



HOUSES OF PARLIAMENT

Joint Committee on Human Rights

Uncorrected oral evidence: Attorney-General (HC 817)

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2.25 pm

Watch the meeting

Members present: Lord Alton of Liverpool (Chair); Juliet Campbell; Lord Dholakia; Tom Gordon; Baroness Kennedy of The Shaws; Afzal Khan; Baroness Lawrence of Clarendon; Lord Murray of Blidworth; Lord Sewell of Sanderstead; Alex Sobel; Peter Swallow; Sir Desmond Swayne.

Questions 1 - 17

Witness

I: Rt Hon Lord Hermer KC, Attorney-General.

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Examination of witness

Lord Hermer.

Q1 **The Chair:** Welcome to the 15th meeting of the Joint Committee on Human Rights. Our principal purpose today will be to hear from the Attorney-General, the right honourable Lord Hermer KC, whom I will introduce more formally in a moment or two. First, let me welcome him to our proceedings.

For members of the public joining us online, let me say a word about the Joint Committee. We comprise six Members of the House of Commons and six Members of the House of Lords. We are of all parties and none. Our remit is to examine legislation and to carry out inquiries into how we meet our obligations to uphold the human rights of UK citizens and people resident in the UK. At present, we are undertaking an inquiry into the Mental Health Bill; that is about to begin its House of Commons stages. Our three thematic inquiries are examining transnational repression; modern day slavery and forced labour in our supply chains; and the failure to bring to justice UK nationals who are members of Daesh and involved in the genocide of Yazidis and other minorities in Syria and Iraq.

Today, the Joint Committee is holding a ministerial scrutiny session, which it does on a periodic basis with relevant Ministers. We will hear from the Attorney-General on his approach to his role as chief legal adviser to the Government. The committee will want to question him on the Government's approach to the rule of law, on human rights and on the European Convention on Human Rights. My colleagues may also range more widely on issues such as accountability for Russian war crimes against Ukraine, accountability for Daesh crimes, forced labour in UK supply chains, sentences of imprisonment for public protection, violence against women and girls, and the proposal for a Hillsborough law.

For the avoidance of doubt, let me make it clear that the law officers' convention is a long-standing convention that means that any legal advice provided to the Government by the Attorney-General, or the fact that any legal advice has been requested or provided, is not disclosed outside government. This convention is reflected in the Ministerial Code and in *Erskine May*, and will frame our discussion today.

Let me turn to the Minister. Richard Hermer was appointed Attorney-General on 5 July 2024. He was called to the Bar in 1993 and took Silk in 2009. He was previously the head of chambers at Matrix Chambers and has served as a deputy High Court judge. Lord Hermer's practice as a barrister covered both public and private law litigation in both domestic and international spheres. He regularly advised on a range of international human rights issues.

I turn to the first question. This year marks the 75th anniversary of the European Convention on Human Rights. Lord Hermer will be aware that,

two weeks ago, in the House of Lords, we had a full-scale debate to mark that anniversary. I want to start the questions by asking for your reflections on the European Convention on Human Rights and its future.

Lord Hermer: Can I start by apologising to the committee? I am afraid that this is the second time we have tried to arrange a date; I am very sorry for any inconvenience that I have caused. I really welcome this opportunity to appear today. I recognise the important role that this committee plays in our institutional machinery for protecting human rights. I have followed the work of this committee very closely since its inception.

On the convention, like many round this table, I did O-level history. Some might have done GCSEs but I anticipate that, for most of us, they were O-levels. I then went on to do A-level history and a degree in history and politics. A lot of that was focused on the history of western Europe, which is a bloody history of centuries of warfare. In the short shadow of the horrors of the Second World War, the Holocaust and the carnage on the battlefields, this country, under the leadership of Winston Churchill, brought together the Council of Europe to identify our common values and to put those values into a framework in order to protect and promote them.

On this 75th anniversary of the creation of the convention—indeed, the Council of Europe signed in London in 1949, and the convention was created the year after—this is a moment to celebrate it. It is also a moment to reflect on the convention and the nature of the values contained in it, which are as relevant today as they were at the time it was formed. It is also a point of national pride. The Council of Europe was created under the leadership of Winston Churchill. Many of the provisions of the convention were drafted by British lawyers, not least David Maxwell Fyfe.

Although the convention reflects universal values, they are a reflection of great, long-standing British values enshrined in our common law. Article 3 is the prohibition on torture. I do not want to get competitive with our European friends but, for centuries, before continental Europe, England had outlawed torture. Articles 5 and 6 are on the rights to a fair trial and to equal treatment before the law. Article 9 is on freedom of religion. Article 10 is on freedom of expression. These are all, if I may say so, great British values and rights. It is a moment of national pride to celebrate the convention because of the role that we played in its creation. As we look across the continent, which has now had an unprecedented period of peace, it is something to reflect on.

I am conscious that we are celebrating the convention and its 75th anniversary at a time in which the convention, in particular the court, has come under some attack. It is important to remind people, as they will hear attacks on the court that it is interfering in the British democratic process, of some stark figures. You could be forgiven for thinking that, day in, day out, this country is being told what to do by the Strasbourg court. I anticipate that this committee will be well aware of the figures,

but not everybody is. In 2023, there was one finding against the United Kingdom. In 2024, there was one finding against the United Kingdom. This year, there has been one finding against the United Kingdom.

It is the job of all of us—me and the Government included—to explain why there are so few findings. That is, in part, because we are a law-abiding nation; as I said, the convention values reflect our own domestic law traditions. It is also because the Strasbourg court, by design, gives individual states what is called a very wide margin of appreciation. It does not fix our policies. It provides an enormous amount of room for states to comply with the convention.

It is also worth reminding ourselves that most of the rights in the convention are not unqualified. Obviously, as we would expect, the right to life and the right to be free from torture are rights that the Government cannot interfere with. No Government would want to. Many of the other rights, such as Article 8 on the right to private and family life, and Article 10, are rights that it is perfectly legitimate for the Government to interfere with so long as they stay within some fairly wide guidelines.

None of that is to say, on this 75th anniversary, that the convention or the court is fixed in stone for evermore. It moves on through constructive dialogues between national courts and the Strasbourg court. It moves on through constructive dialogue between national Governments and the Council of Europe. An example of how the court can move on and improve would be the improvements to the interim measures provision under Rule 39. I take this just as an example. Previously, decisions would be given by unnamed judges, which, to our eyes, would seem certainly not how we would do it here in our courts. That has now changed. Strasbourg is developing. The 75th anniversary is, if I may say so, as set out in your speech to the House of Lords last Friday, a moment for national celebration as well as celebration across Europe.

The Chair: Thank you very much for setting the scene so well. Some of the figures that you shared with the committee were shared during that debate. You are certainly right that they need to be better known.

You turned to Article 8 at the end of your remarks. I noticed over the weekend that the Home Secretary said that there needed to be a review in the light of what she described as significant concerns around asylum and immigration cases. Can you spell out what that means for us? You said that there can be change and there is a broader picture. In terms of upholding our duties under the convention, how would you see that working out?

Lord Hermer: Can I start my answer on that by reminding us of what all of us, but not necessarily everybody, will know when we refer to Article 8? It is convenient shorthand for lawyers but what does it actually mean? What is Article 8? Article 8 reflects a long-standing right in the law of England, Wales, Scotland and Northern Ireland over centuries to private

life and family life free from interference from the state, but it is also a qualified right, so the Government are entitled to interfere with it.

Article 8 is of relevance in the immigration and asylum context in a number of ways. It is relevant as to the circumstances when this Government can expel or deport individuals. It is relevant as to when individuals may or may not have a right to stay. It is also important to state that Article 8 gives the Government enormous room to operate in those fields. It does not prevent us deporting or expelling individuals. It does not require us to keep all individuals in this country just because they settled here or landed here.

As this Government have taken on an unprecedented backlog in the asylum and immigration system, there has been a rise in the number of First-tier Tribunal decisions—in those that have been reported, at least—made purportedly on the basis of Article 8 but which are capable of suggesting that it is not being applied properly and appropriately. I want to make it clear that, in all my comments about decisions of any court, I am categorically not criticising judges. I would very much like an opportunity to return, later this afternoon, to the issue of the criticism of judges because we are at an important moment on that.

The Home Secretary is entirely right to conduct a review on the application of Article 8 in the context of asylum and immigration. The Home Secretary will set the parameters of that, but could I give some areas that may well be worth considering? The first line in the asylum and immigration system is often a Home Office caseworker, who will make an initial decision. There is real merit in checking that Article 8 is being properly understood and applied. As I have said, you can have a very robust but fair process in an asylum and immigration context that is entirely compatible with Article 8. It is really worth reiterating this: Article 8 does not prevent a very robust, quick and efficient, but fair, asylum and immigration process. We need to check that there is the right calibration on casework decisions.

We may also need to check, still being fairly fresh into government, that government is being robust in appealing decisions that we do not like and that there is a litigation strategy that meets that aim. We may also want to check the Immigration Rules, statutes and policies to check that the Article 8 calibration is right. We will also want to work with our colleagues across the Council of Europe to check that there is a common understanding as to the breadth of Article 8. Those are all really important things, if I may put it colloquially, to kick the tires on. We completely understand that people are concerned; so are we. We are determined to ensure that the immigration and asylum system is as robust, efficient and fair as it can be, and you can do an awful lot that is compatible. All of this, I should stress, will be within Article 8.

Having set that out, may I make a couple of broader observations? Really, there are four. None of this review is stopping this Government cracking on with the job. Some 24,000 people with no right to be here have been returned since we took office; that is the highest over a nine-

month period for eight years. Enforced returns are up by 21% since July and there is a 16% increase in the removal of foreign national offenders, so we are getting on with the job.

The second point, if I may make it plain, is that there is a job for all of us in politics to correct misinformation. There is a broader theme in our society at the moment around the dangers of misinformation. There is clearly a lot of misinformation that is being whipped up in the context of asylum and immigration, particularly regarding Article 8. I can give you one example.

Many of you will have heard bandied around the idea that the courts have allowed a foreign national offender to stay here because his child will miss chicken McNuggets. That is doing the rounds. What is not doing the rounds is that that case went to the Upper Tribunal, which categorically rejected that as an Article 8 argument. It rejected the claim, so we have the system working. Courts are always going to make mistakes, which is why we have appeal courts. That is what has happened here. There is a real job on misinformation because most of us will not know what an Upper Tribunal is or what the appeal system is, and will not be able to go on the internet to find out. What we know is that there is a case about chicken McNuggets that is all to do with Article 8. We all have an obligation, where there is misinformation, to set that straight.

I have two more points; thank you for giving me the time on this, but these are really important points. In order to ensure that we deal with the backlog we have inherited under the asylum and immigration system, and in order to calibrate our policies and practices so that we have an asylum and immigration system that works for everybody, we are going to have to work with our friends in Europe overseas. If we want to stop criminal gangs, we are going to need to work with our friends in the countries where those criminal gangs get access to boats. I say "boats"—for any of us who have seen them, you would not put your children in a park lake on them.

We need to work in the countries where people are on the beaches. That is the only way, through international co-operation on the criminal justice level, that we are going to solve these problems, as well as working to improve our system here. We need to be absolutely clear. If we do not seek to stay in the Council of Europe and the European convention system, and we seek to say that Article 8 does not apply to us, there is no hope whatever of reaching those agreements.

That is not just a theoretical argument. Since we have returned to government and the Prime Minister has made plain our unequivocal support for the convention, the Home Secretary has entered into two landmark agreements: with France, meaning that there will now be patrols in French waters; and with Germany, which is now agreeing to change its own domestic law to stop the passing through Germany of criminal gangs and their equipment. It is because of, not despite of, our return to a leadership role in the Council of Europe that we are able to do that and that the Home Secretary has been able to secure those

agreements. It is inconceivable that they could have been secured at a time when we were prevaricating about our commitment to the convention. There are real practical benefits for the people of this country.

The fourth and final point returns to the ways of reporting. We in this country, as part of our commitment to the rule of law, have always cherished the independence of the judiciary. We are entering a dangerous moment in which, not simply on social media but on the Floor of the House of Commons, people are attacking judges on a personal basis. That is entirely unacceptable and creates a huge threat to both the rule of law and the independence of the judiciary. In this country, we are blessed with the fact that there are not Conservative, Labour or Liberal judges. There are hard-working judges working day in, day out and seeking to do their best and to apply the law objectively. Those who seek to undermine it do it at great risk to the fabric of our society and the rule of law.

The Chair: Thank you for setting out your case so well and so eloquently. The whole purpose of a parliamentary scrutiny committee of this kind is to hear these arguments put in the way you have done. That is also the virtue of being present in the House of Lords, where putting these arguments is important, too. If disinformation is going to be combated, it will only be through the kind of process that we are involved in this afternoon.

Q2 **Lord Murray of Blidworth:** Thank you very much, Attorney-General. As between the thick and thin conceptions of the rule of law, you favour the thick conception; you said as much in our debate on the rule of law on 26 November. By that, for the watching public, I mean that the rule of law you conceive of includes the thoughts of Lord Bingham about the applicability of international law being binding on actions within the state and not just the international state party. That is a fair description, is it not, of what you think?

Lord Hermer: There is a danger of misstating my position if you put it entirely in those terms. Will you forgive me if I take a little run-up to answering your question? You raised the difference between thick and thin conception. I should explain what that means, because we may all understand it but it is an important debate for us to have. The first, and really wonderful, starting point is that there is a huge measure of agreement across virtually all of us as to many of the essential components of the rule of law: an independent judiciary and the law applying equally to all—all the components that you and I would absolutely agree on.

There is a debate as to whether human rights and democracy are necessary components of the rule of law. When there is a debate about whether there is a thin conception or a thick conception, it often, but not always, turns on that. The starting point is to remind ourselves how lucky we are. We live in a society where that is debated, not by people who do not believe in human rights but by people who just do not think it comes

within the framework of the rule of the law. How lucky we are to live in a country where 90% of what we agree forms the rule of law is established.

My own take—it is echoed by Lord Bingham and reflects, undoubtedly, the overwhelming consensus—although I certainly respect those who advance a different perspective, it is essential that human rights and democracy are part of a rule of law fabric; they are certainly part of the kind of fabric that I want. If I go to a school, I sometimes explain it—at least, I have done so in the past before this job—in this way: is it enough simply to have rules that you comply with? Is that enough to be a rule of law society?

You can pick any number of examples, but take South Africa under apartheid. It had a Parliament that passed rules, an independent Bar and an independent judiciary. In fact, at one stage, if you went to Committee Room 1 here, where the House of Lords sits, several of the Law Lords were former members of the South African Bar. Would you call it a country that was governed by the rule of law? For me, the answer is no. That is why my conception of the rule of law fits with Lord Bingham's conception of it.

That is my long run-up. Can I now answer your question on international law and the nature of the international rules-based order? Now is a good moment in time to be talking about it. The starting point for me is this: not simply the international legal-based order but our leadership role in it is not just right in itself—it is—but is overwhelmingly in the national interest.

If you asked me—and, I suspect, most people at this juncture in history—whether the world is a safer place when nations comply with their international law obligations, most people would, I think, say that it is. If you asked most people whether we are better off as a country when we have a leadership role in that, I think that they would agree. For me, if I am asked whether we are likely to be a more prosperous nation when there is a solid and stable international legal-based order in which we are a leader, my answer is yes. This country has entered into a vast array of international agreements of different types, and it has made this country more secure, stable and prosperous.

When we talk about international law, it often focuses on international human rights conventions. Often, we talk about the United Nations body of conventions. It is also really important to remind ourselves that, when we talk about international law, we are talking about hundreds of other agreements that this country has reached across a range of subjects that govern people's everyday lives, such as commerce—treaties that we enter into with either individual countries or groups of countries; laws regulating cables under the sea that allow us to have phone calls with our relatives overseas; and the satellites above our heads.

When we take a plane journey, international law governs the route that we take. Incredibly importantly, it also governs aspects of fighting crime internationally. That is all part of the international law framework. We are

going to have future challenges, such as AI, climate and how we use outer space—all of which, I suggest, we are much better off doing through a framework of international law so that we do it together, not individually.

Coming directly to your point, Lord Murray, it is really important that none of this is contrary to the national interest, let alone there being any element of anti-democratic values or structures in place. Parliament is sovereign in our system. It is Parliament and the Executive that choose to enter into international law agreements. It is through a democratic, sovereign Parliament that we enter into those agreements.

You cannot have, as some are advocating for at the moment, a pick-and-mix approach to laws. Once we have entered into an agreement, we should be expected to keep our word. That is the British way. What you cannot do, because it is contrary to the British way, is say, "I know we've got that agreement but it is a bit inconvenient for us at the moment. We're going to ignore it". It would be like going into a shop and saying, "I know there's a law about theft, so I won't steal the apples, but I'll steal the pears". You cannot have that; it would undermine all the advantages that we get of being seen as a leader in international law. It is democratic and overwhelmingly in our national interest.

The Chair: I am anxious that we move on, Lord Murray, if we may.

Lord Murray of Blidworth: Can I ask one short supplementary?

The Chair: Yes, but only if you get a very short reply because we have a lot of other territory to cover.

Lord Murray of Blidworth: In the Civil Service Code, civil servants have to act in accordance with the law. In a scenario where, say, the Home Secretary had tried to exclude a category of migrants from the application of Article 8 in a certain way, would a civil servant be breaking the law, in your view, if they obeyed that order?

Lord Hermer: That is an entirely theoretical question because you will no doubt be aware that, under the Ministerial Code, all Ministers of the Crown must comply with the law.

The Chair: If you want to add to that at some stage after the meeting, if you think there is more to say, feel free to do that. We are going to turn in a moment, beyond the international issues, to the greatest challenges that have been faced in the UK—I know that Baroness Lawrence will ask about that issue—but, before we leave the ECHR, the committee would like to ask you about Protocol 12.

I was interested when I dug out the last time this matter was discussed by this committee: the 17th report in 2005. Among the Ministers who came to give evidence at the time was a Parliamentary Under-Secretary called David Lammy. At the time, he told the committee that the danger would be that, if we incorporated Protocol 12, we might be swamped with litigation. The committee said at the time that this was alarmist and

unwarranted but the Government said, "We will monitor Strasbourg law to see whether this is something we can comply with". What is your thinking on Protocol 12 now?

Lord Hermer: You will appreciate that I am not in a policy-making role. My role is to advise, so that is probably a question better placed to others. I confess that, although I have read many reports of this committee, I have not read your report on Protocol 12; I will go back and review it carefully. If there is anything in it that I think falls within my purview, I will of course write to you.

The Chair: I am grateful.

Q3 **Baroness Lawrence of Clarendon:** What are the greatest challenges for the rule of law and human rights in Britain today? What can we do to combat them?

Lord Hermer: The rule of law currently faces a whole range of challenges, both at home and overseas. Your question concerns at home. The first challenge is that we all talk about the rule of law—barely a speech goes by in any forum talking about our values as a country in which people do not refer to the rule of law—but I suspect that, if we asked lots of people what the rule of law means, either they would shrug or we would get a range of answers. That is not their fault; it is our fault because we have all failed to get out there, talk about it and explain what it is.

I hope that this point is not thought to be overly political but, for me, one easy way to talk about the rule of law is through the Government's missions. There is a real risk in this country of our fabric unravelling and the rule of law unravelling because of crime on the streets. If you live in a town centre, as many people do at the moment, you can watch people go into a shop, steal items from the shelf and walk out of that shop. Nobody does anything. The security guards feel unable to do anything. We may all have had this experience. They shrug. The police will not do anything, if they are there, then there is obviously no prosecution.

That sense of impunity undermines people's belief in the rule of law. This is why, when I talk about what the Government are doing with Safer Streets to make town centres safer, that is something I can absolutely do through the prism of the rule of law. It is not just "law and order" as a meaningless phrase; it means something in that context. Getting out there and explaining how the rule of law matters to people in a real sense is really important.

Equally, going out there and talking about the rule of law as part of growth is really important. We are not going to be able to grow this economy in a society that does not obey the rules of the rule of law, including domestically, because why would you start up a business if you have no functioning courts to take disputes to? Why would you invest in this country unless you thought it was a stable and law-abiding country? These kinds of examples, which drive home and explain to people why

the rule of law matters to us all every single day, are important. We are at a juncture in history in terms of our understanding of and respect for the rule of law.

Baroness Lawrence of Clarendon: Would you say that all of us, as individuals, must be able to try to demonstrate, when we are out there, the rule of law and what it means in this country? When speaking to ordinary people about how you combat it, how would you simplify saying, “This is what we need to do in order to combat and support the rule of law within our human rights”?

Lord Hermer: We all have a responsibility to be out there talking about it. We have a particular responsibility as parliamentarians to talk about it, but it is not just for us. We have a responsibility to talk about it in real terms, not as some abstract concept. That is why I often like to talk about it through the prism of the missions. There is a rule of law explanation as to why we are prioritising, in the criminal justice system, the issues that we are; why crime on the streets matters; and why the police and the prosecution service matter, all in a rule of law prism.

For the economy, it is really important that we explain this. The fact that we have a reputation as a country that abides by the rule of law—we have independent courts, for example—is a huge selling point when we are trying to attract independent investment in this country. People understand that that will lead to jobs and some form of economic stability and security. These are the discussions that we should be having, and we need to do it in language that everybody understands.

The Chair: Yes; we all have a role to play.

Q4 **Lord Murray of Blidworth:** We know that you recently reviewed the guidance on legal risk for government lawyers. Is there a risk that your reforms are delaying the introduction of important policies?

Lord Hermer: The short answer to that is no; I will give you a slightly longer answer as well, though. The first point is that there is nothing substantively new in the revised guidance that I put out. The guidance and the revised terms do a few things. First, they make plain that decisions are for not lawyers but policymakers and Ministers. The role of lawyers is to provide those decision-makers with clear and objective legal advice. If you are a lawyer, it is not a question of telling the Minister what she or he wants to hear; it is, as you know, a question of giving the Minister unvarnished advice.

It goes beyond that. It seeks to encourage government lawyers to provide creative solutions to mitigate risks in order to help Ministers achieve their policy aims. There is little point in alighting on a policy aim that will end up in three years of litigation—and which, ultimately, you might lose—if there is a way, with the help of lawyers, of reducing the risks to avoid that.

The reason why I brought it in as revised guidance, without changing the substance but changing the tone to some degree, is that I had a very real

concern, on entering government as Attorney-General, that a practice had developed in which lawyers were simply being asked to advise Ministers on whether there was a respectable legal argument to support the policy or piece of legislation that they wanted to introduce. "Respectable legal argument" literally means something different to how it was being applied in that case.

"Respectable legal argument" meant, under the old guidance, that it was probably highly likely to be unlawful but that, if you advanced that respectable argument, it was not so bad that, if you were in court, you would be struck off by the Bar Council or the Law Society because it would amount to an abuse of process. There may be scenarios in which it is entirely proper for government to proceed on that basis, but my fear was that it was the default position. Ministers were thinking, "It's respectable", without realising that it was highly likely to be unlawful. That is why I thought there needed to be a tweak, so that government lawyers were able to set out the full range of risks in order to give Ministers an unvarnished assessment of what the legal risks were, as well as creatively trying to find solutions. I do not think that, in any sense, that is blocking or slowing up a Government who want to abide by the rule of law and Ministers who want to abide by the Ministerial Code.

Lord Murray of Blidworth: You changed the word "respectable". The threshold is now "tenable".

Lord Hermer: The threshold is now "tenable" but it is the same threshold. The only reason why I changed the wording was to demonstrate the change in tone. It was not a change in substance at all. The threshold remains exactly the same; it just denotes that we are refreshing this.

The Chair: We will change the tone now by going to a Member of the House of Commons.

Q5 **Sir Desmond Swayne:** How do you strike a sensible balance between the need to give appropriate advice and the urgent demands of government policy? I will put it in terms of an example, which may or may not be appropriate. The Government have decided to repeal Sections 46 and 47 of the legacy rights Act by means of a remedial order. That requires, according to the Human Rights Act—I think these are the words—a very substantial argument for using that Henry VIII procedure. The Prime Minister has said to the Commons, with urgency, that he will find a way of preventing Gerry Adams getting any compensation as a consequence of that. How do you deal with the urgency of the consequence against the appropriateness of the argument in the advice that you have given?

Lord Hermer: You will forgive me if I do not talk about the details of the legacy Act for reasons that Lord Alton raised at the beginning around the law officers' convention. That is absolutely not a fig leaf; there are good policy reasons for that convention.

That tension that you raise between Ministers who want to do something quickly and lawyers who want to make sure that every risk has been analysed and assessed is one that I have 30 years of dealing with in private practice. You often get clients who want to do something now, and there may be a range of legal risks.

One of the greatest of the many privileges I have in doing this job is that I superintend the whole of the Government Legal Profession. We are incredibly lucky in this country to have government lawyers of the very highest calibre, who work incredibly hard. When there is a demand for first-class legal advice at speed, I am satisfied, first, that people work at speed to get it done within the desired timetable; and, secondly, that the advice Ministers then receive is still of the very highest quality, notwithstanding the speed at which it has been produced. It is an example of how lucky we are to have the Government Legal Profession.

Sir Desmond Swayne: How confident are you that there is a lawful way to be found to prevent Adams getting compensation?

Lord Hermer: Tempted as I am to get into the detail of that, I am afraid that I am going to have to plead the law officers' convention.

The Chair: We will not blame Sir Desmond for trying.

Lord Hermer: No, not at all.

Q6 **Baroness Kennedy of The Shaws:** Should a Government be willing to introduce a Bill that they believe has a less than 50% likelihood of being compatible with human rights? It is the old Section 19(1)(b) of the Human Rights Act reservation.

Lord Hermer: This Government are absolutely committed to complying with their obligations in law and under the Human Rights Act. The threshold for whether you go down a 19(1)(a) statement or a 19(1)(b) one is whether it is more likely than not to be compatible with the Human Rights Act at the time you make that assessment. We are facing a few examples at the moment of Bills with Lords amendments that we do not think may necessarily be compatible, but the Government will seek in the Commons to find solutions that render the Bill compatible.

Baroness Kennedy of The Shaws: Basically, you are urging towards compatibility and not imagining a circumstance—attempts at this have been made in the past—where you say, "We will pass this Bill whether it complies or not".

Lord Hermer: The Government intend to comply with their lawful obligations. That is the simple answer to that question. I would be happy to defer to Lord Sewell, who has just come in, on any answers.

The Chair: There is always that problem in politics of losing one's seat, but I am glad to say that we have found one.

Sir Desmond Swayne: Given that need for the Minister to give this

imprimatur to the Bill, to what extent do you think the Human Rights Act has become a special category or, indeed, has evolved into our written constitution?

Lord Hermer: I do not think that it is a question of evolving. The Human Rights Act does what was intended upon passage. On top of that, Parliament—not least, at the pinnacle, this committee—has created structures to ensure compliance with it. Statements of compatibility are what Parliament wanted us to do. All the steps we take to ensure compatibility are in compliance with the Human Rights Act, which Parliament imposed on those subject to it. I do not think that it is a question of evolution. We are doing what Parliament demanded we do.

The Chair: That takes us on to Mr Khan but it takes us into the future as well, in terms of this particular question.

Q7 **Afzal Khan:** Earlier on, you mentioned AI, climate and outer space as the three biggest challenges. What human rights risks do you identify when it comes to the continued and rapid development of AI?

Lord Hermer: Again, just to be clear, the Government's response to both the benefits and the risks that AI presents will be one for the relevant department—DSIT—and my colleague, Peter Kyle, rather than the Attorney-General. So I am going to resist answering on substance.

However, if I can step back, I will identify the competing tensions around AI that policy colleagues will be, and are, grappling with at this moment in time. On the one hand, you have the need not to fetter the development of AI; by its very nature, to maximise the benefits, you do not want to place too many restrictions on how it is developed. On the other hand, you can well see the risks that it poses and the need for some degree of regulation. I have no doubt that my colleagues and the Secretary of State will take all the tensions into account in trying to arrive at solutions, but it is absolutely not for me as the Attorney-General to say what those solutions will look like.

Baroness Kennedy of The Shaws: I want to take you back to an answer you gave in relation to the rule of law, human rights and the big challenges. You gave us a list and mentioned AI. I would have thought that the overriding challenge to us in the United Kingdom concerns regulation. The tech guys in the United States do not want any regulation around technology; they certainly will not want it around AI. We are desperately keen to get a bit of that business. With any kind of regulation, you will have the business ministry snapping at your ankles, saying, "We don't want regulation because that will create problems with the United States of America". Do we not have a problem in regulating this particular area?

Lord Hermer: Again, I do not want to dodge questions that are, on their face, fair but it is not for me as the Attorney-General to comment on what goes, in essence, into policy. There will be competing policy

demands that the relevant Ministers and ministerial teams will be grappling with.

The Chair: It is fair to say that the committee sees this as a cutting-edge issue for the future. There will be interference in our electoral process, in terms of how AI can be used to manipulate people and to fake people. All sorts of issues of that kind will arise.

Baroness Kennedy of The Shaws: It will interfere with intellectual property.

The Chair: There are all sorts of issues. I know that Sir Desmond wants to pursue the point a little further, but it is fair to say that this is increasingly trespassing into policy areas that you said at the outset you would be unable to deal with. However, it would be good if you were able to ask your officials to share these questions with the Lord Chancellor because she will appear before this committee after the Easter Recess. It may be possible then to get further clarity on these policy questions.

Lord Hermer: Of course, I will do that and by dodging the question I do not want it to be thought for a moment that I do not consider these issues to be very important or to suggest for a moment that the Government do not think they are important and are not grappling with these issues.

The Chair: You did not convey that impression.

Sir Desmond Swayne: My question is undoubtedly a policy question. Would the rule of law be better protected by having a bespoke architectural AI Act, which might avoid some of the spats that we are currently having over copyright law and AI?

Lord Hermer: As you recognise, Sir Desmond, that is a policy issue that it would not be appropriate for me to delve into.

The Chair: If we may, though, we can delve into issues around questions such as war crimes. Predominant in many of our minds at the moment is the continuing war in Ukraine. We are privileged that on this committee we have Alex Sobel, Member of Parliament, who is not just a very active member of the committee but a special envoy to Ukraine and has done a lot of work around this issue. The floor is yours.

Q8 **Alex Sobel:** Thank you. I am the trade envoy and chair the APPG, so I declare that for the public record. I first pay tribute to Baroness Kennedy's work on Ukrainian children who have been abducted by Russia from the occupied territories. They have effectively had their whole lives erased and are now being trained to go and fight Ukraine as Russians. I have also met people in hospitals who have been victims of chemical warfare. These are absolutely horrendous and barbarous war crimes. Are we doing enough to support accountability for those war crimes that we see committed on a daily basis in Ukraine?

Lord Hermer: Thanks very much indeed for that question. I also pay tribute to the work that you and Baroness Kennedy do. Prior to coming into this job, Baroness Kennedy and I were both asked by Ukraine to serve on its task force on accountability.

On coming into office, one of the first trips I made was to Kyiv. I met President Zelensky in Kyiv, and what was slightly haunting about that meeting, which was a conference about securing accountability, was that it had to take place in an underground car park. I then travelled, in an afternoon I will never forget, to Bucha. You may have had the same with the priest from the church taking you to the site of the graves. I had gone to Bucha via Babi Yar, so it was an extraordinarily poignant day and a reminder of the atrocities that are being committed day in, day out, not least the abduction of children.

If I may pay credit to the previous Government as well, the United Kingdom has played an outstanding leadership role in Ukraine. It was a huge priority for the Prime Minister to continue unstinting support for Ukraine. Our second Cabinet meeting was addressed by President Zelensky. We have been a firm ally. The events of the last few weeks and the Prime Minister's leadership has just reiterated that.

In terms of accountability, I am delighted that we have been playing a real leadership role. We played a real leadership role as a Government in working to create the special tribunal for crimes of aggression. A representative from the Attorney-General's Office, Judge Morrison, who is a retired judge of the International Criminal Court, is out there training judges. He is often working outside Ukraine, but he accompanied me to Kyiv. Across the legal community, outside government, we are playing a really leading role in the training of lawyers and judges. As a Government, we are also playing a leading role in the victims fund.

When I had the privilege of meeting President Zelensky, I told him that this country, united irrespective of political party, stands with Ukraine on the battlefield and in the courtroom. That is a pledge that remains as strong today as it was on the day I made it.

Alex Sobel: I have a couple of quick follow-ups. In March 2022, very shortly after the invasion, we signed a memorandum on co-operation between the Prosecutor-General's Office in Ukraine and the Attorney-General's Office. A few months later, I went to the office of your predecessor when the Prosecutor-General of Ukraine came to discuss and look at how we were going to develop assistance under that memorandum. You have mentioned a few things there. Under that memorandum, are we providing anything else in terms of assistance to Ukraine?

Lord Hermer: Can I take that away and write to you? You raise my predecessor. Victoria Prentis was and remains a huge voice in this area and I pay credit to everything that she has done on Ukraine.

Alex Sobel: I agree. I have seen her since she left the post. That leads

me nicely on to my next question. In March 2023, I attended with my friend the barrister Miranda Grell, on the invitation of Kieron Beal KC, chair of the Inner Temple's international committee, an event around the Ukrainian judicial capacity-building project. The Inner Temple and others have been working on training Ukrainian judges. From your perspective as Attorney-General, what challenges have there been in the ongoing training of Ukrainian judges when it comes to setting up war crime tribunals? That might be in terms of the legal system or capacity and capability. What sorts of challenges are we facing?

Lord Hermer: The challenges we face are enormous. We are seeking to assist in training not just judges but prosecutors and indeed defence counsel in a country that is currently being ravaged by war. Often, it is better—more efficient and safer—to bring people out of country for training than it is necessarily always to train in country. I pay real credit to the work of those at the Bar, in the solicitor's profession and in the NGO world who are in this space for the work they are doing with Ukrainian partners. I stood at Irpin Bridge, which, as you will know, is the bridge that was bombed, with young people working in the accountability space in Ukraine, and they are absolutely inspiring.

I can tell the committee about one step that I took last week to try to help co-ordinate some of the responses in the legal community. Last week, we set up an international sub-committee of the Attorney-General's pro bono panel to bring together lots of disparate groups. It struck me that I had been meeting groups to talk about Ukraine and what they were doing, and when I would say, "Well, you must know so-and-so, who is doing something strikingly similar" there would be a slightly blank embarrassed look. At the meeting last week, I tried to bring everybody together, let everybody know who is working in that space and ask how we as government could, in a synergistic way, help achieve what everybody is trying to do, which is to assist Ukraine in its struggle for accountability.

Alex Sobel: Thank you. People well beyond the committee will be interested in those responses.

Sir Desmond Swayne: The USA has recently withdrawn from the international working group investigating Russian war crimes. The humanitarian laboratory at Yale University, which was tracking 30 of the abducted children taken into Russia, has had the co-operation of the US intelligence services withdrawn. These are deeply worrying indications of the way that US policy is going. What is the real likelihood of Russia being held to account for its war crimes in Ukraine?

Lord Hermer: You will obviously not expect me to comment on decisions of another Government, but what I can say in respect of this Government is that we have a steely determination to ensure that there is accountability for the war crimes that have been committed. The importance of accountability is reflected in what we have been doing on the tribunal, on the victims' fund and on training.

The Chair: It must have seemed very bleak at the end of the Second World War, not knowing whether people were ever going to be brought to justice. It is significant, as you referred to in your opening remarks, that people such as David Maxwell Fyfe and Hartley Shawcross—primarily British lawyers—were responsible for the creation of the Nuremberg tribunal, which meant that there was a day in court when people were finally brought to account. Like you, I am very upbeat about the role that Victoria Prentis and many others in the UK are playing in bringing about accountability. Thank you for that.

Lord Hermer: International criminal law has had lots of moments in which people have said, "That could never happen". "You could never try Milosevic or Karadzic". "You could never try Charles Taylor". "You will never create the International Criminal Court". "You will never create a tribunal for Yugoslavia or Rwanda".

Q9 **Tom Gordon:** You became Attorney-General after a long career at the Bar, where you advised and represented a wide range of clients. Now that you are the Government's principal legal adviser, how do you ensure that the Government receive rigorous and impartial advice on questions of human rights law?

Lord Hermer: The short answer to that is by doing the best I can. It is essential that Governments of whatever colour receive objective legal advice. The vast majority of the time, that is done through the Government Legal Profession, through the brilliant lawyers that we have. There will be issues that come to law officers, but it is the same approach of objective legal advice.

The way I approach it is not dissimilar, subject to one important caveat, from the way I approached it in private practice. You have a client who wants a particular aim. Your job is to try to use the law as best you can to help them achieve that aim. You identify and tell them about the risks and you help them devise a strategy that they are comfortable adopting. It is always their choice. In order to do that, you have to understand what the client really wants to achieve.

In government, I am aided by the fact that, although my advice on the law is completely objective, I am obviously fully aligned with what this Government want to do. I am in that happy place. That does not detract, for a moment, from the need to provide objective, independently minded legal advice.

The Chair: At the outset I told you that one of the thematic inquiries we are conducting at the moment is looking at the use of slave labour and forced labour in supply chains. We are tracing it back not least to Xinjiang and the use of Uyghur Muslims, but also to the DRC and the 225,000 children who are being sent down mines to mine cobalt, lithium and the rest. Ms Campbell has some questions for you about this.

Q10 **Juliet Campbell:** In order to harmonise with international standards and to protect the rule of law, should we be doing more when it comes to

confronting forced labour in our supply chains, such as introducing due diligence legislation and import restrictions?

Lord Hermer: Again, that is a really important question, but it is a question that touches upon policy rather than my area. You will know that the Government's position is that supply chains should not be tainted by the use of slave labour. That aligns with our values. I will leave it to policy colleagues to answer the substance of your question.

This is an incredibly important issue. I know it is one that the committee has grappled with. I know that Lord Alton, Baroness Kennedy and you have paid a personal price for championing those issues. I pay tribute to the work that you have done. As it happens, prior to coming into post, I spent an awful lot of time on this issue. I was the legal adviser to Lord Mance's review of the OECD guidelines many years ago and then I did the Supreme Court cases that led the way in tort law to supply chain cases. Indeed, I did several of those. My own experience underlines the importance of the issue, but again I am in the fortunate position that its importance is well understood by this Government. On the detail however, I am sorry but that will have to be for policy colleagues.

Juliet Campbell: This may be another policy question, but I will ask it and you can tell me whether it is. How could the UK take a more systemic approach to addressing human rights in business?

Lord Hermer: Again, I am tempted to answer the question because I have spent a lot of time in the realm of business and human rights, but it really is not for me, as Attorney-General, to get into policy. When policies come up and I am asked to comment upon them, my role will be to give a legal analysis, not to comment on the substantive policy. I am going to have to defer those to policy colleagues. I am sorry.

The Chair: I hope that after the hearing is over some of your team might be able to pass on some of those questions to colleagues who have direct policy responsibility. That would be helpful to the committee.

Lord Hermer: I certainly will, yes.

Q11 **Lord Dholakia:** Would a "failure to prevent" duty that creates an obligation on businesses to ensure the prevention of human rights breaches, such as the duty under the Bribery Act, provide an effective model for a new UK approach to business accountability?

Lord Hermer: Again, it is a very important question, but not one I am in a position to answer. No doubt, my policy colleagues who are engaged with the substance of the policy will want to look at other areas, such as the Bribery Act. No doubt, they might want to look at other comparative examples. France, for example, has a recent and relevant law that we will want to look at and test. We may accept something similar or we may reject it. Again, those are really not decisions for an Attorney-General. They are much more for the relevant Secretary of State, but I will, again, pass that on.

The Chair: That would be appreciated by Lord Dholakia and Ms Campbell. Thank you very much for that. We were talking earlier about accountability. Another of our inquiries is into Daesh/ISIS and the terrible crimes that were committed in northern Iraq and northern Syria. Baroness Kennedy, who has pursued this relentlessly, has some questions for you on accountability for Daesh crimes.

Q12 **Baroness Kennedy of The Shaws:** Attorney-General, it came to our attention—this is why the inquiry came into existence—that a number of people who had gone out to Syria and Iraq to join Daesh had come back to this country and, indeed, been investigated and prosecuted. The usual offence that is used is about joining a terrorist organisation abroad or whatever. What was never investigated was whether they had been involved in the servitude and enslavement of Yazidi women, which is an issue that has been a source of concern to me and certainly to Lord Alton. We discovered that there were never any inquiries or investigations into whether any of these men had taken into their homes women from the Yazidi community. It is called “taking another wife”. No questions were asked about their domestic circumstances.

Your consent is required before prosecutions for international crimes can be initiated. What approach do you take to the whole business of giving consent to prosecutions? Would you be minded to look at the business of prosecuting some of these men if there could be evidence of their having been involved in the rape and enslavement of Yazidi women? Indeed, it also happened to Christian women from Syria.

Lord Hermer: As a matter of generality, whenever there is evidence, sufficient to found a prosecution, that an individual has committed any criminal offence, under the CPS Code for Crown Prosecutors, where it is entirely their decision, but also when I am asked on an array of crimes to consent, normally the public interest will be met in prosecution.

In respect of the particular issue of Yazidi women that you raise, I am going to be a little careful about what I say, in case I am asked to consent to any particular case, so you will appreciate that I need to be very careful about what I say.

Baroness Kennedy of The Shaws: It is the generality that we are really interested in.

Lord Hermer: As a matter of generality, it is obviously important that, where we can prosecute and where the test is met, we do prosecute, subject to any overwhelming public interest that points the other way, and it is difficult to anticipate what that could be.

In respect of Daesh and Syria, there are a number of practical difficulties in some of the prosecutions for some of the crimes, whether it be war crimes, which we can now prosecute, or proscription since Daesh was proscribed in 2015. There are difficulties with evidence collection, because often the evidence effectively needs to be obtained from warzones. That is very difficult. Many of the people who we would want to prosecute are either dead or held by non-state actors, but where we have

evidence that is a proper basis to prosecute people in this country, we will.

Particularly in respect of the issue that you raise of Yazidi women, I am very happy, within the realms of the sensitivity that I have to apply to my answers about anything that may come before me on a consent issue, to write to you with further information, Baroness Kennedy, and share that with the committee.

The Chair: That would be very helpful. Thank you.

Baroness Kennedy of The Shaws: Just as a follow-up, one of the concerns we have is that we have been told that one of the key barriers to prosecuting the crime of genocide, for example, which is what we maintain was happening to the Yazidi, is that the UK is able to exercise jurisdiction only over UK nationals or residents. That is because of the way in which the law was drafted when we incorporated it, but individuals can be prosecuted for torture and other war crimes on the basis of their presence in the UK, and of course some of the people we are talking about are residents or UK nationals. If we met the evidential challenges, would it not be possible to prosecute them for those offences?

Lord Hermer: It depends upon the crime. As you will know better than I, there are very few crimes that have extraterritorial jurisdiction. Torture, under Section 134 of the Criminal Justice Act, is certainly one of them, and there are other specified crimes. Where we have individuals in this jurisdiction against whom we have sufficient evidence to charge for a crime with extraterritorial jurisdiction—

Baroness Kennedy of The Shaws: Ritualised and constant rape would constitute torture.

Lord Hermer: Again, I am going to be very careful about what I say. Certainly in terms of international criminal law, rape and serious sexual violence has been established as a war crime. The International Criminal Tribunal for Rwanda was the first court to do it and it is now incorporated in the Rome statute.

Baroness Kennedy of The Shaws: It is, but I want to raise that issue with you. Universal jurisdiction in this country is confined to residents and citizens. Some of us have been rattling that cage and saying that it should be extended. Would you be sympathetic with the idea of extending universal jurisdiction?

Lord Hermer: Again, I am going to pass on that. That is a very important issue, but it is an issue of policy for policymakers to decide. That is not for one moment to say it is anything other than a very important issue that you raise.

Baroness Kennedy of The Shaws: Do you agree, though, that it has been an inhibitor and might account for the very low numbers of international cases of crimes, such as war crimes, that have ever been prosecuted in this country?

Lord Hermer: There is a range of factors that explain that, not least the ones I touched on earlier about collection of evidence, which creates a real practical difficulty, and not having people in the jurisdiction to arrest.

Baroness Kennedy of The Shaws: They come through regularly to see whether there are schools for their children or whether there is good shopping at Harrods. All manner of things bring people into this country, and they could be arrested if we only had a wider understanding of what universal jurisdiction requires.

Lord Hermer: I do not mean to question or undermine the power of the points that you make. I am simply saying they are policy points that are not for me but for others.

The Chair: It is fair therefore to put the Lord Chancellor on notice that we will want to ask her about universal jurisdiction. Perhaps you could let her know that.

Lord Hermer: I will let her know.

The Chair: Baroness Lawrence has one other point about international crime before we move on.

Q13 **Baroness Lawrence of Clarendon:** Lady Kennedy has really been pursuing this issue of international crimes. Why do you believe that the prosecution of international crimes has never been successful in the UK?

Lord Hermer: We have had a few successful prosecutions. I am afraid I do not have the list at my fingertips, but we certainly had a trial of an Afghan warlord in the Old Bailey about eight years ago.

Baroness Kennedy of The Shaws: We did. That is right.

Lord Hermer: It is certainly not from a lack of will among the prosecuting authorities. One practical difficulty that I can talk about—there may be others, and I am sure there are—is evidence collection. If you are dealing with allegations about atrocities in Syria, which is currently war-torn, and trying to get on the ground and obtain evidence that is going to stand up in a Crown Court, the hurdles you will face are very significant. Sometimes the crime will necessitate victims giving evidence, and actually identifying the victims is going to be incredibly difficult. You will face a range of practical difficulties in obtaining documents and being able to produce those in court.

None of that is to say for a moment that we are not trying to do things. There is a unit of the Crown Prosecution Service that is dedicated to these types of issues, as I understand there is within the police as well. It is not that we do not want to do it, it is just that it is very difficult. Where we can do it, we will do it.

Baroness Lawrence of Clarendon: In fact, quite a few European countries have managed to prosecute war crimes. We seem to have these difficulties, whereas other European countries are able to progress those.

Lord Hermer: Yes, that is right. That is explained by various factors. Germany, for example, has different laws about the admissibility of evidence. If something is picked up in Syria with relevant information in it, it is much harder to get that into evidence in a UK court than it is under the German rules. Because of both the German refugee policy and the return of German nationals held in Syria, there have been instances, literally in villages, where people have gone and been able to point to those who were responsible for atrocities. That has enabled those cases to be brought, whereas we have not had that experience here.

The Chair: It is very interesting that you draw that parallel. It took Amal Clooney going to a German court to convict someone of the crime of genocide. That would be impossible in this country because no court here can hear a crime of genocide put before it. However, that is a policy issue and no doubt it is something you will want to go away and think about afterwards. Now Peter Swallow is going to bring us close to home and the IPP question.

Q14 **Peter Swallow:** Lord Hermer, the Government have acknowledged that it was a mistake ever to introduce sentences of imprisonment for public protection. However, there are still hundreds of people continuing to serve IPP sentences who may never be released. What is your view on this and what it says about the British justice system?

Lord Hermer: Forgive me: I spent 30 years in a career in which, whenever I was asked a question—in one of the rooms down the corridor to begin with—my job was to answer that question come what may. I am now in a different job, and the really important issue that you raise is a policy issue. I know you have the Lord Chancellor here in just a few weeks' time and, without seeming to want to dodge or in any way suggest that the issue you raise is not one of real importance, would you forgive me if I leave it to the Lord Chancellor to answer the substance of that?

Peter Swallow: Perhaps I can ask it in a slightly different way, then. Can you foresee any legal risks in not reviewing IPP sentences as part of the Government's overall sentencing review, given their statement that it was a mistake to introduce such sentences in the first place?

Lord Hermer: Again, forgive me, but the question as to whether I can identify legal risk takes me straight into another reason why I cannot answer the question. I understand that it is frustrating and I apologise, but the law officers' convention really does preclude me from dealing with that.

Baroness Kennedy of The Shaws: I think it is important for the viewing audience that you explain why you, as the Attorney-General, the legal adviser to government, feel you cannot step over into policy, because people might not understand the rationale for that.

Lord Hermer: Thank you very much. I am delighted to have that opportunity. If I may, I will explain both that reason and something about the law officers' convention.

The Chair: I referred to it at the very outset.

Lord Hermer: Lord Alton got it absolutely right at the beginning. The role of the Attorney-General is as a legal adviser. My role is not the same as that of the Secretary of State or another Minister in the department. It is not to create policy. It is for Ministers to create policy. My role, when requested, is to advise upon the legality of a policy or whether it carries legal risk and how that risk might be lowered. It is just to be a lawyer. That is my role, and it is quite important. I see the role of Attorney-General as having an additional role, which is to promote the rule of law, but the reason I cannot talk about policy is that it is not for me. It is for me to assist my colleagues on the legal side of policy, rather than create it. It is therefore not appropriate, when coming before this committee or any committee of Parliament, to give answers about policy, because that is quite properly for my colleagues who have control of that policy.

Why can I not talk about the nature of the legal advice that I give? The simple answer is that the Ministerial Code forbids me, but there is a real reason behind that, which is that lawyers in government must feel free to give confidential legal advice to Ministers. We want it to be candid legal advice, talking about not just the benefits but the risks. In private practice, legal professional privilege prevents a lawyer's advice to their client being made public. That is a precise analogue of the role of Attorney-General to the Government. Although sometimes it is very frustrating not to tell you what the position is, I am precluded from doing so for those really very sensible policy reasons.

The Chair: You will have got the gist of the important question that Dr Swallow has put, though. The whole issue of imprisonment for public protection, which can go on for years and years, is something that has been exercising this committee a lot. That is why members wanted to raise it. We are putting the Lord Chancellor on notice that, when she comes, this will be returned to by Dr Swallow and others.

I want to turn to Lord Sewell now, who I hope will be able to entice an answer from you on a question that was raised earlier by Lady Kennedy around violence against women and girls.

Q15 **Lord Sewell of Sanderstead:** We will press hard. With rape and sexual offence prosecutions taking up to three years to reach a verdict, what should the CPS's priorities be when allocating the additional funding recently committed by the former Solicitor-General?

Lord Hermer: I can answer that, and I can answer it with, if I may say so, a degree of passion in my role as superintendent of the Crown Prosecution Service.

First, what is the problem that we face? I have repeatedly heard the most appalling stories from victims, who sometimes have to wait longer. There

are stories of people waiting three or four years for a rape trial. Three and a half years in, they attend trial, no doubt after anxious months of sleepless nights knowing that the trial is coming. When they arrive at court on the day, they are told, "I'm really sorry, but there is no prosecuting counsel available. It's going to be adjourned; we can't tell you until when".

As a result of that, we are seeing defendants playing the system because of complainant attrition. It used to be the case that people would plead not guilty so they could have one Christmas at home with the family before they faced justice. It is now the case that people are pleading not guilty because it might be three years and the wait might make the complainant give up. That is just unacceptable. It goes back to the rule of law point that I was talking about before and the danger to the fabric of society if we do not have a functioning criminal justice system.

That is why I am proud to be part of a Government that are prioritising VAWG. Part of that will be an increased focus within the CPS. I know it is something that the Lord Chancellor feels incredibly strongly about. She is going to be working with the judiciary to change the system for the better. We have a real problem, but there is a determination at all levels, from the Lord Chancellor through to the CPS—I know it is a concern shared by the independent judiciary—to fix this problem, because we recognise the magnitude of it.

Lord Sewell of Sanderstead: Can I ask something related to that? Is the low rate of convictions around rape linked to this issue of funding and resources? Is there a link between the two?

Lord Hermer: I do not think so. One of the problems we face at the moment is that we have inherited this enormous backlog in the courts. We have a real problem that is being compounded because funding, not least for prosecutors, has been a real issue. To become a RASSO prosecutor is a huge public service because you are not particularly well paid, but you are facing a diet of very difficult and very harrowing cases. As the titular head of the Bar, I am trying to encourage members of the Bar to get their qualifications and accreditation as RASSO prosecutors, because that is one of the problems. That is one of the steps that I am taking, along with working together with the CPS to make sure that its priorities are reflected by a decrease in time. That is absolutely something that I know the Lord Chancellor is deeply committed to.

Lord Sewell of Sanderstead: I have another question, but I would add a note on that. A lot of barristers will say there is just no money in criminal law. There is just no incentive to go down that route. It is a very difficult issue, is it not?

Lord Hermer: It is a very difficult issue. It is not an issue that is simply going to be solved by providing more money. We are in the middle of a spending review. You just need to read any given newspaper to know that fiscal constraints are tight. One of the roles that all of us, as politicians, can play, which feeds into that—it is what I am trying to do

with the Bar—is to talk about the importance of public service and to promote the idea that doing these most difficult cases, even if they are not going to be the most well-paid cases, is such vital public service. Generally, as a Government, we want to stress the ethos of public service. My role in terms of the Bar and the CPS is to give that stress.

Lord Sewell of Sanderstead: The Government made a promise to have a specialist rape court at every Crown Court. Are there enough specialist prosecutors and defence barristers to make these courts effective? It is related to the same thing that I was just talking about. Will the CPS be able to resource this policy?

Lord Hermer: Courts generally I am going to leave to the Lord Chancellor, because that is her domain. I am determined to work with the CPS. You will appreciate that it is entirely operationally independent, as it should be, but in my role as superintendent I intend to work with it and with the Director of Public Prosecutions to ensure that we are maximising the resources that are available for this essential work.

Q16 **The Chair:** Thank you very much. That is a very helpful reply for us on, as you say, a very important question. Can I take you to the penultimate question today? I should say at the outset that I have a personal reason for being involved in this question. As a Member of Parliament for a Liverpool constituency, one of the most tragic duties in my time was to visit families who had lost loved ones, including children, simply because they had attended a football match.

Among the awful events that followed the Hillsborough disaster, there was a huge amount of cover-up. There were so many obstacles placed in the path of the families. Eventually, there was a proposal to create a Hillsborough law, which your party had in its manifesto at the recent general election, something I greatly welcomed. This committee, even before the last general election, held an inquiry into the Hillsborough law. We called witnesses, who included Bishop James Jones, who chaired the independent inquiry, Andy Burnham and others. We were convinced that there was a need for the duty of candour that was set out in the proposed Hillsborough law. How would that affect the CPS's ability to prosecute cases linked to other public disasters?

Lord Hermer: Again, I need to be very careful in what I say. There is an array of laws that can apply for scenarios in which there have been gross failures to comply with lawful obligations. The Government will want to look, and are looking, very carefully at whether there is room for improvement. I have no doubt they will consider the work of this committee and of the Law Commission on that. Beyond that, I need to be very careful in anything that I say.

The Chair: I wonder whether you are able to share with us at all how the Hillsborough law would change the accountability mechanisms of public bodies. Are you able to talk about that?

Lord Hermer: I am afraid I am not. I am very sorry. Again, that is not because the issues that you raise are not issues of real importance.

Obviously, they are. I am just not in a position to answer your question. I am so sorry.

The Chair: I am grateful anyway for the opportunity to put the questions to you. We will see whether we can pursue them elsewhere. Thank you for that.

Q17 **Sir Desmond Swayne:** Given the caveat under which we acceded to the International Criminal Court, what legal risk was there that the non-binding judgment by the court in respect to our sovereignty over the Chagos Islands could have turned into a binding judgment?

Lord Hermer: I know there has been a theme developing of me not being able to answer your questions. I think you mean the International Court of Justice. For reasons you will understand, not least the law officers' convention, I am afraid I am unable to answer that question. Again, I am sorry, but I have explained the very cogent public policy reasons that prevent an Attorney-General answering those types of questions.

Sir Desmond Swayne: Can I try this one, then? Are you confident that the human rights of the Chagos Islanders, and proper consultation with them over those rights, have been properly observed in the arrangements that have been made?

Lord Hermer: If a settlement is secured, I am sure it will be one that secures vital United Kingdom interests and is fair to all people impacted by it.

The Chair: Sir Desmond would probably be pleased if that question could be relayed by your officials to the Foreign, Commonwealth and Development Office for one of its Ministers to give us some kind of reply.

Lord Hermer: Yes, of course.

The Chair: Thank you very much. You will be relieved to know that that was the last question today. I know I speak for the whole committee in thanking you for giving us your time and answering questions where you can. We understand the convention and we recognise that there are some things to which you cannot refer, but our questions nevertheless are on the record, because we want answers to them, if not from you, from others in government. One of the beauties of having the Attorney-General here is that you do relate to every single department of government, so we are pretty sure those questions will go to the people to whom they are best directed.

On that note, I will thank you and your team, who have been here throughout. We hope you will continue to interact with the committee in the future.

Lord Hermer: Of course I will.

The Chair: We look forward to seeing you again. On that note, I end this

session.