HOUSES OF PARLIAMENT

Joint Committee on Human Rights

Uncorrected oral evidence: The UK's engagement with its international human rights obligations (HC 708)

Wednesday 24 April 2024

3.05 pm

Watch the meeting

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

Evidence Session No. 1 Heard in Public Questions 1 - 31

Witnesses

I: Lord Bellamy KC, Parliamentary Under-Secretary of State, Ministry of Justice; Rob Linham OBE, Deputy Director of Rights Policy, Ministry of Justice.

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Examination of witnesses

Lord Bellamy and Rob Linham.

Q1 **Chair:** Good afternoon to everyone present and those watching us online, and welcome to today's meeting of the Joint Committee on Human Rights. We are a cross-party committee and a Joint Committee, which means we have members from both the House of Commons and the House of Lords. This afternoon we are taking evidence on the United Kingdom's engagement with its international human rights obligations, and our questioning will focus on the Government's internal decision-making processes, their engagement with judgments from the European Court of Human Rights, and government engagement with the universal periodic review and the various human rights treaties to which the United Kingdom is a party.

We are very pleased to be joined by Lord Bellamy KC, Parliamentary Under-Secretary of State at the Ministry of Justice. He is accompanied by Rob Linham, Deputy Director of Rights Policy at the Ministry of Justice. Good afternoon, gentlemen, and thank you so much for joining us.

As Chair, I have the privilege of asking the first question, which I will direct to you, Lord Bellamy, if I may. Could I ask you, in general terms, to set the scene? As the Minister responsible for human rights, what do you do to ensure the protection of human rights across government and all the various departments of government?

Lord Bellamy: Thank you, Madam Chair, and thank you for your invitation to the committee this afternoon. I, as you know, am Parliamentary Under-Secretary of State at the Ministry of Justice, and human rights policy falls within my portfolio. Essentially, each department is responsible for ensuring the compatibility of its own policy and legislation with human rights, but the Ministry of Justice provides legal and policy support to those other departments, particularly where there are cross-cutting issues across departments.

Directly speaking, in the ministry we have policy responsibility for our own human rights framework under the Act, and we share responsibility with the Foreign, Commonwealth and Development Office for the European convention and the Court of Human Rights. As you know, the Foreign Office looks after the Council of Europe, which is essentially the organisation responsible for the European convention, but we act as the national co-ordinators, effectively those responsible for the implementation of adverse judgments against the United Kingdom, which fortunately are rare. We have had none so far this year, we had one last year and two the year before. I think I am right in saying that cases against the UK represent 0.2% of the European Court of Human Rights' case load.

In addition, of course, we hold responsibility for reporting on a number of UN treaties: the International Covenant on Civil and Political Rights, the ICCPR; International Covenant on Economic, Social and Cultural Rights, the ICESCR—sorry for all the acronyms; and the Convention Against

Torture. We also hold responsibility for the UK's part in the universal periodic review, which, as far as the United Kingdom is concerned, last took place in 2022, and for which my colleague Minister Freer was responsible on behalf of the UK Government.

Q2 **Chair:** Thank you. This committee took evidence last year about the procedure of the universal periodic review, and we are all much more up to speed on it than we were. You mentioned the fact that the UK comes out rather well with its engagements with the European Court of Human Rights. Certainly, when this committee visited Strasbourg in 2022, it was emphasised to us repeatedly that, as you say, 0.2% of the court's workload comes from the United Kingdom. It was also emphasised to us by various interlocutors at the Council of Europe how much the United Kingdom's voice is valued at the Council of Europe and what store people put on the United Kingdom's participation in the convention.

This committee has in recent years scrutinised proposals to repeal the Human Rights Act and replace it with a Bill of Rights, and looked at the potential withdrawal from the European Court of Rights. I think it is fair to say that the committee has supported the retention of the Human Rights Act and been an enthusiastic supporter of Britain's continued membership of the ECHR. I say all that, because there has been quite a bit of rhetoric recently from some former Members of the Government, some Conservative Back-Benchers, and the Prime Minister himself about the possibility of leaving the European Convention on Human Rights. Is leaving the Council of Europe and the convention on the horizon for the Government, or can the committee afford not to worry about that?

Lord Bellamy: The United Kingdom remains very strongly committed to human rights and to working through the frameworks of the Council of Europe and the United Nations. As you rightly say, we have been a leading participant ever since the convention was founded, very much inspired by Sir Winston Churchill in the first instance. One never knows how things will turn out in the future, but, as far as I am aware, there is no current policy on the part of the Government to withdraw from the convention or anything like that, or any need to do so.

Chair: Thank you.

Q3 **Jill Mortimer:** Last year, the MoJ provided evidence with an overview of how the internal government processes for engaging in international human rights mechanisms take place. Do these need to improve in any way and, if so, how?

Lord Bellamy: Our view is that it works well. It works pragmatically. We are not in favour of further formal mechanisms beyond the arrangements that we have at the moment. In particular, we work closely across departments, but also with the devolved Governments. I am not aware of any substantial criticisms of our internal procedures. So without I hope sounding complacent, we think we have got the balance about right at the moment.

Jill Mortimer: You have a light touch.

Lord Bellamy: It is a light touch but, if I may say so, awareness of human rights obligations across government and across departments is pretty high in this country, due not least to the work of committees like this and to our very active NGOs and other organisations. So it is very much on the radar across government.

Jill Mortimer: Would it be fair to say that you do not think there should be a more centralised approach?

Lord Bellamy: No, we do not. We can see disadvantages in further administrative clutter, if I can put it like that.

Q4 **Jill Mortimer:** Thank you. The United Nations advocates for national mechanisms for implementation, reporting and follow-up, such as the UK's action group on the UN Convention on the Rights of the Child, as best practice for co-ordinating the implementation of international human rights obligations within states. My question was going to be whether you would consider establishing one for international human rights mechanisms generally, but I think you have already answered that and we have enough on that.

Lord Bellamy: My answer is the same for that specific question. I think it very much depends on the framework in each country. Some countries have ministries that have a great deal more operational independence than others. We are fortunate in this country to have the deeply rooted concept of collective responsibility, which also enables us to co-ordinate and co-operate very effectively across departments.

Q5 **Baroness Lawrence of Clarendon:** The United Nations has constantly reminded all states to adopt a national human rights action plan. The Scottish Government have already done this, but the UK Government have still not adopted one. Why?

Lord Bellamy: At the level of the UK Government at the moment, we are not persuaded of the need for an action plan as such. As I have just said, departmental policies evolve depending on the problems of each department, and in that context—it crosses my desk quite a lot—human rights considerations are very much taken account of. To have a further overarching plan is not necessary at the moment, as we see it.

Q6 **Baroness Lawrence of Clarendon:** The documents that were sent to us mention that the Government make decisions on international human rights policy through an ad hoc, decentralised approach. Would you agree with that?

Lord Bellamy: If the term ad hoc implies slightly on the hoof and without particular consideration, I do not quite agree. However, I agree with the general proposition that policy evolves according to developing circumstances and the particular circumstances that present themselves and departments, very often in collaboration with the ministry, will develop their policies accordingly.

Q7 **Baroness Lawrence of Clarendon:** It also said that each department is responsible for its own human rights policy decisions. How would the

Government monitor what other departments are doing if it is done in an ad hoc way? How would they know?

Lord Bellamy: Mr Linham will probably be able to add to what I say, but the MoJ provides a full degree of legal and policy support across departments, and I think it most unlikely that any significant problem with human rights would develop in a particular department without the MoJ being involved.

Rob Linham: The situation is that we feel that human rights is best dealt with in what the jargon would be described as a mainstreamed manner. In other words, every one of my colleagues in whichever department is asked to bear human rights in mind and to be aware of the United Kingdom's obligations when making policy. Rather than having a central policeman or policewoman, I suppose, the goal is that every department is cognisant of those obligations.

My team fulfils a function that allows us to co-ordinate on questions that are cross-cutting, where there is a systemic issue perhaps about the operation of a system of human rights that comes up in many different places. It also allows us to be aware of where there are particularly significant issues, but, ultimately, not least given that each government department is individually a public authority under Section 6 of the Human Rights Act 1998, we consider it is best for each of those departments to be responsible for their own compliance with the United Kingdom's obligations.

Q8 **Baroness Kennedy of The Shaws:** This question is a follow-up to Baroness Lawrence's questions. The term ad hoc in the document that was prepared for us is really about being responsive as issues arise. Would you agree with that? The need for it to be within the departments is that for every department it will be very different. If it is a department involving trade, it might involve having to assess the human rights positions in certain situations abroad. If it is the Foreign Office, it will be dealing with issues in other parts of the world. Internally, it will be about all manner of things to do with employment, issues of race, discrimination as experienced by women, et cetera. It does need to be responsive in that way, depending on the nature of the department.

Lord Bellamy: We would entirely agree.

Q9 **Chair:** I will just come back on the human rights action plans and declare an interest. Despite my party affiliation, I am not a Scottish exceptionalist, and I do not necessarily think that everything in Scotland is perfect, but before I was a Member of Parliament I was involved as a stakeholder on behalf of the equivalent of the Scottish Bar Council, the Faculty of Advocates, in Scotland's national action plan. One advantage of a national action plan is that it provides for a process of extensive stakeholder engagement in developing government policy towards domestic implementation of our various human rights obligations. I know the Equality and Human Rights Commission has argued that having a national human rights action plan would enable the Government to

operate perhaps more strategically, ensuring their efforts were streamlined and better co-ordinated across Whitehall and at a local level.

It also says it would enable the Government to "facilitate the sharing of best practice initiatives, improve the way it measures and evidences human rights progress on the ground, and improve co-ordination, preparation and timely submission of state reports to the Human Rights Council and treaty bodies". For the reasons Helena has explored with you, I fully understand why there should be responsibility at departmental level and then an overall co-ordination by you, Lord Bellamy. Could I just tease out a bit more from you on why you think that, notwithstanding the EHRC's recommendations, the United Kingdom does not need a national human rights action plan at the moment?

Lord Bellamy: First, we entirely respect the decisions taken north of the border in their particular circumstances to develop an action plan. However, as far as the UK Government are concerned, for the reasons that I have given, we are not completely persuaded that we need a plan to improve what is already a pretty effective human rights framework in the extent to which human rights considerations enter into government policy, the extent to which departments respect and are aware of their human rights obligations, and the very small number of violations against the United Kingdom that are eventually found. That is strong evidence that it works quite well. I do not know whether Mr Linham would like to add anything, but the only other point I would make is that human rights organisations, NGOs and other stakeholders are not bashful in coming forward in this jurisdiction. They make their voices very clearly heard, and we take account of them and work very closely with them, so we cannot see any real advantage of adding to the bureaucracy.

Rob Linham: I would concur with what Lord Bellamy has said. With the greatest respect to our colleagues at the Equality and Human Rights Commission, there is no problem with, for example, the timely submission of our reports to the United Nations as required. There is no problem with public access to our response to these recommendations. They are published; we place them on GOV.UK as well. As Lord Bellamy has noted, we already have frameworks for stakeholder engagement, both specifically for these treaties and more broadly.

The balance to doing anything of this nature is simply the cost and effort of doing it. Everything has an opportunity cost. It has repeatedly been proposed in the 20 years I have been working in this field, and I think Lady Corston was in the chair when it was first recommended by this committee. Even the annual report we produce on human rights judgments and which your committee scrutinises is a fairly substantial co-ordination exercise for us to undertake and, of course, to approve across government. My fear, with any grand process of that variety, is that we would spend an awful lot of time on process that would not move us very far forward.

Lord Bellamy: Against that background, in the broadest possible sense, we are deeply privileged to live in a very open society in which there is

rumbustious debate. I do not always agree, but debate is out in the open and it is very fully reported. The tussles, stresses, strains and tensions are worked through in a very public process of consensus building and parliamentary activity. Without being at all complacent, we are modestly proud of the way our human rights record has developed.

Chair: You will not get any argument from me on the importance of freedom of expression and a rumbustious debate.

Q10 **Baroness Meyer:** Are this Government still committed to their obligation under international law to execute judgments of the European Court of Human Rights?

Lord Bellamy: Yes.

Baroness Meyer: That is what I thought. Can you also tell us what you think the value of the European Court of Human Rights is? Considering how many years ago it was devised and how the world has changed, is it still fit for purpose? Does it need to be revised or, as some advocate, do we need to get out of it?

Lord Bellamy: In many ways, the European Court of Human Rights has shown a remarkable ability to evolve across the years since it was set up. Remember, the court came a bit later, but the convention dates from the late 1940s when things were completely different, if I may say so.

However, I am afraid that there are significant challenges that have to be worked through, and the UK Government do their best to work through them. The first is the backlog of, I think, 75,000 cases, which is quite a strain on any organisation of this kind. Part of my own background is being a judge in an international court for a while, and I know it is very difficult to operate in an international court from a linguistic and operational point of view and with the different legal traditions and melding of a common approach. This is hard work, so the court does very well, considering the pressures on it.

There is also the need to work on the judicial appointment system to make sure that we have the right people in the court and to allow cases to be dealt with as fairly and as expeditiously as possible. But these are operational issues, and my personal view is they do not put the principles of the court in jeopardy. The difficulties that I have mentioned would not in themselves justify any decision to change the court or abolish it or anything of that sort. Rob, do you have anything to add?

Rob Linham: No, I have nothing to add.

Q11 **Baroness Meyer:** How did you react to the recent decision against the Swiss Government? Was that not the European Court of Human Rights extending its remit and getting into the idea of a country's sovereignty?

Lord Bellamy: We have to step back a bit before we say anything decisive about the Swiss judgment. First, as you know, each case is very much fact dependent. Curiously to British eyes, the European court does

not have a doctrine of precedent. It is not a judgment against the UK, so is in no sense a binding judgment. We do not yet know what the ultimate outcome will be, because that depends on what is decided in the Committee of Ministers. These judgments are almost given in abstracto, as it were. The actual implementation takes a long time and is worked out, more or less, at a political level.

It is far too early to draw any conclusions from the Swiss case, and I imagine, especially since the United Kingdom's approach to climate change and net zero has been significantly different from that of Switzerland, that it is not at all clear that it has any real application to the United Kingdom. We shall see. Those are all caveats I would make. That said, the dissenting judgment is worth a read. It is quite an impressive document from a philosophical and intellectual point of view, so we have to see how this works out.

Chair: That dissenting judgment, of course, was from the United Kingdom judge.

Lord Bellamy: It happens to be a judge from the United Kingdom. It could have been anybody.

Chair: The other thing I would say about the Swiss judgment is that the court was non-prescriptive, in that states should go about fulfilling these positive obligations. There is a big margin of appreciation, is there not, on how a state—

Lord Bellamy: Indeed.

Chair: If, as you say, the United Kingdom's net zero targets are more ambitious than the Swiss ones, perhaps this will not be of much application. It is also fair to say, is it not, that on the same day as the court made this judgment, it also declared two further climate change applications as inadmissible, to shut them down?

Lord Bellamy: That is very important. In the Duarte Agostinho and Others v Portugal and 32 Other States case, it rejected the argument that states other than the state where the applicants were based—the particular state was Portugal—had any liability towards nationals of another country. In other words, it set its face against extraterritoriality in that particular case. The third case was against France, and Rob Linham will remind me of the name of the case.

Rob Linham: Carême v France.

Lord Bellamy: Thank you. The applicant had moved to Brussels and so did not really have any standing to complain about the position in France, which, to my mind at least, shows the court was prepared to take a fairly narrow approach, where justified, to issues about climate change arriving under the convention. So I agree with you. How these cases fit together is another issue that will have to be worked out as we go along.

Chair: That is very helpful. Thank you.

Q12 **Baroness Kennedy of The Shaws:** It is often not understood by those outside the community that you and I belong to that when a judgment comes from the European Court of Human Rights it is understood that there is—as the Chair has mentioned—a margin of appreciation. That means that if a finding is made, it is recognised that how that will be interpreted in the culture and the legal culture of a country might be rather important.

The thing that is often taken as an example is the Court of Appeal's horrifying decision in relation to prisoners' rights to vote. You will remember that, at the time, people were shocked and appalled because they thought this meant that somebody convicted of the most heinous of crimes—murder, rape, terrorism—would be allowed the right to vote. In reality, had Britain decided that, in order to fulfil the judgment's requirement, prisoners with a sentence of less than a year should be allowed to vote if an election takes place in the course of that time, that would probably have been an acceptable response. The margin of appreciation is pretty wide when it comes to the culture of a particular nation. Would you agree with me?

Lord Bellamy: I would agree with you. I would like to underline your comments and perhaps add that it would do no harm for people to be better informed or educated on this animal when we think about our own legal system and our own courts, but it is a different approach really.

Q13 **Baroness Kennedy of The Shaws:** Can I just tease that out a bit more? What the court was deciding in that prisoners' rights example is that we should be protecting individual rights. I would have thought it important, particularly given that this was invented by a Conservative Government and drafted by a Conservative Attorney-General from Britain. This was in 1950, and it was very important to counter what was feared at the time, which was a growing sense that communism was on the rise in Europe and that there was a whole business about collective rights. Protecting individual rights in that context is vital.

The rights of the individual were the basis of this prisoners' rights issue, because they were saying that a blanket ban that affects all prisoners is what we are concerned about. Blanket bans tend to move against individual rights and go down the collective position that we are trying to resist here. There has to be a balance between collective rights and individual rights with, if you like, primacy given to individual rights. That is why, if we had returned by saying, "Yes, we can understand that those returning to the community so soon after being sentenced by a court should be kept active within the community to which they belong", we could have resolved it in a much more sensible way. Would you agree with that? It always surprises me that Conservatives do not like it.

Lord Bellamy: I would agree with your general point. The margin of appreciation is a very important element in the whole thing. I am reaching back into my memory for the details of the prisoner voting case, and I am not entirely sure that I am in a position to comment on it in detail. I can say from memory that it was eventually sorted out by

patient diplomacy and reasoned argument, which is how these things resolve themselves in the end. Coming back to the Swiss case, I would imagine that that is how it will likely evolve and that the Committee of Ministers will no doubt arrive at a sensible small-P political outcome.

Q14 **Jill Mortimer:** Sadly, you have me at a disadvantage, because I am not part of your esteemed community. However, I have educated myself a little and understand the margin of appreciation. You say that the ECHR does not set precedent, but it does have a heavily persuasive effect in our courts. Those judgments do have a persuasive effect. I will give you an example: the amount of weight given to the UNHCR evidence in the Rwanda case was because it had been found to have been given evidence that way in a previous ECHR thing.

Do you worry about some of these very extruded judgments that we are seeing from the original intent of the convention, particularly where the court has exceeded its rights, such as giving itself power of making Section 39s binding and things like that? I do not agree that it should have the power to do that, and it is very undemocratic. Do you feel that it is dangerous that, with those extrusions of judgments, it still has such a heavily persuasive effect and can be argued in our courts in quite the way it is?

Lord Bellamy: The way I would argue it is that something like the living instrument doctrine gives rise to tensions. In terms of the British courts, they know that there is a legislative body that will ultimately enact the law. That means that the mindset of the English legal system is slightly different from the mindset of many continental legal systems where there is a constitutional court, a written constitution, all those things. However, I would say that, on the whole, despite frustrations expressed over the years by many British judges in various judgments and nonjudicial pronouncements, these tensions tend to work themselves out over time.

We had a case called Horncastle many years ago—Mr Linham will no doubt have others, and I may get this one wrong—which was about the admissibility of evidence in criminal cases where the court made a ruling that was really not compatible with how we do things in this country. But in the end, through the dialogue, it was sorted out, and the court effectively backtracked. So it can be hard work but, in the end we have managed to navigate the inherent tensions in the system. Rob, would you like to add anything?

Rob Linham: No. Horncastle was exactly the example I was going to reach for. The obligation under Section 2 of the Human Rights Act on our courts is to take into account the jurisprudence of the Strasbourg court and antecedent bodies. That does not mean slavishly following it, and as Lord Bellamy has cited there have been occasions when our domestic courts have looked at the jurisprudence in Strasbourg. Generally, the jurisprudence in Horncastle is unusual in that it was a United Kingdom case but often looking at the jurisprudence coming from other systems and saying, "When we look at this in our context and in the context of one of the common-law systems of the convention countries, we can see

challenges here and that maybe this hasn't got the nuances right or the details. It doesn't have the balance". Our courts have engaged in that quite extensive dialogue through judgments with the Strasbourg court.

Jill Mortimer: You have already touched on the process for selecting judges. This is where I am at a little disadvantage. I am on the Parliamentary Assembly of the Council of Europe, so I read the CVs and I vote for the judges who go on to the Bench. Are you a little concerned perhaps about the calibre and experience of some of the people who come forward and are elected to the Bench in the European Court of Human Rights? Do you think we will see more of these extrusions coming through in future?

Lord Bellamy: That is a process that one needs to keep an eye on the whole time.

Rob Linham: I have some previous experience on this in Strasbourg. A lot of steps have been taken over the last 10 years to set guidelines in the Council of Europe for a strong and careful process at the national level by which each state chooses its candidates to make sure that it is putting forward qualified candidates. As you will know, there is now much stronger architecture at the Strasbourg level to scrutinise candidates and the development of the advisory panel before it even gets to the Parliamentary Assembly.

Over the last decade or so, we have certainly seen an increased emphasis on the good qualification and good judicial experience of those who are put forward as candidates for the court, and we have definitely made some steps forward since the Brighton Declaration in this respect.

Jill Mortimer: Are you saying that it is better now than it was?

Rob Linham: There is always room to improve, but having those guidelines in place definitely means that you can avoid the odd cases where maybe somebody was put forward for election who was not so qualified, because lists have now been rejected on that basis and it is important that they are.

Chair: I think I am right in saying that if a list of three is put forward by a member state and any candidate on that list is considered inadequate, the list is rejected in its totality.

Rob Linham: That is correct, and that has happened on a number of occasions.

Chair: That is quite a strong safeguard.

Rob Linham: It is important that the Parliamentary Assembly has a genuine choice between three well-qualified candidates for the court.

Chair: What would constitute a well-qualified candidate?

Rob Linham: It is a candidate who satisfies the requirements of Article 21 of the convention. I have it in front of me and will cite it. The criterion, which is very much as drafted in 1950, calls for candidates to be of "high moral character". For example, either they have to have the qualifications required for appointment to high judicial office, which is now understood to mean the highest judicial office in whichever country it is—for us, we would expect somebody to have the qualifications for election or for appointment to the Supreme Court—or, in a phrase that has caused much scratching of heads over the years, they have to be a "jurist consult" of recognised competence, which is generally taken to be that if somebody is a particularly esteemed professor of law or something of that variety, they may not have the technical formal qualifications.

There are two other elements to this. The first is that judges sit in their individual capacity on the court, and one thing that is definitely scrutinised in the process is that everybody who is put forward for the court is, shall we say, free from impediments or encumbrances upon their office for the court. Secondly, every person who is put forward for the court has to have the facility to work in both of the working languages of the court, English and French, and that is now very important as well.

Q15 **Lord Murray of Blidworth:** I have a particular concern arising out of the Swiss climate change case. The case appears to severely unhinge the meaning of the word "victim" from that which has hitherto been the case. It seems to me that there are wide ramifications in that a future risk can qualify somebody for claiming to be a victim and thus giving them standing to bring proceedings under the convention.

Indeed, you will recall—notably as picked out by Judge Eicke—the suggestion that you can act on behalf of future generations as a victim. In the domestic context of our Human Rights Act, we define the term victim by locking it into the definition used in Strasbourg, and it seems to me that this will have ramifications for the operation of the court in terms of the number of cases that are brought and for ramifications domestically. Do the Government have any plans to address this? It seems to me that waiting for further cases to revisit the question of victimhood is not going to be enough.

Lord Bellamy: The Government do not have any immediate plans, but my personal view is that this is a real issue that will need to be thought about in some depth. I speak under the control of Mr Linham but, according to the dissenting judgment, the court may have inadvertently widened the concept of standing to get quite close to what is called an actio popularis—somebody representing what they think is the public interest—although they say that in the Duarte case we cannot have an actio popularis. So how these two things fit together is still an open question, but it is perhaps inadvertently a curious judgment on the question of who a victim is.

Lord Murray of Blidworth: This is a Grand Chamber decision, whereas Duarte is just an admissibility decision.

Lord Bellamy: It is a Grand Chamber decision, and the dissenting judgment on this point does bear careful consideration.

Chair: We could have a whole session on this.

Lord Bellamy: We could indeed, yes.

Baroness Kennedy of The Shaws: It really is an interesting issue.

Q16 **Bell Ribeiro-Addy:** The European Court of Human Rights can issue temporary injunctions, interim measures, and these are often used to prevent human rights violations while deportation or extradition cases are considered, such as those issued to prevent removals of asylum seekers to Rwanda. The court has held that a failure to comply with these interim measures is a violation of Article 34 of the convention. However, the Illegal Migration Act and Clause 5 of the safety of Rwanda Bill, which we have just passed, anticipate Ministers disregarding these interim measures. Do you accept that this would be in breach of the UK's obligations under the convention?

Lord Bellamy: The answer is not necessarily. It will very much depend on the circumstances as they arise. First, could I greatly welcome the improvements in the Rule 39 procedure that the European Court has introduced? If I may say so—I say this in an unauthorised way—it seems to me to be an example of the force by which UK diplomacy can bring about change in relation to Strasbourg. If you engage properly and have a reasonable argument, you will find that the institution can respond. It remains to be seen how significant these changes are, but they look important. We may never have to cross this bridge, but if we ever did have to cross it, it would very much depend on the circumstances at the time. Rule 39 is a controversial area, and I do not think I can go any further than that.

Bell Ribeiro-Addy: I just want to understand why it would be unclear in its language or even in its implementation. It says that a failure to comply with interim measures is a violation. In what situation would it not be a violation?

Lord Bellamy: I do not think we can address this question in the abstract. It will depend very much on the circumstances at the time. If I may respectfully say so, we will have to cross that bridge when we get to it, if we ever get to it.

Rob Linham: May I just add one very important point? Even according to the court itself, a failure to comply with an interim measure will normally constitute a violation of Article 34. Even in Mamatkulov and Askarov v Turkey, the case that brought this and subsequent judgments forward, the court itself has recognised the possibility for limited circumstances where a failure to comply with an interim measure may not occasion a violation of Article 34.

Lord Bellamy: Reverting to our previous decision, again, the question of the violation or what should be done about the violation if there is one,

goes back to the Committee of Ministers. It is not equivalent to what we would understand as an injunction in common law terms.

Baroness Kennedy of The Shaws: Having said that, though, it is interesting that the revised practice direction says, "A failure by a respondent Contracting Party to comply with interim measures undermines the effectiveness of the right of individual application guaranteed by Article 34 of the European Convention on Human Rights and the State's formal undertaking in Article 1 to protect the rights and freedoms set forth in the convention. Interim measures are thus binding".

Lord Bellamy: Is that what it says?

Chair: Yes. I am just following up on what Mr Linham said, which seemed to be slightly at odds with what the revised practice direction says. I know it is just a practice direction, but it is fair to say that it is a description of the previous jurisprudence of the court, is it not?

Rob Linham: That is correct, Chair. I do not have it in front of me, but I think you will find that the judgments that I cited are footnoted to that point of the practice direction. It is a high-level summary of the court's case law, which is quite voluminous. There is an entire information note published by the court on this as well that goes into a lot more detail on its jurisprudence.

Chair: What kicked all this off was the controversy about the successful Rule 39 application that was made during the first set. I am anticipating further litigation. The successful application was made during the previous litigation, but is it not fair to say that that successful Rule 39 application was ultimately shown to have been justified, given that our own Supreme Court concluded that there would have been a real risk of treatment in violation of Article 3 if the removals had gone ahead? What I am really saying is that, regardless of all the fuss at the time it was made, ultimately our own United Kingdom Supreme Court vindicated the fact that those orders had been made.

Lord Bellamy: I am not in a position to agree or disagree with you on that point. This is an area of acute controversy. If there is another round of litigation, we will see what it brings. Given that we are in the situation we are in, I do not think that I can say any more than that on behalf of the Government. We will just have to see how it goes.

Q17 **Baroness Kennedy of The Shaws:** Except that, if I might take up what the Chair was raising, our Supreme Court, relying on the evidence that was before them, decided that Rwanda was unsafe. The legislation that has gone through now, which is saying that Rwanda is safe based on the commitments that have been made by Rwanda to remedy the shortcomings of its system—

Lord Bellamy: And on many other factors.

Baroness Kennedy of The Shaws: Yes, and on many other factors, but it was a recognition that the legal system needed deep improvement, and

we understand that there is work being done on that. However, the concerns and the evidence that were important were the high level of refusal and refoulement, which is irrevocable. We have to remember that the situation in which this kind of interim measure is made is where the European court is saying there would be harm that cannot be retrieved. If you are refouled and sent back to the country in which you have been persecuted, that is irrevocable.

The concern about the safety of Rwanda at the time when the decision was made by the Supreme Court saying that it was unsafe would suggest that, indeed, it was right that the European court make that order at that time. It may be that in the future the court decides differently, given the changes that are sought to be made in Rwanda, but at that time, certainly as the Chair was saying, it would seem to be a proper use of the interim measure power.

Lord Bellamy: I understand the points being made. I do not think it necessarily follows from our Supreme Court judgment that the original interim measures order was correct, or that had that particular applicant ever been sent to Rwanda there would, ipso facto, have necessarily been a breach. It would depend on the facts and the circumstances in that case.

Baroness Kennedy of The Shaws: Ninety-eight percent of cases were being turned down by Rwanda.

Lord Bellamy: The retrospective link that is being made between the original interim measure and the Supreme Court judgment is not necessarily established, but that is as far as I can go.

Baroness Kennedy of The Shaws: The Government, of which you are a part, accepted and in no way said that they were not criticising the Supreme Court's decision. They accepted the decision on unsafety but were putting steps in place to try to retrieve that position and improve the situation so that it becomes safe. That is what I have understood.

Lord Bellamy: The position is that it does not necessarily follow in all the circumstances that that interim Rule 39 order was justified by the then situation, even though, retrospectively, there is a Supreme Court judgment, because I do not think you can draw a direct conclusion. This is historical debate that may not be that useful going forward.

Baroness Kennedy of The Shaws: But like the British injunction, and I know there are differences, the point of it is to stop something happening that could be irretrievable.

Lord Bellamy: As far as I am aware, there was no particular risk of refoulement in those particular cases, which would be highly relevant to whether the original order was right or not.

Chair: Might it help to look at a hypothetical case?

Lord Bellamy: Yes.

Chair: Article 34 is all about the effectiveness of the right of individual application. Am I right in saying that in a deportation context—so moving away from Rwanda—a failure by our Government to comply with an interim measure not to deport would be a clear violation of Article 34, because once you are deported your right of individual application is no longer effective?

Lord Bellamy: You have to remember that it went right up through our domestic jurisdiction, and our Supreme Court accepted the Government's undertaking to bring them back if there was eventually any finding of an infringement. There is more than one view on this and more than one view as to whether deportation is as final as you are suggesting. That is all I am saying.

Chair: I hear you.

Lord Murray of Blidworth: That was the point that I was going to draw, which is that there was an undertaking from the Government to bring anyone back. That satisfied the High Court and the Court of Appeal, and the Supreme Court refused permission on the basis of it, and there is no reason to disbelieve it. One cannot say that because at the end of the day the Supreme Court found as they did that the decision to make a Rule 39 indication was the correct one. Would you not agree?

Lord Bellamy: We have to give proper respect and weight to the decisions of our own domestic courts.

Q18 **Baroness Kennedy of The Shaws:** This question is about Northern Ireland and the judgments in what is called the McKerr group. You will remember that Gervais McKerr was shot dead, there was a prosecution of police officers, they were eventually acquitted, and the case has gone through the system. There was a group of cases involving the possible collaborative roles that the police made with paramilitaries. Those cases have not yet been fully executed more than 20 years after the final judgment was given, but they remain under the supervision of the Committee of Ministers that you have been referring to, which reiterated in its latest decision in September 2023 that it had grave concerns about a piece of legislation that we have put through, the Northern Ireland Troubles (Legacy and Reconciliation Act) 2023, and whether it was compatible with the convention.

I know you know this but, for the benefit of those who are listening, since the decision, the High Court in Belfast in February of this year found that key pillars of that Act, including the conditional immunity system, were indeed incompatible with the ECHR. The High Court quoted the Joint Committee on Human Rights' report in its judgment. Are the Government reconsidering the conditional immunity scheme in light of the judgment of the High Court in Northern Ireland and the repeated calls from the Committee of Ministers to do precisely that?

Lord Bellamy: As far as I know, that judgment of the Northern Ireland Court is under appeal and, given that the litigation is still pending, I do not think I can really advance the debate.

Baroness Kennedy of The Shaws: Are you saying that you think it is being appealed?

Rob Linham: I am given to understand from the notes in front of me that the Government have lodged an expedited appeal to the Court of Appeal in Northern Ireland.

Chair: We have to be very careful about the sub judice rule, as you have indicated, Lord Bellamy. If I take a step back, it does not surprise me that that case has been appealed. I imagine that it will probably go the distance. We are quite excited about it, because our committee was mentioned. We probably cannot explore the actual case, but we can explore the issue. I know the issue of compliance with these judgments may be in the abstract, because long before this particular litigation, when we as a committee went on a delegation to Strasbourg in 2022, this group of cases was brought up with us again and again. If we can explore it without straying into the case that is under consideration, that might be good.

Baroness Kennedy of The Shaws: Do you feel that you can do that, or do you think we are treading on ground—

Lord Bellamy: It is a difficult area to go into when there is pending litigation.

Baroness Kennedy of The Shaws: I think it is problematic.

Chair: Then I think we are probably safest to leave it there and move on to another set of cases that are definitely not sub judice.

Q19 **Lord Murray of Blidworth:** I will ask you some questions about the case of VCL and AN v the United Kingdom. Obviously, in those cases, the United Kingdom was found to be in breach of Article 4 of the European convention, the prohibition on slavery, as a result of failing to protect victims of trafficking from prosecution in relation to working on cannabis farms. Clearly, this case was decided in the way it was in the European court, contrary to the domestic decisions. Do you know what is being done in the department to give effect to the judgment?

Lord Bellamy: In very broad terms, my understanding is that the Modern Slavery Act 2015, which postdates the judgment, particularly Section 45, has largely covered the fundamental problem and given rise to a modern slavery defence, if I may put it colloquially, and that is being followed up. This is where I will ask Mr Linham to bring us up to date in a moment.

There are supplementary actions to improve guidance to prosecutors, to improve education in the police, to give better familiarity with the problem of modern slavery and the available defences so that there is a comprehensive solution to the case. Broadly speaking, we have complied with the judgment, although Mr Linham could perhaps say whether we still have some loose ends that we are dealing with.

Baroness Kennedy of The Shaws: Before you do that, we have a listening public, and it is one of the things that we might explain. That case was about people who have been trafficked and forced to commit crimes. We were not fully cognisant of how modern slavery operated and that people might be working in these cannabis farms, or in other places women might be forced into prostitution and into committing crimes for men who have trafficked them. We now have the Modern Slavery Act to deal with this, and we say that they should not be subject to prosecution if it is clear that they are falling into that category, that there should be no prosecution of those people, or that a defence should be made available to them.

Lord Bellamy: That is entirely right. Those concerned were young Vietnamese, if I remember rightly, who, as you rightly say, had been trafficked involuntarily into committing criminal offences. That forms an important part of the background to the whole modern slavery legislation and, so far, energetically put forward by our former Prime Minister, Theresa May.

Lord Murray of Blidworth: It is right to say, is it not, that in June of last year the Committee of Ministers noted the introduction of proper identification, protection and support for victims since the prosecutions?

Lord Bellamy: That is right.

Lord Murray of Blidworth: Perhaps Mr Linham can update us on what remains.

Rob Linham: Certainly, yes. We provided information in the most recent annual report on the execution of judgments on this at pages 26 and 27. Since then, we have also provided a new action plan to the Committee of Ministers—I think last month, from memory. According to the notes in front of me, the ongoing actions include improving first responders' training, introducing the duty to notify for nonconsenting adults in Scotland and Northern Ireland, keeping national referral mechanism decision-making times under review to reduce delays, making sure that victims get quality timely decisions and appropriate support, and monitoring the impact that the new legislation may have on the identification of and support for victims of trafficking.

There is also ongoing work between our colleagues in the Home Office and the Department for Education and local authorities on the prevention of child exploitation. It is all very much in the implementation space of the legislation now. Also, the Committee of Ministers, in which I used to represent the United Kingdom on this point, wants to see not merely, "Have you changed the law?" but "What impact has that change of the law had?" It is always looking for the practical examples, often statistical records, of what effect it has had. We are very much into that phase now with VCL and AN.

Q20 **Lord Murray of Blidworth:** Obviously, we know that the Home Office considers that modern slavery provisions in the Modern Slavery Act have

been abused in the context of asylum claims and, therefore, there are provisions in the Illegal Migration Act 2023 that address the Modern Slavery Act and its application to those who are part of the cohort for the duty to remove for third country asylum processing. Do you have any thoughts on whether that undermines the modern slavery regime or whether it is protected by those provisions?

Lord Bellamy: I cannot comment in detail on the operation of the modern slavery regime this afternoon, save to say that it is an unfortunate fact from any Government's point of view that if you introduce new rights a large number of people will start to claim them, and they are not always legitimately claimed. That is a constant problem we have to deal with.

Chair: This committee has previously heard evidence—I will no doubt be corrected if I am wrong—that there is no statistical evidence to suggest that modern slavery provisions are being abused and that this was being said without sufficient evidence to back it up.

Lord Bellamy: That is the Home Office view, but I am not in a position to give you detailed evidence on the Modern Slavery Act this afternoon. You need to ask the Home Office, if I may respectfully say so.

Lord Murray of Blidworth: I know from my personal experience that is quite contested.

Baroness Kennedy of The Shaws: It is contested, yes.

Chair: It is certainly contested. I wanted to make the point that some say they are being abused, but the question is whether there is evidence to support that assertion. I take your point, Lord Bellamy. We will not go down this particular—I was going to call it a rabbit hole, but it is not a rabbit hole, because it is very important. You say, Lord Bellamy, that we should perhaps explore with the Home Office the interaction between the provisions of the Illegal Migration Act and the protection of people such as the two young gentlemen in this case.

Q21 **Baroness Lawrence of Clarendon:** Lord Bellamy, you said something just now about too many provisions—I am not sure I am using the right word here—and that those who come over illegally may claim more. I am sorry. I could not get it into my head properly.

Lord Bellamy: I think what I said was that sometimes you create a right and sometimes people abuse that right.

Baroness Lawrence of Clarendon: Yes, to claim more than they need to.

Lord Bellamy: More than they are entitled to, yes.

Baroness Lawrence of Clarendon: Because it is open to them to do that.

Lord Bellamy: Yes. In the Home Office view at least, that is a fact of life in this particular area.

Chair: I suppose the flipside of that might be that there is not much point in creating a right if people do not have the ability to enforce it.

Lord Bellamy: Yes, it comes with the territory in a way. You have to find a way to balance all these things. It is just a problem of government.

Chair: Usually when we introduce a new right it is because we are required to do so by one of the international treaties that we have signed up to, or we have identified through case law or through societal ills that there is a gap and victims need protection.

Lord Bellamy: Indeed. All I was saying was that sometimes it brings another problem with it.

Baroness Lawrence of Clarendon: I did not understand that correctly. Sometimes when they arrive illegally—because, I presume, they find there is no other way of getting here—they are not able to assert their rights. It just seems as if their rights have been cut because they may end up abusing what is open to them, and the Home Office is trying to limit that by not opening up too much for them.

Baroness Kennedy of The Shaws: Do not put the rights in the direction of certain people because of the possible risk that there might be some who will abuse them, thereby removing them from ones who would be entitled to them.

Baroness Lawrence of Clarendon: Yes, that is the complication I had.

Lord Bellamy: That is a perfectly valid observation. I would not disagree with it.

Chair: It is maybe more than a valid observation. As a matter of public policy, should we not be avoiding passing legislation that we think is necessary because some people abuse their rights? We should be avoiding passing legislation that will punish those who need to avail themselves of those rights for the misdemeanours of a handful of people, or even if it is more than a handful.

Lord Bellamy: It is difficult. I would not disagree with the principle as you have just expressed it, but it is the Government's view, and certainly the Home Office view, that this situation in the context of illegal migration had created various difficulties. Lord Murray will know better than me; I am not really here in a position to debate that point in detail.

Chair: I hear you. It is something we have taken evidence on previously and I am sure it is something we will return to again. We will now ask you some questions about the universal periodic review.

Q22 **Dr Caroline Johnson:** Before we move on to that, I want to ask a couple of questions about the ECHR, if I may. You have talked about it

today, and how it all seems to work out all right in the end; even if judgments are difficult you can usually negotiate, and such like. Why do you think there is such an increasing number of people and an increasing loudness of voices arguing that we should leave the ECHR?

Lord Bellamy: You would need to ask those who are making that point why they are doing so. This is a very subjective and personal view, but it is possibly to do with the tensions that I was discussing a moment ago with Jill Mortimer MP between what is regarded as the democratic framework with which we operate in this country on the one hand, and the powers of a court such as the European Court of Human Rights on the other, and sometimes the argument flows in one direction or another. We have lived with this tension now for however long it is, 60 years or so, and we have to work it through, but that is probably the underlying tension, basically. To put it brutally, the underlying question is: are decisions taken by the members of this committee in this building, or are they taken somewhere else? It can be difficult.

Dr Caroline Johnson: It is a difficult one and reading my post bag, my constituents are very keen to have some form of control over the decisions that their government make, and to feel that the decisions are made by unelected people somewhere else in a different country is not something that pleases them.

Lord Bellamy: That is indeed a point of view.

Dr Caroline Johnson: The other thing that challenges people about the ECHR is the balance of rights. Since the Blair Government incorporated it in 1998, we have heard lots of stories of foreign national offenders who have committed heinous crimes—rape, murder, drug dealing—and have committed huge levels of evil and suffering on the people of this country. Yet usually because of Article 8 on family rights they are allowed to stay in the UK. The comfort of these people who have committed such evil acts is put above the comfort of a British citizen.

As far as I can see, there is nothing specific whereby the judge is able to say, "Yes, you have a right to this, but do they have a right to that? Overall, you lost yours pretty much because you committed these evil crimes, so these people have more rights than you. And you're not British because you are a foreign national offender, so you'll be deported anyway". We do not seem to do that. Is there a mechanism by which the UK could change that, such that the rights of the British citizen who has not committed a crime are taken into account over the foreign national offender who has caused such misery?

Lord Bellamy: I completely understand the concerns you are expressing. In the end, it comes down to the question of whether the downsides and the perceptions that you are explaining are outweighed by other considerations, such as the importance of respecting human rights, even of unscrupulous people or their families, and the balance of advantage and the underlying principle of belonging or not belonging to the

European convention. That in the end will be a decision for the political and democratic framework of the country.

Dr Caroline Johnson: These things were not written in stone or in blood, were they? Therefore, they can be changed. There is this feeling that every day we sit in this House we change some aspect of British law, and yet there seems to be a view that once we have some sort of international law it cannot be changed, we must live with it for however many years or decades, and it must remain completely sacrosanct. Surely the fact that we can see that domestic law needs to move with the times and continue to change means that we should be able to recognise that international law, if it is not serving the purpose we wish it to serve for us as a democratic country, needs to change too. That could be leaving it or modifying it. Is there a mechanism to modify it?

Lord Bellamy: Mr Linham will probably come in on this point, but I have said over the years that the UK has been influential in trying to keep the European convention, as it were, in line with changing times and changing opinions. But if you want to change and adapt it, whether you are working with the Council of Ministers or our very influential judges on the court, it is probably better to be on the inside than on the outside.

Dr Caroline Johnson: Presumably if you are on the outside, they do not actually apply to you and you can do more.

Lord Bellamy: There are advantages and disadvantages.

Rob Linham: To answer directly your question about whether the rights in the convention can be changed, the answer is yes, by means of an amending protocol to the convention. That is possible, and we have used amending protocols for the procedural elements of the convention. There is not yet a history of having changed the substantive rights in the convention, generally because the debates are about how they are applied in very specific circumstances. This is a very broadly textured code of rights, so the points that we are talking about, such as foreign national offenders, are not susceptible to being dealt with by means of changing the wording of the convention.

My answer, obviously bearing in mind the line of politics that I must not cross, is that Article 8 of the convention is a qualified right. By virtue of the right to private and family life being a qualified right, it is permissible to interfere with that right proportionately where it is "necessary in a democratic society". You need to have a legitimate aim, which among other things may include the interests of national security, public safety, the prevention of disorder or crime, or the protection of the rights and freedoms of others.

I cannot quote off the top of my head the precise provision in respect of foreign national offenders in particular, but this Parliament has given statutory guidance in immigration legislation on how decisions are to be taken where there is a balance to be struck between a foreign national offender's Article 8 rights and the question of whether they should be

removed from this country. I cannot give you more detail off the top of my head. That is for my colleagues in the Home Office.

Dr Caroline Johnson: Forgive me, I am not a lawyer, so you need to help me with this a little. Are you suggesting that the Government would be in a position to say that all foreign national offenders must be deported regardless of Article 8 rights and that it would not be a breach of the ECHR to do so?

Rob Linham: I am not saying that, and I would not venture an opinion on that matter.

Chair: Is it not really the case that the deportation of foreign national offenders will be looked at by the courts on a case-by-case basis, but it would be completely wrong to think that Article 8 stops their deportation. As you have said, Mr Linham, Article 8—I am looking at it here—is a qualified right. It is possible to interfere with that right provided you do so in accordance with the law and for reasons of necessity in a democratic society, such as the interests of national security and public safety, which is a very important interest.

So it would be wrong if any of our constituents or members of the public had the impression that Article 8 is a get-out-of-jail free card for foreign national offenders, because it absolutely is not. It is completely in line with the spirit of Article 8 for a court to say, "Yes, this person cannot claim their Article 8 right here because we have laws to protect public safety".

Lord Bellamy: Yes, indeed. There are only two comments I would make. As I said earlier, there would be advantages in better public familiarity and awareness of the convention that enabled misunderstandings to be avoided. That is the first point. But if Dr Johnson is asking me whether, in the end, whatever framework of laws we have it has to carry broad public consent, my answer would be that in a democratic society it does have to carry broad public consent.

Q23 **Baroness Kennedy of The Shaws:** We have to live in the real world and deal with the reality, because of course the tabloid newspapers will run away with a case where they think some departure from the norm has taken place. Let us just deal with the norm, Lord Bellamy. You know the courts as well as I do in this country. If you commit a grievous crime of the kind that Dr Johnson is speaking of—wicked, terrible, grievous and horrible crimes—the courts have a very clear power. For a crime of that nature, the judge would be at a senior and experienced level. Judges basically have deportation powers where they will say, "I am passing this sentence on you"— 20 years, 15 years, whatever is appropriate to the crime—and, "And at the end of that you will be deported back to the country from which you come". They use that power regularly in our courts.

Lord Murray of Blidworth: Over a certain number of years there is a statutory presumption that you will be removed.

Baroness Kennedy of The Shaws: Yes, there is, so let us be really clear about that statutory presumption, Dr Johnson. It is important that you know that the statutory presumption is that they will be removed.

The Windrush business has particularly caught the attention of the tabloid press, and it goes back to the people who came here as children to join parents from the West Indies and so on, who might end up committing serious crime. The question then is: do you deport them? Do you say, "And when you have served your sentence, you are going back to Jamaica, which is on your birth certificate as being where you were born, and you are not a British citizen because processes had not been gone through"?

Do you do that when they have had all their schooling here, their families are here, their brothers and sisters are here, and to all intents and purposes they are people who have been produced by our society? Do you willy-nilly say, as has been suggested, there should be no possibility of saying that somebody has family connections in this country of such a deep nature that you cannot just send them back to a place that they do not really know? We are talking about our judges dealing with the justice of a situation when that argument is presented saying, "Don't make a deportation order in this particular case because this person has deep roots in this country". That is the reality, is it not?

Lord Bellamy: From my own official position this afternoon, I am not able to get into the rights and wrongs of judicial decisions in relation to deportation.

Baroness Kennedy of The Shaws: Would you confirm that our judges are of a high calibre and usually work on the basis of much less?

Lord Bellamy: Our judges are of a high calibre and work on the basis of the law as it is in front of them, which includes Article 8. That is true, but the only general proposition I would make is that these laws and this framework that we have, in the end, has to have public support, and that needs to be worked on.

Baroness Kennedy of The Shaws: If we generate a notion that this is happening all the time, that foreign nationals are being given a special kind of concession because of Article 8, if that is promulgated, of course you will spread wrong information to the public and present a reality that is not the reality.

Lord Bellamy: I am not sure I can take it much further. The process by which public opinion is formed in this country, by the free press and the work of social media and all the rest of it, is complicated and deep.

Baroness Kennedy of The Shaws: Social media is particularly problematic in all that, because it promulgates things that are not true.

Lord Bellamy: Yes, if we ever get to a position where a law—and in some respects this is no different from any other law—no longer

commands general public support, that situation has to be addressed. That is all I am saying.

Chair: You said earlier that we need better public understanding of our laws. One of the things this committee recommended, in support of the independent review of the Human Rights Act recommendations, is that we should have better education about human rights law across the piece, not just for school children, but for us all.

Lord Bellamy: It was indeed one of the main recommendations.

Chair: I suppose the best way is to have a lively but informed debate about competing interests. Would you agree with that?

Lord Bellamy: Indeed, and there are competing interests. This is another of the mechanisms by which those interests are modulated. My own view is that better public education could advantageously be extended to the legal system as a whole, and indeed the operation of Parliament and all sorts of other public functions, which are very poorly understood in this country.

Q24 **Lord Murray of Blidworth:** In the past, Article 8 has been the subject of evolution in decisions of the Strasbourg Court. One area has been consideration of decisions to remove foreign national offenders, and, as we were discussing a moment ago with Lady Kennedy, there is a sentencing presumption that, if they are not a British national, above a certain number of years of imprisonment that person will have their right to remain terminated and they will be removed.

There is provision built into the statute, but the only exception to that is if such an action would be unlawful in terms of breaching their rights under the European convention. So Dr Johnson is right in this regard and that the mechanism that foreign national offenders deploy in relation to objecting to removal is through the lens of Article 8. That then brings in the case law of the Strasbourg Court in relation to what falls within Article 8.

My question is to you both, Lord Bellamy and Mr Linham. In light of Dr Johnson's question about what could be done on the international plain between the contracting parties, is it right that rather than seeking to change Article 8 one could agree a protocol that provided for a statutory definition of rights and to control the jurisdiction of the court to expand that. It would be open to the parties to agree such a measure in terms of the construction of the court. After all, there are already protocols dealing with the administration of the court, so in principle there is nothing wrong with that, is there?

Lord Bellamy: I will defer to Mr Linham on this, if I may, but my initial impression is that would be procedurally quite difficult.

Rob Linham: Yes, a treaty is open to the parties—a multilateral treaty in this case—to agree such amendments to that treaty as they wish. One would presume that those amendments would have to be compatible with

the object and purpose of the treaty, but it is open to them to do so. I am frowning at that, because I cannot think of a precedent for it being done in that manner. Equally, however, I cannot tell you it could not be done, if you see what I mean. International law is a great font of creativity at times, but I cannot think of a precedent for it to be done in that manner.

Chair: Thank you. Again, something we could spend a whole session on, I am sure.

Lord Bellamy: We could philosophise all the afternoon.

Chair: We could. I am conscious that we do not want to keep you here for too long because you are a busy gentleman, but we have two or three other questions that we need to ask you. Caroline wants to ask about the universal periodic review.

Q25 **Dr Caroline Johnson:** I do, but I just want to make the point that the government response to consultation actually gives three examples—case X, case AD and case OO—from three different nations, where people who had committed very serious offences used Article 8 rights to remain in the United Kingdom. The scale of it may or may not be massive, but it clearly is a problem that people are staying here on the basis of Article 8 rights when they have committed heinous crimes, so in my view they should certainly not be doing so.

The question about the universal periodic review relates to the perception of some people that the responses received from government are of a different type and quality to previously. Do you agree with that?

Lord Bellamy: No, I do not think I do, but again I will ask Mr Linham to comment. As far as I know we have dealt extremely comprehensively with the periodic review. There were 302 recommendations and we supported 135 of them. We partly supported a further proportion and did not accept the rest.

Rob Linham: There were a further 55 that we partially supported. I was responsible as the lead official for both our third and fourth round of the universal periodic review, and I would not recognise that description. I am trying to think of anything that substantively changed between the two. The only thing I can think of—I stand subject to correction on this when I check my notes later—is that we may not have used the concept of partial acceptance in the third round, but we did in the fourth, because we find it a useful way of indicating a nuance when it comes to a particular recommendation, apart from that the two were strikingly similar, so I do not recognise the description.

Q26 **Bell Ribeiro-Addy:** To your knowledge, what steps are the Government taking to take action on the UPR recommendations, such as to improve humanitarian conditions in places of detention for asylum seekers, in line with the international human rights standards, as well as accelerating efforts to achieve the objective of net zero carbon emissions by 2050, including by ensuring the mobilisation of adequate resources for this purpose.

Lord Bellamy: On the latter point, as far as I know, our policies in relation to net zero are well ahead of most other comparable nations. In relation to the accommodation on asylum seekers, again as far as I know, steps are being taken to make sure they comply with basic standards.

Rob Linham: Yes, and I am afraid the answer here will be a little like it was with the reporting and the execution of judgments at the Strasbourg court: that the responsibility for following-up on any recommendation that we accept or partially accept sits with the department that is responsible for that area. It comes back to the mainstreaming point that Lady Kennedy and I were discussing earlier. So on those points in particular we are not dealing with the recommendation discreetly, if you see what I mean; we are dealing with it as part of the framework and the background against which the lead department will be setting its policy in that area.

Q27 **Bell Ribeiro-Addy:** A number of different organisations are not content with the way in which the Government respond to the UPR recommendations. Is any work being done to improve that?

Lord Bellamy: Without being complacent, I would respectfully suggest that on the whole our response to the UPR periodic review process is exemplary, actually. People will not always agree with us, of course, because there are all kinds of interest groups, NGOs and other people who will always complain about something, but on the whole it is taken very seriously in this country and we are in relatively good standing compared with most countries. I do not know whether Mr Linham would like to add anything.

Bell Ribeiro-Addy: Would you say it is taken seriously in terms of simply responding, or actually carrying out the actions that are—

Lord Bellamy: Both.

Rob Linham: Without drawing comparisons, because my diplomatic colleagues would hate me if I did so, we consider each one of those 302 recommendations—as they were this time—on its merits. We give a considered response to it. We do not, as some states do, just blanketly say that we will accept everything. We do give that reasoned response to it, which is why you have those statistics.

I would caution by the way, just as a sidebar, parenthetically, that the numbers on this can be a little misleading, because, given the way the recommendations are counted, even if there are two recommendations that differ only slightly but are essentially on the same point, that is two recommendations. Countries obviously generally do not co-ordinate the recommendations they give us, so numerically it can seem a little unusual in that respect. If you are asking, "Why have we accepted only just over half and partially accepted another six of them?", that can be part of it.

So some of the ones in the "noted" category, the ones where we said that we were not going to accept them—noted being the jargon—are strikingly

similar. There are a number on the age of criminal responsibility, for example, which is one where the Government noted the recommendations. I will not comment on the policy of it, but from memory at least there are a handful that are on exactly the same subject but are just expressed slightly differently.

Nobody has expressed any concerns about this to me. You are citing the views of civil society, who have engaged with us about how we consult it, for example. I am meeting an organisation in a few weeks to discuss that, but not the point you have raised at all.

Bell Ribeiro-Addy: I take your point about some things being very similar. I am guessing that they are noted because the Government believe they are already doing them, so why would they not just accept them?

Rob Linham: "Noted" can be a range of things. First, it is worth clarifying that in the universal periodic review some recommendations will say, "Please comply with this obligation that you already have", some will say, "Please accept this new obligation", some will say, "Please do this thing that we think is good practice, but that is not necessarily rooted in any treaty". If we were already doing it, we would probably accept or at least partially accept. We would say, "Well, we accept, but we do not accept the premise that there is a problem". But a noted response might say, "We are not content to take on that new obligation", or, "We do not agree with the approach that that country would like us to take", and that is part of the dialogue of the universal periodic review.

Bell Ribeiro-Addy: In that case then, the numbers are right?

Rob Linham: The numbers are right, but what I am cautioning about—

Bell Ribeiro-Addy: Because you started by saying that sometimes they are noted but they are so similar, and that is why you noted them.

Rob Linham: Let me get the numbers absolutely right. So we have either supported or partially supported 190 out of 302. For the remaining 112, they are not 112 discrete subjects. That is what I am saying. For example, there are five that are all basically the same recommendation on a particular subject. So it is not 112 subjects where we have said, "No". There are 112 recommendations, but some will be blocks of essentially the same thing. That was the mere caution I was giving. The numbers are right. It is just that you should not draw the extrapolation from it that I was cautioning against. I hope that was clear. I am trying to do maths in public, which is dangerous.

Chair: Most of us would not even dare to attempt it. I certainly would not.

Rob Linham: I have fields of expertise, and that is not amongst them.

Q28 **Baroness Meyer:** Just to clarify, let us say it would be 40 recommendations by 40 different countries saying the same thing, and

you would count it as 40, as opposed to one recommendation.

Rob Linham: Yes, I am trying to find a practical example in a long list.

Chair: I remember this very well. When we did some scrutiny on this issue, we went through the documentation and there were multiple recommendations from different countries, and you saw a degree of repetition. So one country might have said X at recommendation 22, and then at recommendation 56 another country had said something very similar to that. That is the issue.

Rob Linham: Exactly that. So in the system of the compiling of the final report, if the two recommendations are identical, the compilation will be combined into a single recommendation. If they are even slightly different in any detail, they will be listed separately in the 302.

Baroness Meyer: In effect, not to confuse people, it would have been quite good also to do a separate compilation on subject.

Lord Bellamy: To group them together a bit more?

Baroness Meyer: Yes, so that people would be clearer that there are not so many.

Lord Bellamy: It would be clearer, yes.

Rob Linham: Although we are, of course, bound by the processes and structures of the United Nations in how we present our response to this.

Chair: And the same processes and structures apply to every country that is reviewed, there is nothing special for the UK.

Rob Linham: Exactly.

Q29 **Baroness Kennedy of The Shaws:** I will take up what you have just said, Chair, which is that this process takes place for every country that belongs to the United Nations.

In many ways it is important that we conform in the way that Lord Bellamy has said, by doing it as rigorously as we possibly can. The standard that we are trying to secure around the world is vitally important: respect for human rights and the Universal Declaration of Human Rights, for our common humanity, and generally to raise standards not just in this country but around the world, which is why our place in that scheme of things is very important.

Lord Bellamy: If I may just support that point, Lady Kennedy, it is a very important part of the soft power of this country that we participate very fully in these fora and these discussions, because next time round another country will be under scrutiny, and we want to play our part.

Rob Linham: I have now found an example that might elucidate this. Recommendation 5, right at the top of the list, calls upon the United Kingdom to "ratify the Optional Protocol to the International Covenant in

Civil and Political Rights", and that is attributed in marginally different words to Cyprus, Estonia and Uzbekistan as one recommendation. You then jump to number 7, where you find that Paraguay has called upon us to "accept the competence of treaty bodies to receive individual communications", which is the effect of the optional protocol, but that is listed separately because they have expressed it in a different way. Those are two different recommendations, which is the point I was trying to make about it.

Chair: That makes a very nice link to our next question from Lord Dholakia.

Rob Linham: I feared as much.

Q30 **Lord Dholakia:** Lord Bellamy, my question relates to the universal periodic review and its recommendation. Why have the Government not ratified the Optional Protocol to the International Covenant in Civil and Political Rights?

Lord Bellamy: As I recall it, and I will ask Mr Linham to confirm, this protocol gives the right of individual petition, and at this stage the Government are not persuaded that that is an appropriate further tool in the context of this particular treaty.

Rob Linham: Yes, indeed, so the same is true for both the ICCPR and the ICESCR on this one. This has been considered a number of times over the years. I go back to 2004 on this subject. In particular, the United Kingdom has accepted individual petition under only two United Nations treaties, which from memory is the CEDAW, the Convention on the Elimination of All Forms of Discrimination Against Women, and the CRPD, the Convention on the Rights of Persons with Disabilities, as it is titled.

A review was undertaken in respect to the experience under CEDAW in 2008, if memory serves, by Jim Gallagher of the University of Glasgow. The conclusion then, and the conclusion on the statistics remains, that there is no real obvious benefit. We have had only a very small handful of applications brought under those two instruments, the vast bulk of which have been ruled as inadmissible. We have only had one actually go to the point of determining the merits, and that found that there was no violation.

In that respect—I come back to my point that everything has a cost and an effort needing to follow it—when we have things like individual petition to the European Court of Human Rights, as well as a well-developed domestic framework of both human rights law and equality law, we cannot see the benefit at this stage of accepting the right of individual application under those two treaties.

Lord Dholakia: Does the same apply to the protocol on economics, social and cultural?

Rob Linham: The protocol for individual application, yes.

Baroness Kennedy of The Shaws: Can I just again come in on a sort of Explanatory Note? In our world there are still incredibly repressive regimes that do not have developed legal systems and court systems to which people can apply for judicial review, for example, of decisions being taken by Ministers or arms of the state, where we can challenge things, and so forth. That is why it is so important to retain judicial review and our ways of taking things through our system, but eventually even going to the European Court of Human Rights.

That does not exist in many of the repressive nations, and that is why this was introduced by the United Nations. But there is a recognition that in places which have highly developed legal and court systems, individual approach to the courts is possible, that is why we have retained our position.

As long as we keep having access to the courts and access to justice in that way, including judicial review and having access to legal aid, presumably our position will be retained and we will not find it necessary to take on those commitments of individual petition.

Lord Bellamy: The general point is a fair point, basically.

Baroness Kennedy of The Shaws: Yes, which is that we have a legal system which at the moment is making promises. If we keep to them and do not become repressive—that goes for all parties—then we can be confident that we are doing the right thing.

Lord Bellamy: We have a very developed and effective legal system, despite the pressures that it is under.

Baroness Kennedy of The Shaws: Its occasional shortcomings.

Rob Linham: Insofar as it is appropriate for a civil servant to agree with the points you make, I will concur with them.

Q31 **Chair:** As the Minister responsible for human rights, have you encouraged other government departments to ensure that the Government sign and ratify human rights treaties that we have not yet signed and ratified, but fall within their remits? I am thinking of, for example, the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, and the International Convention for the Protection of all Persons from Enforced Disappearances. Have you also encouraged other government departments to withdraw reservations to other human rights treaties? If so, what has been the response?

Lord Bellamy: The answer is that, personally speaking, I have not taken any steps to encourage ratification of further treaties of the kind that you mention. As far as I know, the Government are concerned that we feel the relevant field is already covered sufficiently by the protections people enjoy under our own domestic law, and there is no real need to go further on the international plain. That is our position.

Rob Linham: Yes, that is exactly right. Obviously the point will be provoked on occasion by, among other things, recommendations in the universal periodic reviews, so I suppose it is examined periodically, but Lord Bellamy has expressed the position on behalf of the Government there.

Chair: One of the things the UPR said was that the British Government should "keep under review the reservations registered upon ratification of the Council of Europe Convention on preventing and combating violence against women and domestic violence (the Istanbul Convention)". Now, there are some quite controversial reservations to that. Are they being kept under review?

Rob Linham: That would be matter for our colleagues in the Home Office who have the lead responsibility for the Istanbul convention. Certainly from personal experience where we have been asked about this in various fora, I can say that this is a matter that is never too far down the agenda.

Chair: That is very helpful. We have kept you here for longer than we said we would, but we are very grateful to you both. It has been an immensely interesting and useful session and we have covered a lot of ground.