



HOUSES OF PARLIAMENT

Joint Committee on Human Rights

Oral evidence: [Ministerial scrutiny: human rights](#),
HC 896

Wednesday 8 December 2021

3.49 pm

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Members present: Ms Harriet Harman MP (Chair); Lord Brabazon of Tara; Joanna Cherry MP; Lord Dubs; Lord Henley; Angela Richardson MP; David Simmonds MP; Lord Singh of Wimbledon.

Questions 1 - 19

Witness

I: Rt Hon Dominic Raab MP, Deputy Prime Minister, Lord Chancellor, and Secretary of State for Justice.

Examination of witness

Rt Hon Dominic Raab.

Q1 **Chair:** Welcome to this afternoon's session of the Joint Committee on Human Rights, which is half Members of the House of Commons and half Members of the House of Lords, and our concern is with human rights. The lead Government Minister on human rights is the Lord Chancellor, Secretary of State for Justice. We have a newly appointed Lord Chancellor, who is Dominic Raab MP. We are very grateful to you, Dominic, for coming along to give evidence to us early on in your tenure to set out what we are looking forward to hearing from you about in relation to human rights and, in particular, the European Convention on Human Rights and the things that have been said about revising the Human Rights Act and the issue of judicial review, which obviously goes to enforcement of human rights.

I would like to say at the outset that I think that we had very good relations with your predecessor, Robert Buckland. He was very prepared to attend the committee, talk to us on a whole range of different issues, answer our letters in the meantime, and respect the role that this committee plays on behalf of the House of Commons and the House of Lords of scrutinising Bills on human rights and looking at operational issues as they affect human rights. I am hoping that we can have a good, respectful relationship with you on the same basis.

I have to say that we have a bit of clearing of the air to do at the start. I feel it is only right for me to raise this with you directly rather than complain bitterly about it behind your back. That is that you basically described feminists as, "amongst the most obnoxious bigots". In your role as champion of human rights, you will be, I hope, defending, protecting and championing the rights of women and feminists, of which I count myself one. I know that Joanna is one and many of the men on this committee would count themselves as feminists, too. Feminism is the advocacy of the rights of women based on the theory of equality of the sexes.

This was in 2011 and some people do say stupid things in the past, albeit I do not, but some people do. I think it is fair enough for us to allow you the opportunity, so that we can respect you knowing that you respect us, to eat those words. To call feminists, of which I regard myself one, obnoxious bigots, you would not say that to me in the House; it would be out of order. Can you just eat your words on that and then we can move on?

Dominic Raab: Madam Chair, first, it is a great pleasure to be back here at the JCHR, having served as a Back-Bencher.

You have taken 10 years to raise that issue with me, but if you look at my record—and I have been a proud supporter of a Government who have seen the gender pay gap fall under their watch—you will find that I have been an ardent champion of equality. Whatever label is put on it, I am a passionate supporter of equality. I would point to my tenure as

Foreign Secretary; when I left all our ambassadors in G7 countries were women, I think the majority, if not all, of those appointed under my watch. I am very focused in the Ministry of Justice on the agenda of tackling violence against women and girls, and I am very happy to elaborate in detail on that if it is helpful for the committee.

Chair: You regard yourself now as aligned with the feminist cause rather than seeing us as obnoxious bigots?

Dominic Raab: Exactly as I articulated it, I consider myself a proud champion of equality in all its forms. I would say actions have backed that up.

Q2 **Chair:** Thank you for that. As for the fact that I should have been after you in 2011, if I had to police all the misogyny of Government Ministers all the time I would not have time to do anything else; therefore, forgive me for not hounding you at that point. We now have to have a proper relationship and I hope we can, so that is why I have raised it now.

Moving on, we have had very clear undertakings in the past from your predecessor that the Government would remain committed to the EU's compliance and membership of the European Convention on Human Rights. This was raised by a member of the House with the Prime Minister—not at this Prime Minister's Questions we have just had but a previous Prime Minister's Questions—as to whether we would stick with the European Convention on Human Rights, and it was raised yesterday in the Nationality and Borders Bill.

To those of us who were there listening to your colleague, the Immigration Minister, it sounded as though the language had changed from that unequivocal commitment that we have had from your predecessor that the Government would stick with the European Convention on Human Rights, irrespective of what they do on the Human Rights Act. Has that changed or can you give us that same undertaking and same assurance that the UK will remain a party to the European Convention on Human Rights?

Dominic Raab: Madam Chair, just to be clear, at the outset of your question, I may have heard it wrong but I thought you referred to the EU. You are talking about whether the Government are committed to the UK remaining a state party to the European Convention on Human Rights?

Chair: Absolutely.

Dominic Raab: Yes.

Chair: Yes, so there is no change there. Thank you for clarifying that. We will now move on to a question from Lord Dubs.

Q3 **Lord Dubs:** Lord Chancellor, do you agree that human rights apply equally to everyone? That would include prisoners, those living in unauthorised encampments, and asylum seekers. As Lord Chancellor, can we assume that you will be ensuring respect for the rights of all these

people?

Dominic Raab: Yes, but as you and I have discussed before, Lord Dubs, there are qualified rights. For example, when the issue of prisoner voting came up, I do think that the UK was right to insist that we do not give prisoners the vote. There is some variable geometry built into the ECHR, as you will know, because you have some qualified and some unqualified rights. You have some derogable and some underogable rights. Of course, human rights, as a general concept, apply universally, but their application does admit that variable geometry. I think that is well accepted in the case law of all courts.

Lord Dubs: Can I turn more specifically to asylum seekers? How do you think human rights apply to those who attempt to reach the UK as asylum seekers? How will you ensure that the Nationality and Borders Bill, on which you have just been voting, does not breach the right to life of those who have travelled to the UK, knowing that people are already dying tragically at sea, as we saw two weeks ago?

Dominic Raab: I know that you and I share a history—you more directly than me—through our families of how important this issue is. I feel passionately about the need to respect our international obligations in this regard and to do the right thing. The reality is at the moment we have an appalling situation where there are criminal gangs feeding on the misery of those fleeing persecution. We need to punish and crack down on those who are profiting from this trade, and dealing with and addressing the problems in the regions where they take place I think is the primary goal. We think of all the foreign policy challenges that presents. I know first-hand what that is like. We also need to have an element of realism about that.

We also need to deal with the pull factor, and encouraging flows through the most unsafe and dangerous routes into the UK is not humane either. I totally accept the argument that you make. We look very carefully at all these issues, and we are doing that in the context of the Nationality and Borders Bill. I am not only confident that the clauses are consistent with those requirements but the overarching strategic objective, which is to stop the misery of this trade, is also crucial to protecting asylum seekers.

Q4 **Lord Dubs:** My last question is about enforcing human rights. Human rights need to be enforceable by those who have their rights breached, from those who are detained in assessment and treatment centres to those in prison for terrorism or other serious crimes. What do you think the barriers are to effective enforcement of human rights and what will you do to ensure that human rights are properly enforceable?

Dominic Raab: That is quite a broad question but let me make a dent in it, if I can. In government you have the Ministerial Code. I have a particular responsibility, as Lord Chancellor, for overseeing human rights policy and ensuring that human rights are properly considered. Of course, there are others who are involved in this as well, particularly the law officers.

I think the principle is that everyone should have as reasonably swift, clear-cut and effective redress as is practicable. At the same time, we need to avoid that being subject to abuse. I think those are the principles that should apply.

Q5 Joanna Cherry: You have given an unequivocal commitment to the United Kingdom remaining a party to the ECHR, but I just want to explore with you a couple of things that were said in the Chamber yesterday afternoon when the junior Home Office Minister was summing up in the second part of the Report stage of the Nationality and Borders Bill. He said that he could confirm that “the Government have imminent plans to consult on substantial reform of the Human Rights Act”. Shall I stop there?

Chair: Yes, we have to vote. The hearing is suspended until the vote is finished.

The committee suspended for a Division in the House of Commons.

Chair: We are recommencing the adjourned evidence session of the Joint Committee on Human Rights and we were halfway through the question from Joanna Cherry about the overhaul of the Human Rights Act. Do you want to start your question at the beginning again, Joanna?

Joanna Cherry: Thank you, yes. I was talking about something that was said by the honourable Member for Corby—who is the junior Home Office Minister—yesterday afternoon when he was summing up in the second stage of the Nationality and Borders Bill Report stage. He said that the Government had “imminent plans to consult on substantial reform of the Human Rights Act, which will be announced imminently in Parliament.” We will ask you a bit more about that in a minute.

Flipping back to the question the Chair asked you at the beginning, Mr Pursglove went on to say, “The Home Secretary also recognises my right honourable and honourable friends’ concerns about aspects of the ECHR and other international agreements. I can therefore confirm that we are committed to reviewing and resolving these issues with the urgency that the situation warrants.” I intervened to say that it sounded like he was announcing something a bit more radical in relation to the Human Rights Act than perhaps we had anticipated, and my anticipations were based on what your predecessor told us. I asked the junior Minister to confirm that the Government are still committed to remaining a full signatory to the ECHR, and he would not answer that question. He said that your intentions would be set out later and it is right not to pre-empt.

I appreciate you have given us a very clear commitment this afternoon, but I am just wondering what he was getting at when he said that aspects of the ECHR and other international agreements were of concern and that there would be legislation to deal with that. Can you clarify what was meant by that?

Dominic Raab: First, I reaffirm the answer I gave to Madam Chair. Secondly, the ECHR is often a lightning rod for criticism. There are elements, less in the convention; I challenge anyone to point to a particular aspect of the convention that they object to. But interpretations of the convention, ways it operates in practice—I think there is a fair debate around all that. Prisoner voting is an example of one that whatever your views are—and there will be different views in this committee across both Houses—there are legitimate debates to be had about that.

There are many other conventions as well. There has been a lot of discussion of the refugee convention. Many of those issues are debated and deliberated through international consideration, whether at the UN or elsewhere. For the part that is squarely within what we will be announcing once we are in a position to on human rights reform, I can reaffirm that we will stay a state party to the European Convention on Human Rights.

Q6 **Joanna Cherry:** What are your plans for the Human Rights Act? You have talked about it being overhauled by the next general election. I am sure you have read our report saying that we found no evidence that the Human Rights Act requires an overhaul. What are you planning to overhaul exactly? Can you just take us through that?

Dominic Raab: Forgive me if I allow us to set out the proposals before the full House when the time is ready. To give you one element, and I think you have been discussing it in this committee, if you look at the procedural framework of the Human Rights Act there has clearly been, since the inception of the Human Rights Act through to now, debate about how it is calibrated. What is the separation of powers? How do you maintain the robust judicial independence that we all want to see? How do you also retain separation of powers and reinforce, protect and preserve the democratic prerogatives? Without going into the detail of what will be in the consultation, those are the sorts of principles that seem fundamental to our constitution.

Joanna Cherry: Are you planning on announcing a consultation at some point?

Dominic Raab: I do not think it would be right or proper to proceed without consultation because of the need for both Houses to look at this very carefully and—perhaps anticipating what you might say subsequently—the variable impacts and considerations and equities across the whole of the United Kingdom.

Joanna Cherry: Are you planning a British Bill of Rights?

Dominic Raab: Again, allow me to announce it and set out the detail properly in front of the House in the right way.

Joanna Cherry: You were involved in drafting a British Bill of Rights when you were in opposition; isn't that right?

Dominic Raab: Correct.

Joanna Cherry: Is that something you put on the back-burner that you might bring forward again?

Dominic Raab: I think it is fair to say that the experience of looking at that in 2015-16 was quite a formative one, but the terrain has changed in material respects between 2015-16 and 2021. One of the reasons why I have not announced it yet is because I want to make sure that we deal with the situation as it is now and take another look at all the case law. It is helpful to have had that chance to look at it then, but this will be a proper analysis, updated to take into account all the changes since then and all the other aspects. I do not feel hidebound to any previous work that we have done.

Joanna Cherry: What do you mean when you say that the "terrain has changed"?

Dominic Raab: The case law. The case law ebbs and flows in the UK courts and in the Strasbourg courts. I hope commenting on that is not regarded as anything other than factual commentary. We are blessed with the finest judiciary in the world. None the less, it is clear that the case law changes and perhaps the overall approach of the Supreme Court changes. It is very important to make sure we understand the facts before us here and now as well as the trends over time.

Joanna Cherry: Can you give us an example of what has changed and the approach of the Supreme Court since 2015-16?

Dominic Raab: There are some quite good examples. I will not give examples because of my capacity as Lord Chancellor; I want to be quite careful about this. There has been a more conservative or more restrictive approach to some of the previous, more elastic interpretations, which is entirely in tune with what the Human Rights Act enables. There has been an ebb and flow of expansive case law to more restrictive case law. That is very interesting in terms of both the substantive issues underlying it but also the judicial approach more broadly.

Joanna Cherry: If you see the ebb and flow as leaning towards a more restrictive approach now, then presumably you would see that as a good thing, so why bother reforming the Human Rights Act if you think the Supreme Court has the balance right?

Dominic Raab: It is a good thing but again let me say that as a general remark. Of course, what ebbs may flow.

Q7 **Joanna Cherry:** You have said in the past that the Human Rights Act is, "fundamentally at odds with the British legacy of liberty going back hundreds of years". I am not sure everyone, particularly perhaps people of Irish descent, would recognise a British legacy of liberty. In what way is that Act, which incorporates the European Convention on Human Rights that the UK ratified in 1951 and which largely represents pre-existing common law rights, at odds with the British legacy of liberty, as you

describe it?

Dominic Raab: They are two different things. There is the convention, there is the case law from Strasbourg, and then there is the third thing, which is the Human Rights Act. One thing I would say, and it is much discussed at the moment, is that I do think, for example, the balance between freedom of speech and privacy is something that has evolved over time. There is no doubt that this has happened. I think the quintessentially UK approach is that freedom of speech has been given the very highest priority and, in fairness, it was also built into the procedural framework of the Human Rights Act to make sure that that was the case at least to some degree.

There is an interesting question about the extent to which privacy considerations under Article 8 have flowed and permeated our case law more, at both the Strasbourg level and the UK level, as a result of EU membership—you think about the right to be forgotten—but also as a result of the case law from Strasbourg. There are academic debates about this all the time. I think it is a fair debate.

My feeling is that most of those shifts ought to be decided—because they are polycentric issues, they are inherently value-laden—by Parliament. In fairness to the courts, they will say Parliament is free to enact legislation to change the case law at any point in which it sees fit. There is no doubt in my mind that, as we found with common law over the years, there are ebbs and flows and tidal shifts. There is more weight applied to privacy vis-à-vis freedom of speech and transparency and openness, and that is partly reflective of the civil law tradition on the continent.

Joanna Cherry: I think you are critical of that. You would like to see more emphasis on freedom of speech, and I suspect that is one thing that you and I would agree about.

Dominic Raab: I will bank that moment.

Joanna Cherry: How does that sit with the policing Bill? In the policing Bill you have put quite strong restrictions on the right to protest so as not to upset people or cause a nuisance. You are giving private rights not to be bothered by protesters a higher value in your policing Act. This committee recommended that you enshrine the right to freedom of expression but you did not do that in the Act. I was wondering whether it is a very selective approach to favouring freedom of speech over private rights.

Dominic Raab: I understand why you say that, but I take the John Stuart Mill approach to liberty. That formulation, the freedom principle, does not help you deal with the practical issues that we, as lawmakers or Ministers in government, have to deal with. I think it is an important principle and there were few greater advocates of free speech than John Stuart Mill. What we are doing is making sure that the harm to others principle and that freedoms are not exercised to disrupt the freedoms of

others are properly catered for. I think that is something that, in the context of the PCSC Bill, we have struck the right balance.

I also recognise—and that is what Parliament is for, that is why these issues do involve values and people have different views on them—that that is a contentious issue. For me, and I think broadly the public, that is the important balance to strike.

Joanna Cherry: Going back to what you said about the ECHR being the European civilian tradition, which Scottish legal tradition has a lot in common with, as you will be aware, I wonder how right that is. People involved in drafting the ECHR were British or English lawyers—a Scot but he was an English lawyer.

Dominic Raab: That is partly true but there are two points. First, there is something that has been put around for a while, that this was all conservative politicians drafting it in Strasbourg or across Europe. It is not true. The travaux préparatoires are all there. This is a matter of fact. If you look at the travaux préparatoires, there was a fascinating tension that they resolved between the civil and common-law traditions. You see this borne out in various points. Article 8 is a very good example of it if you look back at the travaux.

Secondly, my critique, as I made clear at the start, would never be about the convention. I think the convention is a difficult document to object to, but the way it has been interpreted over time, the case law particularly, whether it is under the Human Rights Act and the way it is licensed, creativity or indeed the living instrument document, which was not in the convention, those are different issues. That is where the tidal flow of the more continental civil law tradition has crept in.

Joanna Cherry: Would we be correct in understanding that one of the main purposes of your “reform” to the Human Rights Act will be to curtail opportunities for judicial development of the law?

Dominic Raab: No, I would not put it quite like that. It is fair to say that, particularly with our largely unwritten constitution, I do not think that there is harm, indeed I think there is benefit, in delineating and clarifying the correct balance of the separation of powers between the judicial function, which we need to be robust and fearless—I am confident with the British Supreme Court, which in many ways, vis-à-vis the Strasbourg Court, we want to safeguard—and on the other hand, as I said, the elected prerogatives of Parliament when it comes exclusively to the legislative function. That is the issue.

Joanna Cherry: In your book *The Assault on Liberty* in 2009 you said that it should be made much less easy for Parliament to override our fundamental freedoms on a political whim. Do you still agree with that?

Dominic Raab: Certainly on a political whim.

Joanna Cherry: I might just leave it there for now, Chair.

Q8 David Simmonds: I very much welcome what you had to say about the commitment to the European Convention on Human Rights. Are there particular elements of that convention that you have concerns about? Given that one of the biggest problems in the political debate around the convention stems from a lack of understanding about what it does, do you think there is an opportunity, for example, in the debate about the Elections Bill to highlight where we are in line with the recommendations; for example, the Venice Commission, which is the recognised international authority on fairness and transparency of elections, where the provisions in that Bill are, as far as I can see, entirely in line with the recommendations that it has for ensuring the integrity, the freeness and the fairness of elections in a way that reflects very well on the work being done by the UK Government?

Dominic Raab: Yes, I agree with that. As a specific example, and more generally, as I said to the Chair and to Joanna, you could always look at the ECHR. The interesting thing is that when the ECHR was negotiated, the big contest or negotiation was whether they should articulate some high-minded principles and then let the Strasbourg Court flesh them out or whether they should codify a more detailed approach. Inevitably, they struck a balance, which is why I do not quite accept the assertion or the suggestion that it was all British architecture. There was clearly a balance.

I look at it and few people object to any of the principles articulated there. The much bigger question is the articulation through the Strasbourg case law and, in particular, whether we got the balance right with the Human Rights Act. I do not think everything in the Human Rights Act is wrong. The idea of a schedule with the rights in it and procedural framework is broadly the right structure. It is the judicial creativity, in particular, which you cannot blame the judges for. I have had this conversation with a number of former members of the judiciary, and they all quite rightly say, "But this is what was set out as the framework". I think a sharper delineation of separation of powers would be helpful.

Q9 David Simmonds: Alongside the convention there are a number of other conventions and agreements that the UK is part of, including the Convention on the Elimination of All Forms of Discrimination Against Women and the UN Convention against Torture. What is your view about that wider environment of legal and human rights obligations? Do you foresee any changes being necessary in there or, indeed, looking at the point that was made by Natalie Elphicke, Member for Dover, in the debate yesterday, is there perhaps scope in the context of refugees or a new COP 26-type agreement or approach with a view to maybe a new global compact in the way that we manage refugees and migration?

Dominic Raab: Yes, it is a very good question. We always look to try to strengthen the international network of treaties that reflect our values as well as our interests. I think that is right. I am glad you raised the UN Convention against Torture. The prohibition on torture, Article 3 ECHR, the CAT, appears variously elsewhere. It is a principle of customary

international law, some argue part of the jus cogens now. It seems to me not necessarily self-evident, because otherwise we would not be discussing it, but very clear that the absolute prohibition on torture is something that we must continue to respect and adhere to. I am very proud to have served in a Government who have dealt with the modern trade in human slavery in terms of human trafficking, which we have taken forward in the same way cross-party. These are things I think are part of the bedrock of the consensus that we have in this country. They are good examples.

We are one of the pioneers, and I was very proud as Foreign Secretary to bring in the Magnitsky sanctions regime, for both human rights abusers but also for corruption, visa bans and asset freezes. I think that is important. It is not just a question of whether we are willing to sign up to this or that convention. Will we still adhere to them? Yes. Do we look to refresh them, revise them, and make them fit for the modern world? We are one of the strongest and most ardent advocates for human rights around the world, and I am proud of that tradition.

Q10 Lord Brabazon of Tara: Mine is a very quick and simple question. Do you intend to publish the Independent Human Rights Act Review's findings and follow its recommendations? Would any legislation following that be published first in draft, subject to pre-legislative scrutiny?

Dominic Raab: Certainly, we will want to publish the IHRAR report. Forgive me for not setting out the detail of what we will include, but I can tell you now that I want to pay tribute to its chairman, Sir Peter Gross, and that whole panel for the excellent work they have done. It will certainly inform and influence the approach that we take.

Lord Brabazon of Tara: Will there be pre-legislative scrutiny if there is a Bill?

Dominic Raab: Let me set things out, but as I made clear earlier to Joanna, there clearly needs to be proper consultation.

Q11 Chair: Pre-legislative scrutiny is one way of establishing what you are trying to do in building consensus in the House, and it is something we are strongly in favour of. In October you said you were devising a "mechanism" to allow the Government to introduce ad hoc legislation to correct court judgments that Ministers believe are incorrect. The Government can bring forward legislation to Parliament, and Parliament can already change the law by enacting legislation, which is obviously subject to parliamentary scrutiny and which the courts must then apply. What is this new mechanism?

Dominic Raab: In fairness, I talked about this. I said you have two options. You just say that Parliament brings forward any legislation it wants to correct any piece of case law that it does not like at any particular point, and that is what the constitution says. A number of judges have said to me, "Of course, that is what Parliament is there for". Then there is a separate question, and it is a moot point at this stage, of whether or not there is a mechanism to allow that to be done in a specific

or special way. Let us be very clear about it. You would want to make sure you retained all the due scrutiny that you get. I have talked about the options for it, but let me reassure you, Madam Chair, we are not talking about taking any shortcuts with due parliamentary scrutiny. I know exactly where that is going.

Chair: It is not really about scrutiny only, though, is it? It is about decision-making. With legislation it is not just that Parliament scrutinises legislation, it is that Parliament decides on legislation. The Government do not decide on legislation. Therefore, I want you to be clear that you are not talking about the Government being able to change the law, other than bringing the law to Parliament and seeking Parliament's agreement for Parliament to decide to change the law.

Dominic Raab: Of course. Parliament would have to make the decision. You are absolutely right, and having talked about separation of powers at various points during this session, the principle of separation of powers and the law-making prerogatives of Parliament are absolutely crucial.

Q12 **Angela Richardson:** Thank you, Lord Chancellor, for coming and giving answers today. The independent review of the Human Rights Act looks closely at the relationship between the UK courts and the European Court of Human Rights. Your predecessor told us in July that he encouraged dialogue between Strasbourg and domestic courts and that it was very healthy. Do you agree with him?

Dominic Raab: I totally agree. That is exactly the way I would articulate it as well.

Chair: Looking back to something you said about the European convention, that somehow you agreed with the European convention rights but you did not agree so much with the case law, is it not the case that being a party to the European convention means that you accept the case law as it develops and interprets the European convention rights? I am not quite sure how we could stay in the European Convention on Human Rights but disagree with the case law because, of course, we would still be subject to the jurisprudence of the European Court on Human Rights, even if we prevented our own courts looking at the convention rights.

Dominic Raab: Which article in the ECHR requires us to follow the case law, as opposed to accept rulings in individual cases?

Chair: Well, it requires us to subject ourselves to the enforcement of the European court. That is part and parcel of the European convention.

Dominic Raab: Forgive me, Madam Chairman, there is a very good session in that, and I want to be polite and respectful. There is a big distinction between the requirement that most international courts and tribunals have, once you accept their jurisdiction, to comply with an adverse ruling—subject to the point that Angela made about dialogue, of course, and the convention has bespoke proceedings for that—and saying that you have to follow the generic case law in cases that do not apply to

you. In fact, it is clear that the Strasbourg court has an expectation, but I do not think it is a constitutional one, to follow the case law. That is an interesting feature.

We introduced this obligation through Section 2 of the Human Rights Act, and I think it is clear that I am right about this, because Section 2 of the HRA only ever talked about a “duty to take into account”, and it was because there was not a strict obligation in the convention. Most international tribunals, as a matter of international law, require you to adhere to their adverse rulings or positive rulings, but there is not an express obligation to follow their case law. I think I am right in saying the International Court of Justice, the UN’s principal judicial court, takes a similar approach.

Chair: If you do not comply with the convention rights as they have been interpreted by the European Court of Human Rights, the next time you take an action that is in breach of that you are back before the European court again. We have been in a position in this country where we have not had findings against us because we have been in compliance with the convention, and we take a dim view of those countries that will be subject to European court judgments and just carry on with the same actions that have been found by the European court to be in breach. Do you want us to be one of those countries that sign up to the European convention and accept the jurisdiction of the European Court of Human Rights but decide that if they do not agree with the case law they will just carry on as they were before?

Dominic Raab: Can I draw a distinction between the case law overall and compliance with adverse rulings? If you look at a lot of the approach that is taken judicially, if you look at the textbooks on this, they normally say—and it is true of the International Criminal Court as well under the doctrine of complementarity, but it is also true of the Strasbourg court. Certainly, it used to consider its role as subsidiary to national courts in the sense that it is there only if the courts are unable to enforce those rights; therefore, it has a fallback role.

In relation to the case law specifically, I get the point: if you do not adhere to the case law do you end up back in Strasbourg sooner or later? Because the Strasbourg court does not operate a principle of precedent in the same way as a common-law jurisdiction, and most international courts do not, a lot of the case law has been quite haphazard. If you look at PVR—prisoner voting—it was all over the place. Therefore, I am just not sure the situation is quite as binary as you suggest. What you are articulating is a very common-law approach. That is not the approach that is taken by the Strasbourg court.

Chair: You would hope that next time, with similar facts, the court would take a different view and we could decide to remain out of compliance?

Dominic Raab: That is not what I said, but the truth is it does not operate a similar principle of precedent that you would find in a domestic UK court.

Joanna Cherry: If you take out the obligation of the UK Supreme Court to take into account the Strasbourg jurisprudence, will it not take the guts out of the Human Rights Act? The whole idea of the Human Rights Act was that people should be able to access their rights under the convention through the domestic courts, without having to go all the way to Strasbourg, which takes years and is expensive. If you take out the take into account obligation, will that not render that whole thing a bit pointless?

Dominic Raab: With respect, I do not agree that that follows, because you still have redress under convention rights as applied by the UK courts. If you look at Section 2—I mentioned earlier that I think the case law ebbs and flows—and if you look at the approach that was taken in Ullah to Section 2, effectively what the UK court said is not just that you need to take into account in that more continental approach the case law of the European Court, but it said you need to match it.

Joanna Cherry: But it has retreated back from that now.

Dominic Raab: It has retreated back.

Joanna Cherry: What are you bothered about? What are you worried about if it has retreated back from it?

Dominic Raab: Ebbs may flow, Joanna. There is an interesting question about whether the situation, the accurate position, should be codified. I think it does show that you can take a different view about Section 2. I am grateful for this opportunity to discuss it with you, because that ought to be common ground.

Q13 **Lord Singh of Wimbledon:** Good afternoon. I am Indarjit, Lord Singh, a Cross-Bench Member of the House of Lords. Lord Chancellor, how do you see your human rights role in relation to other government departments? Will you be observing them, monitoring them or policing them to see how they meet human rights obligations through their work?

Dominic Raab: The law officers have the primary role of advising the Government and arbitrating the various different legal views. As a matter of legal policy, and, I suppose, with the DPM hat on, I have an even more overarching role. I do think it is important, and I sit on quite a few of the committees that deal with this. I think it is much more in the realm of policy formation, and I respect the prerogatives of the law officers. There is, of course, the wider institutional regime, such as the Ministerial Code and the references to the rule of law that are reflected in it, which also help to guide us as Ministers and as a Government. I do not think we are under-lawyered in government.

Lord Singh of Wimbledon: I have a very quick supplementary. Most of these government departments carry statements that they take human rights abuse or discrimination very seriously. Can you introduce a timescale for the investigation of complaints?

Dominic Raab: You mean in terms of disciplinary proceedings in any given government department?

Lord Singh of Wimbledon: Investigations.

Dominic Raab: I think that would probably be the role of the Cabinet Office. In discrimination, I appreciate we are all talking about the same network, but that is more of an equalities issue, although it features under Article 14. Let me revert on the answer to that, Lord Singh. We will add it to our list.

Chair: Do I take it from your answer to Lord Singh that you do see yourself as having some sort of pan-government role to champion human rights? Leaving aside the distinct role of the law officers in advising in terms of policy formation and legislation, you see yourself scanning around and being a champion of human rights across government departments?

Dominic Raab: I consider myself a champion of human rights and a proud advocate of human rights. As a lawyer and one of the senior Ministers, with the Lord Chancellor role as well, of course I think it comes with that. Inevitably, those decisions at the very high level are triaged up to Cabinet committees, and if I am on them, or if the Prime Minister asks me to convene in relation to them, then I am very happy to do so.

Chair: Thank you. That is very encouraging. Lord Singh, you have a further question in relation now to Northern Ireland.

Q14 **Lord Singh of Wimbledon:** The Government have proposed to end all investigations and prosecutions of Troubles-related incidents, which would arguably undermine the UK's obligation under Article 2 of the European Convention on Human Rights. What will you do to ensure that Article 2 obligations are then met with regard to Northern Ireland legacy cases?

Dominic Raab: Forgive me, Lord Singh, I do not quite accept that analysis. Partly because the convention is unobjectionable, you can find something in it to point to, to make the policy case you want to make. The wider argument I would make is that on the grounds of legal certainty and finality there ought to be a point after which cases are considered determined or there are other non-judicial means of addressing them. I think that is a fair thing to do. Predictability, legal certainty and finality are important.

Lord Singh of Wimbledon: If two years is the proposed limit for Northern Ireland, why not the same two-year limit in other areas?

Dominic Raab: I will have to revert. I am not quite sure which two-year limit we are referring to. At the end, Madam Chair, I will ask my officials to liaise with your clerks and agree a list of issues that we will write back to you on.

Chair: You said that legal certainty and finality are important within the

criminal justice system, which, of course, they are, but we have entered into an obligation whereby we are committed to conduct effective investigations into deaths. That is under Article 2 of the European Convention on Human Rights. Is that not a very important obligation?

Dominic Raab: Yes, I agree with that.

Chair: You do not feel it is undermined by sweeping it aside because we want to have some finality, which is saying, "No effective investigation into this death"?

Dominic Raab: I do not think that is what it would do. The proposals do not prohibit investigations in relation to those Troubles-related incidents. What they would do is establish an independent body to conduct the investigations into cases of death and very serious injury, for the very purposes of information recovery and transparency and to give finality and answers to those who have waited an incredibly long time for them.

Q15 **Joanna Cherry:** You mentioned earlier in passing, Lord Chancellor, the devolved aspect of all this. You will have seen that our report looking at the Independent Human Rights Act Review concluded that the Government should not pursue reform of the Human Rights Act without the consent of the devolved legislatures. Will you undertake to seek the devolved legislatures' consent and not to pursue reform without that consent?

Dominic Raab: I think it is a bit premature to ask that question until we have not just come up with a consultation but have the text of legislation in front of us. Of course, I am very mindful not just of the UK framework but the different traditions across the United Kingdom, particularly in relation to Scotland. I have been very mindful of that.

Joanna Cherry: Can you tell us what steps you have taken and what steps you will take to engage with the devolved Governments of Scotland, Wales and Northern Ireland on the grounds for any reform of the Act?

Dominic Raab: I will set all that out when we put forward the proposals. That is why we are bringing forward a consultation, precisely to enable the time and space to look not just at the UK-wide implications but the implications for Scotland, Wales and Northern Ireland.

Joanna Cherry: If you take Scotland as an example, the ECHR is written into the Scotland Act. Citizens in Scotland can take issue with legislation or Acts of the Government based on their ECHR rights. If you curtail the ability to do that under the Human Rights Act in relation to reserved matters, arguably you will have a two-tier system of access to justice, whereby people in the devolved countries will be able to access their full panoply of rights under the ECHR in relation to devolved matters, but people across the United Kingdom will not be able to access them in relation to reserved matters. Do you not think that would be a bit undesirable?

Dominic Raab: I am comfortable and confident that we can avoid the problem that you raise, and I look forward to working with all the Administrations and with honourable Members on all sides of the House in relation to this.

Joanna Cherry: The problem is that quite often your Government say they will work with, for example, my colleagues in the Scottish Government in Edinburgh, and that just involves talking to them, or talking at them, but not taking on board what they are saying. You might not always like what they are saying, because there are different political complexions, but they are the democratically elected Government. It is not just talking to them; it is taking on board what they say. Can you commit to doing that?

Dominic Raab: I do not accept that characterisation. During the Covid pandemic there has been very good dialogue and engagement, and I think it is helpful to try to have those conversations in a depoliticised way. That is our commitment, and it is not just about engaging, it is listening as well, not just to politicians but listening at a grass-roots level.

Joanna Cherry: I am not so much thinking about the Covid epidemic, I am thinking about before that. There is the example of Brexit, where we have heard Scottish Government Ministers say they were brought to discussions in Westminster where basically they were just talked at and nothing they said was taken on board. It is not just the Scottish Government who said that; the Welsh Government said the same. What I am looking to you for is an undertaking that you will take a more respectful approach in relation to reform of the Human Rights Act and you will take on board what the Scottish Government and the Scottish Parliament say.

Dominic Raab: I give you that commitment in general. It is quite difficult for me, in advance of knowing what you will say, to commit to doing it.

Q16 **Chair:** Manifestos with commitments to review the Human Rights Act and change it root and branch have come and gone, and Justice Secretaries charged with reforming the Human Rights Act have come and gone, with their proposals running into the sand and not amounting to anything. Why do you think previous attempts to change the Human Rights Act have failed, and why do you think you will be able to succeed where others have failed? Were they just not as bright as you are, or were they barking up the wrong tree? Will we end up in the same place we were before, with it just dissipating?

Dominic Raab: In 2015 and 2016 we were rather overtaken by the referendum, which absorbed a huge amount of time and energy, and led to a different Government in any event. Let us just say I look forward to being, with your support, the antidote to your cynicism.

Chair: I do not quite know how to deal with that point. I do not think we are cynical at all. We are champions of human rights here. We will look at

one of the means of enforcements of human rights, which is the Judicial Review and Courts Bill, with a question from Lord Brabazon.

Q17 Lord Brabazon of Tara: The Judicial Review and Courts Bill proposes introducing remedies that would only prevent unlawful decisions affecting people in the future, not making up for the damage that they have already caused, which the Government themselves have said would lead to “unjust outcomes for many”. Are you concerned that this would deny some people their right under Article 13 of the European Convention on Human Rights to an effective remedy?

Dominic Raab: No, but thank you for the question. If you look at the provision, and the balancing act, and the criteria that are to be considered when deciding on either a prospective or a suspended quashing order, it is very clear that there is the scope to avoid that and that the consideration of redress is one of the key issues, among others, that will be considered. I think it is a useful, flexible tool to give the courts, and it will allow judicial review. It is just one extra tool in the toolkit. It will allow judicial review to be conducted—dare I say it—in a less adversarial way, in the sense that the courts can police public law in a way that is more flexible and avoids the administration of government being unduly disrupted. I think that is the balance we are trying to strike. I have to say, of all the things that create controversy, I have struggled to see the case for not having those extra tools.

Q18 Lord Henley: Continuing on, Lord Chancellor, with the Judicial Review and Courts Bill, it will also effectively remove the court’s ability to review a tribunal’s refusal of permission to appeal a Cart review. You have described that type of judicial review as a legal war of attrition. Obviously, review of tribunal decision-making by the courts can prevent errors, and most Cart judicial reviews are immigration and asylum cases where there are fundamental human rights issues at stake. Would it not be better to attempt procedural reform first, rather than abolishing the Cart reviews and the important safeguards that they provide?

Dominic Raab: First of all, they are not, strictly speaking, abolished, because there is an interest of justice caveat to it. Secondly, I do not think it is a question of—I cannot remember the exact phrase you used—abolishing the judicial review. The reality is that in the lower tribunal there is an appeal, there is the permission stage in the upper tribunal, and the question is whether there should be a third bite of the cherry. That is the legal attrition point. Again, I note that in relation to Cart, only just a little over 3% of those claims are successful. The average rate, I think, for other types of JR is 30% to 50%. There is an anomaly here, and I think this is a rather targeted and common-sense reform, myself.

Lord Henley: The press release accompanying the Bill stated that the ouster clause being proposed to remove or oust Cart judicial review of those decisions on permission to appeal would be replicated in other legislation. In what other areas of legislation do the Government tend to use ouster clauses to remove judicial supervision, and would this damage, again, people’s ability to enforce their human rights?

Dominic Raab: I think we are just saying that if this applies in that context it may apply in future ones, and obviously we want to set that out in concrete terms where that is the case and have this scrutiny then. Let us not do it hypothetically, I suggest, but when we actually have proposals in an area to come forward.

Q19 **Angela Richardson:** The devolved legislatures have taken action to ensure that the UK's international human rights obligations can be better enforced; for example, through passing a Bill incorporating the UN Convention on the Rights of the Child. Do you agree that this would be useful in protecting children's rights and that we should, therefore, do the same?

Dominic Raab: The short answer is I think that the devolution settlement needs to be respected. The balance between devolved competences and reserved matters has been quite carefully calibrated and, I think, functions effectively.

Chair: Thank you very much. You have given us an hour of your time, and we are very grateful to you for setting out some of your thoughts about the convention, about the Human Rights Act, and about your role in government. We look forward to scrutinising your actions and what our proposals are, and responding to your consultations as you proceed with your work. Certainly, the view of this committee is that, whatever else is said about the role of Lord Chancellor and Justice Secretary, we think it is a very important role, as we know you do as well, and something, therefore, that is a promotion from Foreign Secretary. We wish you well with your work. Thank you.

Dominic Raab: Thank you, Madam Chair.

Chair: That concludes the evidence session this afternoon.