



Joint Committee on Human Rights

Uncorrected oral evidence: Accountability for Daesh crimes (HC 1922)

Wednesday 31 January 2024

4.10 pm

Watch the meeting

Members present: Joanna Cherry MP (Chair); Lord Alton of Liverpool; Lord Dholakia; Dr Caroline Johnson MP; Baroness Kennedy of The Shaws; Baroness Lawrence of Clarendon; Baroness Meyer; Jill Mortimer MP; Lord Murray of Blidworth; Bell Ribeiro-Addy MP.

Questions 69 - 99

Witness

I: Jonathan Hall KC, Independent Reviewer of Terrorism Legislation.

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Examination of Witness

Jonathan Hall.

Q69 **Chair:** Welcome back to the Joint Committee on Human Rights. This is our second evidential session this afternoon. We are delighted to be joined by Jonathan Hall KC, the Independent Reviewer of Terrorism Legislation, of whom we will ask questions about our inquiry into accountability for Daesh crimes. We will probably cover issues such as deprivation of citizenship orders, repatriation obligations, and data about the convictions of individuals for terrorism offences.

Before we move to the questions, I will formally introduce our witness. Jonathan Hall is the Independent Reviewer of Terrorism Legislation, a role to which he was appointed in May 2019 and reappointed in March 2022. In addition, he is a barrister and has experience in many fields, including national security, human rights, extradition inquests and immigration. We are very happy to have him with us this afternoon.

I will kick off with the first question. Can you set out your role and remit as the Independent Reviewer of Terrorism Legislation and explain how it might be connected to the issue we are looking at: the United Kingdom's response to atrocities committed by Daesh?

Jonathan Hall: I have a statutory role and an obligation to review the operation of the Terrorism Act 2000 and the Terrorism Act 2006, which include the core offences and core investigative powers, as well as certain provisions of some other Acts, most notably the TPIM regime.

I have been interested in looking at the UK's response to Daesh offences overseas, because people might be prosecuted under the Terrorism Act. A good example of a terrorism offence connected to travelling to Daesh to fight is in Section 5 of the Terrorism Act 2006—they are called "acts preparatory". An individual who went to Islamic State lands to fight would commit that offence.

Last year, in my annual report—my *Terrorism Acts in 2022* report is not public yet, but I have finished it, and I think it will be published in about a month—I looked at how the UK might respond to the phenomenon of foreign terrorist fighters. I looked principally at the role that terrorism legislation might play. In particular, I examined why the number of UK prosecutions—I will try to be careful about how I state this—in relation to conduct committed in Islamic State territory is quite limited.

I have done the maths and I will tell you the figures, but it is much fewer than the number of prosecutions that the Government have referred to. When the Government refer to the prosecutions of people who have been to Daesh, they talk about what they call disruptive prosecutions. That might include someone who returns from Islamic State and has some instructional material on their phone. You might count them as someone who has been prosecuted because of their conduct in Islamic State territory, but in fact what they did over there does not form the basis of their criminal conduct.

I set myself the task of trying to work out why it is so hard for the UK to convert bad acts abroad into prosecutions here. As part of that, I also looked at the question of repatriation. I wrote a paper last year about risk and repatriation; the basis of doing so was to ask whether the UK's terrorism legislation, as a whole, provides a response to the risk that would be presented by people returning from Roj, al-Hol and the other camps. In the course of asking that question, I had lots of conversations with officials and got a little underneath what the UK's deprivation policy is and how it might be interrelated with our ability to prosecute criminal conduct overseas.

Chair: Those are some of the questions we will explore with you this afternoon.

Q70 **Baroness Lawrence of Clarendon:** Welcome. Could you provide us with an overview of the domestic and international legal framework applicable to prosecutions and the prevention of international crimes committed by Daesh, and how international crimes relate to terrorism offences?

Jonathan Hall: Yes. The core international crimes under the International Criminal Court Act 2001 and the Geneva Conventions Act 1957 are different from terrorism offences. There has never been an international agreement on what terrorism is. Although international crimes are, by their very definition, international—they reflect an international understanding of standards of conduct that is so bad that it ought to be prosecuted as great breaches of human rights or war crimes—the same cannot be said of terrorism. All states have different terrorism legislation, but we share common standards when it comes to international crimes.

In practice, if someone goes to Islamic State, the UK's response has been to look at the risk that they might present to the UK and to use the terrorism legislation that counterterrorism police are very familiar with as a way of mitigating that risk. Where someone is overseas and is likely to remain overseas, counterterrorism police will probably ask themselves what the point is of putting their investigative resources into establishing a case for prosecuting someone under the Terrorism Act, as they will not come back for the foreseeable future, for example because of the Government's deprivation policy. You have heard of the policy's strategic distance, which is the Government's overall posture towards people who went to Islamic State.

That is to be contrasted with what you might call more of an accountability framework. When I did my report and spoke to officials and the police, I detected that the approach of counterterrorism police, who have primacy over individuals overseas, was much more about risk management and much less about accountability. They were not really familiar with war crimes. Their approach was to ask, "If this person might return, how can we investigate them and potentially get a conviction under terrorism legislation?"

Baroness Lawrence of Clarendon: You just said that the Terrorism Act offences did not come in, I presume, until Daesh started, so there was nothing before that. But you had how many world wars and stuff before that?

Baroness Kennedy of The Shaws: And there was Irish terrorism before that.

Baroness Lawrence of Clarendon: Yes. Are you saying there was nothing before?

Jonathan Hall: Terrorism legislation, and offences that are called terrorist offences, come from Northern Ireland. In the UK, we had the first permanent terrorism legislation in 2000. If I were to go to fight for Islamic State tomorrow, I would be prosecuted under the 2006 Act, so there are offences.

I do not know, but what you may be thinking of is that in 2019 the Government brought in the designated area offence, which was an attempt to make it easier to prosecute people who had gone overseas—mainly to Islamic State, but it could be anywhere—without having to prove what they did. For that offence to work, first you have to show some conduct after 2019, but many of these people went before then. In fact, most did, if not all.

Secondly, the Secretary of State would have to designate a part of the world as a designated area, and in practice the Home Secretary has never done that. There are lots of good and interesting policy reasons why you as the Home Secretary do not necessarily want to say, “I designate that part of the world as a terrorist hotspot”. After all, you might affect the bilateral relations you have with the people who are running that territory. So you may be thinking of that, but that offence has never been used and cannot be used unless and until the Home Secretary designates a territory. Still, there are offences that in principle could be used.

The real difficulty has been in getting the evidence. I could talk more about the contrast between our legal system and overseas legal systems. You can make some interesting points of contrast between the ways in which the UK and France deal with the Daesh phenomenon, for example.

Q71 **Baroness Lawrence of Clarendon:** The paper we have been given talks about those returning to this country and says that the percentages of those who are prosecuted seem to be quite low. Is there a reason for that?

Jonathan Hall: Yes, there are a number of reasons. I have already spoken about how the counterterrorism machinery’s approach has been to look at risk management rather than accountability.

Secondly, UK terrorism legislation is not as wide as in comparable jurisdictions. In the US, there is an offence called “material support”. This is a very wide offence: if I were a woman who wanted to go out and just

be there for my Islamic State-fighting husband, that would count as material support. We do not have an offence that captures the phenomenon of jihadi brides just for being a bride. The French have an offence called "l'association de malfaiteurs", which is an incredibly broad offence that allows the court to infer that, when certain people are present together and one of them is a terrorist, they are all part of the same terrorist plot. We do not have an offence like that.

The third reason is that we in the UK have more difficult rules of admissibility. In our system, the prosecutor makes an accusation, the defence responds and it is tried in front of a jury, but in a civil law system, where an investigating magistrate compiles a case and then presents a file to the trial court, it is possible for the investigator to rely on intelligence. The UK may well have intelligence about what people are doing overseas, but getting admissible evidence is hard.

As an example of that, let us imagine that you found a fingerprint on the command wire of an improvised explosive device. If that had been picked up by a soldier, a defender in the UK would want to say, "Where was it found? Who picked it up?" What if it was picked up by some special forces of an ally? That is not going to come out in court. So there are practical difficulties in establishing continuity and, as I say, in the exclusion of intelligence.

The fourth reason is that under our system defenders must be present in the UK. France has a habit of prosecuting in absentia. When you look at the prosecution figures, you see that some of the people being prosecuted are not present and may even be dead. That is not to say that the UK could not do better on war crimes; I am talking about terrorism legislation. I am sure you will be conscious that the figures in Germany are very high compared to in the UK. Some of that will be because of the civil law system and the rules of admissibility. However, others will be about the amount of resource that gets put in, and I can talk about that.

Q72 Chair: The answers you have given us so far about the reasons for the low prosecution rate relate to anti-terrorism legislation. We are primarily concerned with the obligation to prevent and punish genocide. That is quite a topical issue at present, but, to focus purely on Daesh, it has been established that Daesh committed genocide in Syria and Iraq against the Yazidis, as well as other international crimes. Given the lack of capacity to effectively prosecute such crimes in Syria and Iraq, the absence of an independent UN tribunal and the International Criminal Court's limited jurisdiction, it seems that the most realistic avenue for prosecutions of those crimes is by national states prosecuting returning Daesh fighters. The UK is of course under an obligation to prevent and punish acts of genocide under the UN Convention against Genocide. Is the UK fulfilling its obligation at present?

Jonathan Hall: I have been looking for a domestic expression of that duty. Obviously, there is a duty in international law to avoid impunity for genocidaires. There is a 2015 CPS accord between the CPS and the police and a 2018 government note saying that they do not want any impunity.

I suspect the Government would say that they comply, although in a moment I will come on to why you might query that.

Of the points that I gave you, two also apply to war crimes. The question of rules of admissibility of evidence applies equally to prosecution for war crimes, while the prosecution of people present in the UK also applies to our approach to criminal justice.

When I met counterterrorism police, I got the strong impression that they were not familiar with war crimes. You may have heard some evidence that there is a war crimes unit, but they would not look to war crimes as a way of managing the risk. As I mentioned, the police looked at managing the risk as their key task, rather than achieving accountability.

To improve accountability you might put resources into what you might call thematic investigations. An individual investigation will be triggered by an event—an individual being found in the UK or information that they are about to come here. I am told that in Germany, because of its enormous influx of 1 million refugees, there was an extraordinary phenomenon of perpetrators and witnesses both being present in the jurisdiction, which made it easier to prosecute there.

Since I wrote my report the police have told me, and they may have told you this too, that they are trying to take more of a thematic approach—for example, looking at where the Yazidis lived and what evidence or intelligence might be converted into evidence about who lived there.

France and Sweden, for example, had a joint international team investigating this, which has been joined by the Netherlands and others. I went to Sweden last year to speak to its prosecutor, and it was very impressive. They try to build a case by looking at where the Yazidis lived. Once you have a map and you can prove where certain people lived, if you have geolocated photos from people's phones showing a man and a woman who have gone over to fight for Islamic State saying, "Look where we live", in principle you might be able to match that photo with those individuals to a location and prove the crime of pillage.

Chair: That is very interesting.

Q73 Lord Alton of Liverpool: Thank you, Jonathan, for your evidence. I am struck by what you have said about the parallels with Germany. In 2015, the British House of Commons voted to say that there is a genocide under way in Iraq against the Yazidis. The Government said, "We can't accept the view of the House of Commons. Only a court can say these things". Attempts to open a route to the High Court of England and Wales, despite a three-figure majority wanting to do that by amendments in the House of Lords, have never been enacted, so there is no route to anything comparable to the German court. Is that something we should be giving attention to?

In answer to Baroness Lawrence, you also raised the issue of evidence collection. In 2019, I went to northern Iraq, to Dahuk and the Nineveh plains and various parts of the Kurdish area. I met the Baba Sheikh, the

spiritual leader of the Yazidis, and took evidence from people who had escaped from Mosul, who gave me graphic accounts of the things that had happened to them. I brought that back and gave it to our Foreign Office. I asked, "Has anyone from the international authorities, or indeed from the Iraqi authorities, been and collected your evidence?" No one had interviewed any of the half-dozen people I met during that visit. If we are not collecting the evidence, how are we ever going to get any kind of convictions?

Jonathan Hall: Yes, and I suppose you might also say that you need to take a policy decision: if you are going to sincerely collect evidence from eyewitnesses and use that, you must be prepared to admit those people to the UK to give evidence. I do not know whether that could also be a factor. Ultimately, if you are defending a case, you are going to object to a witness giving evidence remotely in a case like that. They would need to be present. So I suspect that it is about more than just gathering the evidence; it is about being willing to accept people coming into the UK, with the immigration-related possibility that they may never leave.

Q74 **Lord Alton of Liverpool:** That is something we should attend to. What about the German model?

Jonathan Hall: I do not know the answer to your question. This is a reverse Rwanda point, and I do not know whether a declaration by Parliament would make it any easier. I thought it was a matter of fact that there was genocide. I am surprised that anyone is questioning it.

Lord Alton of Liverpool: It is only now, since the committee started this inquiry, and as a result of the case that Amal Clooney and others pursued in Germany, that the Government have now accepted that it was a genocide. So a German court can come to that conclusion and the Government can then accept it as a genocide, but we have no avenue open for a similar, comparable decision to be made by a British court. Is that not odd?

Jonathan Hall: I have not tracked through this point.

Q75 **Baroness Kennedy of The Shaws:** I am coming at this in a different way. I have gone down the same road as Lord Alton; I too have been out there with the Yazidis and taken accounts from them about their experience.

Something that surprised me in our contact with the police here in the UK was that when there were returnees—men who had gone out there—no one ever asked the questions: "Did you take a second wife? Did you have more than the wife you went with, or while you were there did you acquire one? Tell us about the wife you acquired. Where was she from? Where is she now?" No one seemed to have been trained.

You have answered this by saying that counterterrorism police were not familiar with their responsibilities regarding crimes of that nature, so I suspect there was no interrogation of people about the more grievous crimes that may quite easily have been attributable if you had answers

from the people about who they married, who they were with, whether they had a woman, were they in a household and so on. I do not think there was that kind of interrogation. Do you know anything about the nature of the interrogations?

Jonathan Hall: For everyone who came back from Syria—well, maybe not everyone—the general approach was to use Schedule 7 of the Terrorism Act, so there would be a non-evidential discussion. My impression is that the war crimes unit is a separate unit; it is not part of the counterterrorism police.

Baroness Kennedy of The Shaws: So they might not even have been involved.

Jonathan Hall: They might not even have been involved. I can well understand that, when counterterrorism border police carried out a Schedule 7 examination at the border, they did not ask questions designed to identify whether that person was a witness or a perpetrator.

The other aspect is that we do not have the system that America has of people turning Queen's evidence, or whatever it is called—state's evidence. It is not as effective here.

Baroness Kennedy of The Shaws: I have done cases where folk have done that.

Jonathan Hall: It happens, but nothing like as much. As a prosecutor, you might want to have a low-level person who has gone over who could speak from the inside—there have been some quite successful recent prosecutions in America where, in return for some sort of immunity, they give evidence against a larger fish—but is not something that we have really developed as a criminal practice in this country.

When it comes to knocking on doors and saying, "We know that you've been in Syria", I can imagine that counterterrorism police will be thinking, "First, do we want to stir up a hornet's nest? This is someone who could be risky. Do we want to talk to them? Secondly, if we talk to them, are we talking to them as a suspect or a witness?"

Baroness Kennedy of The Shaws: Those issues arise in other kinds of criminality too.

Jonathan Hall: Exactly.

Q76 **Dr Caroline Johnson:** I have two questions for you on things you have said so far. First, you have talked about the pursuit of accountability relative to risk. You believe that the police are mostly looking at a risk profile rather than an accountability profile. Presumably that is a policy decision. In what way would pursuing accountability increase the risk?

Jonathan Hall: It would not, but if they thought it was not going to manage the risk, it would not fulfil what I detect they perceive to be their primary function. For example, if someone is outside the jurisdiction and there is no prospect of them returning, it would potentially fulfil an

accountability function to build a case, on the off-chance that they might come back at some stage, but it probably would not feel fulfil a risk-management function.

Q77 Dr Caroline Johnson: My second question is about remote evidence. You said that if a witness were to give evidence in the UK, they would need to come to the UK to do that. During Covid, a lot of courts received evidence remotely. Why is it not possible to do that? Is there a law that says you cannot?

Jonathan Hall: The general rules about special measures for witnesses are in the Criminal Justice Act 2003. In principle, you can receive any evidence, but if a judge is going to be asked to dispense with the general principle that witnesses should be present in court, there need to be good reasons. In a war crimes prosecution, where a huge amount of care and attention will have been paid to that witness and the resources are in place, you can well see that a judge might say, "If you've got the resources to spend all this time taking their evidence, why don't you have the resources to bring them over to the UK?"

Dr Caroline Johnson: I appreciate that they may feel that they need the resources to bring them over to the UK, but my question is whether there is a law that stops someone giving evidence from overseas.

Jonathan Hall: There is no law that stops it, but you would need to get permission. You would need to make good the grounds on which the court should give permission to do that.

Dr Caroline Johnson: If we can say that Covid was a reasonable ground, why could it not be considered reasonable grounds in the case of prevention of terrorism?

Jonathan Hall: For the purposes of Covid, they changed the law to allow remote evidence to be given for that reason. In principle, you could change the law to say that, for terrorism cases or war crimes cases, that is a separate ground for allowing people to give evidence from abroad without having to show the normal grounds.

Q78 Baroness Kennedy of The Shaws: If the war crime is rape or sexual enslavement, rape victims are given that protection in any event, so one cannot imagine that a judge would not give permission for a woman to do that.

Jonathan Hall: You could have a pre-recorded cross-examination so they would not need to come to court at all for that.

Baroness Kennedy of The Shaws: So I do not think we would necessarily have to change the law for that purpose.

Jonathan Hall: There, you would simply be using one of the existing grounds. But outside sexual offences—

Baroness Kennedy of The Shaws: We are talking about the Yazidis here, so that is a specific thing with regard to the Yazidis.

Chair: Would they not get it on the grounds of their vulnerability? They could be vulnerable because it was a sexual offence or because they had witnessed genocide and were suffering from mental health issues as a result—PTSD.

Jonathan Hall: Yes. Another point, which the courts are looking at more, is the degree to which you need to get permission from the state in which the individual is located.

Chair: There are no state authorities where some of these people are. Is that not the problem? As I understand it, some of these camps, where the potential perpetrators are, are in the hands of Kurdish freedom fighters, but there is no actual state authority.

Jonathan Hall: That is a different issue that goes to the extradition question. If you want to extradite a suspect who is in a part of Iraq or Syria that is administered by the autonomous area of north-east Syria, that is not a state body. At the moment, the UK, so far as I am aware, has never extradited an individual based on an extradition agreement with a non-state body.

I do not think it is necessarily impossible to fashion one; you remember from the *ex parte Bennett* case that the whole point is to avoid arbitrary rendition. I do not see, in principle, how you should not be able to fashion an agreement with a non-state body, as long as it was done in a careful way and it provided safeguards.

We are talking about witnesses, and the point I was trying to make—Baroness Kennedy may correct me—is that you cannot simply take evidence from a person overseas without the permission of the state in which they are located.

Baroness Kennedy of The Shaws: I have to tell you that that is not right. I have done it myself at the Old Bailey, where, for example, I called Imran Khan; it was before he became the Prime Minister of Pakistan but when was the leader of a political party there. He gave evidence, on a screen, on the circumstances of a particular situation in Pakistan, and he was cross-examined by the prosecution. There was no question of us asking Pakistan for its consent for him to testify. He testified and the court allowed him to give evidence. The back of the court was packed because he was of course a famous cricketer, and now he is famous for something else.

Jonathan Hall: My understanding is that the question of consent of the state in which the witness is located is something that the courts are looking at more and more now.

Q79 **Dr Caroline Johnson:** Have I got this right? There is no law that says that you cannot evidence from abroad, and indeed there is a precedent for it being done. There are grounds to allow remote witnesses, particularly vulnerable witnesses and victims of sexual crimes, which encompass quite a number of the crimes looked at here. That begs the

question: why is it not happening?

My only other thought is: how do you ensure that the witness gives evidence in a specified location where one can be certain that they are not being externally pressurised off-camera? That would be important. Presumably, that is not an insurmountable hurdle in most cases and would lead to greater accountability.

Jonathan Hall: I think you also have to add in the need for the defendant to be present in the country.

Chair: The defendant has to be in the UK.

Jonathan Hall: Yes, the defendant has to be in the UK.

Chair: Even if we can take evidence from all sorts of witnesses who are not in the UK, the defendant has to be in the UK, because, unlike other countries, we do not prosecute people who are not here.

Jonathan Hall: Yes, exactly. You need to have the right defendant. I am sort of inclined to agree with you, but—

Chair: We have to move on. We will come back to this when we come to the questions on repatriation. We are getting a little bogged down.

Jonathan Hall: I am happy to send a note on that, because I want to come back to the Covid point.

Chair: We will come back to that. We will have some specific questions about repatriation in a minute from Bell Ribeiro-Addy. First, Baroness Kennedy will ask some questions about the deprivation of citizenship.

Q80 **Baroness Kennedy of The Shaws:** We are mindful of time. Can you tell the inquiry where the power emanates from that allows the Home Secretary to deprive a British individual of their citizenship? How often has that been used on people who went to fight for Daesh or to set up a new Islamic nation? Can you give us that background? I then want to ask you about how that interacts with human rights.

Jonathan Hall: Yes. This is under Section 40 of the British Nationality Act 1981. There are no figures for how many people have been deprived because of their participation with Daesh.

Baroness Kennedy of The Shaws: Why is that?

Jonathan Hall: I have never been able to get completely to the bottom of it. The Government like to play their cards close to their chest. They provide annual reports called transparency reports. In 2017, about 120 people were deprived. The furthest I have got is to get the Government to accept that the vast majority were Daesh-related.

Baroness Kennedy of The Shaws: Some will actually be Somalians.

Jonathan Hall: Some are Somalians. There have been a few Afghans.

Baroness Kennedy of The Shaws: I know of some Somalians who

were involved in Boko Haram. In different parts of Africa, there are folk who have had their British citizenship taken away. Is that right?

Jonathan Hall: Yes. As you probably know, it is a source of slight frustration for me that it does not fall within the reviewer's remit, because it is a national security power. The number of times it was used in 2017 contrasts enormously with, say, the number of prosecutions relating to Daesh, or to the number of temporary exclusion orders, which I review.

The Government's approach is to say that it is not only a national security power but a power that is available for organised crime, so it does not naturally fall within my remit. I do not think that it naturally falls in the remit of anyone. In principle, the Chief Inspector of Borders and Immigration could look at it, but he never has, and I do not believe that his office is set up to deal with the national security material that he would need to deal with.

Baroness Kennedy of The Shaws: Would you be the best person to deal with this?

Jonathan Hall: I think so. One of the problems is that this a matter of high public interest—everyone is interested in Shamima Begum's case—but there is very little transparency. Whichever way you go on the Shamima Begum issue, more transparency and public understanding can only be a good thing.

Baroness Kennedy of The Shaws: For the public listening, Shamima Begum is the young woman who left when she was about 15 or 16. She went out with two other young pupils from her school. All three went off via Turkey to Syria. We know that she is now in a camp and that she has lost three babies; they have all died.

Jonathan Hall: Yes, that is right. The interesting human rights point about this is that the Government's policy—I referred to the passage in the Supreme Court judgment in my paper—was that deprivation would not make a difference to your human rights. So if an individual was in a camp and had their citizenship taken away, that would not expose them to any greater exposure to Article 3 mistreatments—namely, very bad treatment—than someone who had not been deprived of their citizenship. I repeat: that was the Government's express policy.

Baroness Kennedy of The Shaws: Do we not see becoming stateless as a deprivation of all the rights that follow from citizenship?

Jonathan Hall: Yes, but I am trying to make a different point. The Government's position has always been that, if you take away someone's citizenship, you do not expose them, in a camp, to any greater threat of harm than they would be if they were a British citizen. Because of that policy, the net effect is that it is very hard for the Government to say, if they now wanted to, that they would like to bring the British citizens back from the camps and leave the ones who have been deprived.

One way of looking at this as a policy issue is for the Government say, "Look, we've made deprivation decisions for right or for wrong. Those have been mitigated in the courts and the courts can decide. If the courts' decisions are upheld, so be it. We'll leave them there, because they're no longer British citizens. But we'll allow those who remain British citizens to come back in". The problem with the Government's policy position is that, if they did that, it would demonstrate that being deprived or not made a difference as to whether you were exposed to bad treatment in the camps. In a way, the policy of deprivation has become the tail that is wagging the dog. It has slightly affected the ability of the Government, from a policy position, to bring back British citizens, if they wanted to do that.

Chair: I am being advised that there is a strand of the Shamima Begum that is still live, so we have to be careful not to talk about it.

Baroness Kennedy of The Shaws: It is sub judice.

Chair: There is very strict sub judice procedure in Parliament.

Jonathan Hall: Right.

Chair: I think it is too strict, but that is just my view.

Baroness Kennedy of The Shaws: I think Jonathan and I know the limits on where we can go with that.

Jonathan Hall: It is good to be reminded.

Baroness Kennedy of The Shaws: I was just describing to the public who Jonathan was speaking about.

Chair: I know, but the difficulty is that the parliamentary rule on sub judice is much stricter than what the three of us, as lawyers, would normally understand to be the rule on sub judice. I am sorry to be a bit schoolmarmish about it, but we have to be ultra careful.

Baroness Kennedy of The Shaws: Jonathan, you made a very helpful point: the distinction there is one that is not being examined, because British subjects are not being returned to Britain.

Jonathan Hall: Yes. I think that is a net consequence of the policy that was adopted by the Government.

On the human rights front, the thing that has concerned me above all—as, I am sure, it has the committee—is the position of children. One of the things I considered in my paper was the net national security risk versus the reward of returning children. The conclusion I reached was that there was the real risk of children being trained to become cubs of the caliphate and that therefore they are riskier. On the basis that eventually they will be released in some shape or form—whether through a controlled return, because of an earthquake or because the SDF ceases to run the camp—they will be riskier if they are allowed to stay longer

than if they are brought back and managed. That was my conclusion on risk.

Q81 **Baroness Kennedy of The Shaws:** There seems to be a general acceptance that there might be circumstances in which the removal of citizenship is a power that a state might have, especially for dual citizens—people who have an alternative available to them. What is your view on the circumstance where someone does not have an alternative possibility available to them and therefore they are rendered stateless, and how does that impact on our understanding of human rights?

Jonathan Hall: My view, although it is not really related to terrorism, is that it is rather technical to say that someone who could technically access another citizenship, but in practice is unable to, should be treated like a dual citizen. To take your point, let us say that someone has come from Somalia, it turns out they are an al-Shabaab person, they have been British for two minutes and then they go out to fight in Somaliland. I can understand, and would endorse, the use of a deprivation power in that situation. What is harder to understand is the use of the power against someone who simply cannot become a citizen of another country—for example, because if they went there, they would be at risk of very bad treatment from the security services. I do not know what more I can say, really. I think it is pretty obvious.

Baroness Kennedy of The Shaws: That answer is very helpful, thank you.

Q82 **Bell Ribeiro-Addy:** Are you saying that you would be okay with that on the basis that they could claim another citizenship, based on the length of time that they were a British citizen or on the fact that they could claim another citizenship?

Jonathan Hall: No, the reverse. I was saying that I could well understand—in the case where someone has been a citizen of one country, comes over here, gets citizenship for a short period of time and then goes off to do something very bad—why they should have their British citizenship removed in order to prevent them coming in.

I was making the opposite point to the one that you were asking about. I was saying that where someone in theory could access citizenship—I will not mention the name of the person, but we know who we might be thinking of—that seems to be too technical a reason for depriving them.

Bell Ribeiro-Addy: I suppose that if there is a limit, the question then becomes how long you should have been a British citizen before it is deemed reasonable to remove it from you if you have access to another citizenship.

Jonathan Hall: I do not have an answer to that. That is why I think there should be a review. What I can do as the Independent Reviewer of Terrorism Legislation is draw the public's attention to the way policy decisions are made. For example, if you are thinking about banning a group like Hizb ut-Tahrir, which has just happened, I can tell the public—

and Parliament, through my annual reports—that this is how the Government go about doing it; these are the policy considerations, and you may agree or disagree. That gives Parliament an opportunity to debate whether it should change the law, and it gives the public knowledge about how it goes about it.

With deprivation, it is the sheer ignorance that the public, and indeed I, have about how they make their decisions on a case-by-case basis that is a bad thing, which is why there should be more oversight.

Q83 Bell Ribeiro-Addy: Do you think it is clear to the Government, or to those who apply these rules or make judgments on this, how it could appear that we are creating a two-tier system regarding nationality, race and crossing certain borders? Because of my parents, I could claim nationality from another country. Does that mean that I am more likely or more liable to have my citizenship removed than you, whose parents may not have gone from somewhere else?

Jonathan Hall: Yes. I am married to a Jewish woman, and I guess she could get citizenship in Israel, so she could be deprived of British citizenship. I am sure the Government are conscious of the powerful point you are making. You would have to ask them.

Chair: There is also the issue of whether the Government are properly looking at the full circumstances of people who have been deprived of citizenship. To take a purely hypothetical situation, there may have been young, impressionable women who left the UK to join Daesh, not understanding what they were letting themselves in for. If they are underage when they do that, should they be treated as if they were an adult? I tend to think not. Again, I am talking about a hypothetical situation.

Jonathan Hall: I agree. There is another point to make too, not about the circumstances you are talking about but about looking at the national security risk that these individuals present. As you know, the way the law has moved at the moment is that the courts are being told that they should not try to second-guess in any shape or form the assessment made by the Secretary of State. I understand why the courts have reached that conclusion, but again, in the absence of a review mechanism, it is hard to get under the skin of an assessment by the Home Office that a person presents a risk.

Q84 Bell Ribeiro-Addy: Do we have an assessment of how many individuals have been removed and the basis on which that was done—for example, the final basis that they may have had claim to another citizenship?

Jonathan Hall: There are no statistics like that. There should be, but there are not.

Bell Ribeiro-Addy: Are there any statistics—thinking about some cases that may have been in the media—showing that harsher decisions were taken if names were mentioned repeatedly in the media, as opposed to cases that no one knew about?

Jonathan Hall: No. Ultimately, this is why we need statistics.

Q85 **Bell Ribeiro-Addy:** I have some questions about repatriation. Are we under any legal obligation to repatriate British individuals suspected of involvement with Daesh, and are we complying with those obligations?

Jonathan Hall: I cannot see that we are under a legal obligation to repatriate. As you may or may not know, there was a French case in the European Court of Human Rights where, although France was criticised very heavily, and in fact it led to France deciding to repatriate a lot more people, the court said that internationally there is no duty to repatriate. I cannot find any basis to say that a state would have a duty to repatriate a person from another territory. It might have a duty to prosecute someone who is there or to extradite them to another state, but not to bring them over.

Q86 **Chair:** Not even if that was the only way the state could fulfil its obligation to prevent and punish acts of genocide? If UK citizens are involved in acts of genocide, is not the only way that we can prosecute them by repatriating them? Does that not mean that we have a legal obligation to repatriate in order to fulfil our duty to punish acts of genocide under the UN convention against genocide?

Jonathan Hall: That is an argument, but it does not sound right to me.

Lord Alton of Liverpool: It is more than an argument, is it not? It is the 1948 convention on the crime of genocide, which places upon us the duty to punish those who have been responsible. How do we do that if they are in a foreign jurisdiction?

Jonathan Hall: I am conscious that all the different international instruments bring with them different obligations. I am a bit wary of just agreeing with you that the genocide convention requires you, as a matter of international law, to repatriate. It may require you to punish those who are within your jurisdiction, but I am not sure it would go so far as to say that you should bring someone into your jurisdiction.

Chair: I just do not understand how otherwise the UK can fulfil its obligation. Other countries are bringing people into the jurisdiction, presumably because they think they need to do that to fulfil their obligations, but we seem not to be doing that. It is all very well to talk about historic genocides, as we often do. There is lots of virtue signalling by the Government about marking Holocaust Day, which is absolutely right, and remembering Srebrenica, Rwanda and so on, but if we are not actually fulfilling our obligation to punish our own citizens who have participated in genocide, that virtue signalling is a bit meaningless and empty.

Jonathan Hall: Yes, I tend to agree with you. I have not had this debate with the Government, but I guess they would say that they comply with their obligation by being part of a common system of collecting evidence, so the UK plays some sort of role there, and that they are pushing for some sort of international tribunal, although that may never happen.

Lord Alton of Liverpool: Do you think that, following this session with the committee, you might take this up with the Government and have that debate? You say that there has been no debate about it, but if you were to initiate it, maybe we would make some progress.

Chair: I think we will take it up with the Government in our report.

Q87 **Lord Murray of Blidworth:** The thrust of the last set of questions was that this country should bring in people accused of genocide to have them tried in this country. To what extent would you expect the Government to balance against that the damage to the public interest in bringing into this country people who may pose a risk to national security?

Jonathan Hall: That depends on the nature of the obligation. As I said to Lord Alton, if there is an obligation to do that, so be it. I would be surprised if there were an absolute obligation, because states would probably want to reserve to themselves not bringing people who would present a risk to national security. So if the obligation is qualified by national security, I can see that the Government might take that point. Ultimately, this is a matter that should be debated and aired in public, to see whether there are competing priorities.

One of the points I was trying to make in my paper is that, ultimately, the UK has quite a good counterterrorism system and it can absorb a certain amount of risk. You could say that we are able to absorb the risk of someone who would otherwise get away with genocide.

Baroness Meyer: The risks for the local population could be great, as you said.

Chair: They will not be brought in and let loose on the community.

Baroness Meyer: No, but in a prison they could convert other people.

Dr Caroline Johnson: Presumably, they would not be detained indefinitely. Therefore, they would, at some point, be in their local population providing a risk.

Chair: Not if they are brought home to be prosecuted for genocide.

Lord Murray of Blidworth: They may be acquitted.

Chair: Hang on a minute. If people are brought home to be prosecuted for genocide, there is no way they will be out on bail. You do not get out on bail for one murder. You will certainly not be out on bail for multiple murders.

Jonathan Hall: No, but can I remind you about that genuinely difficult point about extradition? I assume you are talking about people in one of the camps in north-east Syria at the moment. Let us say that there is a man who can be identified. Getting that person back to the UK is a real problem. There are people in the camps who are British but who do not

want to come back. I am sure that would be true of someone who was told that they might be prosecuted.

Chair: I am not going to jump the gun, because I know that someone else will ask about this. We have seen that prosecutions have taken place in Germany, and you explained that that was because, among the 1 million refugees the Germans took in, there were perpetrators and victims. We know that there have been some prosecutions in France and the Netherlands. Are they all people who came back on their own accord, or did France and the Netherlands extradite those people? The Americans have extradited people, have they not?

Jonathan Hall: The Americans have extradited people from here. I do not know whether they have extradited people from north-east Syria.

Chair: I have gone a bit off-piste. I will bring in Lord Alton.

Q88 **Lord Alton of Liverpool:** Thank you. Would it be possible, in due course, to give the committee further information about whether there have been extraditions from north-east Syria to other jurisdictions? That would be helpful to us, without placing too much of a load on you. You can see the line of argument that is being pursued by the committee, so it would be useful to know whether there are any reservations to the 1948 convention on the crime of genocide. To the best of my knowledge, we are required to prevent, to protect and to punish. Since Bosnia, there is the additional requirement to predict—to look for the emerging signs of genocide.

Jonathan Hall: Yes.

Lord Alton of Liverpool: These are obligations freely entered into by states such as the UK, so I cannot see how you can then say, "This doesn't really apply to us in reality", or, "We're opting out of this particular aspect". I do not think there is a reservation.

Jonathan Hall: I will look at the 1948 convention and whether there is a duty to repatriate. On the point about extradition, there was a case in the 1990s—Baroness Kennedy probably acted in it—called *ex parte Bennett*, where two IRA men were bundled on to a helicopter in New Zealand and brought straight back to the UK without any extradition being done. That led to the House of Lords saying that, however guilty those people may be—I think they were charged with grave crimes—their conviction had to be set aside. This case, in practice, casts a massive pall, not over whether the UK wants to prosecute but over whether it feels that it would ever achieve a conviction.

As I said, at the moment, if you were to take someone from north-east Syria and come to an agreement with the SDF that they should be put on a plane and brought back to the UK, the first argument to be generated would be that one. That will feed into decision-making on whether it is possible to prosecute.

Q89 **Lord Alton of Liverpool:** Given all those difficulties, are we striking the

right balance in pursuing the issue of terrorism—your main responsibility—and pursuing the international crime of genocide?

Jonathan Hall: No. On the continent, they call it cumulative prosecutions, where you go for both terrorism and core international crimes. I think we should do more.

One thing I would invite the committee to look into and maybe recommend is for the Government to consider establishing an extradition route with a non-state agency in Syria.

Lord Alton of Liverpool: That is a very interesting idea.

Chair: Who should the Government look at establishing an extradition route with?

Jonathan Hall: With the authorities in north-east Syria.

Chair: I am familiar with that case, ex parte Bennett. Can you remember what year it was.

Jonathan Hall: I want to say 1992.

Baroness Kennedy of The Shaws: It was in the early 1990s.

Chair: It seems to me that, at the moment, it will be terribly difficult to extradite people, but the police and authorities in the United Kingdom could do a lot more in relation to people who have returned and to question returnees about war crimes, as opposed to merely terrorism. It seems unrealistic to expect us to repatriate people at present, but, where people have come back and are being interviewed by the police or the intelligence services about terrorism offences, they should also be asked the kinds of questions that Baroness Kennedy discussed. That would establish where they were, who they were married to, what they have been up to, and whether there might be the possibility of a prosecution for war crimes as well as for terrorism.

Jonathan Hall: Yes. I can see why they could not be asked those questions under Schedule 7 to the Terrorism Act, because the purpose of questioning someone at a port is to find out whether they are a terrorist. I agree with you that there is no reason why, if enough resources were put into it, the War Crimes Unit of the Metropolitan Police should not speak to people who are known to have been in Syria and ask them those questions.

Baroness Kennedy of The Shaws: That is something that they should be encouraged to do. You may have a role and influence in that.

Chair: Perhaps there are two recommendations that this committee can make in its report.

Baroness Kennedy of The Shaws: Yes.

Jonathan Hall: Yes. I was a bit frustrated when I spoke to them. One of my frustrations was that war crimes were not being seen even as a route

of management. The other was about child cruelty; this is not the committee's interest, but mine. A lot of children were taken out to Syria. That was catastrophic. In fact, I found that the rules about extraterritorial jurisdiction are quite limited, so you cannot prosecute someone for child cruelty based on what they do abroad.

I made a recommendation in my report, which I hope you will see within the month, that the Government should look to amend past legislation to extend territorial jurisdiction in child cruelty cases where there is a terrorism connection. It seems to me that that would be another way of dealing with women in particular and to hold them accountable for some of what they have done.

Chair: That is very interesting.

Q90 **Baroness Meyer:** I want to go one step back to what the Chair said about Germany. I am trying to understand this. Germany has been able to prosecute more people, not only because of repatriations but because it has a capacity to do ex parte trials. If the UK were able, in certain cases, to trial people ex parte, would that not be another route—although it is probably very negative for many other reasons—to prosecute more terrorists?

Jonathan Hall: I think that would be a terrible thing to do.

Baroness Meyer: Not in general, just for the terrorists.

Jonathan Hall: Let us talk about terrorism. Terrorists are ultimately criminals, and they have always been dealt with in the criminal justice system. There are good reasons for doing that: not making them too glamorous and not having a special court. If you were to do that for terrorism, you would not only treat them differently but, I am sure, open the door to other cases. As you know, there are people who say that crimes against women should be prosecuted differently, maybe with a lower standard of proof or with different rules of evidence. So you can see that, once you open the door, you would do that.

Fundamentally, it is very good question as to whether the UK's excellent criminal justice system actually ties our hands behind our backs when it comes to prosecution. Overall, I would support maintaining our criminal justice system, which has proven so effective and is very heavily trusted.

I should add that, while I do not know about Germany, the criminal justice system in France is less trusted in certain quarters. You know about the Jogee case. What happened in France was Jogee with bells on, if I can use that inelegant phrase.

Q91 **Lord Alton of Liverpool:** I will ask the next question, which is about hard data. What can you tell us about the actual number of prosecutions and convictions for atrocity crimes that have taken place? We have been given some evidence in previous sessions, none of which was particularly satisfactory. Do you have any data that you can share with the committee?

Jonathan Hall: There are 12 people who have been convicted of terrorism offences for their conduct in Syria. I have their names. I know that because, while I have been burrowing away, Daniel De Simone, a BBC journalist with a particular interest in this, has also been following all the criminal cases. We got our heads together and that is the number we found. If you speak to counterterrorism police or Ministers, they may say that there are more, but, as I mentioned before, while there are people who will have been convicted who went to Syria, they will not have been convicted for their conduct. So the number is 12.

Lord Alton of Liverpool: Thank you. That is helpful.

Q92 **Dr Caroline Johnson:** Thank you. I will ask you a few questions. First, do you think those sentences are long enough? We have been given a list of 10 returners convicted of Islamic terrorism offences in relation to conduct in Syria. The sentences vary: three years, four years, four and a half years, 15 years, 12 years. There is quite a variety of sentences. Depending on how long they actually serve, they could be out on the streets in a relatively short time, posing a risk to the public.

Do you think those sentences are too short, or do you think that the rehabilitation these individuals get in prison is so good that, by the time they are released, they will not pose a risk to the public?

Jonathan Hall: You have to look at the facts. I am making an inference here, but I think you have been given data that spans people who have been prosecuted for what they have done in Syria—that will include the longer sentences—and, for the shorter sentences, people who had stuff on their phones when they were stopped by counterterrorism police. The latter have been prosecuted not for what they did in Syria but for possession of instructional material.

Baroness Kennedy of The Shaws: Or they have photographed themselves with guns and things like that.

Jonathan Hall: I think that might attract a longer sentence. Aine Davis is an example of that; I think he got eight years.

I suspect that you are talking, in part, about people who are convicted of what I will call non-Syrian-conduct offences. In those cases, I would not say that those sentences are too short, because we are not talking about the sort of conduct that this committee is most concerned about: going out and fighting.

Baroness Kennedy of The Shaws: Grievous conduct.

Jonathan Hall: Yes, grievous conduct.

Q93 **Dr Caroline Johnson:** For the first cases on our list, it says in the national crimes database that they pleaded guilty to attending a terrorist training camp in Syria and that, in their car, as they tried to return through Calais, there was rifle ammunition and a mobile phone containing videos and pictures of their time in the training camp. They got three years and four and a half years respectively. Do you think this

evidence suggests that these sentences are adequate?

You talked earlier about how it is difficult to prosecute people, either for where they have been specifically or for reasons of inadmissibility. Sometimes, people may get prosecuted for lesser offences than the security services know they may have committed. Do you think these sentences are adequate to provide the level of protection to the public and rehabilitation that we would hope a prison sentence would do in these circumstances?

Jonathan Hall: I would like to know the name of that case and a bit more about the detail of it. In general, sentences in England and Wales are, in my view, more than adequate. As you know, Parliament has provided for longer maximum sentences. That means that the Sentencing Council has driven up the recommended sentences for these sorts of offences.

I am not worried about the length of sentences in terms of the inability to protect the public. In fact, the opposite is true: I am slightly worried that the trajectory of terrorism sentencing will get a bit too long and would remove some of the steps that we usually see as rehabilitative mechanisms. For example, there are now some terrorism sentences where you will serve the entirety of your sentence in prison, with no possibility of applying for release from the Parole Board.

You might not know that I did a report on terrorism in prisons. I was very concerned about Islamist extremists in prison. I always asked myself what tools I would have, if I were the prison governor, to manage someone who is in prison for a very long time and to discourage them from trying to recruit other people? One mechanism has always been that they need to behave well in prison so that they can apply for parole. As a general principle, I am always concerned when legislation removes the ability for people to apply for parole on the basis of good behaviour in prison, because it removes a mechanism for managing them.

Dr Caroline Johnson: If someone is still actively trying to recruit someone to terrorist activity in prison, do they not present a risk of doing so outside and therefore to the public?

Jonathan Hall: Yes, I think that is probably right.

Chair: Was your point not that if people are given the hope of parole, they might stop actively recruiting because they want to get parole. In contrast, if they do not have much hope of parole, they will go on with active recruitment because they are embittered and have no hope anyway.

Jonathan Hall: Yes.

Baroness Kennedy of The Shaws: Caroline Johnson's point is that they will then get out and actively recruit in their community.

Q94 **Chair:** They will pretend not to be recruiting until then. On the length of sentences, is it not open to the Crown, as it is in Scotland, to say that a

sentence is unduly lenient?

Jonathan Hall: Yes.

Chair: Do we get that often in these terrorism cases? Does that occur frequently?

Jonathan Hall: I cannot think of many. There has been one in Northern Ireland. Northern Ireland sentencing has traditionally been seen as much too low compared to England and Wales. I have reported on it quite often; it is often debated. People have got sentences of two years for chucking pipe bombs, or sentences of six or seven years for directing the IRA. Currently, there is a case called Gavin Coyle, I think, that is being referred to the Northern Irish Court of Appeal by the Attorney-General for Northern Ireland—so it does happen.

I do not think it happens very much in England and Wales, because judges are guided by some very excellent Sentencing Council guidelines now, and the sentences are quite long.

The question of the management of people is really interesting. I am conscious that this might be slightly off-topic, so stop me if it is.

Chair: I would like to hear your answer and then we will move on, as we need to get back on-topic. I am conscious of the time, but I am interested to hear your answer about management, because it pertains directly to Caroline Johnson's questions.

Jonathan Hall: The Government have just launched a consultation on terrorist offenders not being able to secure social housing. On the one hand, you can understand that: why should someone have social housing if they have been convicted of terrorism offences? On the other hand, if you take the view, as I broadly do, that the managing of terrorists is to reduce the risk to the public, saying that someone cannot have social housing, with the risk that they end of sofa-surfing, will probably make it harder to manage the risk. So there are always these competing policies.

Q95 **Dr Caroline Johnson:** I have a couple more questions. First, do you have any data on the number of British citizens currently in these camps in northern Syria?

Jonathan Hall: I have had a briefing. I said that I would keep the numbers confidential. I wrote about this in a paper that I published. When I spoke to officials about a speech I gave at King's College, I asked how much information I could print in the public domain without damaging national security. The number I got to was that there are estimates of 60 UK-linked children, with a smaller number of women and an unknown number of men. That was what I was able to print in the public domain.

Q96 **Dr Caroline Johnson:** Thank you. The other question I wanted to ask is about children, so that brings us quite nicely to that. As I understand it—I am not a lawyer—the age of criminal responsibility is 10.

Jonathan Hall: Yes.

Dr Caroline Johnson: But there were children who went out there before they were 10—obviously not of their own accord; they were taken by a parent or someone else—who have grown up in a very dangerous situation and may have been exploited while they were there.

Baroness Kennedy of The Shaws: Indoctrinated.

Dr Caroline Johnson: Yes, as Baroness Kennedy said, they may have been indoctrinated. How does the UK have responsibility towards those children? How are they being managed at the moment?

Jonathan Hall: The only policy the Government have on children is about unaccompanied children and orphans. The Government's policy is that, if there are any unaccompanied children or orphans in the camps, they will be repatriated. That leaves children who are taken over as part of a family group and who are still with the family group, so they fall outside the policy.

Perhaps even more egregious, although I am not going to make distinctions, are the people who are born in the camps, so they never had any choice or agency at all because they did not exist before being born in the camps. If they are with their family unit, they fall outside the Government's policy.

One of the hardest policy decisions the Government have to make, but they need to make, is whether, in order to protect the child, they are prepared to bring back the adult. A woman might have been radicalised and may even present a bit of a counterterrorism risk, but you know that the only way to bring the child back is to bring them back as a group.

Dr Caroline Johnson: But if you did that for children who were not born at the time of travel, you would be giving people an incentive to have children in really quite difficult and dangerous circumstances.

Jonathan Hall: That is an excellent point; I had not thought of that. I suppose that is right. You have to wear a few risks with any policy, but if you did it fairly quickly, you would not have that risk, would you?

Q97 **Dr Caroline Johnson:** How, practically, would one repatriate anyone from these places? It is not as if you can send them a taxi, is it? Presumably it is a dangerous place to be in and to get from.

Jonathan Hall: It is certainly dangerous, but not impractical. As we know, five people, I think, were repatriated in December, so it is certainly possible to do that.

There is another practical issue that you ought to know about. The view of the Autonomous Administration of North and East Syria, which runs the camps, is that it will not separate family units. Women with children have a veto on the return of their children.

Chair: I am a bit puzzled by that, because we heard in evidence—I think

from Reprieve—that boys of a certain age, around 12 or 13, are being forcibly removed from family units and taken off to the adult male prison.

Jonathan Hall: That is right, and that might lead a mother who is worried about the child being taken to an adult prison to decide: “I won’t stand in the way of the child being removed. Please, Government, treat them as an unaccompanied minor”.

Chair: The view of the Administration that they will not separate family units is not born out by reality or by—

Baroness Kennedy of The Shaws: The practice.

Chair: —by the practice—thanks, Helena—of taking young boys, 11 and 12-year-olds, away from their families and putting them in the male prison.

Jonathan Hall: You are talking about two different things.

Chair: I am talking about two different things. I raise this, because you said that the people running the autonomous area—I forget the exact phrase—

Jonathan Hall: The AANES.

Chair: —would not separate family units, but my answer to that is that they are separating family units, albeit not to repatriate them but to take these male children away and put them in an adult prison.

Jonathan Hall: Yes, but you are talking about two different things. They will not separate them for the purposes of repatriation, but obviously they separate them for the purpose of putting them in adult prison.

Chair: Okay, got you.

Q98 **Dr Caroline Johnson:** I have a final point on that. What risk is posed to the UK forces, or whoever is sent to repatriate those people from Syria? Are they put at risk by doing so?

Jonathan Hall: By being repatriated?

Dr Caroline Johnson: No. Are those who go to repatriate them—those who we send to collect these individuals—put at risk in going to get them?

Baroness Kennedy of The Shaws: I think the Red Cross is involved in this. There are NGOs that take them to the border with Turkey.

Jonathan Hall: There are mechanisms. There is bound to be a degree of risk whenever you go into those camps, but it does not sound to me as if it is a level of risk that ought to stand in the way of doing what is right. If you decide that it is in the long-term interests of the UK, and perhaps in the interest of the child to whom some duty is owed, to repatriate them, I

cannot imagine that the risk to the officials will change anything—if that is what you are getting at.

Q99 Lord Dholakia: Do you have any recommendations for improvements to our legal framework for matters relating to prevention and prosecution, particularly on international crimes, and to ensure that it is compliant with human rights legislation?

Jonathan Hall: I have given the recommendation about an extradition framework. I also recommend that extraterritorial jurisdiction is extended for certain domestic crimes, such as child abuse and neglect. More resources ought to be put in, or at least the counterterrorism police ought to have greater familiarity with war crimes, and there ought to be closer working between the war crimes unit and the counterterrorism policing unit.

Repatriation is not really about accountability, in my view. That is a separate moral issue to do with returning people, particularly children, who had no choice about being taken to the camps. For that, my recommendation would be that the Government should not take a case-by-case approach, which is effectively reactive, whereby they wait to see whether someone comes to them and says, “We think we have a case to be returned”.

The Government should have a proactive approach of looking at those whom they can safely return. They should be gathering information from as many sources as they can to try to identify which women could safely be brought back—with children, so that we do not have the problem of unaccompanied children. In doing so, they could take account of any national security risk. I fully accept that there will be some women, and obviously men, who are very risky indeed.

I would not say that the Government have no choice about repatriation, but they should be proactive rather than reactive, because it is better to know as much as possible about people who could come back if things changed. Who knows? There could be a change of Government, government policy could change or there could be an earthquake, as I mentioned, or an inability to secure people in the camps. A proactive policy would be better.

Chair: Thank you very much. You have a difficult job and you perform it with scrupulous fairness. I am in awe of your ability to do that. You are a tremendous credit to your profession and the English Bar. I thank you for your evidence today.

Baroness Kennedy of The Shaws: I pay tribute to you too.

Baroness Meyer: Hear, hear.

Lord Alton of Liverpool: Hear, hear.

Baroness Kennedy of The Shaws: Very impressive.

Chair: It is a difficult and unfashionable topic, but you do the job scrupulously fairly, and thank you for that.