (E,W): Percentage of those who have lodged an official complaint against the police in past 12 months who are fairly or very satisfied with the handling of the complaint
2.3 (S): Percentage of those who have reported an incident to the police who are very dissatisfied with the way that the police handled the matter

Indicator 3: Detention: Numbers and conditions
3.1 (E,S,W): Percentage of the population in prisons
3.2 (S): Perceptions of being treated with dignity and respect in prisons (E,W data not yet publicly released)
3.3 (E,S,W): Detention in other establishments (under development)

Indicator 4: Equal protection and support for individuals with civil justice problems
4.1 (E,W): Percentage of civil justice problems where respondents gave up or did nothing as opposed to other outcomes
4.1 (S): Percentage who had civil justice problems who tried to solve the problem but had to give up
4.2 (E,W): Percentage of civil justice problems where respondents obtained advice (S under development)

E. EDUCATION AND LEARNING

Indicator 1: Basic skills
1.1 (E,S,W): Percentage of people of working age achieving functional literacy and numeracy skills
1.2 (E,W): Percentage who can speak, read and write English or Welsh very or fairly well

Indicator 2: Educational qualifications
2.1 (E,S,W): Percentage of each age group with no educational qualifications
2.2 (E,S,W): Percentage of each age group with degree-level qualification
**Indicator 3: Participation in lifelong learning**
3.1 (E,S,W): Percentage who have participated in formal or informal learning in last 12 months

**Indicator 4: Use of the internet**
4.1 (E,S,W): Percentage who have used the internet for any purpose within the last 3 months

**Indicator 5: Being treated with respect in education**
5.1 (E,W): Percentage of those attending school or college who say they are treated with respect

**F. STANDARD OF LIVING**

**Indicator 1: Housing quality and security**
1.1 (E,S,W): Percentage of individuals living in sub-standard, overcrowded or unadapted accommodation
1.2 (E,S,W): Percentage who were a victim of domestic burglary or vandalism to the home in the last 12 months

**Indicator 2: Poverty and security of income**
2.1 (E,S,W): Percentage of individuals living in households below 60 per cent of contemporary median income, after housing costs
2.2 (E,S,W): Mean deprivation score among those above the income poverty threshold
2.3 (E,S,W): Share of total personal wealth relative to share of population

**Indicator 3: Access to care**
3.1 (GB): Percentage of disabled people (including older people) who do not receive practical support that meets their needs
3.1 (E): Percentage of older disabled people who do not receive practical support that meets their needs
3.1 (S): Percentage of disabled people (including older people) who do not receive practical support, or lack equipment/adaption that would help
3.2 (E): Percentage of parents who do not have access to childcare which meets their and their children’s needs
3.2 (S): Percentage of parents who would prefer to change their childcare arrangements but are unable to do so

**Indicator 4: Quality of the local area**
4.1 (E): Percentage living in an area with ‘unsatisfactory’ or ‘poor’ local environmental conditions
4.1 (S,W): Average number of problems cited with local environmental quality
4.2 (E,S,W): Percentage able to reach local facilities in reasonable time / fairly easily without private transport

**Indicator 5: Being treated with respect by private companies and public agencies in relation to your standard of living**
5.1 (E,S,W): Percentage who report being treated unfairly by financial institutions, utility companies, housing officials or private landlords, social services, Jobcentre Plus or the Pension Service, or who have avoided contacting them for fear of being treated unfairly (*to be developed*)

**G. PRODUCTIVE AND VALUED ACTIVITIES**

**Indicator 1: Employment**
1.1 (E,S,W): Percentage of working age population in paid employment

**Indicator 2: Earnings**
2.1 (E,S,W): Percentage earning less than 60 per cent of median hourly earnings of employees
2.2 (E,S,W): Median hourly earnings of employees (excluding unpaid overtime) (pay gaps)

**Indicator 3: Occupation**
3.1 (E,S,W): Difference in proportions of group x and group y (for example, men and women) in each occupation, summed across all occupations (horizontal segregation)
3.2 (E,S,W): Weighted average prevalence of work-related illness per 100,000 employed, based on occupation
3.3 (E,S,W): Weighted average prevalence of non-fatal work-related injury per 100,000 employed, based on occupation

**Indicator 4: Discrimination in employment**
4.1 (E,S,W): Percentage with experience of unfair treatment, harassment or bullying at work in the last 2 years

**Indicator 5: Unpaid care and free time**
5.1 (E): Percentage of those with unpaid caring responsibilities who are fully satisfied with the gains and feel adequately recognised
5.2 (E,S,W): Free time (24 hours minus paid work, unpaid work and personal care)

### H. INDIVIDUAL, FAMILY AND SOCIAL LIFE

**Indicator 1: Availability of support**
1.1 (GB): Percentage meeting relatives or friends at least once a week
1.1 (S): Percentage meeting family members at least once a week, or talking to them on the phone
1.2 (GB): Score on five yes/no questions about availability of support
1.2 (S): Score on three agree/disagree questions about availability of support

**Indicator 2: Being free from domestic abuse (emotional or financial)**
2.1 (E,W): Percentage experiencing domestic abuse (emotional or financial) in the last 12 months (reporting the relationship of victim to principal suspect, including partner abuse)

**Indicator 3: Being able to participate in key social and cultural occasions which matter to you**
3.1 (E,S,W): Percentage who say they have been unable to participate in one or more social or cultural occasions which mattered to them in the last three years (*under development*)

**Indicator 4: Being able to be yourself**
4.1 (E,S,W): Percentage who feel able to be themselves (a) with their family, (b) with friends, and (c) in public (*under development*)

**Indicator 5: Being able to form and pursue the relationships you want**
5.1 (E,S,W): Percentage who feel able to form and pursue the relationships they want (*under development*)

### I. IDENTITY, EXPRESSION AND SELF-RESPECT

**Indicator 1: Freedom to practice your religion or belief**
1.1 (E,W): Percentage who feel able to practice their religion or beliefs freely

**Indicator 2: Cultural identity and expression**
2.1 (E,W): Percentage who believe that people with diverse backgrounds, beliefs and identities get on well together (a) where they live, (b) where they work or study

**Indicator 3: Ability to communicate in the language of your choice**
Developing a Human Rights Measurement Framework (HRMF)

3.1 (E,S,W): Percentage who have the opportunity to communicate in the language of their choice (a) at work/study, (b) when accessing services \textit{(under development)}

\textbf{Indicator 4: Self respect}
4.1 (E,S,W): Mean score on Rosenberg self-esteem scale \textit{(under development)}

\textbf{Indicator 5: Freedom from stigma}
5.1 (E,S,W): Mean accumulated humiliation score \textit{(under development)}

\textbf{J. PARTICIPATION, VOICE AND INFLUENCE}

\textbf{Indicator 1: Formal political participation}
1.1 (E,S,W): Percentage who voted in most recent general, national or local election
1.2 (E,S,W): Equality characteristics of elected representatives in House of Commons, Scottish Parliament, National Assembly for Wales and local councils, relative to national population

\textbf{Indicator 2: Perceived influence in local area}
2.1 (E,S,W): Percentage who feel they can influence decisions affecting their local area

\textbf{Indicator 3: Political activity}
3.1 (E,W): Percentage undertaking at least one of the following activities in the last 12 months: contacting a councillor, local official, government official or MP (other than in relation to personal issues); attending public meeting or rally; taking part in demonstration or signing petition
3.1 (S): Percentage who have ever contacted an MP or MSP, government official, or media outlet about a government action that s/he felt was harmful or unjust

\textbf{Indicator 4: Taking part in civil organizations}
4.1 (E,W): Percentage who were a member of a local decision-making body in last 12 months
4.1 (S): Percentage active in a local or national campaigning or solidarity organisation or group in last 12 months
4.1 (W): Percentage active in a local or national campaigning or solidarity organisation or group in last 3 years

\textbf{Indicator 5: Being treated with dignity and respect while accessing and participating in decision-making forums}
5.1: Percentage treated with dignity and respect while accessing and participating in local or national decision-making forums \textit{(under development)}

\textbf{5.2 Relating the EMF to human rights principles and standards}

Human rights principles and standards were a key input into the development of the EMF. Key links include:

- \textbf{Derivation of the list of central and valuable freedoms}
The human rights perspective played a critical role in identifying the capability list (or list of central and valuable freedoms) that provides the foundation for the EMF. The EMF was derived on the basis of a two-stage procedure involving (1) drawing up a minimum core list of central and valuable freedoms from the international human rights framework (2) supplementation and refinement of the minimum core list through deliberative consultation with individuals and groups at particular risk of discrimination and disadvantage. Stage (2) as well as stage (1) reflects a human rights perspective, since the
importance of bottom-up and participatory approaches are intrinsic to the human rights approach.

- **Relationship with the FREDA principles**
  The EMF is underpinned by a concept of equal substantive freedom that highlights three critical aspects of inequality: outcomes (the central and valuable things in life that people actually achieve), autonomy (issues of empowerment, choice and control) and process (discrimination and other aspects of unequal treatment, such as lack of dignity and respect).
  Participants felt it was particularly important to show how these three aspects relate to human rights principles and standards. In particular the EMF provides a system for organizing population survey-based and administrative statistics that relate to the FREDA principles (fairness, respect, equality, dignity and autonomy).

- **Systematic disaggregation of all statistical indicators.** The EMF consultation events focussed attention on the recognition of systematic disaggregation as a human rights issue. This concern is reflected in a range of recent analyses (for instance General Comments of the UN Committee on Economic, Social and Cultural Rights [UNCESCR], Häusermann and Landman 2003, Hunt 2003, Turku Report 2005, UNHCHR 2006b and UNHCHR 2008). Indeed, the fact that many countries do not have adequate data for disaggregated analysis is in itself an important human rights concern and a key priority is to ensure that disaggregated data is collected and reported by official data systems (Chapman 2000). This remains the case in England, Scotland and Wales. The importance of systematic disaggregation was an important motivation underlying the development of the EMF; and the principle of systematic disaggregation is embedded into the theoretical structure of the EMF, with all indicators disaggregated by ethnicity, age, disability, gender, religion and belief, sexual orientation, transgender (see discussion above).

- **The importance of monitoring the position of the non-household population and other vulnerable groups.** Concern with disaggregation reflects the fact that aggregate statistical analysis is concerned with population averages. Information about individual cases can be lost or missing - even when the disaggregated approach to indicators discussed above is applied. In addition, few systems of data collection cover the most marginalized and vulnerable groups (for instance Gypsies and Travellers, homeless, people with mental and learning disabilities living in institutions, older people in care homes, the prison population, and marginal and vulnerable workers). Sometimes this is because of the nature of social surveys (with sampling frameworks that exclude, for example, people in many forms of residential institution and other people without a permanent address). Sometimes, the population groups may be covered by the sampling framework, but difficulties arise because of differential non-response between different population groups, or because of small sample size. In other cases, as discussed under the OHCHR frameworks below, relevant activities can be illegal, concealed and unreported. The EMF includes indicators of the equality
and position of these sub-populations in a number of domains. In addition, the EMF can be used as an advocacy tool where there are data gaps.

- **Role of human rights principles and standards in ensuring that statistical systems cover the position of the non-private household population and vulnerable groups.** The EMF consultation highlighted how human rights principles can be applied in the selection of supplementary spotlight indicators that focus attention on vulnerable groups who might otherwise be inadequately covered in statistical systems. This principle was already built into the analytical structure of the EMF, since the selection of sub-domains is driven by human rights principles (for example, being free from forced labour). Human rights concerns also helped in putting the spotlight on the situation of particular vulnerable groups (for instance lack of nutritional support within hospitals, lack of support in the labour market for people with learning difficulties, deaths in custody, differential gaps in the achievement of Gypsies and Travellers, and so on). The official recognition and listing of vulnerable groups is in itself an important exercise and a key human rights concern (UNHCHR 2008). A number of vulnerable groups were highlighted as part of the specialist consultation process on the EMF, and the importance of taking forward monitoring arrangements to ensure coverage of these groups was the subject of a number of project recommendations.

- **Development of ‘selection criteria’ for identifying and agreeing indicators.** The selection criteria for identifying and agreeing indicators were developed with a view to ensuring that human rights concerns are fully reflected in the portfolio of indicators that will be used to populate the EMF. The criteria applied at the individual indicator level includes: ‘relevance for assessing equality and human rights’. This implies that each indicator used with the Framework should focus attention on a key equality and human rights concern; and should allow this concern to be monitored and tracked. In addition, in order to ensure human rights concerns are fully reflected in the EMF, a human rights-focused indicator selection criterion that relates to the portfolio of indicators as a whole has been specified. This states that, across the portfolio of indicators as a whole, indicators that reflect particular human rights concerns should be included. The implication is that indicators that put the spotlight on particular human rights concerns such as lack of dignity and respect in treatment by public services, and the exercise of care in relation to population groups detained or living in institutions for which the state has responsibility, are of central importance in the development of the EMF.  

5.3 Feedback and Recommendations on Human Rights

**Feedback on human rights from EMF consultation events**

Whilst participants at the consultation event and in subsequent follow-up discussions have welcomed the ways in which the EMF builds on and embeds human rights standards and principles, concern was expressed that the links between the EMF

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67 For full details of the selection criteria, see the Overall Project Briefing Paper (Burchardt, Clark and Vizard, 2008).
and human rights are not always highlighted. It was suggested that the EMF should be explicitly related to human rights principles and standards at every stage of its development, and that the links should be emphasized in internal and external communications exercises by the Commission and GEO, as well as in the theoretical structure of the EMF, and in the process of selection of indicators itself. Comments included:

- Equality and human rights standards should be treated as integrated and complementary systems and approaches that treat these systems as separate and rival systems should be avoided.

- The possibility of re-naming the EMF the ‘Equality and Human Rights Measurement Framework’ to reflect the status of human rights within the framework should be considered. The current name fails to capture the central importance of human rights both for the EMF and for the mandate of the Commission.

- The EMF is underpinned by human rights principles and standards in many ways. The Ministry of Justice (MoJ) web consultation response noted some concerns about and limitations of the approach being put forward. Nevertheless, it suggested that the approach being proposed ‘is an approach we would support, because it rather neatly encapsulates everything MoJ has been saying for some time about human rights underpinning the achievement of equality generally, and the work of the Equality and Human Rights Commission in particular’ (feedback cited in Alkire et al 2009: 38).

- It will nevertheless be critical to ensure that human rights principles are fully integrated into, and reflected in, the EMF. This principle reflects the integrated mandate of the Commission and its responsibilities to promote both equality and human rights.

- The EMF should explicitly be related to human rights standards (e.g. Human Rights Act [HRA] / international human rights treaties) as well as to equality standards.

- The relationship of the EMF to domestic human rights law requires clarification. The HRA, as well as the international human rights framework, provides a foundation for the EMF, increases its legitimacy and is central to the statutory duties of the Commission (Equality Act section 9). Many elements of the EMF (including life, physical security, education, self-respect for the individual, family life, expression, and legal security) are given explicit protection by the HRA (Articles 2, 3, 4, 5, 6, 8, 9, 10, 11, 12 and the protocols) and others (for instance participation and voice) represent fundamental principles underlying the statute and how it has been interpreted. Further, using the HRA, and the accompanying Strasbourg and growing domestic jurisprudence on it, offers guidance for the development of the EMF, whilst judicial interpretations of Articles 8, 3 and 2 have connected dignity and self-respect with autonomy.
• A key human rights objective is to secure disaggregated statistical information that captures and reflects the position of disadvantaged and vulnerable groups. This principle is already built into the EMF, with systematic disaggregation by at least eight characteristics. However, the importance of disaggregation by additional characteristics (e.g. refugee and asylum seeker status) should not be overlooked.

• Monitoring of vulnerable groups and the non-private household population (e.g. individuals resident or detained in public or private institutions) is also critical, and the EMF should function as an advocacy tool to ensure that new data is made available in the future. An attempt should be made to draw and integrate multiple data sources in this area and to develop cross-cutting indicators (for instance an indicator of death through non-natural causes in different institutions and establishments for which the state has responsibility / a duty of care; and a similar indicator for physical security for the non-private household population). Relevant data sources include police records and data collected by Inspectorates.

• Given the continuing concerns about care of vulnerable people in institutions (and proliferation of shocking reports of abuse), it is a key priority for the Commission and GEO to have a clear indicator to track and deal with this pressing social problem.

• Whilst many organisations currently lack specific lists of human rights indicators, some are currently working on the development of human rights indicators. However, Northern Ireland provides a possible good practice example in this area. This includes a role for direct participation in the identification and agreement of a set of human rights indicators. Dignity and respect indicators – there was a general feeling that these could reasonably be classified as ‘human rights indicators’. No references to existing lists or major existing HR indicator initiatives. Feeling that work needs to be done in order to agree a set of HR indicators for use in England, Scotland and Wales.

• Key examples of good practice examples in relation to the development of human rights indicators in the UK context include Mersey Care Trust and the Expectations publication by HM Inspectorate of Prisons, relating to the conditions in prisons and the treatment of prisoners (HMIP 2008).

• Statistical indicators that capture and reflect a human rights issue, such as lack of dignity and respect, should be conceptualized as human rights indicators. Again, it will be particularly important to build on the work of the inspectorates and regulators in this area. Potential sources for possible indicators of self-respect/dignity include the Commission for Social Care Inspection, the Healthcare Commission (especially the core standards

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68 The counter-argument, set out, for example, in some discussions in the literature on human development and human rights, is that the obligations perspective must be built into a statistical indicator in order for that indicator to 'count' as a human rights indicator. According to this viewpoint, indicators that describe socioeconomic situations are indicators of progress and development. However, human rights correspond to obligations, and the 'value added' of human rights indicators is to 'bring in' statistical measures of obligation.
Developing a Human Rights Measurement Framework (HRMF) and the Prison Inspectorate. The Prisons Inspectorate matches their assessment against convention rights. This could provide an important good practice example.

- There is however a danger of minimalism with dignity and respect monitoring; whilst violations are wrong and systems can certainly take dignity and respect away, what is needed is to achieve maximum dignity and respect; that is, it is important to view dignity and respect standards as a floor not a ceiling. In health, using components of patient experience (for instance nutrition support) rather than the overall question on dignity and respect may be more revealing / less subject to conditioned expectations.

- In developing the EMF it will be important to go beyond descriptions of capability inequality (inequality in the central and valuable things in life that people can do and be) and to link the EMF to the obligations perspective. This will include the development of indicators of ‘what can be done’ and underlying structures and systems and policy programmes and instruments. It is particularly important in this context to include indicators of complaints mechanisms and possibilities for redress.

Case study: Mersey Care Trust

Feedback summarized in Alkire et al (2009: 43-44) was received as part of the consultation on the work of Mersey Care NHS Trust (see Mersey Care Trust: 2007), which developed a human rights strategy for the period 2008-2011 and is developing a human rights-based approach to public service delivery that aims to mainstream human rights principles and standards at all levels of the organisation. Work to date includes:

- Service user and carer involvement programme;
- Integration of human rights standards and principles within the Trust’s Learning Disability service, including a benchmarking tool for developing human rights progress indicators with local agencies caring for people with learning disabilities;
- Development of inpatient questionnaire within the Trust’s Learning Disability Service explicitly based on human rights standards and principles. Questions cover outcomes as well as activities and procedures, and explicit questions on dignity and autonomy are included;
- Development of Keeping Me Safe and Well Risk Screen and Guidelines within the Trust’s Learning Disability Service;
- Development of the ‘Human Rights Joint Risk Assessment and Management Plan’ (HR JRAMP) (for joint use between the Trust and Liverpool PCT for that small number of people with Learning Disabilities at serious risk to themselves or others); and
- Participation in the Department of Health’s Human Rights in Healthcare Project.

Whilst Mersey Care Trust is using a number of indicators that can evidence some good human rights practice, the work has not been developed to the point where the Trust currently has a comprehensive set of human rights indicators. The need to
develop a systematic set of human rights indicators on the basis of which human rights policies and practices can be evaluated underpins the Trust’s approach (Dyer 2009). Further commitments in this area set out in the Trust’s Human Rights strategy include:

- From April 2009: All Directorate Business Plans to demonstrate how they protect and enhance human rights of service users, carers and staff; and
- From April 2010: To incorporate human rights quality indicators into Trust services, monitoring and evaluations (Mersey Care Trust 2007:6-7).
Box 4: Questions tabled during the specialist consultation on the EMF at the human rights event

Participants were asked to provide concrete examples of the good practice use of human rights indicators in official statistical monitoring systems and in everyday work. The following questions were also put forward for consideration:

**Q1 Definition of a human rights indicator**
- Q1.1 Do you have an agreed definition of a human rights indicator that you use in your everyday work / organization?
- Q1.2 Do you agree with the definition of a human rights indicator suggested in this paper?

**Q2 Identification of good practice examples of human rights indicators already being used in England, Scotland and Wales**
- Are you aware of agreed lists of human rights indicators that are being used for monitoring purposes in England, Scotland and Wales?
- Are you aware of good practice use of human rights indicators within official statistical monitoring systems?
- Do you have examples of human rights indicators from your everyday work / organization on which we could draw?
- Do you have any further suggestions or comments regarding statistical indicators that we could include in the short-lists of indicators in domain, that are particularly important from a human rights perspective?

**Q3 Description of existing indicators as ‘human rights indicators’**
- Do you agree that human rights consistent indicators (for instance indicators of dignity and respect) used, for example, by Inspectorate bodies should be described as ‘human rights indicators’?

**Q4 Developing cross-cutting human rights indicators from multiple data sources**
- Are you aware of attempts to bring together data from a number of sources (for instance from data provided by Inspectorates, the Home Office, the police and other sources) on cross-cutting human rights issues?
- Do you think the development of human rights indicators that take forward this approach would be useful?
- For the life domain, would you support the development of indicators picking up overarching human rights issues in relation to loss of life through non-natural causes in a range of institutions and contexts for which the state has responsibility and a duty of care (for instance prisons, police cells, care homes, medical establishments, including mental health establishments)? Do you have any comments and suggestions about how we should do this?
- For the physical security domain, would you support the development of an indicator picking up overarching human rights issues in relation to physical violence and abuse in a range of institutions and contexts for which the state has responsibility and a duty of care (for instance prisons, police cells, care homes, medical establishments, including mental health establishments)? Do you have any comments and suggestions about how we should do this?
- For the legal security domain, would you support the development of a measure capturing quality of life in prisons, taking account of the standards set out in HMIP (2008)? Do you have any comments and suggestions about how we should do this?

**Q5 Other possibilities for taking the human rights perspective forward**
- Do you have any suggestions or comments about additional ways in which we could draw on human rights principles and standards in taking the development of the EMF forward?
Recommendations on Human Rights from EMF final report

The EMF Final Report recommended that as the development of the EMF is taken forward in the future, further research is commissioned to ensure that (1) the EMF is fully mapped to underlying human rights, principles and standards; (2) indicators of obligations (as well as results) are fully developed; (3) indicators are developed with a view to covering all three types set out in the OHCHR best practice document. The need for a full set of human rights indicators in England, Scotland and Wales emerged during the course of the specialist consultation, and should also be addressed. Other recommendations included:

- The development of the EMF by the Commission, GEO and the devolved administrations continue to be informed by human rights principles, including systematic disaggregation by vulnerable groups, robust coverage of the non-household and vulnerable sub-populations and by supporting the use of the EMF as an advocacy tool where there are data gaps (for instance in relation to the development of an indicator of elder abuse, including in the institutional context).

- The commission should ensure that the ways in which the EMF builds on and embeds human rights principles as well as equality principles are emphasized in internal and external communications exercises.

- A full set of human rights indicators should be developed to use with the EMF and to discharge the Commission’s obligation to monitor the position of individuals and groups from the equality and human rights perspective, including by developing indicators and reporting triennially to Parliament.

- In taking the development of the EMF forward, the Commission, GEO and the devolved administrations should fully examine the obligations perspective, and a tool should be developed which maps the EMF to the duties recognized in domestic and international law.

- In order to build on the international practice set out in the OHCHR Indicators Framework, it is necessary to develop three types of indicators. In the OCHRC terminology, these are:
  
  - **Structural indicators** (focusing on the ratification/adoption of legal instruments and the existence of basic institutional mechanisms deemed necessary for facilitating realization of the human right concerned);
  
  - **Process indicators** (focusing on the steps undertaken by the primary duty-bearer, the state, to meet human rights obligations, including public programmes and specific interventions);
  
  - **Outcome indicators** (focusing on achievements from the perspective of rights-holders).69

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69 Human rights primarily govern the relationship between the State (the duty bearer) and the individual or groups (rights holders). Accordingly, all people have human rights – we are the rights holders – and for each right there are corresponding duties on states to respect, protect and fulfil these rights.
• In the terminology of the OHCHR, the current data set focuses on outcome indicators. We recommend that the Commission supports the development of a full set of human rights indicators that can be used with the EMF. The objective here would be to retain the full set of outcome indicators, but to expand the indicator set by covering the OHCHR categories of structural and process indicators.

• The EMF consultation raised the need for the development of an indicator covering physical security in a variety of institutions and establishments such as care homes for the elderly, mental health institutions and within prisons. These would be overarching indicators bringing together multiple data sources, including data from the Healthcare Commission, the Commission for Social Care Inspection and the Prisons Inspectorate. This proposal reflects the feedback comments and suggestions made by a number of subject experts and stakeholders at the physical security and human rights events.

• Building on the proposal, the EMF Final Report recommended that the Commission work with the Department of Housing and Home Office and the relevant audit, inspection and regulatory bodies, including the Audit Commission, Commission for Social Care Inspection, Healthcare Commission, HM Inspectorate of Constabulary and HM Inspectorate of Prisons and bodies in Scotland and Wales, to ensure the timely delivery of national statistics that enable the physical security of people resident or detained in public and private institutions to be monitored. The timely delivery of national statistics on elder abuse was found to be a particular priority. The Commission has an important overarching and regulatory role co-ordinating role and should also work to ensure the development and integration of the new indicators on elder abuse into the Equality Measurement Framework at the earliest possible date.

• The need to develop joined-up frameworks for conceptualising and measuring new and emerging equality and human rights indicators – such as the indicators of dignity and respect that are increasingly being included in the frameworks adopted by Inspectorates and Audit bodies - was highlighted as another important priority.
6

British Institute of Human Rights (BIHR) knowledge and experience

This Chapter reviews the fourth key input into the HRMF project – the knowledge and experience on the ground of the British Institute of Human Rights. This includes a particular emphasis on the importance of Articles 2, 3 and 8 of the Human Rights Act as entry-points for the protection of human rights, and specific recommendations on the development of human rights indicators. In a seminar organized by the British Institute of Human Rights, a number of participants suggesting that the EMF could provide a core set of indicators for a broader indicators framework that related to the ‘obligations’ dimension of human rights, as well as the ‘individual achievements’ dimension. An important priority for the Commission in taking forward the development of the EMF would be to relate the EMF to obligations indicators; with the notion of obligations being ‘unpacked’ using internationally recognized systems, especially the ‘respect, protect and fulfil’ criteria set out in the General Comments of CESCR, with each of these dimensions further elaborated by the notions of availability, accessibility, affordability, quality and adaptability.\(^70\)

6.1 Why is a human rights measurement framework being developed?

It is often (erroneously) stated that rights are ‘abstract’. At both national and international levels the establishment of some rights, particularly those that fall within the economic, social and cultural sphere, are said to be difficult to measure and because many are to be realised ‘progressively’ and it is difficult to identify and assess their progress, or lack thereof. Civil and political rights, though more frequently immediately realisable are rarely absolute in nature. The development of the jurisprudence of the European Convention of Human Rights, now bought into UK law through the Human Rights Act 1998 (HRA), consistently reiterates the balance that must be achieved within ‘qualified’ rights between the rights of the individual against the rights of others. Moreover, many of the rights within the HRA impose positive obligations on the state/public authorities to ensure individuals’ rights are protected and realised. These positive duties span from absolute rights (such as article 2, right to life) to qualified rights (such as article 8, right to family and private life).

In order to provide clarity to states and individuals about how they can ‘progressively realise’ certain rights the United Nations (UN), through its system of special representatives, experts and committees began to produce documentation, which expanded on the meaning of individual rights, addressing their scope and measurement. Notable among these are the ‘General Comments’ of the committees set up to monitor the implementation treaties which set out various human rights, such as the Committee for the International Covenant on Economic, Social and Cultural Rights.\(^71\) Through these various UN mechanisms common principles began to be established about how rights are realised and how this realisation is monitored and assessed. Firstly, that there is a ‘minimum core obligation’ within all rights, which

\(^{70}\) This view was expressed by a number of participants at the British Institute of Human Rights Policy Seminar Series, Seminar 2: Measuring human rights, 28 May 2009, Kings College London.

\(^{71}\) For further information about the UN systems and mechanisms related to human rights see http://www.ohchr.org/EN/HRBodies/Pages/HumanRightsBodies.aspx.
set out the essential level of that right which must be met immediately. Secondly, the rights must be realised ‘without discrimination’. Thirdly, that the steps taken to realise progressively realised rights should be ‘deliberate’, ‘concrete’ and ‘targeted as clearly as possible’ (UNDP 2000). Put in other words, rights can only move forwards: that is to say ‘progressive realisation’ means that states can only expand on rights, not take away rights already established.

6.2 Recommendations on the development of indicators based on BIHR’s experience

The British Institute of Human Rights (BIHR) is an independent national human rights charity which focuses on the value of human rights ideas, laws and practice to tackle inequality and promote social justice. BIHR has three main aims: (i) to lead the development of a fresh and ambitious vision of human rights that encompasses the full range of internationally recognised rights and is relevant to everyone in the UK, especially the most marginalised people; (ii) to build the capacity of other organisations to develop their own human rights practice that helps them deliver more effective services and campaigns; and (iii) to influence people with power to make this broader vision of human rights an integral part of their policies and plans. BIHR takes forward these aims through a range of activities including producing a range of information and other resources, such as briefings and toolkits; developing and delivering training and consultancy on both practice and policy; leading and/or collaborating on innovative human rights pilot projects; undertaking research and policy analysis; lobbying national government and Parliament, conducting media activity and campaigns, and occasional strategic legal interventions.

Learning from BIHR: Practice and policy

Since the introduction of the Human Rights Act in 1998, BIHR has specialised in taking human rights ‘beyond the courtroom’, making human rights knowledge accessible to a wide range of audiences and translating the ideas and laws into practical tools for people and organisations to use in everyday life. Working with both duty bearers and rights holders. BIHR provides information, training and consultancy to a range of voluntary, community and public bodies at national, regional and grassroots levels. In addition BIHR runs pilot projects in specific fields or sectors such as within the voluntary and community sector, in poverty, healthcare, schools and local government. In collaboration with others, these allow us to test the impact of human rights on people’s experiences of services and their ability to challenge the state when it fails to treat them with dignity and respect and the ability of public sector to use human rights to develop and deliver their services. This experience ‘from the ground’ to inform BIHR’s policy and influencing work.

BIHR’s experience of supporting service users and service providers has given us a ‘birds eye view’ of how the Human Rights Act is being invoked by individuals (and groups supporting them) across Britain in the ordinary course of negotiating public services, to secure improvements. BIHR’s work suggests that the specific human rights which are most commonly used to challenge poor services are:

- The **right to respect for private and family life** (Article 8 of the European Convention on Human Rights); and
• The **right not to be tortured or treated in an inhuman or degrading way** (Article 3).\(^2\) (BIHR 2008a:7)

At the core of these two rights is the focus on safeguarding human dignity; 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’.\(^3\)

Evidence of the common use of Articles 3 and 8 can be found in our work documenting human rights on the ground as illustrated in ‘The Human Rights Act - Changing Lives’. In its second edition this report documents 31 case studies illustrating how individuals have directly challenged the treatment or services provided to them by public bodies, resulting in changes to their circumstances. Examples of Articles 3 and 8 being used to either challenge poor treatment by public services, or to inform the reform or development of such services include: include stopping older or disabled people being strapped into chairs, or having their mobility severely restricted; inappropriate use of restraints; improving quality of very poor standard of accommodation; providing privacy in washing or other facilities; enabling participation in social activities; protecting women fleeing domestic violence through provision of housing and ensuring their children are kept with them; housing large families together; provision of transport for access to particular services; provision of home care for older people; managed family visits for someone in mental health residential care; provision of a specialised double bed; keeping a married couple together in social care arrangements; stopping the housing eviction of an asylum seeker whilst giving birth; provision of school transport for disabled child; stopping the use of CCTV cameras in a private bedroom in a residential setting; stopping daily unannounced intrusive visits; supporting someone to get married.

As part of the EHRC’s Human Rights Inquiry BIHR coordinated a participative consultation event with voluntary and community groups to capture and document the experience of organisations and individuals that would not otherwise have responded directly to the inquiry.\(^4\) The 40 representatives from 34 organisations had varied experience and knowledge of the HRA, but those who had some experience cited Articles 3, 5 and 8. This broadly echoes other BIHR work that Articles 3 and 8 are of particular relevance within the UK, underpinning our recommendation that these rights need to be extensively measured in the measurement framework.

Further illustrations of which issues are relevant to the rights, most frequently utilised by service users and providers are provided in BIHR's guides to the Human Rights Act,\(^5\) Human Rights in Healthcare: A framework for local action,\(^6\) and guidance for

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\(^2\) BIHR response to EHRC's Human Rights Inquiry call for evidence, 21 June 2008, p7

\(^3\) A and others v East Sussex County Council and Another (2003)

\(^4\) Held on 9 July 2008, 12noon-5pm in London at the Resource Centre, 356 Holloway Road, London N7 6PA. Final report submitted to EHRC on 8 August 2008, including collation of the notes from the five focus groups held, an evaluation and a summary of the responses overall written by Jean Candler, Head of Policy and Public Affairs, BIHR. This event is referenced throughout the HR Inquiry report. The report is unpublished but available from BIHR.


\(^6\) Human Rights in Healthcare: A framework for local action, pages 27-29
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a whole school approach to human rights. All these publications outline in detail the types of problems or issues which are frequently mentioned in these respective settings which relate to human rights.

Other rights that have been particularly utilised by individuals to challenge poor treatment are article 2 (right to life), article 5 (right to liberty), article 6 (right to a fair trial), article 9 (freedom of thought, conscience and religion) and article 14 (right not to be discriminated against in relation to any of the rights):

- **The right to life** (Article 2) – for example this right has been invoked to challenge decisions relating to access to medical treatment, protection against domestic and other forms of physical violence, and the use of 'Do Not Resuscitate' notices in hospitals;
- **The right to liberty** (Article 5) – this right is often used to challenge detention of people in prisons, mental health hospitals, care homes (where people who lack the capacity to resist may be 'informally' detained), and in immigration removal centres;
- **The right to a fair trial** (Article 6) – this right is often used to challenge the process by which decisions have been taken in contexts including planning, licensing, child care and welfare benefit claims;
- **The right to freedom of thought, conscience and religion** (Article 9) – this right has been invoked to challenge decisions relating to religious dress and other forms of religious observance in schools and residential care facilities; and
- **The right not to be discriminated against in relation to any of the rights contained in the European Convention** (Article 14) – this right has been used to challenge discrimination in many contexts (BIHR 2008a:9).

Recognising the view that a lack of effective evaluation and measures of human rights creates difficulties in the highly-charged negative political climate in which human rights are frequently criticised as too abstract BIHR’s policy and research work has included a recent roundtable seminar to discuss how to measure human rights within the UK. The context for the seminar was based on building upon the international measures and frameworks which have been developed to identify and measure progress towards human rights. These include obligations states have to 'respect, protect and fulfil' human rights; the 'four As' concepts - 'adaptability, affordability, accessibility, availability'; and the UN Office for the High Commissioner of Human Rights' framework which has identified relevant quantitative indicators across, what are described as 'structural, process and outcome' categories, or the 'commitment, efforts and results' of states in fulfilling their human rights obligations.

The key findings from this seminar, available in a summary report, are very

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79 Office of the High Commissioner for Human Rights (OHCHR) Indicators Framework HRI/MC/2006/7
instructive. The seminar findings can help us consider how to develop a human rights measurement framework, what pitfalls need to be avoided and what the added value is of human rights to existing data collection and measures. It augurs well for the need for a measurement framework specifically for human rights, which cross-references to other relevant frameworks, but which particularly measures human rights realisation. As was said during the seminar by Dr Todd Landman, the closer the indicator is to the concept being measured the more successful will be the measurement, hence the need for specific human rights measures. Additionally the added value of human rights is the layer of accountability which all human rights trigger. This must be reflected in any human rights measurement framework. The seminar also picked up the issue or participation, which is integral to human rights including participation in the development of indicators and measurement processes. A finding that is backed up by other BIHR work, outlined above, which recommends empowerment and participation as critical elements of any human rights process. The consultation process for the development of this human rights framework ought to involve those most affected by human rights violations/non-realisation to ensure what is being measured reflects real needs and situations.

6.3 Recommendations on the nature and scope of indicators

On the basis of the experience and learning outlined above it is submitted that the following issues should inform how the rights contained in the HRA are quantified into indicators are:

**Focus for indicators:** Given the many examples which illustrate potential human rights infringements/non-realisation, the indicators chosen for the purposes of this measurement framework should relate to those examples that are either most egregious, most commonly typify real experiences, or which can be captured through data and surveys. This also has implications for establishing data gaps (see below).

Above, we identify those rights and the issues they deal with which have commonly been used in our experience of human right on ground. The following can also be drawn from our human rights pilot projects:

- Human Rights in Healthcare Project: now running for four years, two particular issues which have emerged from this project as major human issues in healthcare are (i) personalisation agenda (including patient choice and involvement) and (ii) dignity in care (incorporating abuse). It is therefore recommended that indicators need to address these two issues.

- Human Rights in Schools Project: although at earlier stage in development than the health work, participation has emerged as a major human rights issue within education. This includes participation in activities, and in school management, policies and procedures. The Whole School Guidelines

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82 Interview with Lucy Matthews, Acting training and consultancy manager, by Jean Candler, 5 February 2010.
produced as part of this project document examples of human rights in practice within the school community, many which relate to 'student voice' - the involvement of students in school decision-making (BIHR/Ministry of Justice forthcoming).

- Human Rights and Poverty Project: the project was preceded by a roundtable on the relationship between human rights and poverty, the insights of which indicate particular issues which are relevant to the measurement framework. Whilst it is internationally well-accepted that poverty is both cause and consequence of human rights abuses, the roundtable highlighted the limitations of the HRA to tackle poverty, because of the "lack of enforceable economic, social and cultural rights in the UK". Although there are instances where the positive obligations imposed by the HRA have been used in relation to poverty, such as the Limbuela case notably, "where the right not to be treated in an inhuman and degrading way was successfully used to challenge destitution faced by asylum seekers." In terms of the human rights measurement framework therefore, it is essential that Articles 3 and 8, which relate to human dignity and respect incorporate measures for poverty, and that the framework is not limited to the HRA, but incorporates obligations the state has under international treaties that cover economic, social and cultural rights, such as rights to health, education and adequate standard of living.

- From Principles to Practice – Building the Human Rights Capacity of the Third Sector: this project began with a scoping exercise carried out by BIHR, and funded by Capacity Builders, to map the needs of the third sector in using human rights in its work. A particular issue highlighted by the mapping, not drawn from other BIHR work, is the "lack of access to the legal system" in terms of difficulty in finding 'lawyers to take on human rights cases due to limits on legal aid and limited compensation for human rights cases', as well as the general complexity of the law particularly for 'excluded and 'invisible' groups e.g. undocumented workers, trafficked women.' This strongly suggests a need for an indicator in the measurement framework which relates to access to legal aid, and access to the law.

Types of indicators: In BIHR's experience that is a particular issue around lack of awareness of human rights in the general public at large and within the voluntary and community sector and the public sector. For example, the BIHR coordinated VCS consultation event conducted as part of the EHRC’s Human Rights Inquiry (see above) participants identified issues in relation to their experiences of public authorities applying human rights and the HRA, and key barriers to their use across public and voluntary sectors. The key emerging issues were low awareness of

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83 See for example, the OHCHR's Human Rights Day message, 10 December 2006, 'Poverty is a cause and a product of human rights violations', http://www2.ohchr.org/english/events/day2006/hrd2006.htm.
85 In this case the right not to be treated in an inhuman and degrading way was successfully used to challenge destitution faced by asylum seekers. For further information ibid p.6.
87 From Principles to Practice: Report of BIHR regional consultation events on building the capacity of the third sector in human rights, June 2009, page 15.
human rights and the HRA across public and voluntary sectors; lack of training; lack of information and advice; lack of will; lack of resources, funding and commissioning - and of particular concern in this regard was a noted trend that VCS critical of public authorities were losing out in funding processes; perception barriers that human rights are not relevant in the UK context (because "we don't torture our patients")\(^8^8\); organisational barriers - including entrenched behaviour within organisations resistant to change and over-reliance on good practice of individual staff; lack of knowledge of how to hold public authorities to account. In addition, lack of information, awareness and resources was a key finding from the Principles to Practice needs scoping of the third sector (see above).\(^8^9\) This suggests that it is important for the measurement framework to capture information about understanding/awareness of human rights/HRA. It is important to measure this across the population as a whole and specifically within the public and voluntary sectors.

Another key issue emerging from BIHR's Human Rights and Poverty work (see above) is the need for empowerment and giving direct voice to people facing poverty in discussions about human rights; and information for and capacity-building of both those affected by poverty and service providers to tackle negative perceptions and raise awareness of accountability of human rights laws and policies. This mirrors learning from BIHR's other work (such as the event held for the VCS to participate in the HR Inquiry) that a measurement framework must include measures of awareness of human rights and accountability of public authorities. It also demands that in the development of the measurement framework people directly affected by human rights infringements/abuses should be involved in the consultation processes, which is why BIHR is gathering information from the groups it works with as part of the development of this framework.\(^9^0\)

Additional points to capture include the existence of specific information and training on human rights across these sectors which could be regarded as indicating good processes towards human rights realisation. For example, the independent evaluation of the Human Rights in Healthcare project by Ipsos Mori highlights that one of the main successes of the healthcare project was the training, and improvements in it, for example ‘making the training more accessible and participatory’.\(^9^1\) This indicates that when quality training is available this improves understanding and application of human rights, hence backing up the need for measuring availability and accessibility of (quality) training on human rights.

**Attributes of rights - availability, accessibility, affordability, adaptability (the four 'a's) and quality:** Core concepts that have emerged from the UN General
Comments, which can be described as the four ‘A’s are: availability, accessibility, affordability and adaptability. Taking the example of the right to education the way to measure an individual’s or group’s realisation of this right would be to assess whether the state-provided education was ‘available’, e.g. by ensuring schools were sufficiently close to where a child lived. It was ‘accessible’, e.g. a disabled child could access the school and facilities within it, such as gyms, toilets or libraries. It was ‘affordable’, e.g. this not refers to the provision of free or affordable school places, but also non-prohibitive costs attached to school uniforms, school trips, school books etc. Finally, education was ‘adaptable’, e.g. the education provided met the needs of the individual child, such as provision of religious facilities. Quality is also often referred to as setting some reasonable standard of the provision of a particular service or item. For example water needs to be drinking quality, or education or health must be of a reasonable level. A key advantage of using these broad concepts alongside the established norm of ‘progressive realisation’ is that these can be adapted to the cultural, economic and social context of a particular nation. In other words, the ‘available, accessible, adaptable and affordable’ model can equally apply to, for example, schooling in a poor community in an African country and to education in a rich, developed nation such as the UK, though the provision will look different.

A key recommendation from the BIHR seminar on measuring human rights (see above) was for the Commission to develop a human rights framework, linking to the Equality Measurement Framework. "It should be based on the three-dimensional matrix which layers human rights, the obligation indicators - ‘respect, protect, fulfil’ dimensions of rights; and the ‘four As’ - affordability, adaptability, accessibility, availability across each other, to enable human rights indicators for the UK to be established."92

**Linking principles/values to rights:** Core values or principles associated with human rights sometimes are referred to in the mnemonic ‘FREDA’ - standing for fairness, respect, equality, dignity and autonomy.93 In BIHR’s experience these values ‘are simple and resonate strongly with the personal values of both providers and users of public services.’94 They are of great practical value as both “flags” that help people to identify when human rights may have been violated or as “prompts” when solutions to human rights issues are being sought95, at both individual and policy levels. These principles can also be applied to many services. For example, the concept of ‘fairness’ can be related to the ‘right to a fair trial’, which in a health context can relate to actions which ensure ‘there is a robust and fair process for dealing with concerns about the professional conduct or performance of a healthcare professional’.96

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93 At times, this value is described as ‘participation’ rather than autonomy, as for example in Right Here, Right Now: A Whole-School Approach to Human Rights, BIHR/MOJ, 2010 (publication pending).
95 Ibid, p11
96 Ibid, p11
could be ‘ensuring that disciplinary processes are fair’\textsuperscript{97}, both for students and/or staff.

However, BIHR does caution about the use of these values in isolation from the human rights standards from which they emerge, what BIHR refers to as ‘human rights lite’. ‘Human rights lite’ refers to work which emphasises some of the ideas or values behind the Human Rights Act, but which does not otherwise refer to the Act or the specific human rights which it protects. Generally, work of this sort is not part of a process aimed at achieving the concrete realisation of human rights, and nor does it involve a public authority taking fully on board its role as a ‘duty bearer’ or its accountability in relation to human rights. A typical example of this is public authority staff who say they are satisfied their organisation is properly implementing its duties under the Human Rights Act on the sole basis that the organisation subscribes to principles like dignity and fairness. This is especially problematic when accompanied by resistance to more technical information about human rights, including how specific human rights standards apply to particular areas of decision-making and how legal principles like proportionality can be used to improve the quality of specific decisions. Major problems associated with ‘human rights lite’ include: (i) it obscures the important fact that human rights are enshrined in law and that people can, if necessary, enforce them via the Human Rights Act – this is a powerful incentive for public authorities to embrace a broader human rights agenda; and (ii) it tends not to be part of a meaningful process across the whole organisation and rarely leads to any significant change – for example staff may respond to introductory information about the ideas or values behind the Human Rights Act by saying ‘we are already doing this, we don’t need to waste any more time learning about this’. A key learning point is that emphasising human rights principles alone is not sufficient to ensure that the specific human rights set out in the Human Rights Act are realised.\textsuperscript{98} In relation to indicators for measuring human rights we believe it is vital that the measurement framework specifically links the values to the rights associated with them, to ensure a robust and stringent framework is developed.

\textbf{Collection and disaggregation of data}: Disaggregated data is important as the noted examples refer to people in various vulnerable situations, e.g., such as older people, disabled people, including people with learning disabilities, asylum seekers and refugees, Gypsies, Travellers and Irish Travellers, people with mental health problems and women fleeing domestic violence. In BIHR’s experience of practical human rights work the HRA legal principle of ‘proportionality’ is particularly important. In our experience proportionality is (i) the key mechanism by which the Human Rights Act permits different rights and interests to be balanced in most situations; and (ii) a test for establishing whether interferences with (non-absolute) human rights can be justified.\textsuperscript{99} It is therefore important that the collection of data and the selection of indicators that there is sufficient flexibility which takes into account individual circumstances, and proportional responses. The needs of one group or individual is not necessarily the same as the population as a whole. For example, the

\textsuperscript{97} Right Here, Right Now: A Whole-School Approach to Human Rights, BIHR/MOJ, 2010 (publication pending).page 25.


provision of school transport for a young girl with learning disabilities\textsuperscript{100} was proportionate in her unique circumstances, but may not apply to the school population as a whole.

**Data gaps:** As noted above, once the focus for indicators has been identified, the framework will need to consider what data is available, with gaps in current available data likely to emerge. The independent evaluation of the Human Rights in Healthcare project (see above) conducted by Ipsos Mori notes, inter alia, “…key learning points include the need to incorporate a system of collecting useful quantitative data…Explicit identification of relevant data will ensure that any specific impacts that result from [using a human rights approach]…can be tracked.”\textsuperscript{101} As this evaluation makes clear measurement itself is vital for tracking human rights developments and therefore where quantitative data is unavailable against indicators chosen, efforts should be made to gather this data

**Capturing data on non-discrimination:** There are two issues to consider in relation to the concept of non-discrimination under the HRA. First, non-discrimination is not currently a free-standing right in law in the UK, because the UK has not signed up to the Optional Protocol 12 of the ECHR, which makes this a freestanding right. As it stands in the UK, under Article 14 non-discrimination is a conjunctive right, in that it must be read in relation to another right within the Convention. However, the issues which Article 14 does cover include:

- multiple discrimination, i.e. the compounding of two or more issues of discrimination (e.g. the disabled gay man case described above)
- how to address the impact of blanket policies, which are therefore not discriminatory, but can be challenged as generally poor treatment (e.g. a hospital’s decision, which was overturned when the HRA was explained, in which all older people’s mobility was prevented on a ward through placing them in chairs they could not get out of, regardless of their walking abilities, or wishes\textsuperscript{102}.

It therefore needs to be recognised in the measurement framework that because human rights goes beyond the mandated protected groups under our domestic anti-discrimination law and fills gaps where they exist in data collection will need to reflect this. For example, data may need to be collected on the basis of other status or identities such as homelessness, asylum status or membership of minority communities such as Travellers and Gypsy communities. This will mean ensuring that non-discrimination cuts across all the indicators and measuring poor treatment that is not necessarily discriminatory.

**Systematic evidence v over-reliance on individual cases**

As Ipsos Mori also conclude, “avoiding reliance on one or two key individuals is necessary to ensure that implementation can continue and goals can be achieved


even when these key people are unable to be involved.\textsuperscript{103} Just as was expressed in the participative VCS event for the HR Inquiry there is a need in a measurement framework for measuring the systematic application of human rights so as to not rely on the good practice facilitated by particular individuals.

7

International good practice

This Chapter sets out the final key input into the HRMF project – international good practice on the development of human rights indicators. The OHCHR Conceptual and Methodological Framework is examined first. This provides the starting-point for the current project and the central focus for our methodology, which emphasizes the key distinction between structural, process and outcome indicators, and the need to cover all three types of indicator as the development of the HRMF is taken forward. However, there is a rapidly increasing number of international initiatives in this area, and these are also reviewed, with a particular emphasis on drawing out the insights and lessons for the HRMF project.

7.1 The OHCHR Conceptual and Methodological Framework

A list of illustrative human rights indicators that can be used with the OHCHR Indicators Framework has recently been published (UNHCHR 2008) and provides a good practice model for the development of human rights indicators. This model is the central focus of the HRMF.

Main features of the OHCHR conceptual and methodological framework

The main features of the OHCHR conceptual and methodological framework are described on the OHCHR website as follows:

- The OHCHR conceptual and methodological framework adopts a common approach to identifying indicators for monitoring civil and political rights, and economic, social and cultural rights.
- The framework recommends the development of *structural*, *process* and *outcome* indicators. This configuration of indicators should help assess the steps being taken by States in addressing their obligations – from commitments and acceptance of international human rights standards (*structural* indicators) to efforts being made to meet the obligations that flow from the standards (*process* indicators) and on to the results of those efforts (*outcome* indicators).
- The framework seeks neither to prepare a common list of indicators to be applied across all countries irrespective of their social, political and economic development, nor to make a case for building a global composite measure for cross-country comparisons of the realization or enjoyment of human rights.
- The framework provides guidance for the identification of contextually relevant and feasible indicators in compliance with international human rights norms and principles. Using the adopted framework, lists of illustrative indicators have been identified and are being validated on a number of human rights and thematic issues.
- The adopted methodology focuses primarily on indicators that are or can be compiled by official statistical systems using administrative records and statistical surveys.

104 The information in this section is based on http://www2.ohchr.org/english/issues/indicators/framework.htm.
The framework focuses on quantitative as well as qualitative indicators. Efforts have been made to keep the indicators simple, based on objective and transparent methodology and, to the extent feasible, with an emphasis on disaggregation by type of prohibited discrimination and by vulnerable and marginalized population group.

**Definition of a human rights indicator**

A human rights indicator is a statistical indicator that is explicitly rooted in the international human rights framework and that facilitates international monitoring of (1) the human rights position of individuals and groups; and (2) the fulfilment of international obligations by states. The OHCHR Conceptual and Methodological Framework suggests the following definition:

> Human rights indicators are specific information on the state of an event, activity or an outcome that can be related to human rights norms and standards; that address and reflect the human rights concerns and principles; and that are used to assess and monitor promotion and protection of human rights (UN HCHR 2006b).

The proposed definition draws on the formulation used by Special Rapporteur Paul Hunt in his various reports to the Commission on Human Rights (for instance UNHCHR 2003, UNHCHR 2006a). Hunt argues that a right to health indicator derives from, reflects and is designed to monitor the realization or otherwise of specific right to health norms, usually with a view to holding a duty bearer to account.

**Identifying attributes**

As a starting point for each human right, the OHCHR Conceptual and Methodological Framework translates the narrative on the legal standard of the right into a limited number of characteristic “attributes” that facilitate a ‘structured identification of appropriate indicators for monitoring the implementation of that right’. The notion of attributes of a right is intended to assist in ‘concretizing’ the content of a right and makes explicit the link between identified indicators of a right, on one hand, and the normative standards of that right, on the other. By selecting the attributes of a right, the process of identifying suitable indicators or cluster of indicators is facilitated as one arrives at a categorization that is clear, concrete and, perhaps, more ‘tangible’ in facilitating the selection of indicators (UNHCHR 2008).

**Indicators for cross-cutting human rights norms**

Indicators that capture the cross-cutting human rights norms or principles cannot be exclusively identified with the realization of a specific human right, but are meant to capture the extent to which the process to implement and realize human rights is, for instance, participatory, inclusionary, empowering, non-discriminatory or accountable. OHCHR notes that there is no easy way to reflect these cross-cutting norms and principles explicitly in the selection of indicators. However, in capturing the norm of non-discrimination and equality in the selection of structural, process and outcome indicators, a starting point is to seek disaggregated data by prohibited grounds of
discrimination such as sex, disability, ethnicity, religion, language, social or regional affiliation of people (UNHCHR 2008).

Criteria for the selection of quantitative indicators

The OHCHR Conceptual and Methodological Framework further notes that a key consideration in adopting a methodology for identifying and building human rights indicators, like any other set of indicators, is its relevance and effectiveness in addressing the objective(s) for which the indicators are to be used. Other methodological requirements are viewed as following from this consideration. In the context of the work undertaken by the treaty bodies in monitoring the implementation of human rights, quantitative indicators should ideally be: relevant, valid and reliable; simple, timely and few in number; based on objective information and data-generating mechanisms; suitable for temporal and spatial comparison and following relevant international statistical standards; and amenable to disaggregation in terms of sex, age, and other vulnerable or marginalized population segments (UNHCHR 2008).

Contextual relevance of indicators

The contextual relevance of indicators is noted as another key consideration in the acceptability and use of indicators among potential users. In designing a set of human rights indicators, like any other set of indicators, there is a need to strike a balance between universally relevant indicators and contextually specific indicators, as both kinds of indicators are needed (UNHCHR 2008).

Coverage of structures, processes and outcomes

Coverage of structural, process and outcome indicators is key to the OHCHR Conceptual and Methodological Framework. The distinction between these different types of indicators is characterised in UNHCHR (2008) as follows:

- **Structural indicators** reflect the ratification and adoption of legal instruments and existence of basic institutional mechanisms deemed necessary for facilitating realization of a human right. They:
  - Capture commitments or the intent of the State in undertaking measures for the realization of the concerned human right.
  - Focus on the nature of domestic law as relevant to the concerned right - whether it incorporates the international standards - and the institutional mechanisms that promote and protect the standards
  - Reflect policy frameworks and indicated strategies of the State as relevant to the right, such as a national policy statement on a subject is an instrument that is expected to outline a Government’s objectives, policy framework, strategy and/or a concrete plan of action to address issues under that subject
  - Can be common to all human rights or relevant to specific human rights or to a particular attribute of a human right.

- **Process indicators** relate state policy instruments with milestones that cumulate into outcome indicators, which in turn can be more directly related to
the realization of human rights. State policy instruments refers to all such measures including public programmes and specific interventions that a State is willing to take in order to give effect to its intent/commitments to attain outcomes identified with the realization of a given human right. By defining the process indicators in terms of a concrete ‘cause-and-effect relationship’, the accountability of the State to its obligations can be better assessed. They:

- Help in directly monitoring the progressive fulfilment of the right or the process of protecting the right, as the case may be for the realization of the concerned right.
- Are more sensitive to changes than outcome indicators and hence are better at capturing progressive realization of the right or in reflecting the efforts of the State parties in protecting the rights.
- The selection of process indicators is guided by two considerations. The first ensures that the articulation of process indicators reflected a causal relationship with the relevant structural as well as outcome indicator. For example, a process indicator of the right to health - proportion of school-going children educated on health and nutrition issues – was chosen so that it could be related to the corresponding structural indicator, namely “time frame and coverage of national policy on child health and nutrition”, as well as with the outcome indicator ‘proportion of underweight children under 5 years of age’. The second consideration was to bring out explicitly a measure of “effort” being undertaken by the duty-holder in implementing its obligation. Thus, indicators such as “proportion of requests for social security benefits reviewed and met in the reporting period” or “proportion of the population that was extended access to improved sanitation in the reporting period” were included in the category of process indicators. This included reformulating a commonly available indicator (in the latter case an MDG indicator), and/or requiring some additional estimation on the basic information of the indicator.

- **Outcome indicators** capture individual and collective attainments. These provide a more direct measure of the realization of a human right and reflects the cumulative impact of various underlying processes (that may be captured by one or more process indicators). The rate of change of outcome indicators may be slower than for the corresponding process indicators. For example, life expectancy or mortality indicators could be a function of immunization of the population, education or public health awareness, as well as of availability of, and access of individuals to, adequate nutrition. Process and outcome indicators can be meaningfully viewed as ‘flow’ and ‘stock’ variables.

- **Overlaps** Process and outcome indicators may not be mutually exclusive. For example, a process indicator for one human right can be an outcome indicator in the context of another right.

**Official v non-official data sources**

The OHCHR Conceptual and Methodological Framework emphasizes the critical role of both official and non-official data sources in international human rights monitoring.
Official socio-economic indicators are essential in monitoring the compliance of states with their treaty obligations under international human rights law (including enabling the reporting obligations of states to be discharged); but it is also essential to make use of information collected by non-governmental sources in international human rights monitoring. This argument reflects the more general principle that the state’s own description of the human rights situation in a country ought not to be the sole evidence-base in terms of which international monitoring proceeds.

There are, of course, a number of reasons to doubt official accounts of the situation at hand. Human rights violations may represent illegal activities by the state - these activities may be underground or covert, and data collection may become almost impossible. Furthermore, data on questions of torture, arbitrary disappearances and extrajudicial killings, is less likely to be available, and more likely to be biased, manipulated and concealed, in more closed and repressive societies. Limitations of this type can make official statistical information of limited value in human rights monitoring, and can introduce systematic statistical biases into human rights comparisons and measurement. These problems underlie the sceptical position on the application of quantitative methods in human rights analysis (for instance as discussed in Jabine and Claude 1992:9-30; Goldstein 1991:47-48; Cingranelli 1988; Lopez and Stohl 1991; Barsh 1993).

The HRMF will draw on data from surveys and administrative data sources. However, the intention is that the HRMF will also draw on a broader range of sources, including non-official sources and events-based monitoring.

Rejection of composite indicators and cross-country comparison approaches

The OHCHR indicators framework also rejects the use of composite statistical indicators (where more than one indicator is combined in a single statistical measure) and the use of a cross-country approach. The first objection reflects the fact that where a single measure methodology is used, differential achievement in regard to individual indicators may be submerged by the exercise of conflating these indicators into a single index. In effect, a low performance in one indicator may be ‘compensated’ for by a high performance in another. The second objection reflects the political critique of simplistic country-ranking methodologies as well as the underlying statistical limitations of such approaches. The rejection of single indicator approaches has also been reflected in the development of the HRMF, which emphasises a system of spotlight indicators rather than a single composite indicator approach. Part of the rationale for avoiding a single composite indicator approach is in fact the limitations of exercises based on simplistic cross-country rankings.

International Applications of the OHCHR Conceptual and Methodological Framework

The OHCHR’s Conceptual and Methodological Framework emerged from a request from Treaty bodies to the OHCHR for assistance regarding the use of statistics and indicators. The attributes of the framework are directly derived from a reading of the international human rights normative framework (treaty provisions and general

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105 Material in this section is drawn from a Personal Communication with Nicolas Fasel, 2010.
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comments), and in 2008 the framework was endorsed by the treaty bodies. It is intended that the identification of indicators at the country level can have a focus on certain attributes of rights given their contextual relevance; for example, under the right to life, in the UK context the indicator relating to the death penalty would not be relevant.

The OHCHR has undertaken consultations with regional and national stakeholders to validate the lists of indicators it has developed. Sub-regional workshops were undertaken in Asia, Africa and South America in 2007-2008. Following these events, follow-up activities, including national workshops, were implemented in a number of countries to develop the use of indicators in furthering the implementation of human rights, including Colombia, Ecuador, Guatemala, Mexico, Nepal, Kenya and Uganda.\textsuperscript{106} The OHCHR is continuing its work to elaborate indicators for additional human rights, and to develop meta-data to facilitate the use of indicators by providing detailed information on their definition, rational, method of computation, data sources, disaggregation, etc. Further work on the application of the framework and the use of indicators is continuing at the country level.

\textsuperscript{106} Office of the High Commissioner for Human Rights, OHCHR Work on the Use of Indicators to Promote and Monitor the Implementation of Human Rights, Status Note, March 2010, p 3.
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Box 5: OHCHR Human Rights Conceptual and Methodological Framework

- A common approach to identifying indicators for monitoring civil and political rights, and economic, social and cultural rights;
- The development of quantitative as well as qualitative statistics
- Coverage of three types of indicator:
  - **Structural indicators** (focusing on reflect the ratification/adoptions of legal instruments and the existence of basic institutional mechanisms deemed necessary for facilitating realization of the human right concerned);
  - **Process indicators** (focusing on the steps undertaken by the primary duty-bearer, the state, to meet human rights obligations, including public programmes and specific interventions);
  - **Outcome indicators** (focusing on achievements from the perspective of rights-holders).
- The essential role of two categories of data-generating mechanisms:
  - **Official socio-economic data** (Official statistical information disseminated by the State through its administrative records such as civil registration and benefit systems and statistical surveys. The use of a standardized methodology and covered in principle by standard requirements of statistical reliability and validity.)
  - **Non-official events-based data** indicators or information compiled by non-governmental sources and human rights organizations focusing on alleged violations reported by victims, witnesses or NGOs (such as the alleged incidence of arbitrary deprivations of life, enforced or involuntary disappearances, arbitrary detention and torture) and processed in a standardized manner (for instance by United Nations special procedures / HURIDOCS format). Data of this type may not be internationally comparable or satisfy standard requirements of statistical validity and reliability.
- An emphasis on efforts to keep the identified indicators simple, based on objective and transparent methodology, and a rejection of methodologies based on (1) a common list of indicators to be applied across all countries irrespective of context; (2) a single global measure aiming at cross-country comparisons and rankings;
- An emphasis on disaggregation of identified indicators by type of prohibited discrimination (for instance sex, ethnicity, disability, etc) and by vulnerable or marginalized population groups.

7.2 The framework developed by the UN Committee on Economic, Social and Cultural Rights

The UN Committee on Economic, Social and Cultural Rights (CESCR) has focused international attention on the importance of statistical indicators for evaluating the human rights position of individuals and groups and in developing benchmarks in terms of which progress can be evaluated. The following concepts developed by the Committee in its General Comments and elsewhere underpin this approach:

- Obligations of conduct v obligations of result and de jure v de facto realization of human rights;
- Obligations to respect, protect and fulfil human rights;
- Progressive realization / maximum available resources / minimum core threshold approach / immediate obligations; and
- Availability, accessibility, affordability, quality and adaptability.\(^{107}\)

These concepts have important implications for thinking about the role and development of the HRMF. For example:

De facto v de jure

The analytical distinction between de facto and de jure human rights monitoring is relevant to thinking about the role that the HRMF might play in relation to human rights monitoring. The Commission has specific legal duties both to monitor the law from an equality and human rights perspective, and to monitor results (or social outcomes) from an equality and human rights perspective (by developing indicators and assessing progress in a triennial report). The HRMF is being developed in order to assist the commission in discharging its duty to monitor results (or social outcomes) from the human rights perspective. However, the spread of indicators types (covering structures, process and outcomes) means that the HRMF will support the analysis of both the de facto and the de jure human rights position of individuals and groups.

Obligation of conduct v obligation of result

The CESCR has tended to classify obligations under the ICESCR as involving obligations of result as well as obligations of conduct. This approach gives states a relatively wide margin of appreciation in terms of policies and programmes that they can undertake, and emphasizes the development of benchmarks and targets, in terms of which the obligation of ‘progressive realization’ under Article 2 of the ICESCR can be assessed (by enabling progress to be evaluated and making it possible to assess when policy adjustments are required). The development of benchmarks and targets in turn requires the development of human rights indicators, and a core concern of the Committee has been to ensure that adequate statistical information is made available for international monitoring in this area.

\(^{107}\)See for example UN Committee on Economic, Social and Cultural Rights General Comment 15 (the right to water), General Comment 14 (right to highest attainable standard of health), 13 (right to education), 12 (right to adequate food), available from http://www2.ohchr.org/english/bodies/cescr/comments.htm [Accessed 22 February 2010].
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The UN Committee on Economic, Social and Cultural Rights has relied on the distinction between international obligations of conduct and international obligations of result in its jurisprudence, stipulating that situations or results - as well as specific actions and omissions - constitute relevant benchmarks in terms of which the compliance of states parties with their treaty obligations under Article 2 of the ICESCR can be assessed. The concept of the effective realisation of human rights in practice, as well as the distinction between the de facto as well as the de jure aspects of the realisation of economic, social and cultural rights, have both been emphasised in this context. For example, the Reporting Guidelines issued to states parties by the Committee on Economic, Social and Cultural Rights suggest that information relating to the law pertaining in a state should be supplemented with statistical information relating to the achievement of the human rights enumerated in the Covenant by individuals and groups in practice. The Committee has repeatedly criticised states parties that have focussed on ‘legalistic and theoretical aspects and [have] not placed sufficient emphasis on tangible facts reflecting the actual situation prevailing in the country’ and has highlighted the use of statistical indicators and benchmarks as evaluative tools for assessing the achievement of economic and social rights by individuals and groups. This approach is further developed in the Maastricht Guidelines, which also emphasise that a situation or result, as opposed to an act or an act of omission, can constitute a relevant benchmark against which the compliance of states parties with their treaty obligations can be judged. Guideline 7 stipulates that whereas ‘the obligation of conduct requires action reasonably calculated to realise the enjoyment of a particular right’, the obligation of result ‘requires States to achieve specific targets to satisfy a detailed substantive standard’. Applied to article 12 of the ICESCR, the human right to health:

[T]he obligation of conduct could involve the adoption and implementation of a plan of action to reduce maternal mortality [while the] obligation of result requires States to achieve specific targets, such as the reduction of maternal mortality to levels agreed at the 1994 Cairo International Conference on Population and Development and the 1995 Beijing Fourth World Conference on Women.

This reasoning has implications for discussions about evidentiary thresholds in the field of economic and social rights, highlighting the relevance of both the specified results and the results achieved in practice in the determination of compliance with international obligations under the ICESCR. However, as emphasised in the reasoning in the Commentary accompanying International Law Commission, violations of Article 2 of the ICESCR by national states cannot for example be inferred from the non-fulfilment of the human rights set out in the ICESCR per se. The compliance of states under Article 2 of the ICESCR might for example be taken to require evaluation of (1) the results the human rights set out in the ICESCR have been realized; (2) the adequacy of state conduct (e.g. the application of a ‘best efforts’ or ‘reasonableness’ criterion). The reasonableness of state action should be evaluated in terms of the results specified in the Covenant (i.e. the full realisation of the economic, social and cultural rights) taking account of reasonableness of state conduct (evaluated for example in terms of the general principles set above, intermediate benchmark targets and the ‘minimum threshold approach’). However, evaluation of state compliance with even its core obligations under the “minimum
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threshold approach” will in the final analysis take account of the evaluation of state conduct as well as the results achieved. For example, whilst resource scarcity does not relieve States of certain minimum obligations under Article 2 of the ICESCR, any assessment as to whether a state has discharged its minimum core obligation must nevertheless take account of resource constraints applying within the State party concerned. Thus the failure of population groups within a particular jurisdiction to achieve adequate nutrition provides *prima facie* rather than direct evidence of human rights violations by the national state.

Respect, protect and fulfil

The Committee has further emphasized the importance of statistical information that makes it possible to assess the extent to which states are fulfilling their obligations to respect, protect and fulfil human rights. The interpretative framework developed by the Committee (for instance in its General Comments) has become highly influential and informs many international discussions about human rights indicators. The framework defines these three tiers of obligation as follows:

- The obligation to respect human rights requires that the state does not actively violate human rights (for instance in relation to the right to housing, through arbitrary forced evictions).
- The obligation to protect human rights requires states to take reasonable action to protect individuals and groups from violations by third parties (for instance by the establishment of a legal and institutional framework that prevents violations and ensures appropriate action is taken by the state when violations occur – such as investigations, monitoring, remedies and relief).
- The obligation to fulfil human rights requires states to take legislative, budgetary, administrative and other measures to promote the achievement of human rights (for instance by the adoption of policies and programmes) and by directly providing for the fulfilment of human rights (for people whose human rights would otherwise be denied).

Indicators that are relevant to all three tiers of obligation are admissible in the indicator selection process for the HRMF. For example, in relation to the right to life:

- Indicators of arbitrary deprivation of life by the state are admissible as process indicators and are relevant to the evaluation of the obligation to ‘respect’ human rights.
- Indicators of intimate partner homicide are admissible as outcome indicators, and are relevant to the obligation of states to ‘protect’ human rights (protection from third party violations).
- Indicators of life expectancy are admissible as outcome indicators, and are relevant to the obligation of the state to ‘fulfil’ human rights.

Further details of the CESCR’s General Comments on housing, food, education, health, water, work, social security, and taking part in cultural life, are outlined in Appendix 2.
7.3 Statistical Information Required by the UN Committee on the Rights of the Child

The UNCRC provides an important starting-point for monitoring children’s human rights in England, Scotland and Wales. States are required to provide substantive information as required in relation to the following categories (UNCRC 2005):

- General measures of implementation;
- Definition of the child;
- General principles;
- Civil rights and freedoms;
- Family environment and alternative care;
- Basic health and welfare;
- Education, leisure and cultural activities;
- Special protection measures; and
- Optional protocols.

The reporting guidelines issued to states inform signatories on the type of statistical data that nations are obligated to collect and present to the Committee for its evaluations. Section 1 includes the following requirements:

6.(d) Statistical data: States parties should provide, where appropriate, annual statistical data disaggregated by age/age group, gender, urban/rural area, membership of a minority and/or indigenous group, ethnicity, disability, religion, or other category as appropriate;

7. Reports should be accompanied by copies of the principal legislative texts and judicial decisions, as well as detailed disaggregated data, statistical information, indicators referred to therein and relevant research. The data should be disaggregated as described above and changes that have occurred since the previous report should be indicated. (UNCRC 2005: 2-3)

A summary of the types of statistical information regularly required in country reports, broken down by the categories specified within the Committee’s reporting guidelines, is provided in the next section. These include, for example:

- Number of children without parental care disaggregated by causes;
- Number and percentage of children who received special care in terms of recovery and social reintegration;
- Number of children with disabilities who are living in institutions, including institutions for mental illnesses, or outside their families, such as in foster care; and
- Number of persons under 18 detained in institutions that are not specifically for children (UNCRC 2005: 10-18)

The annex to the 2005 UNCRC report submission guidelines provides detailed requests on the chapter-specific disaggregated statistical data and indicators expected in the report, which must also cover ‘the reporting period since the
consideration of their last report’ (UNCRC 2005). Some sample instructions, taken from the annex to the guidelines, as well as from the UN Committee’s General Comment No. 9 (UNCRC 2007) follows from here:

Under Section 5, Family environment and alternative care:

**Children without parental care (arts. 9, paras. 1-4, 21 and 25)**
12. With reference to children separated from parents, States parties should provide data disaggregated as described in paragraph 1, above, on the:
   (a) Number of children without parental care disaggregated by causes (i.e. due to armed conflict, poverty, abandonment as a result of discrimination, etc.);
   (b) Number of children separated from their parents as a result of court decisions (inter alia, in relation to situations of detention, imprisonment, exile or deportation);
   (c) Number of institutions for these children disaggregated by region, number of places available in these institutions, ratio of caregivers to children and number of foster homes;
   (d) Number and percentage of children separated from their parents who are living in institutions or with foster families as well as the duration of placement and frequency of its review;
   (e) Number and percentage of children reunited with their parents after a placement;
   (f) Number of children in domestic (formal and informal) and intercountry adoption programmes disaggregated by age and with information on the country of origin and of adoption for the children concerned.

**Abuse and neglect (art. 19), including physical and psychological recovery and social reintegration (art. 39)**
15. States parties should provide data disaggregated as described in paragraph 1, above, on the:
   (a) Number and percentage of children reported as victims of abuse and/or neglect by parents or other relatives/caregivers;
   (b) Number and percentage of those cases reported that resulted in sanctions or other forms of follow-up for perpetrators;
   (c) Number and percentage of children who received special care in terms of recovery and social reintegration.

Under Section 6, Basic health and welfare:

**Children with disabilities (art. 23)**
16. States parties should specify the number and percentage of children with disabilities disaggregated as described in paragraph 1, above, as well as by nature of disability:
   (a) Whose parents receive special material or other assistance;
   (b) Who are living in institutions, including institutions for mental illnesses, or outside their families, such as in foster care;
   (c) Who are attending regular schools;
   (d) Who are attending special schools.
Under Section 8, Special protection measures:

- **Children deprived of their liberty, including any form of detention, imprisonment or placement in custodial settings (art. 37 (b)-(d))**
  
  24. States parties should provide appropriate disaggregated data (as described in paragraph 1, above, including by social status, origin and type of crime) on children in conflict with the law in respect of the:
  (a) Number of persons under 18 held in police stations or pretrial detention after having been accused of committing a crime reported to the police, and the average length of their detention;
  (b) Number of institutions specifically for persons under 18 alleged as, accused of, or recognized as having infringed the penal law;
  (c) Number of persons under 18 in these institutions and average length of stay;
  (d) Number of persons under 18 detained in institutions that are not specifically for children;
  (e) Number and percentage of persons under 18 who have been found guilty of an offence by a court and have been sentenced to detention and the average length of their detention;
  (f) Number of reported cases of abuse and maltreatment of persons under 18 occurring during their arrest and detention/imprisonment.

Under the UNRC, General Comment No. 9 (2007) on the rights of children with disabilities, there is further information on the types of statistics the UNCRC expects in state-specific reporting (UNCRC 2007).

Under Section C, Data and statistics:

  19. In order to fulfil their obligations, it is necessary for States parties to set up and develop mechanisms for collecting data which are accurate, standardized and allow disaggregation, and which reflect the actual situation of children with disabilities. The importance of this issue is often overlooked and not viewed as a priority despite the fact that it has an impact not only on the measures that need to be taken in terms of prevention but also on the distribution of very valuable resources needed to fund programmes. One of the main challenges in obtaining accurate statistics is the lack of a widely accepted clear definition for disabilities. States parties are encouraged to establish an appropriate definition that guarantees the inclusion of all children with disabilities so that children with disabilities may benefit from the special protection and programmes developed for them. Extra efforts are often needed to collect data on children with disabilities because they are often hidden by their parents or others caring for the child.

**Concerns about UK statistical monitoring of children and young people raised by the Committee**
The limitations of statistical systems in the UK for monitoring the human rights of children has been a key issue raised by the Committee in its General Comments on UK Reports. For example, in responding to the UK’s most recent report, the Committee highlighted the ‘still high prevalence of violence, abuse and neglect against children, including in the home’ and ‘regrets that there is still no comprehensive system of recording and analysing abuses committed against children.’ The Committee recommended that mechanisms must be established to monitor ‘the number of cases and the extent of violence, sexual abuse, neglect, maltreatment or exploitation, including within the family, in schools and in institutional or other care’ (UNCRC 2008: 12).

The Committee further highlighted ‘the lack of data on the number of children seeking asylum’ and recommends that the UK should ‘provide disaggregated statistical data in its next report on the number of children seeking asylum, including those whose age is disputed.’ It recommended that ‘efforts to collect data on the extent of sexual exploitation and abuse of children’ are intensified so that adequate preventative measures can be drawn up and implemented (UNCRC 2008: 17-18).

7.4 Frameworks developed by UN Special Rapporteurs

The work of a number of UN Special Rapporteurs has also made a significant contribution to the conceptual and methodological development of human rights indicators. The subsections below provide some examples, drawing on the work of Special Rapporteurs in the areas of health, education and violence against women.

Right to the enjoyment of the highest attainable standard of physical and mental health

The distinction between structural, process and outcome indicators discussed in section 6.1 builds on the analytical framework developed by Paul Hunt in his capacity as Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. Hunt (2003) introduced the structures-process-outcome typology and applied it to the development of indicators of the human right to health. He provided an updated definition of the typology in Hunt (2006):

- **Structural indicators** address whether or not key structures and mechanisms that are necessary for, or conducive to, the realization of the right, are in place. Examples might include the ratification of international treaties that include the right to health; the adoption of national laws and policies that expressly promote and protect the right to health; or the existence of basic institutional mechanisms that facilitate the realization of the right to health, including regulatory agencies.

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108 The latest UK submission to the UN Committee on the Rights of the Child was in July 2007 (coordinated by the Department for Children, Schools and Families, DCSF). The report, The Consolidated 3rd and 4th Periodic Report to the UN Committee on the Rights of the Child covers England, Scotland, Wales and Northern Ireland, as well as information on Overseas Territories and the Isle of Man (HM Government 2007).
• **Process indicators** measure programmes, activities and interventions. They measure, as it were, State effort, and can help to predict health outcomes. Examples of process indicators include the proportion of births attended by skilled health personnel; the number of facilities per 500,000 providing basic obstetric care; the percentage of pregnant women counselled and tested for HIV.

• **Outcome indicators** measure the impact of programmes, activities and interventions on health status and related issues. Examples include maternal mortality, child mortality, HIV prevalence rates.

Hunt (2003) argues that all three types of indicator are essential elements of international human rights monitoring. He also suggests that outcome indicators are of limited use when used alone; and that process and outcome indicators are most useful when used in conjunction with **benchmarks** that measure the variable nature of ‘progressive realization’ under the International Covenant on Economic, Social and Cultural Rights (ICESCR); and that a key function of statistical information in the context of international human rights monitoring is to facilitate the development of benchmarks of this type.109

In his 2006 report,110 Hunt reiterates that there is no alternative to the use of indicators to measure the progressive realization of the right to the highest attainable standard of health, however the role of indicators “should not be overstated”. (UNHCR 2006a, p 8) Hunt argues that indicators and benchmarks highlight issues such as disaggregation, participation and accountability, and can thereby enhance the effectiveness of policies and programmes; however indicators are not able to give a complete picture of the right to health in a specific jurisdiction.

Hunt argues that health indicators may however be used to monitor aspects of the progressive realization of the right to health, provided:

(a) They correspond to a right to health norm;
(b) They are disaggregated, by at least sex, race, ethnicity, rural / urban and socio-economic status
(c) They are supplemented by additional indicators that monitor five essential and interrelated features of the right to health:
   (i) A national strategy and plan of action that includes the right to health.
   (ii) The participation of individuals and groups, especially the most vulnerable and disadvantaged, in relation to the formulation of health policies and programmes.
   (iii) Access to health information, as well as confidentiality of personal health data.
   (iv) International assistance and cooperation of donors in relation to the enjoyment of the right to health in developing countries.
   (v) Accessible and effective monitoring and accountability mechanisms.

109 It is relevant to note here that the EMF focused on the evaluation of the attainments of individuals and groups (rather than on underlying structures and policy instruments).
Noting that it is impossible for one indicator to possess all these features, Hunt states that it is more helpful to think in terms of “a human rights-based approach to health indicators”; by combining a range of indicators, it is possible to monitor the progressive realization of the right to health. (UNHCR 2006a, p 14)

Writing in the Lancet, Backman et al (2008) build on the Special Rapporteur’s Framework in identifying some of the right-to-health features of health systems, such as a comprehensive national health plan, and propose 72 indicators that reflect some of these features. Globally processed data on these indicators for 194 countries and national data for a number of countries Ecuador, Mozambique, Peru, Romania, and Sweden are presented. Data gaps for 198 indicators were identified, and the authors found that organisations that obtain such data give insufficient attention to the right-to-health features of health systems. Recommendations for governments, international bodies, civil society organisations and other institutions are set out and the authors suggest that the indicator and data, although not perfect, provide a basis for the monitoring of health systems and the progressive realisation of the right to health.

The objective of evaluating the extent to which health systems worldwide incorporate elements of the right to health gave rise to a range of research objectives. These were:

- To promote awareness of the complementary relation between a health system and the right to health;
- To select a manageable set of indicators to assess the degree to which a health system includes some of the right-to-health features;
- To assess if sufficient information is available about these features both nationally and internationally;
- To increase monitoring and accountability in relation to health systems and the right to the highest attainable standard of health;
- To deepen the understanding of the important role of health data and indicators in relation to the progressive realisation of the right to health;
- To consider the limitations of data for health and human rights in relation to the progressive realisation of the right to health;
- To provide a basis to monitor; over time; health systems and the progressive realisation of the right to the highest attainable standard of health (2008:2054).

Indicators were devised to measure the extent to which the right to health was present in health systems, in consultation with publications by the WHO and the UN Committee on the Elimination of Discrimination Against Women, and the UN Covenant on the Rights of the Child. Key requirements were that ‘health facilities and services should be available, accessible, culturally acceptable, and of good quality’.

The indicators selected were determined against criteria of scientific robustness, usefulness, representativeness, understandability and importance. They were selected in consultation with a range of individuals and organisations, with special attention paid to the representation of diversity in the consultation process.
Right to education

The Reports of Special Rapporteur
The right to education project identifies obstacles to the achievement of the right to education world wide. The project has as an analytical foundation the reports of the Special Rapporteur on Education (UNHCHR 2004a). The Convention on the Rights of the Child is used as a basis for the work of the project and there is a focus on the development of indicators relating to the age at which school children are taken to court, are employed and are taken before courts. In particular, indicators of the legal age of employment, marriage and criminal responsibility are emphasized.111

‘The report deals with three substantive areas:
- Financial obstacles to the realisation of the right to education;
- Elimination of gender discrimination both in and through education; and
- The content of education’ (UNHCHR 2004a:2).

The report focuses on gender, and identifies a need for cross-sectoral strategies to address barriers to education that lie outside the area of education, narrowly conceived. It examines marriage, pregnancy and access to sex education as crucial issues. A ‘key message is the urgent need for a substantive human rights contribution by the United Nations actors which bear “human rights” in their name. An important conclusion is that education statistics are frequently used without an analytical underpinning grounded in human rights expertise, whereas existing openings for human rights mainstreaming in global, regional and domestic education strategies require such expertise (UNHCHR 2004a:2).

Drawing on case study evidence, the Report suggests that in two countries (China and Columbia), the statistics regarding out-of-school children of compulsory education age do not cover all children but only those who comply with the requisite administrative regulations. The Special Rapporteur suggest that requirements of birth registration or residence certificates for school enrolment deny children’s right to education. In China, the position of internal migrants and out-of-plan children constitute a particular concern and, similarly, internally displaced children in Colombia represent an immense challenge owing to their statistical invisibility and the practical impossibility for many to start and finish school’ (UNHCHR 2004a:5).

The report emphasises the distinction between statistical measurements and individual lives, and notes that statistics can fluctuate significantly owing to altered categorisations with little or no relation to changed numbers of school enrolment. Finally it issues a warning, namely, that ‘[a]ny target that is set quickly loses its meaning as it becomes manipulated’ (UNHCHR 2004a:19).

Violence against women

Walby Report

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Walby (2006) details a framework for the development of indicators for violence against women. In setting out general criteria for indicator selection, Walby suggests that indicators should:

- Summarise complex data;
- Be unambiguous and easy to interpret;
- Enable an assessment as to whether an improvement or deterioration has occurred;
- Be meaningful and relevant to policy makers, service providers and the wider informed public;
- Be capable of being supported by reliable and robust quantitative data;
- Be available at regular intervals and be comparable between countries and population groups; and
- Be neither so many as to confuse, nor so few as to mislead (2006:3).

In compiling a list of indicators measuring violence against women, Walby identifies three dimensions of violence that can be measured by indicators: prevalence, rate, and effects. ‘Prevalence’ reflects the number of women who have experienced domestic violence while the rate per person measures the number of incidents. Separate indicators can be used to measure policy actions. Indicators of violence against women should:

- Reflect the extent of violence, in terms of both its prevalence and incident rate;
- Be sensitive to severity;
- Distinguish between violence enacted by intimate partners, family, and other people; and
- Capture events over the last year, as well as the life-time;
- Cover victim services;
- Relate to the actions of the justice, civil legal and health systems; and

Accurate measurements of these indicators require reliable data, which in turn necessitates the development of sophisticated quantitative data collection methods undertaken at regular intervals.

Report of the Special Rapporteur on Violence Against Women

The Special Rapporteur on Violence Against Women (United Nations Human Rights Council [UNHRC] 2008a) proposes a limited number of indicators to better allow for comparisons between countries. Each indicator should be grounded in more detailed national research to enable better understandings of local contexts and monitor internal progress. The development of indicators measuring violence against women is a human rights obligation, derived from human rights jurisprudence and the principle of due diligence. States have an obligation to ensure that their interventions are accurately targeted, which necessitates the compilation of indicators.

There are five key attributes of good indicators, organised under the acronym SMART:

- Specific;
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- Measurable;
- Attainable;
- Relevant; and
- Time-framed

OHCHR has in turn developed this into a standard for international human rights indicators. They should be:

- Relevant, valid and reliable;
- Simple, timely and few in number;
- Based on objective information and data-generating mechanisms;
- Suitable for temporal and spatial comparison and following relevant international statistical standards; and
- Amenable to disaggregation in terms of sex, age and other relevant variables

The report adds three more principles for the measurement of violence against women:

- Grounded in human rights commitments and cross-cutting principles
- Based on internationally accepted definitions; and
- Not open to misinterpretation or generating spurious results (2008:10).

Specific indicators measuring violence against women are:

- A grave violence against women indicator, which requires international agreement on a definition of grave violence which can then be measured cross-cultural and through time;
- A femicide indicator, measuring female murder rates which are not captured in prevalence methodology, derived from disaggregating current homicide data and developing coding for sex-based categories; and
- A social tolerance indicator, measuring decreasing tolerance of violence against women.

As with Walby’s proposals, the report recommends the development of indicators that capture state response. It notes that this set of indicators should be easier to develop, given the widespread concurrence on the responsibilities set out in international law. The minimum standards generally agreed upon are:

- Constitutional guarantees of women’s equality and repeal of discriminatory laws;
- Plan of action/executive policy on violence against women with a strong evidence base and political will for its implementation, demonstrated by budgetary allocation, timelines and clear paths of responsibility;
- An effective legal framework, statute and procedural law that provides access to justice redress, protection and compensation;
- Criminalization of all forms of violence against women and the prosecution of its perpetrators;
- Increased awareness and sensitivity of professionals and officials;
- Resource allocation to ensure provision of support and advocacy services by NGOs, including shelters, helplines, advocacy, counselling and other
services;
- Awareness-raising and prevention programmes;
- Addressing structural inequalities in the promotion of women’s advancement; and
- Collection, collation and publication of data, including evaluation of policies and basic research programmes (2008:19)

These standards refer largely to institutional measures, and so can be easily transformed into indicators. They are however not distinct, but often linked. The report distinguishes between what it terms institutional indicators, and process indicators. Process indicators measure the responses to violence against women, and are largely reliant on the accurate reporting and tracking of reported incidences by the state. Such reporting systems have been successfully introduced in some countries, and are to be expected in developed nations.

Institutional indicators measure both the minimum obligations of states, and the need for further interventions; the benchmarks are the ‘ratification without reservations of relevant conventions, and the development and implementation of appropriate machinery and oversight.

The proposed institutional indicators concerned with the ratification of the Convention on CEDAW are:
- Ratification of the Convention without reservations;
- Ratification of the Optional Protocol;
- Ratification of the Convention with few reservations;
- Ratification of the convention with significant reservations contrary to the object and purpose of the Convention; and
- Still to be ratified (2008:21).

The Report notes that process indicators are concerned with the key State obligation ‘to provide remedies and access to justice for victims of human rights violations’, in this context to ensure justice is properly exercised for women who have been the victims of violence. The proposed process indicators measure attrition rates and reporting rates, both of which are heavily reliant upon ongoing proper reporting by the state. Increasing report rates may indicate decreased tolerance and increased confidence in the exercise of women’s rights, and should be matched by increasing prosecution and conviction rates. The proposed indicators are:

- Increased reporting rates (measured by administrative data from the criminal justice system)
  - Increased reporting of all forms of violence against women;
  - Increased reporting of most forms;
  - Increased reporting of some forms;
  - Flat rates of reporting of some forms; and
  - Flat rates of reporting of most forms.
- Decreased attrition rates for prosecution and conviction
  - Increased rates of prosecution and conviction of all forms of violence against women;
  - Increased rates of prosecution and conviction of some forms;
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- Flat rates of prosecution and conviction of all forms;
- Flat rates of prosecution and conviction of some forms; and
- Decreasing rates of prosecution and conviction of some forms.

The Next Step Report: Developing Transnational Indicators on Violence Against Women

An addendum to the Report of the Special Rapporteur on Violence Against Women (United Nations Human Rights Council 2008b) sets out evidence submitted for the purposes of the Report by Professor Kelly. Kelly reviews the meaning of indicators in general and human rights indicators in particular. In its everyday usage, ‘an “indicator” indicates’: it is an object or sign that is suggestive of something else. In economic and statistical terms, an indicator is an aggregation of a large amount of information that allows comparisons both over time and to a benchmark – this comparative value is the key feature of an indicator. Within the context of human rights, indicators may be devised and employed for a range of purposes, including:

- To assess compliance;
- To undertake diagnostic analysis;
- To produce documentation;
- To create comparative and ranking assessments; and
- To inform planning and performance (UNHRC 2008b:30-31)

At the structural level compliance with existing international law, including through the creation of relevant legal and institutional infrastructures must be assessed. Process indicators address specific interventions, illustrating progressive realisation of rights through measures on protection, remedies and prevention. Indicators must also fulfil the following requirements if they are to be useful:

- Relevant, valid and/or reliable;
- Simple, timely and few in number;
- Based on existing information and data-generating mechanisms;
- Suitable for temporal and spatial comparison and following relevant international statistical standards;
- Amenable to disaggregation in terms of sex, age and other vulnerable or marginalised population segments;
- Grounded in Human Rights commitments and cross-cutting principles;
- Based on internationally accepted definitions; and
- Comparative across time for and between States (2008b:90).

Kelly notes that a report of the Special Rapporteur on VAW draws on the themes of prevention, protection, punishment and reparation/remedy to further underline the content and contours of State actions. She further notes that whilst the ratification of CEDAW is recorded currently by the United Nations Statistical Division, constitutional guarantees of women’s equality and whether VAW is located within an equalities agenda is not (2008b:91).

The Report emphasises the importance of the indicator development exercise being anchored in human rights standards and norms and highlights the OHCHR Indicator
Framework in this context. Whereas outcome indicators are concerned with prevalence of VAW, ‘[a]t the structural level compliance with existing international law, including through the creation of relevant legal and institutional infrastructures must be assessed… Process indicators address specific interventions, illustrating progressive realization of rights through measure on protection, remedies and prevention and the distinction between indicators of structures, processes and outcomes’ (UNHRC 2008b: 88).

The following indicators are set out by Kelly in the Report (UNHRHC 2008b: 88-106) and in a related presentation:\(^{112}\)

**Assessing prevalence of VAW:**
**Outcome indicators**
- Proportion of female population who experience grave VAW in last 12 months (based on a population survey)
- Proportion of female population who experience grave VAW ever (based on a population survey)
- The trend in female deaths due to femicide (using a national femicide index)
- Evidence of decreasing tolerance of VAW (as measured by national surveys and analyzed across key demographics)

**Assessing state responses:**
**Structural indicators (drawing on international law and policy) including:**
- Ratification of CEDAW etc (as specified in Special Rapporteur Framework
- Constitutional guarantees of women’s equality, with violence understood as a driver for inequality
- Action Plan on VAW
  - AP has sufficient resources to deliver implementation
  - AP covers all forms of VAW within an explicit gender analysis
  - AP is monitored by independent oversight body with specific VAW mandate (National Observatory, National Human Rights Institution with VAW mandate)
  - AP has clear time frames and targets
- Appropriate and effective legal framework – statutes and procedures that provide redress including
  - Repeal of discriminatory laws
  - Responses that encourage reporting, investigation of prosecution of cases of VAW, mindful of the principles of dignity, integrity and privacy
  - Resource allocation to ensure provision of support and advocacy services by NGOs
  - Awareness raising and prevention programs
  - Collection, collation and publication of data

**Process indicators, including:**
- Case attrition – the proportion of reported cases that fail to result in any form of sanction

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- Tracking of reporting, prosecution and conviction rates on annual basis increasing
  - Increasing reporting rates indicate decreased tolerance and increased exercise of the right to redress
  - Prosecution rates should mirror increases in reporting, and increase if legal and procedural reforms are having the desired impacts
  - Conviction rates should at minimum stay constant and increase if procedural reforms are effective
- Cases taken against the State through human rights mechanisms
- Resources

7.5 Other international initiatives to develop indicators

There have also been a number of international initiatives undertaken to develop indicators under individual rights, as detailed below.

Right to Adequate Food

**Indicators Benchmarks Scoping Assessment (IBSA) Project**

The IBSA Project was a collaboration between the University of Mannheim and FIAN International, the FoodFirst Information and Action Network, which aimed to find a set of adequate human rights indicators for the right to food through a combination of academic research and analysis of case studies of violations of the right to food. The research project was led by Professor Eibe Riedel, Vice Chairperson of the CESCR. The IBSA Project team presented four papers on aspects of its work, which were considered at an expert symposium held in 2006.

1. The IBSA Procedure as a Tool of Human Rights Monitoring

Riedel’s paper provides an overview of key issues and concerns with reporting processes to the CESCR. Because of ambiguities of wording in the Covenant, Riedel argues that human rights indicators and benchmarks are of vital importance in monitoring State compliance with the ICESCR.

Riedel proposes the IBSA procedure as a four step process for reporting to the CESCR, with the four steps comprising:
- (a) human rights indicators;
- (b) nationally set benchmarks;
- (c) scoping; and
- (d) assessments.

Singling out the right to food, Riedel points to the volume of potentially relevant indicators available, and argues of the need to develop key right to food indicators relating to the various respect, protect and fulfil treaty obligations. Riedel suggests that State Parties could have input into the selection of prioritized indicators, which they would then propose to the CESCR as a focus during their reporting cycle. Benchmarks would be set at the State level, and Riedel argues that their

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appropriateness to the specific State context could be tested by the CESCR through consultation with specialised agencies, national human rights institutions and NGOs. Riedel argues that the advantage of this approach is in the prioritization of constructive dialogue between the Committee and the State Party over an adversarial, violations-based approach.

Riedel argues that adoption of the IBSA procedure would create a reliable and workable indicator list, focus attention on the issues that matter most, and improve the capacity of both State parties and the CESCR to assess human rights realization.

2. **Rights-based Monitoring**

Windfuhr’s paper provides an overview of current literature on rights-based monitoring, and the lessons learned from the different approaches. He argues that the development of a rights-based monitoring framework has to be country specific as national circumstances vary widely. Windfuhr also emphasises that the monitoring process itself must be rights-based, i.e. it has to be participatory, empowering and transparent in order to enable the duty-bearer to be held accountable.

3. **Developing Indicators for the Right to Food - Lessons learned from the case work of FIAN International**

Jonsén’s paper presents a case study of five countries where FIAN had been documenting numerous cases of violation of the right to food, and aims to assess whether the indicators developed within the IBSA Project capture the forms of violations identified in the case work of FIAN.

Jonsén emphasises the importance of consultation with a range of grass roots actors in developing human rights indicators, and with testing indicators “on the ground” in concrete situations of the violation of the right. Jonsén argues that the critical starting point in identifying indicators for the right to food is to identify the hungry – she argues that while structural and process indicators are important, food insecure and marginalized people are often poorly identified, and the reasons for hunger are not properly reflected in policies and programmes. The accurate identification of victim groups is also critical in determining how human rights indicators should be disaggregated. Analysis of patterns of violations is also a key aspect, enabling the identification of the impact of state actions or inactions on violations of the right to food.

In analysing violations of the right to food, Jonsén uses the obligations to respect, protect and fulfil the right as well as the principle of non-discrimination as the starting point. Jonsén argues for the need to analyse the level of state action in respecting, protecting and fulfilling across the three branches of state responsibility – the executive / administrative, legislative and judicial. She argues that distinguishing

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between the different governmental branches facilitates defining where the fault lies, whether the problem can be traced to the legal framework, judicial enforcement or the actual implementation of polices and programmes.

Jonsén emphasises the importance of contextual relevance in developing human rights indicators, as the realisation of the right to food differs significantly across the countries analysed in the case study, but she concludes that certain human rights indicators may be relevant across countries and regions.

Jonsén’s case study concludes that a wide range of indicators deriving from many different sources are needed in order to capture the scope of a violation of the right to food. Jonsén also emphasises the importance of identifying gaps; not all victims of human rights violations are in a position to claim their rights, and she identifies some of the most disadvantaged groups as children under five, the rural poor, the urban fringe-dwelling poor, migrant workers, women, prisoners and detainees, and people living with HIV/AIDS. She argues that disaggregated outcome indicators identifying marginalized and disadvantaged groups are a crucial starting point for developing a meaningful human rights indicators monitoring framework, and for a better targeting of strategies and policies to combat hunger and implement the right to food.

4. Right to Food Indicator Description

Söllner’s paper describes 37 right to food indicators, the outcome of the IBSA Project’s research on the right to food. The indicators were finalised after a multi-stage process involving compilation of a common list of possible right to food indicators; the addition of indicators derived from consultations with specialist agencies; further modification of the list after application to concrete cases of violations of the right to food documented by FIAN; and input from participants at an expert symposium.

Report of Expert Symposium

The Project research was presented at an Expert Symposium, which aimed to reach consensus on the indicator list as well as to establish greater coherence amongst the different actors working on indicators globally. Some of the key issues discussed included

- Harmonization of international and national monitoring systems. The symposium report acknowledges that international and national monitoring has different objectives and purposes. It was important to be clear on what was being monitored, and for what purpose. The symposium report states that indicators should not be different at the national and international levels, but a contextual analysis for each country has to be added.
- The practical implications and methodological framework of the IBSA-indicators. The report states that lack of availability of data was seen as an important obstacle. There was also a strong emphasis on the reliability of the data, and the independence of the responsible actors providing the indicator.

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Right to Adequate Housing

The United Nations Housing Rights Programme published a working paper on monitoring housing rights in 2003, a joint publication of UN-Habitat and the OHCHR.\(^{118}\)

The paper emphasises the difficulties in quantifying housing rights, which incorporate multi-dimensional issues including security of tenure, adequacy of housing (habitability, accessibility, affordability, location, cultural adequacy), the status of access to housing resources by vulnerable groups, the scale and scope of homelessness, the scale and scope of forced evictions and displacement, the status of informal settlements, the right to non-discrimination and equality, the existence of national legislation protecting housing rights, and access to remedies when housing rights are violated. The working paper emphasises the importance of disaggregating housing rights data to capture the housing conditions of particularly marginalised groups – identified as women, children, the elderly, refugees, internally displaced persons, indigenous peoples, ethnic and other minorities, and people living in poverty – and to measure disparities in housing rights between different social groups.

The working paper identifies 17 key indicators which it proposes as a systematic set of indicators covering six core housing rights elements: housing adequacy; legal security of tenure and scale and scope of forced eviction; scale and scope of homelessness; the rights to non-discrimination and equality; national legal protection and acceptance of international standards. The working paper also highlights the conceptual difference between a state’s “willingness” and “ability” to implement housing rights, and the challenge of capturing through indicators the progressive implementation of a right.

Right to Water

The Centre on Housing Rights and Evictions produced a paper on monitoring implementation of the right to water in 2005, based on the proceedings of an expert workshop held in 2004.\(^{119}\) The paper outlines the beginning of an international process to develop right to water indicators, and develops a matrix of potential indicators based on General Comment No. 15 of the CESCR. The categories used in the matrix are general indicators, availability, physical accessibility, quality, affordability, sanitation, and vulnerable and marginalised groups.

The paper argues that well-designed human rights indicators should be able to assist in the development of effective programmes that will deliver human rights. It is argued that right to water indicators will add value by allowing measurement of


efforts by states to realise rights rather than just focusing on outcomes, and by enabling assessment of levels of access to the right to water on the basis of disaggregated social characteristics such as gender, disability, ethnicity, geographic location (urban and rural, informal and formal settlements), etc.

**Human Rights Indicators for People with Disabilities**

In 2007, an Australian disability advocacy group published a resource manual for disability activists and policy makers providing an extensive list of human rights indicators for people with disability. The indicators outlined in the manual are based on the articles of the Convention on the Rights of Persons with Disabilities. The intention of the project was to create human rights indicators as a meaningful way to monitor and evaluate service quality for people with disabilities, in response to perceptions that existing measures of service quality were “becoming increasingly bureaucratic and devoid of meaningful content.” (French, 2007, p 11)

### 7.6 European regional initiatives

**Council of Europe initiatives**

Hammarberg (2009) has argued that closing the gap between the rights proclaimed in human rights treaties and the reality in member states requires a systematic approach, including effective collection of relevant data and defining meaningful indicators that can be used to assess progress. He suggests that indicators make human rights planning and implementation processes more efficient and transparent; make it easier to hold governments accountable for the realisation of human rights; and to highlight success through accurate criteria. In addition, indicators have an important potential role in clarifying and communicating the practical content of human rights in concrete situations. Nevertheless, the use of indicators should be seen as part of a broader process of systematic work for implementing human rights. Together with national action plans, baseline studies and rights-based governance, indicators are a tool for enforcing human rights.

An important insight in Hammarberg’s discussion is that not all aspects of human rights can be measured through statistical information. There is a also a need to evaluate qualitative aspects. As an example, he points out that the competence of judges may be more relevant than their number. Another reason for caution relates to the fact that the full use of human rights indicators as an assessment tool depends largely on relevant and reliable data. Different types of data are necessary in order to get a comprehensive and valid picture. Non-governmental organisations, national human rights structures and the media are valuable sources of information on human rights violations, and in Hammarberg’s view, effective official statistical systems are an important instrument for human rights reform. In order to identify discrimination, data should be disaggregated based on gender, ethnicity, sexual

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orientation, disability and age, based on proper safeguards to respect the privacy of the persons involved. Indicators should finally be relevant to the context in which they are applied. One way to ensure the relevance and feasibility of indicators is to involve those directly concerned (including, relevant public authorities, national human rights bodies and non-governmental organizations).

Various efforts by the Council of Europe to develop indicators are finally highlighted. For example, the Council of Europe has prepared rights-based indicators to measure component parts of social cohesion for the implementation of its Strategy for Social Cohesion (2009). In addition, the work of the EU Fundamental Rights Agency in the area of child rights is discussed (see below).

Fundamental Rights Agency (FRA) indicators of child rights

FRA has developed a series of indicators for the protection, respect and promotion of the rights of the child on the basis of EU competence in this area. FRA (2009) sets out a series of indicators under the following key areas, which are in line with existing EU provisions of direct relevance to children:

- Family Environment and Alternative Care
- Protection from Exploitation and Violence
- Education, Citizenship and Cultural Activities
- Adequate Standard of Living

These indicators are not intended to monitor compliance with international standards and conventions but to guide the FRA’s data collection and research. The indicators presented in this report are a starting point, which will undergo constant refinement and expansion as FRA continues to develop its ‘toolkit’ for the assessment of the impact of EU law and policy on children’s status and experiences in the EU-27. Member States are invited to use the FRA indicators to collect data that will allow them to formulate evidence based policies to protect the rights of the child.

The FRA notes that these indicators should be seen as integral to the process of the protection of children and the promotion of their rights, and should be seen as ‘an initial toolkit to evaluate the impact of EU law and policy on children’s status and experience across various fields’. By building upon previous attempts to devise EU-level child indicators, the FRA hopes to further develop legal, policy and research work concerned with the rights of children. The FRA’s indicators were developed with reference to seven criteria:

- ‘The issue must be grounded in the child rights framework;…
- The issue falls within EU competence;
- There is significant EU added value to developing indicators in this area;
- The issue has been identified by children as being of importance;
- The area affects a significant proportion of the child population in the EU or raises concerns that require an urgent response;
- There is an appreciable and accessible body of existing research and data on which to draw in the application of the indicators; and
- There is indication of policy interest at EU level for indicators in this area’ (2009:7).
Developing a Human Rights Measurement Framework (HRMF)

The conceptual framework of the FRA’s indicators is quite clearly delineated. They are grounded in the UN’s Conventions on the Right of the Child, and designed to fall within the EU’s legal and policy jurisdiction and its competence to enact. The indicators focus on a child’s ‘societal status’ and are then restricted to rights that are relevant exclusively to children. This set of indicators is designed to complement indicators that examine human rights and development more broadly. The FRA emphasises that these indicators measure rights, rather than well-being: ‘child rights indicators consider the interaction between children, the state and society on matters concerning children’. This understanding considers rights from both the position of the individual to claim them, and of the responsibilities to ensure they are provided (2009:9).

The indicators were selected in a process of expert consultation, including a consultation meeting and interviews with ‘key respondents’. Some of these respondents were invited to provide formal feedback on early drafts. The scope of the indicators was determined according to four guiding principles drawn from the UN CRC, and formulated with reference to a widely recognised human rights matrix. The four principles from which the indicators are determined are:

- Participation;
- Non-discrimination;
- Best interests; and
- Life, survival and development rights.

7.7 American Regional initiatives - The Inter-American Commission on Human Rights


The guidelines have the dual aim of providing a basis for reporting but also a design for “a permanent, internal evaluation mechanism for each state party”. (OAS, 1998, p 2). The guidelines state the need to cater to different local and regional contexts –

The aim is to make indicators and qualitative signs of progress consistent with different realities in a context of broad participation and rigorous methodological transparency. (OAS, 1998, p 2)

The guidelines include a modelling exercise demonstrating the application of progress indicators to the right to social security and the right to health.

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The guidelines distinguish between indicators of the economic and social context and right indicators, which are designed to verify the observance and effective exercise of human rights. Rights indicators seek to measure progressive realisation of rights, effective access to social rights, and the capability of individuals to demand the rights to which they are entitled. (OAS, 1998, p 9)

Drawing on the widely utilised typology of structural, process and outcome indicators, the guidelines propose three additional conceptual categories for analysis and organisation of information:

(i) Incorporation of the right - in the legal system, in the institutional apparatus, and in public policy;
(ii) State capabilities – how and according to what parameters government (and its various branches and departments) deals with different socially problematized issues;
(iii) Financial context and budgetary commitment – the actual amount of state funds available for public social spending and how it is distributed.

The guidelines also propose inclusion of indicators on three cross-cutting issues:

(i) Equality;
(ii) Access to justice;
(iii) Access to information and participation.

7.8 New Zealand Action Plan for Human Rights
Initially, the concept of developing national plans of action for human rights came out of a recommendation of the Vienna World Conference on Human Rights in 1993:

The World Conference on Human Rights recommends that each State consider the desirability of drawing up a national action plan identifying steps whereby that state would improve the promotion and protection of human rights.122

The Office of the High Commissioner for Human Rights’ website currently lists 29 countries which have developed such plans.123

One example of such national plans of action is the New Zealand Action Plan for Human Rights, detailing priorities for action for the period 2005-2010.124 The impetus for the development of the New Zealand Action Plan was the establishment of a Human Rights Commission with the principal function of developing such a plan within the New Zealand Human Rights Amendment Act 2001. The plan identified the key priority areas as children’s rights; rights for disabled people; race relations; civil and political rights, particularly freedom from discrimination, democratic rights and responsibilities, safety from violence, justice, places of detention, and human rights and terrorism; and economic, social and cultural rights with a particular focus on poverty reduction, housing, health, education, and employment.

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7.9 UK based initiatives

Klug et al (1996) develop a framework for ‘auditing’ the quality of democracy and political freedoms in the United Kingdom, the underlying aim being to establish an account of the current state of democracy based on systematic and objective foundations. The volume presents two related indices as auditing tools: a set of “democratic criteria”, against which democratic institutions are evaluated, and a Human Rights Index of ‘evolving international human rights standards’ to audit the protection of political and civil rights in the UK. The volume was published prior to the introduction of the Human Rights Act (1998) and the Human Rights Index is developed from international and regional human rights instruments, such as the International ICCPR and the ECHR, and interpretations given to them by supervisory bodies, such as the General Comments of the UN Human Rights Committees and the case law of the European Court of Human Rights. The authors discuss the importance in exercises of this type both of the characterisation of human rights standards as normative and evolving (rather than positive and fixed).

An important advantage of the approach adopted in this publication is that the link with jurisprudence makes it possible to make direct inferences about human rights violations. For example, the evaluation of equal access to political rights includes detailed examination of the reasoning and jurisprudence set out in the General Comments of the UN Human Rights Committee, in UK domestic case law and the European Court of Human Rights. This is followed by evaluation of key statistical indicators such as participation of women in public life. Adopting this methodology more generally, the authors concluded that although the UK is a liberal democracy, free from widespread and gross violations of human rights, there had nevertheless been 42 violations and 22 near-violations of European and international human rights norms at the time of writing.

Following Klug et al (1996), and subsequent to the introduction of the Human Rights Act (1998), Starmer et al (2001) published a further volume (the Human Rights Digest). This publication provides a framework for monitoring and evaluation by drawing together the principles underpinning ECHR Rights (and hence the HRA) on an issue by issue (rather than article by article) basis and setting out the key extracts from the case law of the European Court of Human Rights and other international jurisprudence. Again, a key insight is the importance of the evolving nature of normative human rights standards, taking account of case law and jurisprudence, as well as the Articles set out in human rights instruments such as the HRA.

Other related major audits of democracy and freedom in the UK undertaken under the auspices of the Democratic Audit project includes Weir et al (1998) and Beetham et al (2002). A series of state of the nation polls have also been published and a framework for international comparative exercises has also been developed. The latter provides some basic principles and issues to be considered while assessing democracy and freedom in any given country. These include:

- Nationhood and citizenship;


See: http://www.democraticaudit.com/auditing_democracy/assessmentframework.php
• The rule of law and access to justice;
• Civil and political rights;
• Economic and social rights;
• Free and fair elections;
• Democratic role of political parties;
• Government accountability and effectiveness;
• Civilian control of the military and police;
• Minimising corruption;
• The media in a democratic society;
• Political participation;
• Government responsiveness;
• Decentralisation; and
• Democracy beyond the state.

7.10 Body of literature on human rights statistics and measurement

Landman and Carvalho (2010) set out a new framework for measuring human rights that reflects the ways in which the substantive content of the concept of human rights has evolved through normative international standard-setting at the domestic, regional and international levels. A key aim is to shift from ‘generations’ approaches to human rights towards a more complex view of rights as comprised of a set of categories (such as civil, political, economic, social and cultural). The authors contend that states have both a negative obligation, to refrain from infringing upon these rights and preventing their violation, as well as a positive obligation to ensure their rights commitments are met. Measures for human rights should capture both these positive and negative responsibilities to rights – their ‘violation’ and their ‘realization’. The authors further highlight the distinction between rights in principle, rights in practice and rights as policy; and the importance of understanding the implementation of human rights policies and the processes involved in their realization. This understanding can be elucidated, they suggest, by the notions of availability, adaptability and acceptability; and of non-discrimination, participation, progressive realization and effective remedy (2010:7).

Based on this substantive understanding of the concept of human rights, the authors draw on the work of Adcock and Collier to provide a conceptual framework for the measurement of human rights in the social sciences. The measurement process is characterised as involving a series of sequential steps:

i. the background concept;
ii. the systematised concept;
iii. the development of indicators; and
iv. the assigning of scores.

These different steps, the authors contend, are more or less implicit in a range of human rights measures that have been developed. These include:

i. events-based measures;
ii. standards-based measures;
iii. survey-based measures; and
iv. socio-economic and administrative statistics.

The authors make a number of further observations that are particularly relevant for the HRMF project. First, they contend that socio-economic and administrative statistics can be used as important proxy measures for the different dimensions of human rights, including the state obligations to respect, protect and fulfill’ (2010:8). Second, they note that many parts of their proposed measurement framework remain ‘remain virtually empty’. For example, they suggest that there has been an overemphasis on the development of ‘respect’ measures of civil and political rights, and the ‘fulfill’ obligations of social and economic rights. This imbalance, they proposed, should be addressed through the development of ‘fulfill’ and ‘protect’ measures for civil and political rights, and ‘respect’ and ‘protect’ measures for social and economic rights. They conclude that much more work is needed in developing ‘violation’ measures for economic and social rights, particularly in light of trends towards the private provision of social and economic welfare. Further attention is also necessary to address the ‘fundamental issues of social science measurement’, including source materials, bias and error, accountability and transparency (2010:8).

### 7.11 Development-based initiatives

**The Human Development Index**

The Human Development Index [HDI] was introduced in the 1990 Human Development Report and combines indicators of life expectancy, educational attainment and income into a single composite human development index. The HDI sets a minimum and a maximum for each of these three dimensions and then shows where each country stands in relation to these goalposts, expressed as a value between 0 and 1.

One way the use of the HDI has been improved since 1990 is through disaggregation. A country’s overall index can conceal the fact that different groups within the country have very different levels of human development. Disaggregated HDIs are arrived at by using the data for the HDI components pertaining to each of the separate groups; treating each group as if it was a separate country. Such groups may be defined relative to income, geographical or administrative regions, urban/rural residence, gender and ethnicity. Using disaggregated HDIs at the national and sub-national levels helps highlight the significant disparities and gaps: among regions, between the sexes, between urban and rural areas and among ethnic groups. The analysis made possible by the use of the disaggregated HDIs should help guide policy and action to address gaps and inequalities.

The HDI is one of a family of composite non-GDP measures of development and progress, which also include the Gender Related Development Index (GDI) and the Gender Empowerment Measure (GEM)) and the Human Poverty Index (HPI-1 and HPI-2). For the 2010 report, the methodology of the human development indices are being revisited in the light of recent conceptual and technical advances relating to multidimensional poverty measurement. Additional dimensions such as environment, inequality and participation are likely to be integrated into new composite measures. There will also be a focus on measurement aspects related to gender and poverty, in particular the issue of multi-dimensional poverty.
HDR 2000: Human Development and Human Rights

In 2000 the UNDP Human Development Report was on the special subject of human development and human rights. The Report included a comprehensive discussion of the uses of indicators for human rights accountability and a template for evaluating the fulfilment of state obligations in relation to the realization of the right to health based on a case study by the Centre for Economic and Social Rights (UNDP 2000).

The Millennium Goals

The eight Millennium Goals provide a set of international goals and an associated set of established and agreed international targets with specified time lines for delivery. For example:
Goal: to eradicate extreme poverty and hunger
Target: Halve between 1990 and 2015 the proportion of people whose income is less than $1 a day.

Goal: to achieve universal primary education
Target: to ensure that, by 2015, children everywhere, boys and girls alike, will be able to complete a full course of primary schooling

Progress in achieving the Millennium Goals including detailed statistical analysis of achievement against the targets is reviewed annually in UN (2009). Although the specification of the Millennium Goals was widely viewed as a break-through in terms of the development of specific goals and time-lines, the prospect of the failure to implement and achieve the goals by 2015 has generated debate about whether the mechanisms for accountability and responsibility are in fact adequate in practice for some or all of the Millennium Goals. For example, Fukuda-Parr (2006, 2007) highlights the importance of Millennium Development Goal (MDG) 8 in terms of transforming notions of global solidarity and international responsibility into concrete policies and benchmarks. However, she contends that the achievement of the goal is limited by the failure to allocate responsibility and accountability. In particular, there has been a failure to identify specific steps, quantitative goals and timeframes for implementation and that as a result there has been a failure to introduce ‘systemic reforms to enhance the needs of developing countries in international decision making’.

Evaluating the fulfilment of state obligations

Fukuda-Parr et al (2008) propose a methodology for an index of economic and social rights fulfilment that: uses available survey-based objective, rather than subjective data; focuses on state obligations rather than solely on individual enjoyment of rights; and captures progressive realization of human rights subject to maximum available resources. Two calculation methods are proposed: the ratio approach and the achievement possibilities frontier approach. The paper identifies key conceptual and data constraints and limits whilst aiming to contribute to the process of building rigorous approaches to human rights measurement, as a first step to the development of a methodology for measuring economic and social rights fulfilment. The paper concludes that the proposed index provides important new information.
compared with other measures of economic and social rights fulfilment, but does not capture some desired features such as the right to non-discrimination and equality, and the right to social security. The paper also outlines an agenda for longer term research and data collection that would make more complete measurement possible.

Framework for human rights and poverty reduction

UNHCHR (2004b) sets out the framework developed by Hunt, Nowak and Osmani for human rights and poverty reduction. A central emphasis is on effective monitoring methods and the introduction of indicators into Poverty Reduction Strategies in terms of which benchmarks and targets can be set. Indicators of this type are viewed as an essential precondition and a vital feature of a human rights approach to poverty reduction.

Following the Human Development Report 2000 on Human Development and Human Rights, an important debate has arisen in relation to the distinction between human rights indicators on the one hand, and general indicators of socio-economic progress and development on the other. An infant mortality rate is widely used as an indicator of socio-economic progress and development. However, it is not a measure of legal obligation. Is it also a human rights indicator, and if so, is there anything to distinguish a human rights indicator from more general indicators of this type? Hunt, Nowak and Osmani respond in the following way in the context of developing indicators of the human right to health:

[W]hat tends to distinguish a right to health indicator from a health indicator is less its substance than (i) its explicit derivation from specific right to health norms; and (ii) the purpose to which it is put, namely right to health monitoring with a view to holding duty-bearers to account (UNHCHR 2002, para.37).

UNDP programming guide

This Guide sets out indicators for human rights based approaches to development programmes for UNDP Country Offices. It has sections on different aspects relating to the development and use of indicators across the key elements of human rights programming. Normative evolution based on human rights ix explored and the ways in which human rights have been mainstreamed into the activities of all UN agencies are examined. The Guide reviews the main existing indicators for human rights and discusses their limitations for human rights based programming. Two hypothetical programme examples on access to clean water and the prevention of torture are used to show how indicators can be used for human rights programming purposes. Finally the Guide offers advice on how Country Offices can make use of indicators for the phases of programme design, implementation, monitoring, and evaluation (UNDP 2006).

7.12 Initiatives related to civil and political rights

Freedom House Index

The Freedom House produce an annual publication The Freedom in the World 2008 that reports on civil and political rights cross-nationally. The 2008 survey contains reports on 193 countries and 15 related and disputed territories. Each country report begins with a section containing the following information: population, capital, political rights (numerical rating), civil liberties (numerical rating), status (Free, Partly Free, or Not Free), and a ten-year ratings timeline. (Beginning this year, data on gross national income per capita [GNI/capita], life expectancy, religious groups, and ethnic groups are no longer included in this section). The political rights and civil liberties categories contain numerical ratings between 1 and 7 for each country or territory, with 1 representing the most free and 7 the least free. The status designation of Free, Partly Free, or Not Free, which is determined by the combination of the political rights and civil liberties ratings, indicates the general state of freedom in a country or territory. In addition, ten-year ratings timeline list the political rights and civil liberties ratings and status for the last 10 years.

The CIRI Human Rights Data Project

The Cingranelli-Richards (CIRI) Human Rights Dataset contains standards-based quantitative information on government respect for 15 internationally recognized human rights for 195 countries, annually from 1981-2007. The Dataset contains standards-based quantitative information on government respect for a wide range of internationally-recognized human rights for countries of all regime-types and from all regions of the world. The dataset contains measures of government human rights practices, rather than human rights policies or overall human rights conditions (which may be affected by non-state actors). It covers both disaggregated measures of specific human rights practices, which can either be analyzed separately or combined into valid and reliable indices, as well as two aggregated indices.

The dataset website notes that the dataset contains information about government respect for a wide range of human rights. However, the selection of the particular rights in the CIRI dataset does not imply that these rights are considered to be more important than other human rights. Rather, these are the rights for which reliable and systematically available information across time and space is available. Cingranelli-Richards plan to extend the coverage of CIRI over time to ever-include additional human rights. CIRI currently includes measures of the practices of governments that allow or impede citizens who wish to exercise their:

- Physical integrity rights--the rights not to be tortured, summarily executed, disappeared, or imprisoned for political beliefs;
- Civil liberties such as free speech, freedom of association and assembly, freedom of movement, freedom of religion, and the right to participate in the selection of government leaders;
- Workers’ rights; or
- Rights of women to equal treatment politically, economically, and socially.

Explanations of the definition and operationalization of each variable are provided on the web site.

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128 Information taken from http://ciri.binghamton.edu/index.asp
The Worldwide Governance Indicators (WGI) Project

The WGI project reports aggregate and individual governance indicators for 212 countries and territories over the period 1996–2008, for six dimensions of governance:

- Voice and Accountability;
- Political Stability and Absence of Violence;
- Government Effectiveness;
- Regulatory Quality;
- Rule of Law; and
- Control of Corruption.

The aggregate indicators combine the views of a large number of enterprise, citizen and expert survey respondents in industrial and developing countries. The individual data sources underlying the aggregate indicators are drawn from a diverse variety of survey institutes, think tanks, non-governmental organizations, and international organizations.

Kaufman et al (2009) report on the 2009 update of the Worldwide Governance Indicators (WGI) research project, covering 212 countries and territories and measuring six dimensions of governance between 1996 and 2008: Voice and Accountability, Political Stability and Absence of Violence/Terrorism, Government Effectiveness, Regulatory Quality, Rule of Law, and Control of Corruption. The aggregate indicators are based on hundreds of specific and disaggregated individual variables measuring various dimensions of governance, taken from 35 data sources provided by 33 different organizations. The data reflect the views on governance of public sector, private sector and NGO experts, as well as thousands of citizen and firm survey respondents worldwide. The authors report margins of error accompanying country estimates, pointing out that these reflect the inherent difficulties in measuring governance using any kind of data. They conclude that even after taking margins of error into account, the WGI permit meaningful cross-country comparisons as well as monitoring progress over time.

Human Development Report: Initiatives on Measuring Political Freedoms

The Human Development Report 2001 introduced the human freedom index, derived from 40 criteria rated in Humana’s World Human Rights Guide (developed under the auspices of “Freedom House”, discussed above). Following a critical review and debate of this source and method, Human Development Report 1992 launched the political freedom index, which focused on five freedoms and drew on the judgments of a range of experts, scoring each country from 1 to 10. UNDP (2000: 91) sets out reasons for discontinuing these measures:

- The human freedom index and the political freedom index were based on qualitative judgements, not quantifiable empirical data
- Both indices were aimed at analyzing complex issues with summary answers – either yes or no or a rating of 1-10. But because no data and examples were provided, the indices did not empower readers to understand the judgments.
• The HDI shows where change is needed through data on its components. But neither the human freedom index nor the political freedom index could reveal why a country scored yes rather than no, or 4 rather than 5. So the assessments could not be translated into policy advocacy.

7.13 Other relevant initiatives

Chapman’s “Violations approach”

Chapman (1996) identifies the ‘progressive realization’ approach towards human rights as being limited, and advocates a ‘change of paradigm’ towards what she terms a violations approach. The violations approach stands in contrast to progressive realisation. While the latter attempts to ensure compliance with the Covenant through an ongoing process of gradual improvement, Chapman suggests an approach with ‘a focus on identifying violations of the rights enumerated in the Covenant.’ Whilst noting the importance of attempts to conceptualize progressive realisation, she proposes that the UN Committee on Economic, Social and Cultural Rights should shift its focus towards identifying and rectifying human rights violations on the grounds that this approach provides a more effective and systematic based for human rights monitoring. Chapman further proposes a schema to distinguish between different types of violations:

• ‘Violations resulting from actions of the part of governments;
• Violations related to patterns of discrimination; and
• Violations related to a state’s failure to fulfil the minimum core obligations of enumerated rights’ (1996:42).

It is relevant to note that even when international human rights obligations are narrowly viewed in terms obligations of conduct (e.g. Chapman’s “violations approach”) rather than in terms of obligations of result, the development of accurate statistical information remains an important priority. For example, Chapman emphasizes the necessity of statistical information on the policies and practices of legal and administrative entities and the conduct of state officials. Statistical information may also be necessary to evaluate the achievement of minimum essential levels of human rights (Chapman, 2000).

Turku Expert Meeting on Human Rights Indicators

In 2005 an Expert Meeting on Human Rights Indicators was convened in Turku, Finland with a view to reviewing pre-existing work on human rights indicators and their conceptual frameworks that could be useful to UN human rights treaty bodies in their assessment of compliance with human rights treaties by State parties. The participants represented various actors in the human rights arena, including members of human rights treaty bodies, academia and officials from the OHCHR and other intergovernmental organizations, or governments. Several papers on

\[129\] This section is based on information set out in Report of Turku Expert Meeting on Human Rights Indicators available at http://web.abo.fi/instut/imr/research/seminars/indicators/Report.doc. Reports of the background papers for the seminar are also available at this website.
existing approaches to the use of indicators in relation to human rights were presented during the expert meeting.

The Report of the expert meeting suggested that the general purpose of an indicator is to provide specific information on the state or condition of an event, activity or outcome. Indicators can be either quantitative or qualitative. It was suggested that given the complexity of assessing compliance with human rights norms, a broad notion of indicators in the context of human rights monitoring would be more suitable than a restrictive one. Hence not only should statistics (quantitative indicators) be covered, but also any information generally expressed in a narrative form relevant to the observance or enjoyment of a specific right (qualitative indicators). In this context quantitative and qualitative indicators are complementary to each other rather than excluding the use of one another.

The meeting recommended focusing on data collected through appropriate institutional mechanisms based on the use of valid and reliable methods at the national level. Among the different categories of human rights indicators and initiatives identified and discussed, the experts highlighted the need to primarily focus on the category of “socio-economic statistics and other administrative data” that have to be compiled by States Parties and on the category of ‘events-based data on human rights violations’ that are collected by human rights organisations (NGOs, CSOs, NHRIs) for identifying and building the illustrative core list of human rights indicators.

Finally, the expert meeting underlined that indicators must be well-chosen, so that they help in the assessment of compliance with human rights treaty provisions. It was recognized as a pragmatic necessity that work must start from looking at what data is being collected according to internationally agreed statistical definitions and asking the question which sets of these statistics would be the optimal (instead of ideal) one to serve as indicators when assessing treaty compliance.

The meeting was an important input into the OHCHR framework discussed above.
Appendix 1: Further details of the UK Framework for the protection and promotion of human rights

The Human Rights Act


The ECHR Protocols that the UK is a party to are the First (property & education) and the Third (free elections) and the Sixth (death penalty)
Box 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).
- 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 2009d: 23
Table 3: Human Rights Treaties signed and ratified or having been the subject of an accession as of 26/2/2010

<table>
<thead>
<tr>
<th>No.</th>
<th>Title</th>
<th>Opening of the treaty</th>
<th>Entry into force</th>
<th>E. N. U.</th>
</tr>
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<tbody>
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<td></td>
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<td></td>
<td>Entered into force: 3/9/1953</td>
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<tr>
<td></td>
<td>Fundamental Freedoms</td>
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<tr>
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<td></td>
<td>Entered into force: 18/5/1954</td>
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<td>035</td>
<td>European Social Charter</td>
<td>18/10/1961</td>
<td>26/2/1965</td>
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<td>Signature: 18/10/1961</td>
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<td>Ratification or accession: 11/7/1962</td>
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<tr>
<td></td>
<td>and Fundamental Freedoms, conferring upon the European Court of Human</td>
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<td></td>
<td>Rights competence to give advisory opinions</td>
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<tr>
<td></td>
<td>Signature: 6/5/1963</td>
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<td>Ratification or accession: 6/5/1963</td>
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<td>Entered into force: 21/9/1970</td>
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<tr>
<td></td>
<td>and Fundamental Freedoms, amending Articles 29, 30 and 34 of the</td>
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<td></td>
<td>Convention</td>
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<td>Entered into force: 21/9/1970</td>
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<td>Protocol No. 5 to the Convention for the Protection of Human Rights</td>
<td>20/1/1966</td>
<td>20/12/1971</td>
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<tr>
<td></td>
<td>and Fundamental Freedoms, amending Articles 22 and 40 of the Convention</td>
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<td>Signature: 10/2/1966</td>
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<td></td>
<td>Entered into force: 20/12/1971</td>
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<td>of the European Commission and Court of Human Rights</td>
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<td>Signature: 6/5/1969</td>
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<td></td>
<td>Ratification or accession: 24/2/1971</td>
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<td>Entered into force: 17/4/1971</td>
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<tr>
<td></td>
<td>and Fundamental Freedoms concerning the Abolition of the Death Penalty</td>
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<td>Signature: 27/1/1999</td>
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<td>Ratification or accession: 20/5/1999</td>
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<td></td>
<td>and Fundamental Freedoms</td>
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<tr>
<td></td>
<td>Signature: 19/3/1985</td>
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<td></td>
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<td></td>
<td>Entered into force: 1/1/1990</td>
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<td></td>
<td>Degrading Treatment or Punishment</td>
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<tr>
<td></td>
<td>Signature: 26/11/1987</td>
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<tr>
<td></td>
<td>Ratification or accession: 24/6/1988</td>
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<tr>
<td></td>
<td>and Fundamental Freedoms</td>
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<tr>
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<td>Signature: 25/3/1992</td>
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<td>Ratification or accession: 9/3/1993</td>
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</table>

**Notes:**
Convention(s) and Agreement(s) opened to the member States of the Council of Europe and, where appropriate, to the : E. : European non-member States - N. : Non-European non-member States - U. : European Union. See the final provisions of each treaty.

Source: Treaty Office on [http://conventions.coe.int](http://conventions.coe.int)
### Core international human rights treaties

#### Table 4: Current status of UK ratification of UN Human Rights Treaties

<table>
<thead>
<tr>
<th>International Covenant on Economic, Social and Cultural Rights</th>
<th>New York, 16 December 1966</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Entry into force:</strong></td>
<td>3 January 1976, in accordance with article 27</td>
</tr>
<tr>
<td><strong>Registration:</strong></td>
<td>3 January 1976, No. 14531</td>
</tr>
<tr>
<td><strong>Status:</strong></td>
<td>Signatories : 69. Parties : 160</td>
</tr>
<tr>
<td><strong>United Kingdom of Great Britain and Northern Ireland</strong></td>
<td><strong>Signature</strong> 16 Sep 1968</td>
</tr>
<tr>
<td><strong>Note:</strong></td>
<td>The Covenant was opened for signature at New York on 19 December 1966.</td>
</tr>
</tbody>
</table>

**Declarations and Reservations:**


<table>
<thead>
<tr>
<th>International Covenant on Civil and Political Rights</th>
<th>New York, 16 December 1966</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Entry into force:</strong></td>
<td>23 March 1976, in accordance with article 49, for all provisions except those of article 41; 28 March 1979 for the provisions of article 41 (Human Rights Committee), in accordance with paragraph 2 of the said article 41</td>
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<tr>
<td><strong>Registration:</strong></td>
<td>23 March 1976, No. 14668</td>
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<tr>
<td><strong>Status:</strong></td>
<td>Signatories : 72. Parties : 165</td>
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<td><strong>United Kingdom of Great Britain and Northern Ireland</strong></td>
<td><strong>Signature</strong> 16 Sep 1968</td>
</tr>
<tr>
<td><strong>Note:</strong></td>
<td>The Covenant was opened for signature at New York on 19 December 1966.</td>
</tr>
</tbody>
</table>

**Declarations and Reservations:**


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131 As at 26-02-2010 01:49:17. Information from [http://www2.ohchr.org/english/bodies/treaty/index.htm](http://www2.ohchr.org/english/bodies/treaty/index.htm), accessed 26th February 2010. Sign / accede / ratify: When a state signs an international treaty this is signals its preliminary endorsement of the treaty, it does not create a binding legal obligation. A state which ratifies or accedes to a treaty is asserting that it considers itself to be legally bound by the treaty. Ratification requires the state to have previously signed the treaty, whereas accession is a single step which does not require previous signing. It should be noted that a treaty which has been acceded to or ratified by the UK does not automatically become part of the domestic law; separate legislative action is required to incorporate international law into domestic law (for example the HRA making the ECHR enforceable in the UK). Nonetheless, ratification or accession, is a state’s expression that it consents to be legally bound by the treaty, including respecting and implementing its provisions.
### International Convention on the Elimination of All Forms of Racial Discrimination

**New York, 7 March 1966**

<table>
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<tr>
<th><strong>Entry into force:</strong></th>
<th>4 January 1969, in accordance with article 19</th>
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<tr>
<td><strong>Registration:</strong></td>
<td>12 March 1969, No. 9464</td>
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<tr>
<td><strong>Status:</strong></td>
<td>Signatories : 85. Parties : 173</td>
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<tr>
<td><strong>United Kingdom of Great Britain and Northern Ireland</strong></td>
<td><strong>Signature</strong> 11 Oct 1966</td>
</tr>
<tr>
<td><strong>Note:</strong></td>
<td>The Convention was adopted by the General Assembly of the United Nations in resolution 2106 (XX) of 21 December 1965.</td>
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**Declarations and Reservations:**

### Convention on the Elimination of All Forms of Discrimination against Women

**New York, 18 December 1979**

<table>
<thead>
<tr>
<th><strong>Entry into force:</strong></th>
<th>3 September 1981, in accordance with article 27(1)</th>
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</thead>
<tbody>
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<td><strong>Registration:</strong></td>
<td>3 September 1981, No. 20378</td>
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<tr>
<td><strong>Status:</strong></td>
<td>Signatories : 98. Parties : 186</td>
</tr>
<tr>
<td><strong>United Kingdom of Great Britain and Northern Ireland</strong></td>
<td><strong>Signature</strong> 22 Jul 1981</td>
</tr>
<tr>
<td><strong>Note:</strong></td>
<td>The Convention was opened for signature at the United Nations Headquarters on 1 March 1980.</td>
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**Declarations and Reservations:**

### Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women

**New York, 6 October 1999**

<table>
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<tr>
<th><strong>Entry into force:</strong></th>
<th>22 December 2000, in accordance with article 16(1)(see paragraph 16 of Resolution A/RES/54/4)</th>
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<tr>
<td><strong>Registration:</strong></td>
<td>22 December 2000, No. 20378</td>
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<tr>
<td><strong>Status:</strong></td>
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<tr>
<td><strong>United Kingdom of Great Britain and Northern Ireland</strong></td>
<td><strong>Signature</strong> 17 Dec 2004 (a)</td>
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<td><strong>Note:</strong></td>
<td>The Protocol was adopted by resolution A/RES/54/4 of 6 October 1999 at the fifty-fourth session of the General Assembly of the United Nations.</td>
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**Declarations and Reservations:**
### Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
New York, 10 December 1984

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<tr>
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<td>Registration:</td>
<td>26 June 1987, No. 24841</td>
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<tr>
<td>Status:</td>
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<tr>
<td>United Kingdom of Great Britain and Northern Ireland</td>
<td>Signature 15 Mar 1985</td>
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**Note:** The Convention was adopted by resolution 39/46 of 10 December 1984 at the thirty-ninth session of the General Assembly of the United Nations.

**Declarations and Reservations:**

### Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
New York, 18 December 2002

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<td>Status:</td>
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<tr>
<td>United Kingdom of Great Britain and Northern Ireland</td>
<td>Signature 26 Jun 2003</td>
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</table>

**Note:** The above Protocol was adopted on 18 December 2002 at the fifty-seventh session of the General Assembly of the United Nations by resolution A/RES/57/199. In accordance with article 27 (1), the Protocol was opened for signature on 4 February 2003, the first possible date, by any State that has signed the Convention. In accordance with operative paragraph 1 of General Assembly resolution A/RES/57/199, the Protocol is available for signature, ratification and accession at United Nations Headquarters in New York.

### Convention on the Rights of the Child
New York, 20 November 1989

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<th>2 September 1990, in accordance with article 49(1)</th>
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<td>Status:</td>
<td>Signatories: 140. Parties: 193</td>
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<tr>
<td>United Kingdom of Great Britain and Northern Ireland</td>
<td>Signature 19 Apr 1990</td>
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**Note:** The Convention was adopted by resolution 44/25 of 20 November 1989 at the Forty-fourth session of the General Assembly of the United Nations.

**Declarations and Reservations:**
### Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict
New York, 25 May 2000

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New York, 25 May 2000

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### Convention on the Rights of Persons with Disabilities
New York, 13 December 2006

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New York, 13 December 2006

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### Table 5: Summary of UK ratifications of core UN human rights treaties

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<td><strong>CMW-International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families</strong></td>
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<td><strong>CRC-Convention on the Rights of the Child</strong></td>
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Appendix 2:
Selected CESCR General Comments

General Comments of the Committee on Economic, Social and Cultural Rights
The Committee has developed detailed interpretations of what it considers to be the essential aspects of a number of the rights articulated within the Covenant on Economic, Social and Cultural Rights, which are published in the form of general comments. These comments do not take a generic approach but outline specific requirements in relation to each of the rights under consideration.

General Comment No. 4 – The right to adequate housing
“Adequate housing” must include the following aspects:

(a) Legal security of tenure. Tenure takes a variety of forms, including rental (public and private) accommodation, cooperative housing, lease, owner-occupation, emergency housing and informal settlements, including occupation of land or property. Notwithstanding the type of tenure, all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats. States parties should consequently take immediate measures aimed at conferring legal security of tenure upon those persons and households currently lacking such protection, in genuine consultation with affected persons and groups;

(b) Availability of services, materials, facilities and infrastructure. An adequate house must contain certain facilities essential for health, security, comfort and nutrition. All beneficiaries of the right to adequate housing should have sustainable access to natural and common resources, safe drinking water, energy for cooking, heating and lighting, sanitation and washing facilities, means of food storage, refuse disposal, site drainage and emergency services;

(c) Affordability. Personal or household financial costs associated with housing should be at such a level that the attainment and satisfaction of other basic needs are not threatened or compromised. Steps should be taken by States parties to ensure that the percentage of housing-related costs is, in general, commensurate with income levels. States parties should establish housing subsidies for those unable to obtain affordable housing, as well as forms and levels of housing finance which adequately reflect housing needs. In accordance with the principle of affordability, tenants should be protected by appropriate means against unreasonable rent levels or rent increases. In societies where natural materials constitute the chief sources of building materials for housing, steps should be taken by States parties to ensure the availability of such materials;

(d) Habitability. Adequate housing must be habitable, in terms of providing the inhabitants with adequate space and protecting them from cold, damp, heat, rain, wind or other threats to health, structural hazards, and disease vectors. The physical safety of occupants must be guaranteed as well. The Committee encourages States parties to comprehensively apply the Health Principles of Housing, prepared by WHO which view housing as the environmental factor most frequently associated with conditions for disease in epidemiological analyses; i.e. inadequate

and deficient housing and living conditions are invariably associated with higher mortality and morbidity rates;

(e) Accessibility. Adequate housing must be accessible to those entitled to it. Disadvantaged groups must be accorded full and sustainable access to adequate housing resources. Thus, such disadvantaged groups as the elderly, children, the physically disabled, the terminally ill, HIV-positive individuals, persons with persistent medical problems, the mentally ill, victims of natural disasters, people living in disaster-prone areas and other groups should be ensured some degree of priority consideration in the housing sphere. Both housing law and policy should take fully into account the special housing needs of these groups. Within many States parties increasing access to land by landless or impoverished segments of the society should constitute a central policy goal. Discernible governmental obligations need to be developed aiming to substantiate the right of all to a secure place to live in peace and dignity, including access to land as an entitlement;

(f) Location. Adequate housing must be in a location which allows access to employment options, health-care services, schools, child-care centres and other social facilities. This is true both in large cities and in rural areas where the temporal and financial costs of getting to and from the place of work can place excessive demands upon the budgets of poor households. Similarly, housing should not be built on polluted sites nor in immediate proximity to pollution sources that threaten the right to health of the inhabitants;

(g) Cultural adequacy. The way housing is constructed, the building materials used and the policies supporting these must appropriately enable the expression of cultural identity and diversity of housing. Activities geared towards development or modernization in the housing sphere should ensure that the cultural dimensions of housing are not sacrificed, and that, inter alia, modern technological facilities, as appropriate are also ensured.

**General Comment no. 7 – The right to adequate housing: forced evictions**

The following procedural protections for forced evictions are stipulated:

(a) an opportunity for genuine consultation with those affected;
(b) adequate and reasonable notice for all affected persons prior to the scheduled date of eviction;
(c) information on the proposed evictions, and, where applicable, on the alternative purpose for which the land or housing is to be used, to be made available in reasonable time to all those affected;
(d) especially where groups of people are involved, government officials or their representatives to be present during an eviction;
(e) all persons carrying out the eviction to be properly identified;
(f) evictions not to take place in particularly bad weather or at night unless the affected persons consent otherwise;
(g) provision of legal remedies; and
(h) provision, where possible, of legal aid to persons who are in need of it to seek redress from the courts.

**General comment no. 12 – The right to adequate food**


The Committee considers that the core content of the right to adequate food implies:

The availability of food in a quantity and quality sufficient to satisfy the dietary needs of individuals, free from adverse substances, and acceptable within a given culture;

The accessibility of such food in ways that are sustainable and that do not interfere with the enjoyment of other human rights.

9. **Dietary needs** implies that the diet as a whole contains a mix of nutrients for physical and mental growth, development and maintenance, and physical activity that are in compliance with human physiological needs at all stages throughout the life cycle and according to gender and occupation. Measures may therefore need to be taken to maintain, adapt or strengthen dietary diversity and appropriate consumption and feeding patterns, including breast-feeding, while ensuring that changes in availability and access to food supply as a minimum do not negatively affect dietary composition and intake.

10. **Free from adverse substances** sets requirements for food safety and for a range of protective measures by both public and private means to prevent contamination of foodstuffs through adulteration and/or through bad environmental hygiene or inappropriate handling at different stages throughout the food chain; care must also be taken to identify and avoid or destroy naturally occurring toxins.

11. **Cultural or consumer acceptability** implies the need also to take into account, as far as possible, perceived non nutrient-based values attached to food and food consumption and informed consumer concerns regarding the nature of accessible food supplies.

12. **Availability** refers to the possibilities either for feeding oneself directly from productive land or other natural resources, or for well functioning distribution, processing and market systems that can move food from the site of production to where it is needed in accordance with demand.

13. **Accessibility** encompasses both economic and physical accessibility:

Economic accessibility implies that personal or household financial costs associated with the acquisition of food for an adequate diet should be at a level such that the attainment and satisfaction of other basic needs are not threatened or compromised. Economic accessibility applies to any acquisition pattern or entitlement through which people procure their food and is a measure of the extent to which it is satisfactory for the enjoyment of the right to adequate food. Socially vulnerable groups such as landless persons and other particularly impoverished segments of the population may need attention through special programmes.

Physical accessibility implies that adequate food must be accessible to everyone, including physically vulnerable individuals, such as infants and young children, elderly people, the physically disabled, the terminally ill and persons with persistent medical problems, including the mentally ill. Victims of natural disasters, people living in disaster-prone areas and other specially disadvantaged groups may need special attention and sometimes priority consideration with respect to accessibility of food. A particular vulnerability is that of many indigenous population groups whose access to their ancestral lands may be threatened.
General comment no. 13 - The right to education

(a) Availability - functioning educational institutions and programmes have to be available in sufficient quantity within the jurisdiction of the State party. What they require to function depends upon numerous factors, including the developmental context within which they operate; for example, all institutions and programmes are likely to require buildings or other protection from the elements, sanitation facilities for both sexes, safe drinking water, trained teachers receiving domestically competitive salaries, teaching materials, and so on; while some will also require facilities such as a library, computer facilities and information technology;

(b) Accessibility - educational institutions and programmes have to be accessible to everyone, without discrimination, within the jurisdiction of the State party. Accessibility has three overlapping dimensions:

1. Non-discrimination - education must be accessible to all, especially the most vulnerable groups, in law and fact, without discrimination on any of the prohibited grounds (see paras. 31-37 on non-discrimination);

2. Physical accessibility - education has to be within safe physical reach, either by attendance at some reasonably convenient geographic location (e.g. a neighbourhood school) or via modern technology (e.g. access to a "distance learning" programme);

3. Economic accessibility - education has to be affordable to all. This dimension of accessibility is subject to the differential wording of article 13 (2) in relation to primary, secondary and higher education: whereas primary education shall be available "free to all", States parties are required to progressively introduce free secondary and higher education;

(c) Acceptability - the form and substance of education, including curricula and teaching methods, have to be acceptable (e.g. relevant, culturally appropriate and of good quality) to students and, in appropriate cases, parents; this is subject to the educational objectives required by article 13 (1) and such minimum educational standards as may be approved by the State (see art. 13 (3) and (4));

(d) Adaptability - education has to be flexible so it can adapt to the needs of changing societies and communities and respond to the needs of students within their diverse social and cultural settings.

General Comment No. 14 - The right to the highest attainable standard of health

The right to health contains the following inter-related and essential elements:

a) Availability. Functioning public health and health-care facilities, goods and services, as well as programmes, have to be available in sufficient quantity within the State party. The precise nature of the facilities, goods and services will vary depending on numerous factors, including the State party's developmental level. They will include, however, the underlying determinants of health, such as safe and potable drinking water and adequate sanitation facilities, hospitals,

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clinics and other health-related buildings, trained medical and professional personnel receiving domestically competitive salaries, and essential drugs, as defined by the WHO Action Programme on Essential Drugs. (5)

(b) Accessibility. Health facilities, goods and services (6) have to be accessible to everyone without discrimination, within the jurisdiction of the State party. Accessibility has four overlapping dimensions:

Non-discrimination: health facilities, goods and services must be accessible to all, especially the most vulnerable or marginalized sections of the population, in law and in fact, without discrimination on any of the prohibited grounds. (7)

Physical accessibility: health facilities, goods and services must be within safe physical reach for all sections of the population, especially vulnerable or marginalized groups, such as ethnic minorities and indigenous populations, women, children, adolescents, older persons, persons with disabilities and persons with HIV/AIDS. Accessibility also implies that medical services and underlying determinants of health, such as safe and potable water and adequate sanitation facilities, are within safe physical reach, including in rural areas. Accessibility further includes adequate access to buildings for persons with disabilities.

Economic accessibility (affordability): health facilities, goods and services must be affordable for all. Payment for health-care services, as well as services related to the underlying determinants of health, has to be based on the principle of equity, ensuring that these services, whether privately or publicly provided, are affordable for all, including socially disadvantaged groups. Equity demands that poorer households should not be disproportionately burdened with health expenses as compared to richer households.

Information accessibility: accessibility includes the right to seek, receive and impart information and ideas (8) concerning health issues. However, accessibility of information should not impair the right to have personal health data treated with confidentiality.

(c) Acceptability. All health facilities, goods and services must be respectful of medical ethics and culturally appropriate, i.e. respectful of the culture of individuals, minorities, peoples and communities, sensitive to gender and life-cycle requirements, as well as being designed to respect confidentiality and improve the health status of those concerned.

(d) Quality. As well as being culturally acceptable, health facilities, goods and services must also be scientifically and medically appropriate and of good quality. This requires, inter alia, skilled medical personnel, scientifically approved and unexpired drugs and hospital equipment, safe and potable water, and adequate sanitation.

General Comment No. 15 – The right to water
(a) Availability. The water supply for each person must be sufficient and continuous for personal and domestic uses. These uses ordinarily include drinking, personal sanitation, washing of clothes, food preparation, personal and household hygiene. The quantity of water available for each person should correspond to World Health Organization (WHO) guidelines. Some individuals and groups may also require additional water due to health, climate, and work conditions;
(b) **Quality.** The water required for each personal or domestic use must be safe, therefore free from micro-organisms, chemical substances and radiological hazards that constitute a threat to a person’s health. Furthermore, water should be of an acceptable colour, odour and taste for each personal or domestic use.

(c) **Accessibility.** Water and water facilities and services have to be accessible to everyone without discrimination, within the jurisdiction of the State party.

Accessibility has four overlapping dimensions:

(i) **Physical accessibility:** water, and adequate water facilities and services, must be within safe physical reach for all sections of the population. Sufficient, safe and acceptable water must be accessible within, or in the immediate vicinity, of each household, educational institution and workplace. All water facilities and services must be of sufficient quality, culturally appropriate and sensitive to gender, lifecycle and privacy requirements. Physical security should not be threatened during access to water facilities and services;

(ii) **Economic accessibility:** Water, and water facilities and services, must be affordable for all. The direct and indirect costs and charges associated with securing water must be affordable, and must not compromise or threaten the realization of other Covenant rights;

(iii) **Non-discrimination:** Water and water facilities and services must be accessible to all, including the most vulnerable or marginalized sections of the population, in law and in fact, without discrimination on any of the prohibited grounds; and

(iv) **Information accessibility:** accessibility includes the right to seek, receive and impart information concerning water issues.

**General Comment No. 18 – The right to work**

(a) **Availability.** States parties must have specialized services to assist and support individuals in order to enable them to identify and find available employment;

(b) **Accessibility.** The labour market must be open to everyone under the jurisdiction of States parties. Accessibility comprises three dimensions:

(i) Under its article 2, paragraph 2, and article 3, the Covenant prohibits any discrimination in access to and maintenance of employment on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, physical or mental disability, health status (including HIV/AIDS), sexual orientation, or civil, political, social or other status, which has the intention or effect of impairing or nullifying exercise of the right to work on a basis of equality. According to article 2 of ILO Convention No. 111, States parties should “declare and pursue a national policy designed to promote, by methods appropriate to national conditions and practice, equality of opportunity and treatment in respect of employment and occupation, with a view to eliminating any discrimination in respect thereof”. Many measures, such as most strategies and programmes designed to eliminate employment-related discrimination, as emphasized in paragraph 18 of general comment No. 14 (2000) on the right

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to the highest attainable standard of health, can be pursued with minimum resource implications through the adoption, modification or abrogation of legislation or the dissemination of information. The Committee recalls that, even in times of severe resource constraints, disadvantaged and marginalized individuals and groups must be protected by the adoption of relatively low-cost targeted programmes;

(ii) Physical accessibility is one dimension of accessibility to employment as explained in paragraph 22 of general comment No. 5 on persons with disabilities;

(iii) Accessibility includes the right to seek, obtain and impart information on the means of gaining access to employment through the establishment of data networks on the employment market at the local, regional, national and international levels;

(c) Acceptability and quality. Protection of the right to work has several components, notably the right of the worker to just and favourable conditions of work, in particular to safe working conditions, the right to form trade unions and the right freely to choose and accept work.

General Comment No. 19 – The right to social security

Elements of the right to social security:

1. Availability - social security system
   The right to social security requires, for its implementation, that a system, whether composed of a single scheme or variety of schemes, is available and in place to ensure that benefits are provided for the relevant social risks and contingencies. The system should be established under domestic law, and public authorities must take responsibility for the effective administration or supervision of the system. The schemes should also be sustainable, including those concerning provision of pensions, in order to ensure that the right can be realized for present and future generations.

2. Social risks and contingencies
   The social security system should provide for the coverage of the following nine principal branches of social security.
   (a) Health care
   (b) Sickness
   (c) Old age
   (d) Unemployment
   (e) Employment injury
   (f) Family and child support
   (g) Maternity
   (h) Disability
   (i) Survivors and orphans.

3. Adequacy
   Benefits, whether in cash or in kind, must be adequate in amount and duration in order that everyone may realize his or her rights to family protection and assistance, an adequate standard of living and adequate access to health care, as contained in articles 10, 11 and 12 of

the Covenant. States parties must also pay full respect to the principle of human dignity contained in the preamble of the Covenant, and the principle of non-discrimination, so as to avoid any adverse effect on the levels of benefits and the form in which they are provided. Methods applied should ensure the adequacy of benefits. The adequacy criteria should be monitored regularly to ensure that beneficiaries are able to afford the goods and services they require to realize their Covenant rights. When a person makes contributions to a social security scheme that provides benefits to cover lack of income, there should be a reasonable relationship between earnings, paid contributions, and the amount of relevant benefit.

4. Accessibility

(a) Coverage
All persons should be covered by the social security system, especially individuals belonging to the most disadvantaged and marginalized groups, without discrimination on any of the grounds prohibited under article 2, paragraph 2, of the Covenant. In order to ensure universal coverage, non-contributory schemes will be necessary.

(b) Eligibility
Qualifying conditions for benefits must be reasonable, proportionate and transparent. The withdrawal, reduction or suspension of benefits should be circumscribed, based on grounds that are reasonable, subject to due process, and provided for in national law.

(c) Affordability
If a social security scheme requires contributions, those contributions should be stipulated in advance. The direct and indirect costs and charges associated with making contributions must be affordable for all, and must not compromise the realization of other Covenant rights.

(d) Participation and information
Beneficiaries of social security schemes must be able to participate in the administration of the social security system. The system should be established under national law and ensure the right of individuals and organizations to seek, receive and impart information on all social security entitlements in a clear and transparent manner.

(e) Physical access
Benefits should be provided in a timely manner and beneficiaries should have physical access to the social security services in order to access benefits and information, and make contributions where relevant. Particular attention should be paid in this regard to persons with disabilities, migrants, and persons living in remote or disaster-prone areas, as well as areas experiencing armed conflict, so that they, too, can have access to these services.

5. Relationship with other rights
The right to social security plays an important role in supporting the realization of many of the rights in the Covenant, but other measures are necessary to complement the right to social security. For example, States parties should provide social services for rehabilitation of the injured and persons with disabilities in accordance with article 6 of the Covenant, provide child care and welfare, advice and assistance with family planning and the provision of special facilities for persons with disabilities and older persons (article 10); take measures to combat poverty and social exclusion and provide supporting social services (article 11); and adopt measures to prevent disease and improve health facilities, goods and services (article 12). States parties should also consider schemes that provide social protection to individuals
belonging to disadvantaged and marginalized groups, for example crop or natural disaster insurance for small farmers or livelihood protection for self-employed persons in the informal economy. However, the adoption of measures to realize other rights in the Covenant will not in itself act as a substitute for the creation of social security schemes.

General Comment No. 21 – The right of everyone to take part in cultural life

The following are necessary conditions for the full realization of the right of everyone to take part in cultural life on the basis of equality and non-discrimination.

(a) **Availability** is the presence of cultural goods and services that are open for everyone to enjoy and benefit from, including libraries, museums, theatres, cinemas and sports stadiums; literature, including folklore, and the arts in all forms; the shared open spaces essential to cultural interaction, such as parks, squares, avenues and streets; nature’s gifts, such as seas, lakes, rivers, mountains, forests and nature reserves, including the flora and fauna found there, which give nations their character and biodiversity; intangible cultural goods, such as languages, customs, traditions, beliefs, knowledge and history, as well as values, which make up identity and contribute to the cultural diversity of individuals and communities. Of all the cultural goods, one of special value is the productive intercultural kinship that arises where diverse groups, minorities and communities can freely share the same territory;

(b) **Accessibility** consists of effective and concrete opportunities for individuals and communities to enjoy culture fully, within physical and financial reach for all in both urban and rural areas, without discrimination. It is essential, in this regard, that access for older persons and persons with disabilities, as well as for those who live in poverty, is provided and facilitated. Accessibility also includes the right of everyone to seek, receive and share information on all manifestations of culture in the language of the person’s choice, and the access of communities to means of expressions and dissemination.

(c) **Acceptability** entails that the laws, policies, strategies, programmes and measures adopted by the State party for the enjoyment of cultural rights should be formulated and implemented in such a way as to be acceptable to the individuals and communities involved. In this regard, consultations should be held with the individuals and communities concerned in order to ensure that the measures to protect cultural diversity are acceptable to them;

(d) **Adaptability** refers to the flexibility and relevance of strategies, policies, programmes and measures adopted by the State party in any area of cultural life, which must be respectful of the cultural diversity of individuals and communities;

(e) ** Appropriateness** refers to the realization of a specific human right in a way that is pertinent and suitable to a given cultural modality or context, that is, respectful of the culture and cultural rights of individuals and communities, including minorities and indigenous peoples. The Committee has in many instances referred to the notion of cultural appropriateness (or cultural acceptability or adequacy) in past general comments, in relation in particular to the rights to food, health, water, housing and education. The way in which rights are implemented may also have an impact on cultural life and cultural diversity. The Committee wishes to stress in this regard the need to take into account, as far as possible, cultural values attached to, inter alia, food and food consumption, the use of water, the way health and education services are provided and the way housing is designed and constructed.

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