HOUSES OF PARLIAMENT

Joint Committee on Human Rights

Uncorrected oral evidence: Ministerial scrutiny: Human rights, HC 182

Wednesday 13 December 2023

3.10 pm

Watch the meeting

Members present: Harriet Harman (Chair); Lord Alton of Liverpool; Joanna Cherry; Lord Dholakia; Lord Henley; Baroness Kennedy of The Shaws; Baroness Lawrence of Clarendon; Baroness Meyer.

Questions 1 - 18

Witness

I: Alex Chalk KC MP, Lord Chancellor and Secretary of State at Ministry of Justice.

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Examination of witness

Alex Chalk KC.

Q1 **Chair:** Can I welcome you, Lord Chancellor, to this ministerial scrutiny session? We are the Joint Committee on Human Rights. Half of us are members of the House of Commons and half are members of the House of Lords. One of our responsibilities is ministerial scrutiny in general of human rights. As Lord Chancellor, you are the key figure in government responsible for human rights. This is your first appearance since your appointment in April before our committee, and we look forward to working with you in the future as you conduct your role. It is a very good moment for you to be coming before this committee, because human rights are high on the agenda—both the parliamentary agenda with the Rwanda Bill and, as a result, the public agenda. We are very grateful to you for coming to us to answer our questions today.

The Ministry of Justice, of which you are Secretary of State, is the department for human rights. As Lord Chancellor, you protect the independence of the judiciary, so we will have that very much in mind when we ask you questions about human rights protection in government and, in particular, the Rwanda Bill. Having worked with you in the past, I know that you have a lot of personal experience and a strong commitment to human rights and the rule of law. We are looking forward to how it is working out in practice now that you are in the hot seat in government, but we are supportive of the work that you have done in the past—at least, I am.

We are looking forward to hearing in particular some justification for the argument that the Rwanda Bill does not breach human rights, some reassurance that the Bill's provisions will not change in a way that would undermine human rights, justification of the status quo, and, looking ahead, any changes that you could rule in or rule out at this point—changes that were raised and proposed in the House of Commons last night.

I will start by asking you a general question about your and the Government's stance on human rights at this point. The UK and UK lawyers played a prominent role in the establishment of the rights-based international legal order. We were key proponents and drafters of international human rights instruments, including the European Convention on Human Rights. Indeed, it was a British lawyer and MP, Sir David Maxwell Fyfe, who led the drafting. The UK was the first state to ratify the European Convention on Human Rights in 1951, and the first president of the European Court of Human Rights was a British legal scholar. In light of that history, is our involvement with the European Convention on Human Rights and the European Court of Human Rights something we should be proud of and cherish?

Alex Chalk KC: First, thank you very much for inviting me. This is an extremely important committee, and it is my pleasure to be here. If I may be indulged for one moment, I remember being a law student and you as Solicitor-General coming to address members of Middle Temple at

Cumberland Lodge. I was very grateful for your interest in the progress of legal students, so it is wonderful to be in front of this committee.

You asked me about my view on human rights and the Government's. Let me just say that human rights matter. As a barrister, one would take an interest in human rights—the proper balance between the rights of the state and the rights of an individual, both in this country and overseas. Like many people, I did some pro bono work on behalf of a prisoner of conscience, Nasrin Sotoudeh, who was held in Evin Prison in Iran. Plenty of barristers do that. We have a proper understanding that we should never take for granted some freedoms we enjoy in this country.

There is always a necessary tension between the state, which has to preserve the freedom and stability of a country and the security of a nation, and the importance of guarding against the power of an overweening state—if I can make those points. I remember as a practitioner grappling with the Criminal Justice Act 2003. That was novel legislation at the time, and these sorts of questions were constantly raised, whether it was issues to do with bad character evidence or the extent to which it managed those important balances. So I am familiar with that by way of background and certainly value human rights enormously.

Turning to your point about the Government and the European convention, I went to Strasbourg recently and met the Secretary-General and Deputy Secretary-General. To your point about our role, I looked around the office of the Deputy Secretary-General at the various books and things around the room, and there was a figure of Winston Churchill. I do not think that was put there for my benefit. I think it was put there to recognise that he was Prime Minister when we gave our signature to the convention. So as you say, we played a part.

But the central point is this: we believe that we can deliver on the priorities of the British people and on this Government's agenda to stop the boats to protect our borders, of which there is a proper public interest requirement, and to do so within the four corners of our international legal obligations. We are signatories to the convention, and we believe that we can carry out and prosecute this policy while remaining within the four corners of that policy.

We think there is a proper interest in doing so, first, because the UK has contributed as much as, if not more than, any other country to the international rules-based order. Secondly, we think that it is the most effective way of applying the policy. It is not simply a case of saying, "We think this is the right thing to do as a matter of principle, because human rights have a value". We think it is the right thing to do because it is the best way of delivering on the policy. It is about head as well as heart.

Chair: Thank you.

Baroness Kennedy of The Shaws: You have answered part of my question, but I have to tell you that I felt a great sense of relief when you

became the Lord Chancellor. We had seen a change in law that I had not approved of, and although there was a need for reform, I felt that the role should be filled by someone who understood, at a visceral level, the rule of law. When I saw that you, as an experienced lawyer, were coming into that role, I found it a source of celebration. I genuinely remember welcoming you, and that was heartfelt, because it makes a difference. That understanding has been displayed in what you have just said, because you have answered the question, which is: do we remain a party to the European Convention of Human Rights even after this Bill? You are saying that, yes, we will remain a part.

Alex Chalk KC: Yes.

Q2 **Baroness Kennedy of The Shaws:** I took the time to go through many of the quotes that you have made over the years, man and boy, in which you say, "I want to make the point crystal clear that, whatever happens, we are committed to the ECHR. We are a nation of laws. We are committed to upholding human rights. That is the way it's going to stay". Let me tell you, I have about six or seven of these quotes that I can render to you. The public would be interested to hear that you really do say a few words on the European convention. You say, "I very much support it. The values of the European convention are British values". That is why I suspect that Winston Churchill's bust sits in the office of the Deputy Secretary-General. Winston Churchill really believed that the European convention was a vital thing to share a set of values across Europe, and that should inform legal systems.

So this is the next question. You were given to understand that there are plans to put in amendments that will basically seek to override opportunities to go before courts. At this moment, doing your homework in your office, are you looking at plans to repeal sections of the Human Rights Act?

Alex Chalk KC: First, thank you for the courtesy of doing the research into me, which I appreciate.

As far as we are concerned, the position is that the Bill has been carefully designed and carefully engineered to ensure, as I have indicated, that we can do what we need to do while staying within the four corners of our international legal obligations. We think it is important to ensure that we are not a member in name only, but that the Bill complies with Article 13, which, as you know, is the requirement to ensure that there is an effective remedy. Is that requirement that an individual can get before a court in appropriate circumstances? Plainly, to ensure that this works, there is a proper interest in ensuring that the arguments that can be advanced before a court are kept within their proper parameters. That is precisely what the Bill does. To your question about whether we are seeking to repeal, no, that is not what we are seeking to do so far as the Human Rights Act is concerned.

Baroness Kennedy of The Shaws: Any bit of it?

Alex Chalk KC: No, it is certainly not seeking to repeal, but it does disapply certain parts, that is true. Ordinarily, Section 3 of the Human Rights Act requires Bills to be read down to be in compliance with the convention, as the distinguished lawyers in this committee will know—well, I am sure you all know that, but certainly Ms Cherry will know.

But here is the really important point. If you look at the wording of the HRA, it says "read down", effectively, in so far as it is possible to do so. If Parliament says that black is white—I am exaggerating to make the point—it is not possible to read that down that it is a different colour. Do you see what I mean? In other words, in so far as it is ousted or disapplied, it is slightly otiose anyway, because no court would ever have been able to read down. It would have to have taken Parliament's steer. If Parliament's steer is clear, then, even under Section 3, the courts have to take that steer.

Baroness Kennedy of The Shaws: We could have a very good argument here.

Alex Chalk KC: I know that I am dealing with a very distinguished lawyer and you will have some extremely cogent points to make, but the central argument we make is that so long as an individual has the ability to get before the court to advance their points, which might relate to their own specific circumstances—plus, of course, Section 4 remains—we say that that fulfils Article 13 obligations, which means that we remain within the convention, and, as I said, that is something we are committed to doing.

Baroness Kennedy of The Shaws: It is interesting that you are saying that it is possible even within the language of the Human Rights Act, because Lord Sumption is making it very clear, in his criticisms of having any Bill to override a decision by the Supreme Court of this nation, that this Bill is "profoundly discreditable". That is the language he uses, and he is no pussycat when it comes to criticising aspects or interpretations of the European Court of Human Rights. He says that courts are being asked to "pretend" that Rwanda is safe when the infrastructure and so on shows that it is not safe. He is saying, "Well, they might be able to get away with that here, but it's not going to work internationally".

You have mentioned our role in creating the rules-based order. Lord Sumption says that, internationally, there will be "a breach of the rules of customary international law" and "a breach of the refugee treaty". He goes on to say that, constitutionally, we are breaking our own rules because we are trampling a decision made by our Supreme Court and saying, to use Lord Garnier's language, that cats are dogs, that unsafe is suddenly by declaration safe, that it is Humpty Dumpty time and you are creating nonsense law.

Alex Chalk KC: I will address Edward Garnier's remarks first before coming back to the Jonathan Sumption point. Edward Garnier did say that Parliament can legislate that a cat is a dog, but he went on to say that a cat evidently is not a dog. The point he was making was effectively

that Parliament can do what it wants as a matter of constitutional law. The Crown in Parliament is sovereign, and that must be right.

It is the second part of what he said that I disagree with, because that, to my mind, effectively prejudged the treaty. We say that that was then, this is now. If you look at the treaty, it would be wrong and unfair, we suggest, to say, "Hang on. The position that the Supreme Court was looking at—incidentally, a snapshot around 14 months ago—is manifestly identical to the position now". We say, "No, that's not the case".

First, quite apart from the fact that time has moved on—I appreciate that time in and of itself is not a determinant—it is reasonable to look at what has happened in moving from an MoU to a treaty and, furthermore, to the contents of that treaty in so far as it addressed the points made by the Supreme Court. You were kind enough at the beginning to mention my belief in the rule of law. I am a passionate believer in the rule of law. I am a passionate supporter of our Supreme Court, which incidentally—I do not think this is a chauvinistic or jingoistic thing to say—is probably one of the best if not the best supreme court anywhere in the world in terms of its calibre.

Baroness Kennedy of The Shaws: But here you are saying, "We are not going to accept—"

Alex Chalk KC: Let me finish the point. The point is that we respect them greatly, but if you look at the treaty, that specifically adverts the points they are making about refoulement, most obviously, and about the independent monitoring committee and the appeal body. The refoulement point is massive; it is probably the single most important thing. It is worth reflecting that under the MoU there was not the level of reassurance about the refoulement point which the Supreme Court evidently wanted.

This treaty, which, as you know, is of a different species of agreement compared to an MoU, literally says that it is not possible to refoule. Here is the really important point: if someone gets asylum, they stay in Rwanda, of course, but if they do not, they still have the right to settle and there is a complete bar on refoulement. There are those who turn around and say, "That's all terribly interesting, but how can one believe what Rwanda said?" That is exactly why you have the independent monitoring committee.

Baroness Kennedy of The Shaws: Lord Chancellor, I want us to stop there, because we are saying that we have now extracted a promise from Rwanda that there will be no refoulement, there will be no returns. Basically, we settle on 100 people, we send them there, and it has to take them. There is no judgment or due process of any meaningful kind, and there will be an acceptance.

The problem with that is that we also know that one of the concerns the Supreme Court had was about the kind of discrimination that has been faced by people of certain backgrounds inside Rwanda. Lord Sumption

criticises this new Bill, because he says the infrastructure of Rwanda is not given to this. It is a country that has emerged from a genocide. There are divisions in the society, and the development of the rule of law is so immature that it is not capable of dealing with high levels of things like discrimination. That is the point that he has made publicly: that the institutional nature of the nation means that it is not the right place. If you were sending people to Canada, it would be fine, but Rwanda is institutionally incapable of this, despite its promises.

Alex Chalk KC: It is perfectly legitimate for him to make that point, but we respectfully disagree. If one is looking at the institutional maturity of the nation, that is where it is important to consider the evidence that will go alongside the treaty. I completely understand the argument of people who say, "All right, I get this point about non-refoulement. That is plainly a significant issue. We don't want people suddenly being sent back to Syria or Afghanistan where they might be at risk"—incidentally, I think that chimes with the instincts of the British people—"but how can we be sure that you're not going to have airport refoulement and so on?

I would respectfully invite those who are properly concerned about this to look first at the treaty but also, perhaps as importantly, at the policy statement published recently, which was in the public domain on 12 December, which considers some of the detail that underpins it. I will not detain the committee too long, so will simply give you a page reference by way of one example. The monitoring mechanism is at paragraph 101 onwards.

If I can just test the patience of the committee for one second, paragraph 103 says that Article 15 of the treaty enhances the role of the independent monitoring committee, ensuring that obligations under the treaty are "adhered to in practice". For example—I will not list all of them—it will be able to set its own priority areas for monitoring; it will have the ability to publish reports as it sees fit; there will be daily monitoring of the partnership, particularly for the first three months; it can make unannounced visits to accommodation; it can sit in on interviews by the First Instance Body; it can observe hearings before the appeal body—and so on. It sets out that this is a muscular body that will be there to sit on the shoulder of the process to spot what is going on. That is before you take account of the fact that there will be a joint committee with a Brit on it. Incidentally, I have met the Brit already to satisfy myself that he is a fit and proper person to be doing this, and a Rwandan.

It is perfectly proper to say, in a nutshell, "Is Rwanda ready?" I totally get that. Equally, if one is to look at it in fairness, it is right to consider all the evidence about the assistance that is being provided and the apparatus that is being installed to ensure that the values that we rightly expect as a country can be adhered to in that country. I would simply invite that to be weighed in the balance in making a judgment.

Chair: Thank you.

Q3 **Joanna Cherry:** As Helena has said, one of the things the Supreme Court took into account was institutional problems on the ground in Rwanda. There is, for example, and I have raised this with other of your Ministers in your Government, the fact that there is no law protecting LGBT people in Rwanda from discrimination. There is sex discrimination law but no law protecting LGBT people. The Supreme Court also noted not a lack of good faith on the part of Rwanda but a sort of institutional inability to deliver on its promises.

If you are so convinced that the treaty and the policy document, and the institutions you have set up, are going to make Rwanda a safe country for asylum seekers, what is the point of this Bill? Why oust the jurisdiction of the Supreme Court from checking whether you are right about that if you are so convinced that you are right about it?

Alex Chalk KC: Because we say that there is a proper role for the democratically elected body to consider this on new facts. You could do it via a different route, as you say. You could say, "We'll simply proceed as before", but it seems to me that, so long as it is consistent with the rule of law, we have to balance these competing considerations. The question I suggest is: is it proper, lawful and constitutionally appropriate to do so? If it was simply saying, "The Supreme Court said X and we say Y on the same fact", there would be a very strong argument for saying that that was constitutionally improper. I totally get that. But we are in different circumstances. Is it constitutionally improper for the Crown in Parliament, which is sovereign, to consider these matters in the round and reach its own adjudication? Plainly not. That is open to a government to do.

The Chair rightly noted at the beginning the special responsibilities on the Lord Chancellor. I have had to look carefully at whether this is somehow an affront to the oath. Is it somehow an affront to principle? That does not mean that everyone would take this course, but it is not an improper course. My judgment is that a huge amount of thought has gone into the Bill, as one might expect, to ensure that it stays within those parameters and within the substance of the treaty, and that it is a proper course for the Crown in Parliament to take.

Forgive me for stating the obvious, but free-thinking Members of Parliament will reach their own judgment on this. It is open for them to consider the evidence, and to do so in a way that no doubt takes into account what their constituents have to say, and so on, in the normal course of events. But there is nothing prima facie improper about taking this course, I would submit.

Chair: If the Government proceed with the scheme, the Supreme Court says, on the question of fact, that it does not think that Rwanda is safe, it sets out its reasons, and the Government then study the court's reasons and take steps, such as going from a memorandum of understanding to a treaty, and various other steps to address the concerns highlighted by the courts, does it not make sense to let the courts decide whether you have done enough to satisfy their concern?

Can I put it to you that there is something a bit uncomfortable about you putting the House of Commons in the position of us supposedly having to address the evidence and decide on the facts as well as on the law. That is not what we are there for. You have brought it to the wrong place. You have brought it to the Commons to make that decision, when in fact you should have left it to the courts to make that decision, as Joanna Cherry says.

Is the only reason why you are not letting it go back to the courts so that they can just tick the boxes and say, "Tick, tick, tick, you've dealt with all our concerns", but are taking it back to the Commons is because you have a majority in the Commons and you can get it voted through but you think you might not win in the Supreme Court? That is very uncomfortable, is it not? Should you not be going back to the court? Having identified the problems, why are they not the right people to say that you have solved them? Why ask us, or even this committee? It is not for us. It is for the Supreme Court.

Alex Chalk KC: Forgive the reductio ad absurdum, but if I was suggesting that for every applicant who might want to raise their personal circumstances, Parliament would decide on it, of course that would be a total absurdity. That is why we recognise that it would be wrong, and it would be going on the wrong side of the line, to deny an individual's opportunity to come before a court—

Chair: Is it a red line for future amendments in the Bill that you will not let that happen?

Alex Chalk KC: I will certainly deal with that point, but first I will develop the point that we think it is important that an individual should be able to come before a court to talk about their own specific circumstances. I do not say that just because we think that is how you stay on the right side of the constitutional line. To Baroness Kennedy's point about British values, if you went into any pub up and down the United Kingdom and said, "There was a person with really serious medical reasons which meant that if they got on that plane they might not survive the trip"—or they were in some diabetic coma or something dreadful—"and that came to pass because he or she had not been able to put those points before a court", British people would be shocked.

Chair: Okay, but we are not talking about the man in the pub. We are talking about Robert Jenrick, David Jones and Bill Cash, who are arguing precisely for that and saying that they want the Bill to be changed so that an individual cannot come before the courts to argue their individual case. Are you reassuring us that you will go with the man in the pub and not with Robert Jenrick, David Jones and Bill Cash and exclude people from bringing their individual circumstances to the court?

Alex Chalk KC: Our position is that whoever you are, whether you are any of the individuals you mentioned, the Prime Minister and the Government are willing to listen to sensible suggestions and insights. Those are all intelligent and highly able people, and maybe they have

thought of ways to improve the Bill that we have not thought of. However, we do think that there are certain aspects that are important to uphold to ensure that we remain within international law. The first reason for that is because we think there is a proper interest in the UK supporting the international rules-based order. Incidentally, who knows what will happen in the future to the precise shape and scope of the convention, but we are in it, so we should comply.

It is not just that. It would not be terribly sensible, we would argue, to do something that might collapse the agreement, because Rwanda would walk away. That is the position the Prime Minister has made clear. So as far as we are concerned, there will be a sensible dialogue among people who are thinking about this in a calm but principled way. Of course there may be differences of views, but we will also need to ensure that whatever sensible ideas come up we remain within the four corners of our international legal obligations.

Q4 **Joanna Cherry:** You mentioned your oath, Lord Chancellor, which is the oath you take under the Constitutional Reform Act. When you take office as Lord Chancellor, you swear an oath to respect the rule of law and to defend the independence of the judiciary. I think you would accept that you therefore have unique constitutional responsibilities. The Rwandan Bill disapplies human rights protections in the UK for a certain class of people in our jurisdiction, which undermines the fundamental principle of the universality of human rights. It ousts review by the courts on fundamental questions of fact, and it requires judges to say that a particular set of facts is true regardless of whether the evidence before them shows it to be untrue. I am just wondering how you reconcile those three things with your oath of office.

Alex Chalk KC: There are a number of things there. The first point is that whether you are a politician or a judge, whoever you are, everyone recognises that the rule of law does not simply mean the rule of the judiciary. It considers all sorts of aspects, including a proper recognition of the sovereignty of the Crown in Parliament. That is point one.

Point two is that the rule of law, in so far as it requires a British Government to comply with their international legal obligations, does not necessarily mean that the only way by which you can give effect to being members of the European Convention on Human Rights is by every section of the Human Rights Act applying in every case. At the risk of stating the obvious, we were members of the convention for decades before the Human Rights Act came into force. I was a law student when the Human Rights Act came into force under the slogan, "Bringing rights home", as we all remember. You will remember it very well, Chair. But, of course, we were members of the convention before.

The point I really want to make—I made it inelegantly before, so let me emphasise it now—is that the touchstone of membership of the convention is whether you give effect to Article 13. We say that we do give effect to Article 13, and we specifically think about Article 13, which runs like a stick of rock through this Bill. That is why we say that you do

so first by ensuring that Section 4 on declaration of incompatibility is there so that the courts can be seized of this issue, and that an individual can make his or her points before the court.

We therefore say that the third point is that there is nothing constitutionally improper, or indeed that undermines the rule of law or my oath or anything else, for Parliament to say, "We are going to make a judgment on the question of whether Rwanda is safe". I have not heard anyone argue that Parliament cannot do that. Of course Parliament can do that. Edward Garnier was saying that Parliament can argue that black is white, and the dog is a cat if that is what it wants. However, we go on to say that there is a proper evidential basis for that as well.

Joanna Cherry: Lord Chancellor, I am not interested in whether Parliament can do it or not. I know, as a result of the unfortunate English legal doctrine of parliamentary sovereignty, that the UK Parliament seems to be able to do whatever it wants, in theory, but that is not what I am interested in. I am interested in the preservation of the British Constitution. That is a strange thing for a Scot Nat to say, but I would like to see—

Alex Chalk KC: We welcome it.

Joanna Cherry: —similar principles apply when my country becomes independent and gets its own written constitution. At the moment, we have an unwritten constitution, which involves various checks and balances. I suggest to you that this Bill upsets all those checks and balances—in fact, some of your Back-Benchers have made that point, including your very distinguished predecessor, Sir Robert Buckland, who made that point when he talked about comity in the Chambers yesterday. As a Parliament, you are usurping part of the judicial function. Of course, if the Supreme Court makes a decision that Parliament does not like, Parliament can change the law, because Parliament is supreme. What Parliament cannot do is change the facts. It is the sort of thing that goes on in a dictatorship, not in a democracy. I exaggerate slightly, but it is really. I am not really buying this. I want to pick up on something you said that rather alarmed me when you said that nobody suggests that we have to accept or apply all the articles to the ECHR.

Alex Chalk KC: No, I did not say that. I was talking about sections of the HRA. That is a different point.

Joanna Cherry: Yes, but do you or do you not accept that Article 1 of the Universal Declaration of Human Rights, which says that human rights apply to everyone, all men and all women?

Alex Chalk KC: Can I just deal with the points you make?

Joanna Cherry: That is fundamental. That is a really important question. Do you or do you not accept Article 1 of the Universal Declaration of Human Rights: that human rights apply to all men or all women, or are you saying that it is proper for Parliament to create classes of people to

whom human rights do not apply? I would suggest to you that, when that happens in a country, it is normally the sign that the country is on a bit of a slippery slope.

Alex Chalk KC: There are lots of points in there, and I must respond to some of them. First, I know it was a slip of the tongue, but I think that suggestions of a dictatorship are a long way wide of the mark.

Joanna Cherry: I am not saying that we are a dictatorship. I am saying that is the sort of thing that happens in a dictatorship, that there is a declaration that all cats will now become dogs, or all Jews will become inhuman. These are extreme examples, but my point is really about the universality of human rights, so, if you could direct your answer to that, do you accept that human rights are universal or not?

Alex Chalk KC: You say they are extreme examples, but my point is this is not an extreme example. I need to deal with these points, and I will come to your issue at the end in a moment. You say that this is usurping judicial function. That is another way of saying that there is an element of an ouster in this. That is true. Ousters exist. If you tripped in here wanting to bring a claim for negligence, and you did so four years later, effectively your claim would be ousted, because Parliament, by the Limitation Act, has said that you cannot bring your claim. That happens.

Joanna Cherry: Yes, but I have had three years to bring it.

Alex Chalk KC: You had three years to bring it. All I am saying—

Joanna Cherry: These people have no time to bring it and will not be allowed to bring it to all.

Alex Chalk KC: The point is, though, that of course that is perfectly legitimate for Parliament to do. It does it all the time. There is a proper question about whether it is constitutionally right to have a complete ouster. We say that the proper balance—the Home Secretary called it the Goldilocks point—comes with the fact that an individual should be able to put their points before a court. We think that is right and that, without that, there are acute questions along the lines that you have indicated.

Respectfully, I think you unintentionally mischaracterised what I said. I did not say that we should not give effect to Article 2 of the convention on the right to life, prohibition against torture and degrading treatment, prohibition against slavery, liberty and security, fair trial, all those things that we are familiar with. Those all stay. We can regale them: privacy in family life, freedoms, et cetera.

The point I was making about the Human Rights Act, which the then Government said is bringing those rights home, is not of itself the touchstone of our membership of the convention. The touchstone of our membership of the convention is whether Article 13 of the convention—not of the Human Rights Act—on the right to an effective remedy, is properly reflected in this Bill. We say that it is, and you know that it is, because an individual can get before a court—let us be clear what that

means—and say, "I say there's a breach of Article 3 on the prohibition against torture and human degrading treatment, because I've got some particular genetic condition for which I can't have treatment in Rwanda. Therefore, if you stick me on that plane, it will amount to a breach of Article 3". We say that they should be able to advance that point if we are going to be in the convention.

We also say that there can be an opportunity for someone to get before a court to say that there is declaration of incompatibility. Those are important. That is the touchstone of membership. It is not the touchstone to then say, "You have to have all these other aspects of the Human Rights Act". That is the point that I probably did not make clearly enough before, but that is what I am very clear about.

Joanna Cherry: I think you are really saying that Clause 4 of this Bill is a red line for you.

Alex Chalk KC: We say that we have carefully calibrated this Bill to ensure that we can do what we need to do, which, incidentally, we think is a proper way of showing the British people that something we signed up to back in 1951 remains relevant today. In other words, you, the man and woman in the street, can be satisfied that your Government can safeguard the borders while we are the open, tolerant, human-rights country that we want us to be, and so you do not, as it were, bring those rights into disrepute. We think it is possible to do both, but we have to be very careful about how we do so. We think we have the balance right.

Joanna Cherry: Can you answer the question on the universality of human rights? Do you think human rights should apply to everybody without distinction, or do you think we can create classes for whom human rights do not apply to the same extent as for others?

Alex Chalk KC: This is an academic question, which bears a very long and careful analysis. If you will forgive me, I will write to you on that specific point, because it is a complex question.

Joanna Cherry: It is.

Alex Chalk KC: It does not necessarily lend itself to a yes or no answer. I will write to you.

Joanna Cherry: I am grateful to you.

Q5 **Baroness Kennedy of The Shaws:** Lord Chancellor, I was really interested that when you gave examples of individuals who might be able to bring a case before a court you used health, because the World Health Organization's analysis of Rwanda is that it is particularly unsuccessful in relation to mental health issues. It does not have many people who are qualified to deal with people who have mental health issues. I suggest to you that it is one of the reasons why, in the original memorandum and in the treaty, there is an arrangement whereby Rwanda can send to Britain—I hope that the British public are listening to this—a number of persons they feel would benefit from coming to Britain as asylum seekers

because of what is not available for them in Rwanda. I suggest to you that that is dealing with people who have serious mental health issues.

People who have been tortured often have serious mental health issues. Rwanda is not capable of dealing with those. That is why built into this arrangement with Rwanda is this business that a number of people can be sent here to us in exchange for our arrangement to send people there. We are not receiving any money from Rwanda for that benefit, but I am just saying to you that it is to do with the absence of mental health professional practitioners and people who can help those with serious mental health illness. That is one of the problems at the heart of this. People who have suffered persecution often have mental health issues, and they cannot be dealt with adequately in Rwanda.

Alex Chalk KC: I confess that I am not an expert on the specifics of the mental health provision, but certainly part of the reason why we wanted to secure a treaty with Rwanda is because, on any view, notwithstanding the proper points made by the Supreme Court, Rwanda has come a very long way in recent years. You are certainly not making this point, but others have perhaps disparaged Rwanda—I will be careful what words I use—and have looked through a lens of 30 years ago, which I understand, because that is when it was in the news, but so much has changed in that time, first, in civic society but also in health treatment. I am very happy to look at the specific point you raise. It is not something that I have a personal responsibility for; it is a matter for the Home Office.

The central point is that we think it must be right that in extremis, in the vanishingly narrow set of circumstances where there are specifics relating to that individual, very possibly to do with health, they should be able to get that before a court, because we think that also chimes with the instincts of the British people, apart from anything else. They would expect that person to be able to make that point and to advance those medical records.

Q6 **Lord Alton of Liverpool:** You have put great emphasis on the convention. I was very struck when Ms Cherry was asking her question that this week is the 75th anniversary of the Universal Declaration of Human Rights, that gift of Eleanor Roosevelt, René Cassin and others. Why did we do that? It was in the aftermath of the Holocaust and all the horrors that have beset the world. The 30 articles came from that, but so did the convention in 1951, as you have rightly said. You come from the tradition of David Maxwell Fyfe, and of Winston Churchill, who said that, "In the centre of our movement stands the idea of a Charter of Human Rights, guarded by freedom and sustained by law" and that "moral concepts will be able to win the respect and recognition of mankind". I get the impression, from everything that you have said from your days in Middle Temple, that you believe in that too.

You said a few moments ago, "We're in it, so we should comply". How does that measure up against the statement by the Home Secretary on the Floor of the House that he cannot sign off the compatibility of this Bill

with the convention rights, and indeed against the contradiction on 6 December when he said, "It is absolutely certain that the Bill is in accordance with international law"? How can those two statements be reconciled? Is it not odd that, for the second time in one year, we had the Government saying, "This Bill is not compatible with the convention". I have been in both Houses for over 40 years and I have seen Ministers like you, good men and women, who have been proud to stand up and say that legislation is compatible, that we are in it, so we should comply. Are you proud of the fact that, twice in one year, on very controversial pieces of legislation, we have not been able to get sign-off by Ministers?

Alex Chalk KC: Respectfully, there are lots of very important points there. First, yes, if you are in it, you should comply. I want to make one brief point about that. This is probably not what anyone wants to think about on a Wednesday afternoon, but going back to our 18th-century constitutional history, Edmund Burke, who incidentally on one view is the father of conservatism, said, "A state without the means of some change is also without the means of its conservation". He was effectively arguing in favour of cautious, incremental recalibration.

I make that point, because who knows how we will reframe that convention in the future? There is the perfectly legitimate argument that things need to evolve. After all, the times they are a'changing, and all that, and the world is very different compared to what it was in the ashes of the Second World War. Indeed, when I have been to Strasbourg and to the Council of Europe in Riga and elsewhere, we have such an open, sensible, constructive dialogue with our colleagues, which includes conversations about where the convention is going. So I make that point. But, yes, when you have the convention, we should comply with it.

Your second point was, "That's all very interesting, but you want to do a 19(1)(b)", to paraphrase what I think you are saying. It is very important to be clear what 19(1)(b) is and is not. There are examples of that clause being invoked out of an abundance of caution, even where you think there is a perfectly proper argument that you are in the convention.

Chair: Can you just decode that?

Alex Chalk KC: Yes, I will explain.

Chair: Are you saying that the Home Secretary is saying that he cannot certify that it is compatible with the Bill, but it might be? He might just be being very cautious. That is a bit odd, is it not?

Alex Chalk KC: In 2003, there was a 19(1)(b) statement in the Communications Act after a case in the ECHR. I think it was VgT in Switzerland, as I recall, about the funding of paid political advertising. As a result of that case, the late, great and much-missed Tessa Jowell could not give a 19(1)(a) statement. It was a 19(1)(b). The Communications Act and the case arising out of it was litigated, and the UK ended up winning, but I think it was 9:8, so a very close judgment.

The then Secretary of State said, and the modern Secretary of State is saying, "There is a perfectly respectable argument that it is compatible, but I cannot 19(1)(a) it", because we accept this is novel. We have been very up front about that. But we also think—I risk repeating myself, but I will not—that because of the way it has been calibrated and designed and the careful path that it has steered, it remains in the convention. However, because it is novel, and out of an abundance of clarity, transparency and, yes, caution, we have 19(1)(b)-ed it.

Lord Alton of Liverpool: In accordance with what you just said about being up front, can you spell out for the committee the sections of the Bill that you think might not be in compliance?

Alex Chalk KC: It is not about specific sections. You have to look at the Bill in the round and decide whether you can say for sure that this is in compliance. That is what Section 19(1)(a) is. The central point I am making is that there have been examples in the past where British Ministers, in good faith, which by the way is what you would expect of a British Minister—

Chair: Lord Alton was asking whether you can identify any specific parts of the Bill as opposed to other parts? You are saying, no, it is about the Bill as a whole.

Alex Chalk KC: You have to look at the Bill as a whole. We can look at the Bill together if you want. To the point that Ms Cherry was making about the disapplication of the Human Rights Act, there might be some who argue that this means that we are not in compliance with the convention, but we say no, we think we are. We think we are right, and there is a very reasonable argument to that effect. I take some reassurance from the fact that a British Minister does not metaphorically stick his chest out and say, "We're absolutely in compliance". He says, "Yes, this is novel. Some people will say this is contentious, but we think there's a perfectly respectable argument to say that it's on the right side of the line. That's why we are using 19(1)(b)".

Chair: Order, order. The committee will stand adjourned for 15 minutes for two Divisions.

The committee suspended for two Divisions in the House of Commons.

Chair: Thank you, Lord Chancellor. I will continue the session with a request to you. You mentioned the Communications Act 2003. As a Bill, there was no certification that it was compliant with the European Convention on Human Rights, and that was precisely so. Incidentally, that was the fear that the provision of restricting political donations for party political campaigning might interfere with freedom of speech. That is why it might not have been in compliance with the European convention's protection of free speech.

As you rightly said, subsequently the case was contested and won by the UK Government, but the point was that it was specified that it was that provision which meant that the Bill as a whole could not be certified as

being compliant. It was one clause. The ECHR memorandum that accompanies the Rwanda Bill explains why it believes that it is in compliance with the European convention. I would be grateful if you could write to us to say which provisions in the Bill cause the doubt that it might not be compliant, so that we are clear about that.

Alex Chalk KC: Okay.

Chair: That would be very helpful. There is one further thing. I hope you were not arguing this, because it would be a bit odd if you were. Just to clarify, were you arguing that it might be all right for us to do something that is not compliant with the European Convention on Human Rights, because at some future date countries might get together to change the European convention, and thereby we might be all right again?

Alex Chalk KC: No, I was not arguing that.

Chair: Okay, good.

Alex Chalk KC: No. If that impression came across, that is not right.

Chair: Do not worry. So long as you were not making that point, and it was just a misunderstanding, that is all right.

Baroness Kennedy of The Shaws: You were defended in your absence.

Alex Chalk KC: Thank you. I was just saying that things can change. Things evolve. That was my point.

Chair: But that is not a justification for what you do at the moment.

Alex Chalk KC: Correct.

Chair: It might be a justification for arguing within the parties to the European convention to change it, and something you have done that might look all right retrospectively, but you have to judge what it is at the time.

Alex Chalk KC: Yes, I agree with that.

Chair: Will you write to us along those lines explaining which provisions of the Bill you feel are not—?

Alex Chalk KC: Yes.

Chair: We will look forward to that. Bearing in mind the Bill is going into committee pretty quickly and quite apace, can you please do that promptly?

Alex Chalk KC: We will do it with all due diligence next.

Chair: Leaving out Christmas Day and New Year's Eve, but aside from that, we will need it—

Alex Chalk KC: This is a tough committee.

Chair: Because this is going through, and the House needs that—

Alex Chalk KC: We recognise that.

Chair: We are a committee of the House. We are here to help the House shine a light on the proceedings that are going through the House. Thank you very much. We will look forward to that.

Q7 **Baroness Meyer:** Changing the subject a little, as part of our inquiry into human rights of asylum seekers, we heard several concerns about the provision of accommodation, financial support, the availability of legal aid, the protection of victims, trafficking and modern slavery. Are you confident that the UK's current framework for dealing with asylum seekers, including in particular the Illegal Migration Act, complies with our human rights obligations?

Alex Chalk KC: Plainly, as is implicit and indeed explicit in your question, there are several aspects to how you deal with asylum seekers to ensure that you are upholding their human rights. You mentioned accommodation and legal aid, and indeed there are many other aspects. Accommodation is really in the Home Secretary's lane. I have particular responsibilities in respect of legal aid. This point is worth emphasising. The IMA is necessarily rapid and operates within tight timelines, trying to get all the appeals and so on done within a limited period of time, but—this is really important—that only works, as a matter of law and of upholding basic rights, if you give someone an opportunity to get some advice.

This is done at public expense, by the way, quite rightly. I always say that I am a legal aid lawyer on a career break. Legal aid matters, so we want to ensure that people have the opportunity to advance those arguments. Equally, the British people are entitled to say, "Once you've had your opportunity, once you've had a fair crack at the whip to make your points, if those points are unsuccessful, we can't have this merry-go-round where it appears that there's no finality to this litigation". Incidentally, the best way you make a cogent submission to the court is to say, "This guy has had every opportunity to have that legal aid". The short answer to your question is, yes, we do think that. On the specific legal aid point, which is in my lane, we have been at pains to ensure, at some considerable public expense, that legal aid is available.

Baroness Meyer: Can you tell us a bit more about this terrible case of the asylum seeker who died recently?

Alex Chalk KC: I anticipated you might ask about this. It is obviously an extremely sad case. The police are already investigating it, and there will be an inquest in the normal way. I would not be able to say a great deal about it even if I knew. Necessarily, it is still very early days in that investigation, but I would like to put on record that this is plainly a great tragedy, and I send my condolences to the family and friends of the poor man who died in this case.

Q8 **Lord Dholakia:** Can I probe a little? Can you not give us some idea of

who committed suicide or whatever the case was? We have asylum seekers from various parts of the world: Afghanistan, Iraq, other African countries. Something should have said that this person, who took his life, was born in this particular country or was of a particular nationality, rather than going into the causes of why he committed suicide.

Alex Chalk KC: I am sorry. I am not sure I understood the question.

Lord Dholakia: All we saw on the television after the death of an individual was his coffin was being taken out, and a press release that an asylum seeker had died or committed suicide. There was nothing further. I think people want to know the precise nationality of that individual.

Alex Chalk KC: As you say, what happened has to be established.

Baroness Kennedy of The Shaws: Investigated.

Alex Chalk KC: It has to be investigated. It is not out of any reticence. It is simply because bitter experience tells us that, when one jumps to conclusions, one can end up inadvertently misleading the public. It has to take its course necessarily, I am afraid. Coroners are independent, of course, and he or she will want to release whatever details they properly can at the appropriate moment. That is probably as far as I can take it.

Chair: Thank you for your answer to the further question posed by Lord Dholakia following the question from Lady Meyer, but this was a man who was in the custody of the state—

Alex Chalk KC: He was.

Chair: —and the state has an obligation to protect the right to life of anybody who is in its custody. Following Lord Dholakia's point, I think people will expect that the state knows who is in its custody and who has died and will respect the need for transparency, commensurate with respect for the family life and the relatives. However, there is a need for transparency here, and people do not like at all the idea that the state in this situation will hide behind a process of saying, "We're going to wait a couple of years until the coroner looks at it". I do not expect you to answer any of that. I am just making an obiter dictum, if I might.

Alex Chalk KC: One very good thing, by the way, is that whether somebody is in the custody of the state—in the proper use of the word; as in, the prison system—or indeed in the care of the state, as in these circumstances, this is likely to be an Article 2-style inquest. We have brought more exceptional case funding so that there is more legal aid available for those types of cases, precisely because the state has a role. I just wanted to make the point that we are very alive to that, and here is an example of where we ensure that the legal aid system does respond to the convention rights of individuals.

Chair: Thank you.

Q9 **Lord Henley:** We now turn to Rule 39 and the ability of the ECHR to

indicate states to refrain from taking certain action while human rights claims are considered. Do you believe that Rule 39 decisions are binding on the UK as a matter of international law? In what circumstances could a Minister ever use the power in Clause 5 of the Rwanda Bill and Section 55 of the Illegal Migration Act 2023 to ignore a Rule 39 decision without placing the UK in breach of our international obligations?

Alex Chalk KC: We do not need a boring history lesson, but until 2005, as you know, Rule 39 was explicitly non-binding on member states. The case of Cruz Varas made that clear, and it was only in the case of Mamatkulov v Turkey in 2005 where that position was said to change.

Even parking that to one side for a second, this does not arise for consideration at this point, because the circumstances can be significant. One would want to know the case in which there is a Rule 39 order. What was the evidence that was considered? Did the Government have an opportunity to be heard? What exactly did the court say? We submit that it would be a discourtesy to the European court, quite apart from anything else, to prejudge how you are going to respond in respect of circumstances that are not yet clear. You would want to read what they had to say about it. The Prime Minister has been very clear about his position. As for precisely what arises in the context of Rule 39, that is something we have to take in stages.

Q10 **Chair:** Robert Jenrick said last night that the Bill should be amended so that it does not just confirm that Ministers can choose whether to comply with interim measures issued by the European Court of Human Rights relating to flights to Rwanda, but that it would require Ministers to ignore those interim measures. Do you think that is an acceptable change?

Alex Chalk KC: We will listen very carefully to what all Back-Benchers and former Ministers have to say. We have crafted the Bill to put it in the right place, as we perceive it. No Government have a monopoly on wisdom, and we will listen to all sensible suggestions that keep us within international law.

Joanna Cherry: I am troubled by this. It seems to me that, basically, Ministers are going to usurp what is a judicial function here. You are saying that it is going to be left to Ministers rather than judges to decide whether there has been failure to comply with interim measures from the European Court of Human Rights, which as you say, according to the court itself, amounts to a breach of Article 34. Is that not a real interference with the separation of powers? We are not even talking about parliamentary sovereignty here; we are talking about ministerial fiat as to whether to obey an international court.

Alex Chalk KC: As a matter of practicality, it has always been for a Minister to make a decision about whether to comply. That is a statement of fact. On the question of what it is proper to do, as you say, you normally have the superintendence of the courts, and Ministers should abide by an order of the court. The only point I am making is that this

does not arise for discussion now, because we will have to see what all the circumstances are down the line.

I was in Strasbourg recently, where, incidentally, Britain has a much greater influence than perhaps a lot of people realise, because they recognise the quality of our jurisprudence. We said, "You might want to think about how Rule 39 applies. In other words, is it right for there to be ex parte applications in circumstances where one of the parties is a nation state, and, by the way, you really should give them opportunity to be heard wherever possible?" On issues such as the naming of judge, in all our jurisdictions, whether Scottish or English and Welsh, our tradition is that you really should name the judge. We have made those suggestions, and we think those are proper points to make, and I do not think it is jingoistic to say that we have led the debate on that.

All I am saying is that the whole issue of Rule 39 is coming under scrutiny. The central premise you make is entirely fair and proper. The question about exactly what happens has to take account of the circumstances down the track. I do not think there is very much more I can usefully add on that point.

Chair: There are two circumstances that might be down the track. One is the facts of what Ministers decide to do. The other is the proposed amendment that we should have on the face of the Bill a requirement for Ministers to ignore those interim measures. That is what was proposed last night.

Alex Chalk KC: That is what was proposed. My experience as a Minister suggests that one should wait to see what individuals come up with by way of proposal rather than what they say they are going to come up with by way of proposal. Respectfully, I have heard very clearly what has been said. That is an issue we would have to give very careful consideration to.

Baroness Kennedy of The Shaws: Would you find it attractive or unattractive?

Alex Chalk KC: I do not know what it is yet, because I do not know how it has been framed.

Chair: We all know what it is, and we can see that you find it unattractive, so we will see how you get on with it.

Q11 **Joanna Cherry:** You mentioned visiting Strasbourg. The committee visited Strasbourg last year. Again, it was made very clear to us that what the United Kingdom does, and the United Kingdom's influence, is important and hugely valued. However, the point was equally made to us that if the United Kingdom takes it upon itself unilaterally to ignore aspects of the convention, such as the interim orders, that has a knock-on effect on other countries, particularly some of the countries in eastern Europe that, let us say, are not as closely interested in constitutionalism and human rights as the United Kingdom has been in the past.

Alex Chalk KC: I absolutely accept that point. The UK's record on compliance with orders—that is to say, not interim orders—is extremely good. We sign up to something and we do it. There was the whole Hirst judgment, which created paroxysms in the British establishment, because here was an outstanding judgment. That caused us real disquiet, because we are a rule of law nation, so I totally get the point, which is why we have to consider this carefully and proceed with caution.

Q12 **Baroness Kennedy of The Shaws:** I share your sense of pride in the British legal system. That is not to say that we always get everything right, but it is highly respected around the world, and much of my work now is international. Our contribution to the development of law in Europe has been without comparison, truthfully.

Alex Chalk KC: It really has.

Baroness Kennedy of The Shaws: The reality, although people do not seem to realise this, is that it is very rare for the European Court to ever find against Britain. You can probably count that on a hand or two, but it is really rare. That leadership role is precious. You are currently our holder of the great role of state that protects it, so I hope that you can maintain that strength of purpose in facing this challenge.

Alex Chalk KC: I thank you for saying that. The extent of the contribution we make is poorly understood—as you say, it is the jurisprudence but also the conflict of laws legislation—but it is colossal. This country has the second-largest legal sector in the world, but no one realises it. It is something that we just do not talk about. We should take much more pride as a nation in our contribution and what we stand for.

Baroness Kennedy of The Shaws: The other thing is that countries, for example in contractual matters, choose this as the place to come to for resolution of disputes, because they know we have an independent judiciary and good lawyering and there is a respect for law. Are we not putting that at risk by having legislation like this?

Alex Chalk KC: It is precisely because of that we think so carefully about this. It is why we have to be able to say, "We're remaining within international law", even if we were to think—I am not suggesting that we do—"That was 70 years ago. My goodness, this is all terribly inconvenient". That is what it means to be a rule-of-law nation; you have to do it when it is uncomfortable. Our position is that it remains within the four corners of international law. It is precisely because of our outsized influence and our disproportionate weight, and the fact that people look to this nation, that we have to set an example.

Baroness Kennedy of The Shaws: Lord Chancellor, you know that there are sections of your own party that really do not share your commitment to the rule of law, and you are going to be under enormous pressure. Are you going to be steely enough to resist it?

Alex Chalk KC: I do not accept that. As a party, we take pride in this country. My job is to make sure that one of the things we should take

pride in, alongside the professionalism of our Armed Forces and so on, is our contribution to the world through the rule of law, which is far beyond what most of our fellow citizens have been given to understand. That is a point that will weigh heavily with my esteemed colleagues.

Baroness Lawrence of Clarendon: You talked earlier about the man in the pub.

Alex Chalk KC: Yes. Or woman. I did say "or woman".

Baroness Lawrence of Clarendon: Or woman in the pub.

Baroness Kennedy of The Shaws: She is not pub-goer.

Baroness Lawrence of Clarendon: Exactly. That did not answer the question. We are talking about immigrants who will be transported and their voices. Their voices are not in the pub. Their voices are not able to speak in the courts or anything like that. Their voices are not there. I just wanted you to reflect on that and think whether that is the right analogy to give.

Alex Chalk KC: All I was thinking when I was imperfectly trying to make the point is that, when we look at some of the things that we think it is important to uphold and maintain—this is the point about an individual, or an immigrant as you refer to them, being able to get before a court to say, "Listen, I'm really ill. If you put me on that plane, I'll suffer serious injury or worse"—if we said to the man or woman in the pub, a Brit like you or me or any of our pals, "Do you think that, ultimately, they should be able to tell someone if the plane ride would kill them?", most people would say, "Yes", because that is the kind of people we are. We are basically a fair-minded people.

They would also say, by the way, that a British Government must, as a matter of sovereignty, be able to control its borders. We must be able to decide who comes here, so the proper balance is as we have done it. We think, without being too grandiose about it, that this chimes with the good sense of the British people, whether they are pub-goers or not.

Baroness Lawrence of Clarendon: Why Rwanda and not any other country?

Alex Chalk KC: Because we have an agreement with Rwanda.

Baroness Lawrence of Clarendon: Before you got to that point, how did you choose Rwanda?

Alex Chalk KC: I do not hold the pen on that. That is led by the Home Office and the Foreign Office. Plainly, it is going to be a Venn diagram of issues. First, is there a nation that wants to have an agreement with us? Secondly, do we think there are sufficient structures and organisations in place? That is where there have been question marks and so on, and the treaty is designed to allay those concerns. Thirdly, there will be issues about the precise arrangements and cost, and so on. It is no secret that

the British Government have spoken to more than one nation, but this is the show in town, and the relationship with Rwanda is pretty well established now.

It has not completely taken effect, of course, but the political relations, the relations between our relative civil servants, are very good and very mature now. This is a modern relationship. My children are growing up, and in the future I think they will be looking at partnerships between Britain and African nations and will not give that a second look. Many of these African countries are growing at a far greater rate than we are. There are real areas of exciting development, interesting thinking and science and technology. These are countries that will have very mature partnerships with us in the future.

Baroness Lawrence of Clarendon: But immigrants and those in the boats coming here are not thinking, "I'm coming here, because I want to go to Rwanda".

Alex Chalk KC: No.

Baroness Lawrence of Clarendon: They are coming here because they feel that this country will uphold their human rights.

Alex Chalk KC: They want to come here.

Baroness Lawrence of Clarendon: So, once they arrive here, to find themselves in a situation where the UK decides, "No, we're going to send you to Rwanda"—

Alex Chalk KC: That is at the heart of it, I am afraid, and that is sort of the point. Australia did this with Nauru, as you know. The way I see it, we are an open, humane, decent, tolerant and compassionate country. We are the nation that has said to 500,000 people since 2014 or 2015, "If you're Ukrainian or on the Syrian Middle East scheme or from Hong Kong, come to our country, because we want to offer sanctuary. We want to be open, decent and humane". Part of the rule of law is saying, "Yes, that is a legitimate route", but it is also to say that those who do not arrive legally should not be put in a similarly strong position. So, yes, there is an element of jeopardy that people will want to come here rather than necessarily go to Rwanda, but that is at the heart of the scheme.

Baroness Lawrence of Clarendon: That makes me start to look a little further, because the people who are coming and who will be sent to Rwanda are not from Hong Kong or Ukraine; they are coming from other African countries.

Alex Chalk KC: That is right.

Baroness Lawrence of Clarendon: It makes the proposition very different.

Alex Chalk KC: It is very important to note that it is not saying that there will be different treatment depending on which country you come from.

Baroness Lawrence of Clarendon: It is seen as that.

Alex Chalk KC: It is very important to be super-clear about that. The difference between the two is that we have set up a particular route for people coming from Ukraine, because of the circumstances that existed there. We set up the scheme—I have forgotten the name of it now—to allow 20,000 people to come from Syria, and the Hong Kongers, and Operation Pitting to allow those to whom we owed a debt of gratitude to come from Afghanistan. That, as it were, is legal migration, where we say, "This is part of our role as a global citizen who will act in a compassionate and decent internationalist way".

At the same time, for those people who arrive illegally—incidentally, it has been illegal for 40 years; arriving in that way is not a new thing—we say that there has to be a different approach, because that is the way you are fair to the British people but also to those who have played by the rules and done the right thing. We think that is also part of what it means to be British.

Q13 **Joanna Cherry:** I hear what you are saying, but it is a fact, is not it, that there are 17 Afghans in every small boat for one Afghan who gets in via the system? The United Kingdom owes Afghanistan a particular debt as a result of our sudden and abrupt withdrawal. Helena and I have been working, for example, on trying to get Afghan female judges and prosecutors in—with very little success, despite the fact that I have had meetings with all sorts of your colleagues, including the Prime Minister. Afghans cannot get to this country easily, so they are coming on the small boats. Do you think these Afghanis—perhaps some of them served as interpreters for the British Army—should be packed off to Rwanda? Do you think that is a mark of a humane country the United Kingdom, Lord Chancellor?

Alex Chalk KC: First, can I commend your work in respect of Afghan judges? That is absolutely to be commended.

Joanna Cherry: It is very kind of you, but I have not had any results yet. Helena had results at the beginning, but despite repeated ministerial meetings with your colleagues—including the PM as a result of a PMQ this summer—the Government have not budged an inch. There is really not much point in commending me. I am really not looking for praise here. I am actually making quite a harsh point that Britain has not fulfilled its moral duty towards these people, so they are coming by small boats. Do you think they should be packed off to Rwanda? That is my question, Lord Chancellor, because that is what this Bill will do.

Alex Chalk KC: First, on the judges thing, do come and speak to me, because I do think that is an incredibly important point. Secondly, lest we forget, the lives of British soldiers were put at risk in Kabul, in what you

will recall was an extremely volatile and dangerous experience, to ensure that 15,000 people were extracted and brought to the UK. Also, American soldiers lost their lives because of a terrorist attack in that very airbase where British soldiers were within half a kilometre. It was highly dangerous, and we put the lives of British soldiers at risk to repay our debt of gratitude. I also recall the Secretary of State for Defence saying, in emotional terms, that he recognised that, because of the volatility of that situation, we would not be able to extract everyone we wanted to, but that was because the Taliban were literally at the gates.

Thirdly, we have set up the ARAP scheme. This is not directly in my lane; this is a matter for the Home Office and the Ministry of Defence. I am aware that we have done this precisely to discharge our debt of honour and gratitude to those to whom we owe that particularly duty, because they have interpreted for the British forces or whatever. We take the matter extremely seriously, and that continues to be the case. I happen to know from my brief period of time in the Ministry of Defence that a vast amount of time was taken to ensure there was proper accommodation, so that those to whom we owed a debt of gratitude were not stuck in hotels but were moved into settled accommodation.

However, I respectfully say that that is separate from the issue of general illegal migration. We do not owe, as it were, a debt to one national over another. We should have a race-blind policy, but it does mean that if there is a special connection, a special duty—whether you are Afghan or because you have helped British forces—we should discharge that duty to you, and that is exactly what we are doing.

Q14 **Lord Alton of Liverpool:** Lord Chancellor, can I take you to the Criminal Justice Bill and Article 8 of the European Convention on Human Rights, the right to family life? The Bill will provide statutory authority for sending prisoners from the UK to serve their sentences in foreign prisons. I wonder how you evaluate that against the right to family life and their chance of rehabilitation being protected if they are in another country. Presumably, a lot will depend on the individual agreements reached with different nations. What opportunity will Parliament get to scrutinise the human rights compatibility of those agreements?

Alex Chalk KC: There are two key questions in that. First, I absolutely agree with you that part of a prisoner's rehabilitation is about ensuring that their relationships with people on the outside are improved and cemented. To be blunt, there are three things you need to do: try to get someone a job; try to address any mental health or substance abuse problem; and ensure that they have a proper stable life afterwards in terms of relationships. You could add in accommodation as well. We completely accept that point. Therefore, we as a Government, or whoever is in power, will have to take great care to ensure, if there is an agreement with another country—there is nothing terribly novel about that; Norway, and so on, has done it—that the right kind of prisoner is going.

The sad truth, I am afraid, is that there are some people in custody who, perhaps because they are foreign nationals, have very limited ties with people here in the UK, but I would not want a situation where people were being denied their opportunity to foster and cement those relationships. As you say, it will come down to the nature and the operationalisation—terrible word, but you know what I mean—of the agreement to ensure it is right for those serving a sentence. That would include issues about whether they are a remand or a serving prisoner, whether they are an FNO, whether they are a Brit, what sentence they are on, et cetera.

Lord Alton of Liverpool: And on the issue about Parliament having a chance to scrutinise it?

Alex Chalk KC: Incidentally, I have received a note saying that I am horribly late for my next meeting, so please forgive me.

Lord Alton of Liverpool: I understand.

Alex Chalk KC: On the issue of Parliament, it will be agreed by way of a treaty. There is nothing unusual in that, but the CRaG process would apply, which will mean that Parliament has the opportunity to pray against it within 21 days of it being laid. They could stop it coming into effect, and the Government would have to lay it again. That is the normal CRaG process.

Lord Alton of Liverpool: Do you have any idea of the numbers of people this is likely to involve?

Alex Chalk KC: I do not at this stage, simply because we are at an early stage in discussions. I can write in respect of those issues, Chair, but in the spring of next year, discussions having taken place, we will be in a much better position to set out the timeline and indeed the parameters for next steps, so I will know much more. In the grand scheme of things, it is going to be relatively modest, if it happens at all. We simply have to take this in stages and see whether it is suitable. We are not going to compromise on standards or on the rehabilitation requirement and so on.

Q15 **Lord Dholakia:** I want to come back to the question posed by Baroness Lawrence and my colleague from the Lords. I forgot to declare my interest. I was born in a country neighbouring Rwanda, and I am associated with a number of projects in Rwanda. Everywhere I go in the Middle East, India, Pakistan, or anywhere there are asylum seekers who come to this country, the thing they remember about Rwanda is the genocide that took place there between Hutus and Tutsis, and quite often the question asked even now is about the unsafeness of that particular country.

The impression, very clearly, is not that Rwanda is a safe country. You mentioned it is a safe country, but it is not. Everywhere, there is copious evidence of Rwanda being unsafe. What would happen to people who are dealing with such cases in front of judges? When charges involve matters connected with human rights abuses or being beaten up or tortured, et

cetera, how would the courts deal with that when you tell them it is a safe country, but people know it is not safe?

Alex Chalk KC: On that specific point, the deeming provisions are in place. As I say, Parliament, if it chooses to, could deem Rwanda a safe country. No doubt, it will want to consider the package of evidence, some of which I have referred to in the policy statement already, but there will be further material for them to consider. If Parliament reaches that adjudication, someone can still go before a court and say, "As far as I am concerned, Parliament got it wrong. There should be a declaration of incompatibility", which is the Section 4 point. Our whole approach is that you have to remain within international law and you have to comply with Article 13. There are two principal ways you do that. One is the ability to mention your own personal circumstances—the illness point that I referred to before. Another is being able to make the Section 4 declaration of incompatibility point. That is how you ensure that the courts are not inappropriately ousted from the process.

Q16 **Baroness Kennedy of The Shaws:** I do not know how briefly you can answer this question. We have been having an inquiry in relation to Daesh returnees, the prosecutions of people who were involved in ISIL and that kind thing. We have heard evidence about Britons being detained in camps in north-east Syria in connection with all that, many of them women with small children. The former UN special rapporteur on counterterrorism and human rights, as well as organisations like Reprieve, told us that the UK should, as Canada and other countries are doing, be repatriating citizens currently detained there, prosecuting them in our courts if that is what is required and there is evidence, and sticking to our international legal obligations. If we are not careful, many of those people are likely to be victims of trafficking and might be stimulated back into terrorism again, as it is a breeding ground. What are we doing about all that?

Alex Chalk KC: Can I give you a brief answer and then offer to give you the longer answer in writing? First, this is really a matter for the Home Office and Foreign Office, but we have brought some people back. Secondly, everyone has to be seen on their facts, because, as you say, there may be national security considerations and one has to consider the safeness of the UK. Just saying, "Oh, well, just put them on trial then", is not always an answer. You can charge people with Section 5 of the Terrorism Act or Section 1, encouraging acts of terrorism or other matters, simply because it is extraterritorial, but I hardly need to tell you that you might have evidence to point to that, but it is not necessarily all admissible. Therefore, you have to work out whether you can put someone on trial.

Baroness Kennedy of The Shaws: Evidence is always a problem.

Alex Chalk KC: It is always a problem. Getting the evidence is difficult, and even if you have it, will it all be admissible in an English court? All I am saying is that each case has to be considered on its facts. We do not comment on individuals, but where we can, we do, and some people have

come back. There is a danger in making comparisons between what the Canadians have done or what we have done, because they are necessarily different people and different considerations apply. I have been informed that we do consider them on a case-by-case basis, and we have, as I say, brought some back to the UK—some, incidentally, for prosecution, but others to ensure that they are NRM-ed because there are trafficking issues.

Q17 **Joanna Cherry:** Lord Chancellor, you will be aware that the Global Alliance of National Human Rights Institutions is carrying out a review into the independence of the Equality and Human Rights Commission. So far as I can see, this review has been stimulated by a number of LGBT+ organisations, including Stonewall, which has tried on three occasions to get GANHRI to censure the EHRC, and now GANHRI is finally looking at the issue in a separate inquiry.

Equally, it is important to say, by way of background, that there are a number of other human rights organisations in the United Kingdom, including Sex Matters and the LGB Alliance, which have written to GANHRI saying that they think the EHRC is doing a good job and that basically this request for a review has been stimulated because the EHRC looked at the question of sex-based rights and Stonewall thought that it should not be doing that. From your point of view, do you have any concerns about the independence of the EHRC?

Alex Chalk KC: The independence of the EHRC is incredibly important, and, as a result, it has to respond to these various criticisms, claims and entreaties itself. That is a matter for it. As for the position of the British Government on some of the underlying issues, you will know our position on some of the points that the EHRC is being criticised abut, but it is necessarily a matter for an independent body to respond as it sees fit. I am tempted to get into some of the substantive issues which you have spoken very powerfully about, if I may say so, but I probably ought not to say anything beyond that.

Joanna Cherry: Fair enough.

Q18 **Lord Alton of Liverpool:** On the helpful reply you just gave Baroness Kennedy about Daesh, would you agree to a separate meeting where Lady Kennedy and I can come and see you to talk to you? I went there in 2019, and I met some of the victims. It is an issue that takes more time than would be possible even at a meeting like this. Would you agree to see us separately at some point so that we can discuss it with you?

Alex Chalk KC: How could I refuse?

Chair: These are issues of the highest importance that we have been discussing. We are very grateful to you for your time and for the thought that you have put into this. Thank you for your evidence. We look forward to hearing from you further.