

## Foreign Affairs Committee

### Oral evidence: [Human Rights: Annual Review of the Work of the FCO](#), HC 687

Tuesday 28 February 2017

Ordered by the House of Commons to be published on 28 February 2017.

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Members present: Crispin Blunt (Chair); Ann Clwyd; Mike Gapes; Stephen Gethins; Mr Mark Hendrick; Mr Adam Holloway; Daniel Kawczynski; Ian Murray; Andrew Rosindell; Nadhim Zahawi.

Questions 1-99

#### Witnesses

Professor Gaim Kibreab, Research Professor and Course Director, London South Bank University, Martin Plaut, journalist and author of "Understanding Eritrea: Inside Africa's most repressive state", and Professor Richard Reid, Head of Department and Professor of the History of Africa, School of Oriental and African Studies.

Victoria Barnes, Acting Legal Director, Human Dignity Trust, Kapil Gupta, Programme Information Officer, Human Dignity Trust, Philippa Drew, Trustee, Kaleidoscope Trust, and Jesse Sperling, Programme Manager, Kaleidoscope Trust.

#### Examination of witnesses

Witnesses: Professor Gaim Kibreab, Martin Plaut and Professor Richard Reid.

**Q1 Chair:** Welcome to this afternoon's session of the Foreign Affairs Committee, in connection with our annual inquiry into the human rights policies of the Foreign and Commonwealth Office. We have two sessions this afternoon. The first is on Eritrea, which is one of the countries against which we chose to mark the Foreign Office's work on human rights so that we could have a continuing example of work in a particular human rights-concerned country, alongside Egypt. We have picked those two countries simply to give ourselves a basis for analysis of the Foreign Office's work. It is, at this stage, not saying anything about those two countries, apart from the fact that obviously they have human rights challenges. That puts them in a rather large group, globally.

I am extremely grateful to you gentlemen for coming to give evidence this afternoon, at the first of our two sessions. We will hope to detain you no longer than an hour, so I invite you to be crisp with your answers so that we can try and get through the scale of the subject that we need to cover.

If you feel you have not had the opportunity to get points across fully, of course we are very happy then to receive further evidence in writing.

I invite you first to introduce yourselves, for the record.

**Martin Plaut:** I am Martin Plaut. I am senior research fellow at the Institute of Commonwealth Studies and I was with the BBC World Service for 27 years, finally as Africa editor of BBC World Service news.

**Professor Kibreab:** I am Gaim Kibreab and I am an academic at London South Bank University. Originally I am from Eritrea.

**Professor Reid:** Richard Reid, professor of history at SOAS, University of London.

Q2 **Chair:** Thank you very much. Perhaps I can start with the first question, which is about the quality of information we have about what is actually going on in Eritrea. Do you think there is too much notice taken of the views of exiles from Eritrea, rather than actual information from the country itself? Is the country itself its own worst advocate? Perhaps you would give us your view on the data that are out there about Eritrea.

**Professor Kibreab:** Unfortunately, most of the information that is available in the public domain comes from exiles who have left the country for different reasons; but the large majority are people who flee from national service, which is open-ended and, over time, has degenerated into forced labour. I did a comprehensive survey among those who left Eritrea to flee—to desert from national service or avoid being conscripted. I expected them to be biased because they have an axe to grind, but I think that was found to be wrong. I was surprised, actually, by the level of their support for the principle of national service. I interviewed over 220 and none of them said he or she was in principle against national service. It was just the open-ended nature of it, and the punishment regime that accompanies it, that they were opposed to.

If one tries to cross-check the information one gathers from an informant who left the country illegally to evade national service, one can minimise the risk of collecting unreliable data. Nevertheless, one has to admit that it would have been more useful and possible to collect more reliable data if there were opportunities to collect the data from the country itself. Still, one has to bear in mind that the country is not free. Even my friends in Eritrea —academics—have lots of constraints to cope with, and the opportunities to conduct free academic research are very limited.

Q3 **Chair:** Professor Reid, do you have a view as to how reliable the overall picture of Eritrea is that we receive in the west?

**Professor Reid:** It has always been a problem in the Horn generally. These are countries which are run by movements which are, by definition, very secretive and highly suspicious. Even fieldwork within the country is often problematic, because you have to select very carefully who you talk to. But it is worth noting in addition to what Gaim just said that in some ways the counter-narrative that has begun to emerge in certain quarters

tends to come from within Eritrea and is, I guess, developed by people who claim to have better access than the exiles and more balanced information than, for example, humanitarian and NGO groups that tend to focus on human rights. So, on the question of quality of information, I guess it depends what questions one is asking, because you can get quite different answers according to the people that you talk to.

**Chair:** Mr Plaut, if you don't have a different perspective—

**Martin Plaut:** Well, slightly. In one sense it is constrained by the fact that there is no free press, as the Foreign Office makes clear. Even journalists who come from outside—the BBC and Reuters once had correspondents in the field, but they were forced to leave. So there is no permanent presence there and people who go there for the BBC and other organisations—it is worth noting that some time next year the BBC will open services which will feed in local languages to the area, which will be an important development—are constrained. Frankly, much of the information they have is very limited.

I will give you one specific example. National servicemen were going through Asmara and there was an attempt by them to escape from a truck. A bus was put across the road. They fled. People were shot at. When I reported this in my own blog recently, I was told by someone who had spoken to diplomats in Asmara, "None of this happened. I was there an hour later. This is nonsense." A few days later, the Government admitted that it was indeed true.

There is also a good amount of information. If you look, for example, at the monitoring group which the United Nations set up to look at the sanctions, they produce documents—hundreds of pages—that are very detailed and well researched. Also, the special rapporteur on human rights has produced very detailed information. But from the Government side there is a huge gap. For example, there is no official budget produced. Now, how do you know what is going on? There has been no census for many, many years, so almost all the data is very weak.

Q4 **Chair:** Thank you very much. Will you just give us the headlines as to what you consider to be the most worrying aspects about Eritrea's human rights problems at the minute? Professor Kibreab, perhaps you could give us your list and then your colleagues could add to it or disagree. You mentioned national service, but what would your list be of the most worrying things about Eritrea?

**Professor Kibreab:** There are many problems, but, since we cannot talk about all of them, if I were to prioritise: absolute absence of rule of law; the open-ended national service; and the absolute dearth of institutional arrangements that regulate it. Because the military commanders are free to punish the conscripts in any way they want. There is no limitation as to the kind of punishment they can mete out against these people. The national service is one of the most serious problems faced by the country, and anybody that is detained is never brought to court, even though the country's laws incorporate the principle of habeas corpus and criminal



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procedural law requires that someone who is detained should be brought before the court within 48 hours and that, according to the court's decision, this can be extended up to 28 days. We know very well that hundreds, if not thousands, of people were detained in 2001 who have never been brought before a court. The failure of the Government to implement the ratified constitution lies at the heart of the country's problem. The country is ruled arbitrarily. There is no limitation to the powers of the people ruling the country. If someone is detained, then he or she is left to rot and they remain in prison, with no visitation rights. In essence, one could say that the total absence of the rule of law lies at the heart of the problem. Without the rule of law, I do not think that there are enforceable rights that citizens can resort to against Government violations of their rights. The absence of the rule of law is at the heart of the problems faced by the country.

**Q5 Chair:** Is there any difference of opinion? You would both be happy with that analysis?

**Professor Reid:** I would simply add, as an extension of that, that there is a culture of militarisation that extends into virtually all walks of life. It emanates from the President's office, but essentially the country is run along militaristic lines. Much of this is rooted in the idea that Eritrea is surrounded by enemies and cannot trust anyone. This has evolved to the position where Eritrean citizens themselves are not trusted by the Government. Layers of paranoia and mistrust have built up over a long period of time. Just to emphasise one point that Gaim has made: the concentration of power lies in the hands of one man, or a circle around that individual—the President—with no counterbalancing forces, including judiciary or civil society.

**Martin Plaut:** Could I make one point? If you look at the point that is made about national service in the Foreign Office report where it says that they "gave assurances to international partners to limit national service", this is typical of what President Isaias does. He allows ministers and diplomats to give out ideas and suggestions that he will indeed allow certain things, but when it actually comes to pass nothing takes place unless he endorses it personally. I have provided some data showing that this has happened repeatedly. This is personalised rule by President Isaias and his closest coterie of people. He continuously moves people around, and nobody is secure in their position. It is personal rule by one man, and unless he has endorsed an action nothing will take place. The words of the ambassadors and the diplomats and the Ministers are not worth the paper they are written on, or the air they are given on, unless he has endorsed it, because he can always withdraw it.

**Q6 Nadhim Zahawi:** Clearly the evidence that Eritrea's human rights record causes serious concern is mounting. We have touched on this, but there are many reasons here, and I want to focus on the human rights aspect of this. What would you say is the main source of this poor human rights record? You have touched on the President, Martin. What role does the President play specifically around human rights? Are the human rights problems a sole and direct consequence of his behaviour—his autocracy—



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or is there more to it? I am conscious of the time, but I will ask a full question. What do you think would be the best way for Eritrea to improve its human rights record? Can it improve its human rights record under the current Government? What would you say is Eritrea's greatest challenge when it comes to improving the human rights record? And what is the quickest and easiest step it could take that would make a real difference?

**Martin Plaut:** In answering, one has to see the historical trajectory of both the party and the President. They fought a 30-year war of liberation against the Ethiopians. This required an extraordinary act since they were faced with a population of perhaps 10 times their own size, armed first by the Americans and then by the Soviet Union. Yet they won. This required discipline beyond human endurance. The President formed a party—a front and then a Marxist-Leninist cell party inside it, which controlled everything. The People's party ruled completely supreme, and he ruled it with a rod of iron. He executed those who challenged him, both on the left and on the right. That continued right through until independence in '91. It was not formal independence until '93, but they had taken Asmara in '91. Suddenly people were liberated. They thought, "Hang on, we've won. Let us breathe the air of freedom that we have been promised all these years." He was deeply unhappy with this. When, for example, he decreed that there would be no pay increase for soldiers and troops would not be paid, and when he treated the veterans who had been disabled very badly and they protested, they were either shot down or taken away and never seen again. He has ruled like this for many, many years. This is the nature of the man and of the regime. Until one grasps that, there is no way of understanding where Eritrea stands.

**Chair:** I call Mike Gapes. *[Interruption.]* I am sorry. If you are reasonably content with the answer a colleague has given, I am happy to leave it there.

**Professor Kibreab:** I am.

Q7 **Mike Gapes:** May I probe you a bit more about the ideology, Martin? You mentioned a Marxist-Leninist corps. Is this now totally a personal regime or is there a party structure of people who potentially could pose an alternative at some point? Is there an obvious successor? Is this North Korea but in Africa? Or is it something different?

**Martin Plaut:** I think, to be honest, there was an attempt to work an inner party democracy after the war between Ethiopia and Eritrea, which ended in 2000. There was a genuine challenge to the governance of President Isaias. Those people have been in jail ever since. Frankly, there has been no inner party congress of the PFDJ ever since. There has never been a congress of the PFDJ. So what party structures can one possibly use in those circumstances? I don't think one can see this as a normal country.

Q8 **Nadhim Zahawi:** Do you see any signs of improvements specifically in the last two years? If so, where? And what is responsible for those



improvements?

**Professor Kibreab:** I do not think there has been any noticeable improvement at all. The Government make promises and then withdraw them. It is not even the Government that make those promises. It is the spokesman of the Government. Even though they told the world that the national service would be reduced to 18 months as originally planned, the President has never said anything about it. When he was the person who said that—he was approached by a Reuters journalist who was in Eritrea—he said that as long as our territories remain occupied, and as long as Ethiopia does not accept the ruling of the border commission, there is an eminent threat to our national security and therefore we are not going to limit the duration of the national service.

To understand Eritrea, one really needs to take into account the geopolitical situation in the area. The counterfactual is always problematic because it is based on an assumption that it did not happen. Had this happened, probably the scenario would have unfolded in this way, but we cannot be certain about it.

What would have happened if Ethiopia had accepted the ruling of the border commission? It did not, and therefore we do not know, but the failure of Ethiopia was to be bound by the decision of the border commission and the failure of the international community, which was witness to the ratification of the agreement, was to bring pressure to bear on Ethiopia. I am not saying that it has not brought any pressure to bear on Ethiopia—I do not know—but that there has been no outcome resulting from such pressure.

In Eritrea the Government is bitter about the way it has been treated, but it does not do justice to its own cause. The ruling was in its favour, but it was unable to win friends among the international community. It throws tantrums, and that is what is against it—it does not seem to understand the basic rules of the game of international diplomacy. It has been unable to make new friends and it is good at losing old friends. No one speaks on behalf of Eritrea.

Q9 **Daniel Kawczynski:** My question was around whether Western media accurately reflect the situation on the ground in Eritrea, and whether they are exaggerating the human rights abuses, but the three of you seem to be united in painting a rather gloomy picture.

May I ask, specifically in terms of the comparison with Eritrea's neighbours where there are also many human rights abuses—countries such as Sudan and Djibouti: what is it specifically in Eritrea that is worse than in those neighbouring countries?

**Professor Reid:** I would relate that partly to a couple of the answers that have been given to different questions. In many ways, there is no substantive difference.

Ethiopia has a pretty appalling human rights record, which is well documented and in many ways well publicised, but the difference is almost



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an existential one. Ethiopia occupies a much more significant position in terms of regional security, with a network of regional partnerships; certainly since 9/11, for example, Ethiopia has in some ways been permitted to approach certain types of human rights issues in a certain way. It is regarded as being on the frontline of the war on terrorism and that kind of thing.

In Eritrea, there appears to be an undiluted form of human rights abuse, because it seems to serve no other purpose. What has long profoundly irritated the Eritrean Government—from its perspective, and we need to understand this—is the absolute hypocrisy that it perceives in how the only thing that lots of people talk about in Eritrea's case is human rights abuses, and very rarely what Eritrea would describe as its national security agenda. Ethiopia, however, is accepted to have security issues in terms of its internal cohesion, with Somalia on its southern border and so on.

Probably my argument would be that substantively there is no significant difference, but Eritrea has no other string to its bow, in a sense. This appears to be what it does. It has a highly militarised society, and therefore its human rights abuses are much more in the spotlight, perhaps, than those of somewhere like Ethiopia.

**Q10 Daniel Kawczynski:** Is it comparable with the President of Sudan and what is happening in Darfur and parts of Sudan?

**Professor Reid:** Yes. It is of a different form, but if we accept that this is a Government that has utter disregard for the wellbeing of the vast bulk of its population, then yes, it is comparable. My fear is that in terms of any post-Isaias transition, or in a period in which Isaias might be challenged, things might get worse before they get better; in many ways the country is built on kindling, and increasingly so.

This refers back to a point made earlier about the quality of information. One thing that is increasingly clear, although the Government have tried to dampen this down quite a lot, is that there are deep ethnic and religious tensions in the country that could erupt at any time. I have spoken to people over a number of years who are quietly quite afraid of what might happen after Isaias. Ironically, they can also be Isaias's great critics, but in the same breath, they will say, "But we also fear what will happen without him". He is keeping a lid on what is a set of intersecting tensions within the country itself.

**Q11 Stephen Gethins:** Obviously, there is a big focus on the refugee and migration crisis here. What do you think are the primary drivers for that crisis?

**Martin Plaut:** The primary driver has already been mentioned, which is the indefinite national service. Some people have been in it for more than 20 years, effectively without pay. Although there have been promises which were referred to in the Foreign Office's document about the increases in pay, in fact so many deductions were then added that some soldiers lost money—they actually had less money than before when they had the pay increase, if you see what I mean.



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One of the things that it is really important to note is the streaming of Eritrea's population across the border—frankly, this is the strongest evidence for what is actually going on in the country. Despite orders to border guards to shoot to kill, there are hundreds, sometimes thousands of people a month. It has now reached a situation where there is a real crisis.

**Q12 Chair:** Sorry, is that up to thousands being shot?

**Martin Plaut:** No, that is the numbers who have left, who have crossed the border. Sometimes they buy their way through, sometimes they are shot at, and sometimes they are killed. It is a very mixed picture. The situation is that these people are now in acute danger because, quite frankly, the European Union is absolutely determined to halt this flow by any means possible.

If you look at the three main ways in which people can reach Europe, the route through the Sinai is closed; the Israeli border fence is almost impermeable; and the route via the Canary Islands and Gibraltar, or the Spanish mainland is almost closed. That leaves Libya and Egypt. Earlier this month, the EU signed a deal with the Libyans, which is essentially an Australian system of outsourcing refugees. Just as the Australians have the islands on which to keep people, the European Union is now set on establishing camps inside Libya.

The conditions are appalling. They are so bad that a German diplomatic cable suggested that they were as bad as concentration camps. There are gross human rights abuses in these camps. They are terribly, terribly dangerous: people are held there, shot, and raped. That is what is happening and the EU is now determined to make sure that they are strengthened. I am very happy to provide you with the documentation that shows what is actually going on.

The other thing that is happening is that the British Government are not using the instruments which they have signed up to. If you look at Security Council Resolution 23, which again I can give you, it called for an end to the illicit, illegal extortion of taxes from Eritreans in this country, or in fact anywhere in the world, and for an end to halting the use of mining to fund the activities of the Eritrean Government.

Both of these are included here, but have not been implemented by the British Government, despite the fact that documentary evidence has been produced on at least two occasions and provided both to the Foreign Office and to the police—a move asked for by Baroness Warsi in an answer to the House of Lords. This is what she asked for—"please provide the documents". The documents were provided. I again will provide these to your Committee and you will see what has been happening. There has been no development at all in this regard, despite the fact that Britain was a sponsor of this resolution.

**Stephen Gethins:** It would be helpful to our inquiry if you provided that evidence. Can I ask the other witnesses whether they agree that national



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service is the main driver for this? There is clearly a refugee crisis here. It would be interesting to get your perspective, because this is a big issue.

**Professor Kibreab:** You know when people decide to flee—not only when they decide to flee, but when they decide to do something as human beings, they do not take a decision based on a single reason or factor; multiple factors underlie our decisions.

If you look at the situation in Eritrea, it is so bad that anyone who has a choice would flee. The economy of the country is in tatters, because of the myopic economic policy of the Government. The private sector is deliberately stifled. The party and the state are the sole employers, and their capacity to absorb the expanded labour supply is very limited.

It is not only the national service, but once you join the national service, there are so many abuses—corporal punishment, exploitation of labour, sexual exploitation—and there are no recourses against the abuses meted out against people who are in the national service. Those people have families. Eritrean families rely on each other's incomes; they pool together their meagre incomes, and that is how they make ends meet. The national service has actually caused the collapse of livelihood systems.

Diversification of income was the sole basis of survival in Eritrea. For example, the daughter moves to the city, she braids hair and sends money home; one of the male members looks after the cattle and another farms the fields and contributes to the family budget; and the mother does all the domestic chores, but also participates in the cultivation of agriculture—weeding and so on. All able-bodied members of families are now in the national service, which has struck a deadly blow to the long-standing livelihood systems of the country.

In a way, those long-standing livelihood systems have collapsed, and you would expect people to respond to that situation differently. If no opportunities can be obtained within the country, the obvious alternative is to flee from slavery. The conditions in which these people are held are absolutely appalling; anyone in their position would react in the same way. There is nothing that attracts people to stay in the country. The country's future is actually undermined by the national service, and also due to many other factors, including the Government's hostility to the private sector.

Q13 **Ann Clwyd:** Do you have any information at all on Dawit Isaak and the other journalists imprisoned with him?

**Martin Plaut:** All I know is that there have been repeated attempts to have him freed. The European Union sent emissaries to Eritrea and was promised that he would be freed, but again, it was one of those occasions where President Isaias just refused to take it up. I am afraid, sadly, that I know no further information. Occasionally you hear rumours about people who are held in these conditions without trial or without any recourse to law of any kind. Do others here have any better information?

**Professor Kibreab:** No.



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Q14 **Ann Clwyd:** Has the FCO played an active role in helping that?

**Martin Plaut:** Not that I am aware of.

Q15 **Ann Clwyd:** So they promised the UN or the EU? The UN?

**Martin Plaut:** EU.

Q16 **Ann Clwyd:** Who was that? Do you know? Was it a Commissioner?

**Martin Plaut:** What's his name? Louis Michel. He went there with one ticket for himself and one ticket for Dawit Isaak. He had been promised by diplomats in Brussels that he would return with him and when he came to see Isaias, Isaias would not even talk about it. He returned humiliated.

Q17 **Ann Clwyd:** Has the EU not followed it up in any way?

**Martin Plaut:** The view of the Eritrean Government is simple. To be frank, they think that politicians will come and go but they will remain, and they do not really care what is done. They get some aid but they do not depend on the aid; the regime does not depend on the aid to survive, but on its own resources and repression. Therefore, they will just wait for you to go away, quite frankly. It is a rather grim prognosis, but it is the truth.

Q18 **Ann Clwyd:** We were told that there used to be a shoot-to-kill policy for anybody trying to get out of the country. Is that still the case?

**Professor Kibreab:** They have not revoked the rule, but I am not aware of anyone having been shot and killed recently. But they have put landmines at the borders and recently more than 10 youngsters who were trying to cross to Ethiopia got killed because they stepped on landmines. There are people dying. It was reported on Radio Medrek; I have not seen it reported elsewhere.

This takes us back to the reliability of sources, but I think the border areas are now mined and more people are likely to die. Up to 2014, there was evidence of people having been killed while trying to cross into Ethiopia and Sudan.

Q19 **Ian Murray:** Do you think the Foreign Office's reporting and analysis on Eritrea is fair and reasonable?

**Professor Kibreab:** Can you repeat the question?

**Ian Murray:** Is the Foreign Office's reporting and analysis on Eritrea a fair and reasonable reporting of what is happening in the country?

**Professor Kibreab:** They are too careful, actually, and they rely on secondary sources. When the Home Office changed its country guidance policy, they were accompanied by people from the Foreign Office and the Foreign Office wrote a report that painted a bleak picture of the human rights situation in Eritrea, but the Home Office said the country's human rights were improving.

As you can imagine, the Foreign Office has lots of constraints. It is still hoping to win the hearts and minds of the Government and is very careful



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in the way it frames the problems that exist in the country. If you look at the updated statement, for example, it contains lot of, not inaccuracies, but data which is out of date. It is not updated material, actually.

Q20 **Ian Murray:** You would say that it is fair but not accurate?

**Professor Kibreab:** It is fair but not accurate.

Q21 **Ian Murray:** It is right to keep it as a country of concern?

**Professor Kibreab:** Yes, I think so.

Q22 **Ian Murray:** The Foreign Office has said that it has three priorities for improving human rights in Eritrea. It talks about amendment of the terms of national service, which we have covered quite a lot already this afternoon; implementation of the universal periodic review recommendations; and implementation of the constitution. Are these correct priorities—are they realistic? You talked earlier about the lack of the rule of law being a real problem, so are those three priorities the right ones?

**Professor Reid:** Yes, they are a good starting point. The Foreign Office is full of very busy people with lots of priorities. What strikes me is, of course, the narrowness of the remit. There is a certain lack of context in terms of how one might achieve those goals.

It has been referred to already, but forgive me if I return to the prop on which this regime leans quite heavily: its external security. As long as it perceives Ethiopian occupation of Eritrean land, contravening the Algiers agreement and the Boundary Commission findings, which are now 15 years old, I struggle to see how these can be separated out.

Quite a few of us have for some years, rightly or wrongly, been arguing for engagement with the Eritrean Government. I am beginning to wonder whether that was actually correct, but I have certainly argued for it. You cannot separate out these kinds of goals from how things are seen from within Asmara. As Gaim mentioned earlier, we don't know—it is a counterfactual—whether, if Ethiopia had fully accepted the Boundary Commission findings in 2002, things would have been very different. Would we now be seeing a flourishing democratic Eritrea? Probably not—I doubt it—but it would certainly have removed some of the key legitimising drivers behind this almost psychopathic behaviour towards citizens.

I would like to see, in a sense, more responsibility from the FCO. The UK obviously has a role to play not simply in telling Eritrea off for its naughty human rights record but in trying to get to grips with the internal legitimacies on which this regime rests. One of them is this crucial relationship with Ethiopia.

Q23 **Ian Murray:** Do you think that relationship is reflected in the FCO's analysis? Their three top priorities do not seem to correspond with the wider region and its relationship with its neighbours.



**Professor Reid:** No, indeed. That is precisely what I would argue. It is striking that this is obviously an FCO report, yet it is curiously narrow in terms of awareness of a regional context that is extremely important. The Horn of Africa is a very unstable and dangerous neighbourhood to live in for any Government, any movement and any population group, and this is directly linked to human rights—or the lack of them. It is directly linked to political culture and the way that political actors feel they can behave.

Normal rules do not apply. As Martin has mentioned, this is a regime that hopes everyone eventually will just go away and leave it alone. Isaias is fond of saying, “The dogs bark but the camel continues to march.” He is the camel. There is no separation in their minds between these kinds of issues—human rights—and the wider context in which they believe they are operating.

**Martin Plaut:** Can I just come in on that? There are two other things that one needs to bear in mind. One is that in the Horn, certainly the Americans and probably the United Kingdom as well see Ethiopia as far more important. Ethiopia is key to fighting al-Shabaab in Somalia. The Eritreans were supporting al-Shabaab. They are no longer, but they are supporting other movements that are fighting against the Ethiopians. Frankly, if you have to choose between Asmara and Addis Ababa, most diplomats in the end say, “Well, we’ll go with Addis Ababa,” so what are you then left with to offer Asmara?

The other thing to remember is that just across the waters—they are very narrow waters—there is a raging civil war in Yemen with the Houthi rebellion. The Eritreans are now clearly on one side of that war. The United Arab Emirates have built a base in the port of Assab. The Saudis are involved. There is probably a lot of money going to Eritrea from both Saudi and the UAE, and there are pretty good reports—I have had first-hand accounts—of Eritrean troops actually being involved in the fighting against the Houthis as well.

As you can imagine, there is a deep involvement here of the Eritreans, which has provided them with a lot of diplomatic muscle, because the Saudis are now on their side, as is the UAE. That has allowed them out of the sort of containment that Ethiopia had placed them in before this took place.

**Chair:** They are on the same side as us, then.

Q24 **Ann Clwyd:** How well positioned do you think the UK is to influence human rights in Eritrea? We understand that Ministers have not met the ambassador since 2010. Is that the right approach? Should we be engaging in a different way? Is there a lack of will or interest?

**Martin Plaut:** If they had implemented resolution 2036, which was signed up to, that would at least provide some leverage, but I agree with you; meeting the ambassador and being more, shall we say, positive about things would also help.



**Professor Kibreab:** I think so, too. One thing Eritrea does not respond to is threats and isolation. The only way to make a difference probably is by talking to them. I am not sure whether that would make a difference, but it is much worse to isolate them. If you look at their history, as Martin said earlier, it is a freedom movement that won against all odds. Nobody helped the Eritrean liberation movement. They won it. They received some support from NGOs and so on, but they made it against all odds. Nobody thought they would win the war of independence. They did, and when they created the state, they had so many axes to grind against the Organisation of African Unity, the neighbouring countries, the United Nations and so on. Then the border war broke out, and the world did not come to help them or implement the ruling of the Boundary Commission. Their President sees the world as conspiring against him. I do not know how you can make him change his mind. Working with his colleagues does not pay off in any way. Only he decides everything. Unfortunately there are no institutions in Eritrea.

The most critical question is whether the Government implements the constitution or not. If the Government implements the constitution, the indefinite national service would be declared null and void, because it violates the fundamental human rights of conscripts. Those who engage in the private sector would be able to challenge the Government in its own courts. If there were a constitution in the country, the President would be accountable. Ministers would be accountable to Parliament. The justice system would be independent, and the rights of citizens would be enforced. As was said earlier, there is one man rule in Eritrea, and that rule is absolute. He is not accountable to anything. As long as the status quo prevails, we are unlikely to see change.

Q25 **Ann Clwyd:** Who is best equipped to influence the Eritreans?

**Professor Kibreab:** I wish I knew.

**Professor Reid:** There have been a number of actors in recent years. The South Africans for a while were quite interested in their mining sector. Iran and Qatar—these are perhaps not the FCO's favourite partners, or at least some of them might not be, but a number of quite surprising countries from our point of view have been able to open the door slightly or certainly have conversations with Isaias in a way that Western countries have not. The jury would still be out on whether or not they have influenced him. I think the Qataris got fed up after a while because he used their medical facilities and promised certain things but didn't really deliver.

One thing I would add to Gaim's point is this: we know that by simple biology, Isaias will not be there forever. If there were a way that the FCO could maintain informal contacts with a range of middle-ranking officials, however we define those individuals, who are currently in the Government—someone will need to govern Eritrea in the event of Isaias's demise, however it happens. I know folk who have worked in the Foreign Office, and in NGOs, who have succeeded over a number of years in maintaining soft, informal relationships with people who work in the



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Eritrean Government, and those middle-rankers who may well have to step up at some point in the future. Once the head is cut off—we have seen it in many other regimes around the world in the last 20 years—there is a requirement of people who worked in those regimes to suddenly become something else. That sounds rather cryptic, but there are people there who will be able to work with the FCO, the UK, in future.

**Martin Plaut:** I think, also, the continued support for the UN rapporteur on human rights is extremely important. She has shone a light on the prevailing practices and the Eritrean Government has found this very difficult to deal with, because her reports are long, comprehensive and authoritative. There has been British support for that, and that is very much to be welcomed. I would suggest that is one of the things that really can be continued.

- Q26 **Mr Hendrick:** Martin Plaut, you have been quite critical of the EU's involvement, to some extent, and their engagement with Eritrea. What type of approach would you have preferred the EU to make, to be more effective? Obviously, you have mentioned the UN rapporteur. While some people in Eritrea might be a bit more co-operative with the UN, how has that affected the outcomes—the living conditions or the human rights of people within Eritrea? What I am trying to say is criticism is one thing; outcomes and results are something else. How would you go about it?

**Martin Plaut:** I don't know if you are aware of the Valletta summit, which took place in November 2015, at which the EU established its basic approach towards Eritrea, among other countries in Africa; it is part of the Khartoum process that was established. That looks to many elements, some of which are positive, but there are extremely worrying elements within this approach, which is now absolutely at the centre of what they are trying to do, and which I was trying to describe, about these camps that are established in Libya.

For example, they asked for "improved intelligence gathering", encouraging "all States to gather intelligence on smuggling of migrants and trafficking in human beings, with the support of Interpol and other appropriate agencies", support for "Interpol intelligence gathering exercises in relation to migrant smuggling and trafficking in human beings" and enhanced "cooperation in particular with Interpol National Central Bureaux...and regional bureaux" in Africa. Can you imagine what that is doing, when you have that kind of drive by the EU to assist a Government as repressive as Eritrea in maintaining this kind of information—sharing information, providing them with equipment, providing them with training? You have actually made the situation very much worse. Imagine if you were trying to flee across that border; you had decided that after 18 years you could not remain in national service one minute longer, and you now knew that the intelligence about what you were trying to do was enhanced by the European Union. How would you feel about it?

- Q27 **Mr Hendrick:** I totally sympathise with the point that you make, but from the European Union's point of view clearly their main objective is to stop



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people getting into the European Union. Making the system worse in Eritrea probably is a bit of an afterthought, if anything. My question is—okay, I accept it may be making things worse for people in Eritrea; but how do you make things better for people in Eritrea? That is clearly what we are here to try and talk about.

**Martin Plaut:** That was why I was trying to point you in two directions.

Q28 **Mr Hendrick:** Making things less worse isn't making things better. How do you make things better?

**Martin Plaut:** One of the ways is to maintain scrutiny of the country. That is why I referred to the UN rapporteur on human rights, and the monitors—the United Nations Security Council monitors, who monitor what is going on. The other thing you can do is, just as was done with repressive regimes like South Africa, increase the pressure on the country.

Q29 **Mr Hendrick:** Sanctions: the economy, as we have already heard from Professor Kibreab, is virtually on its knees because everybody who is fit and able is being conscripted. How will any form of sanctions improve things at all? If everybody is being conscripted and basic family life has disappeared, what is going to happen?

**Chair:** Professor Kibreab would like to come in.

**Mr Hendrick:** I would like to come back to Mr Plaut in a second.

**Professor Kibreab:** I could not say what measures would improve the situation inside the country, but there might be a point of entry for dialogue with the Government if someone approached them with a promise that they were going to bring pressure on Ethiopia to accept the decision of the border commission, for example—though Ethiopia may not accept that. One of the most contentious issues that the Eritrean Government raises wherever they go is that notwithstanding the fact that the law is on our side, the international community has conspired against us in siding with Ethiopia. Instead of penalising Ethiopia or bringing pressure upon it they are providing Ethiopia with millions and millions of foreign aid. The culprit is rewarded and therefore we have nothing to do with these people. They withdraw from any kind of negotiation. I am not saying that, if this were to happen, the Ethiopian Government would open their doors for foreign investment, release prisoners and so on. I doubt whether they would; but at least they would run out of an argument, if that were to happen.

Q30 **Mr Hendrick:** I accept that totally. I think that Mr Plaut talked earlier about the difficulties with Ethiopia—because, clearly, they are fighting al-Shabaab. They have a particular role in headquartering the African Union. They are a big player and Eritrea is seen as a much smaller player. I take what you are saying at face value, but the likelihood is—*[Interruption.]* Yes, I will come to the question. This was a result of my question to Mr Plaut. You said earlier that the way that Eritrea deals with critics is just to ignore them and hope that they go away. Why is the sort of criticism or pressure that you are indicating from the EU—or anywhere else—going to



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make any difference, other than to try to embarrass them a bit more?

**Martin Plaut:** It is not a question of embarrassing them. If the UK genuinely implemented halting the tax that is paid by the diaspora abroad, for example, that would be critical to the funding that the Government have. But it is not just a question of a stick—although sticks are certainly useful. You have only to look at my own country of origin, South Africa, to see what sanctions did. They actually played a considerable role: the evidence is unequivocal about that.

On the other side, why not work with people such as the UAE and the Saudis, who are now President Isaias' best friends? There is no reason why that should not take place. I fully support what Professor Gaim says. The pressure on Ethiopia should be maintained and stepped up; they should be told in no uncertain terms that they should abide by the agreement they signed up to in Algiers, which contained no ifs and no buts. It was absolute that they should accept it, but they have not.

Q31 **Mr Hendrick:** But telling people in no uncertain terms when, as you say, they are not listening is—

**Martin Plaut:** But this is Ethiopia that I am talking about.

Q32 **Mr Hendrick:** Oh, Ethiopia—I accept that. However, as I say, Ethiopia has a different role in the Horn of Africa.

Q33 **Daniel Kawczynski:** Our understanding is that applications from Eritrea to the United Kingdom have fallen in the last year. How would you explain that—is it a result of the improving situation in Eritrea or some other factor?

**Professor Reid:** It is certainly not because of an improving situation in Eritrea. Sometimes numbers are inexplicable. It is certainly not because fewer people are leaving. Perhaps the UK looks somewhat less enticing.

**Professor Kibreab:** But also, the border control regime has become more rigorous with the dismantling at Calais and other restrictions. It is no longer easy to cross from Libya, given the large number of people who are drowning in the Mediterranean Sea. Even though there is no state in Libya, the EU is trying to work together, even with militias and others, who are abusing the refugees. That is also stopping them from crossing the Mediterranean Sea. So I think it is control rather than any sign of improvement in the country; nothing has improved.

**Professor Reid:** There are networks of intelligence for Eritreans fleeing across the Mediterranean. My understanding is that the number of accepted asylum cases in the UK fell dramatically through 2015-16. Of course, people are well aware of that, and may head in other directions if the word spreads that the UK is less welcoming than it once was.

**Professor Kibreab:** But if that were the case, they would know about the new country guidance and the ruling of the upper tribunal, which decided in favour of Eritrean asylum seekers, contrary to the Home Office's policy. We said, "If you left Eritrea illegally and deserted from the national



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service, if returned, you will face no harm.” The upper tribunal disagreed, and said, “If you fled from the national service illegally and return to Eritrea, there is a high probability that you will be persecuted.” I am sure most Eritreans in Ethiopia, Sudan, and even inside the country must be aware of that. I think that the control regime has become more rigorous. That might be one of the reasons why the numbers have gone down, but it is only temporary.

- Q34 **Chair:** Do you have the slightest sense that a number of the people claiming to be Eritrean coming to the United Kingdom are not in fact Eritrean, but are claiming to be so because of the state of things in Eritrea?

**Professor Kibreab:** Many of them are not Eritreans. We do not know the percentage, but a substantial proportion of them come from Ethiopia—especially from Tigray.

- Q35 **Chair:** So Eritreans in the UK will look around at people claiming to be Eritrean, and in a significant number of cases they will go, “The dear old Brits have been gulled again.”

**Professor Kibreab:** It may not be significant. I sometimes write expert reports. In desperation, solicitors approach me to do assessments of nationality, even though I have no time and it is quite depressing to interview those youngsters, who have fled their country in anticipation that they will be granted status on the basis that they are Eritreans. Most of the people they send have no claim at all. It is very depressing, so I say no most of the time. If I say yes, most of the cases are not actually what they claim.

- Q36 **Mike Gapes:** Can I follow up on this? If the main driver of people leaving Eritrea and trying to get asylum in Europe is the issue of national service, is there any breakdown of the number of men who are coming as applicants and how many women are coming? How many families are coming? Is it overwhelmingly single men, or are they bringing their families with them?

**Martin Plaut:** Don’t forget that the national service is irrespective of gender.

- Q37 **Mike Gapes:** Is there any data?

**Professor Kibreab:** Yes, there is. In 2014, about 36,000 Eritreans arrived in EU countries.

**Mike Gapes:** 6,000?

**Professor Kibreab:** 36,000. That was the largest number ever. The large majority were under 30—in fact, below 25 years old—and the overwhelming majority were single males. When they settle, on the basis of family reunification they bring their wives or fiancées, and the demographic structure changes slightly, but it is predominantly young males.



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Q38 **Mike Gapes:** But that requires them to actually be accepted with refugee status, so it is several years later, and then they have to get their families from wherever their families have fled to. Presumably, it would be very difficult to get them from Eritrea.

**Professor Kibreab:** That is very true.

Q39 **Andrew Rosindell:** Can you comment on the UN panel of inquiry that concluded in 2016 that Eritrea's leaders are committing crimes against humanity?

**Martin Plaut:** I think there is overwhelming evidence that that is the case. If you look at that report, which is hundreds of pages long—in fact, there are two reports—I think it is substantiated.

**Andrew Rosindell:** Any other comments?

**Professor Reid:** I would agree with that.

Q40 **Andrew Rosindell:** Did the UN resolution that followed the commission of inquiry's report go far enough in that case, or do you agree with the commission of inquiry that Eritrea should be referred to the International Criminal Court?

**Martin Plaut:** Since there is no domestic means of taking up these cases, which is the test by which you judge whether something should go to the ICC, then I think it was legitimate to ask for it to go to the ICC, so that it could judge whether there was or was not a case. There is no way it can be judged in Eritrea.

Q41 **Andrew Rosindell:** Have there been any tangible results following Eritrea's universal periodic review in 2014 or its renewed co-operation with the Office of the UN High Commissioner for Human Rights?

**Professor Reid:** I would not say that there have been any substantive changes as a result.

**Professor Kibreab:** The fact is that they are submitting reports. The quality of the reports they are submitting is probably questionable, but the fact that they agreed to be scrutinised is quite positive and a move in the right direction. Where that is going to lead, we do not know.

Q42 **Andrew Rosindell:** Does the fact that Eritrea allowed the visit of the UN experts in 2016 indicate a change of approach?

**Professor Kibreab:** No.

Q43 **Andrew Rosindell:** None at all?

**Professor Kibreab:** Well, it would be wrong to deny that it also represents a positive gesture, but they visited the prison where civilians are held. They were not allowed to visit the detention centres where political prisoners have been held since 2001. If there was a genuine change of heart on the part of the Eritrean Government, they should have allowed them to visit either where the members of the G15 or the journalists and others are held.



**Professor Reid:** If you wanted to end on an optimistic note, which is possibly what we want to do, one could spin this to suggest that any opening or any kind of engagement is a good thing. Whether it is sustained and leads in the short term to any substantive difference in the quality of life in Eritrea is in a sense almost a separate thing. Improving human rights in Eritrea is going to be a life's work, I suspect, in some ways, but any kind of engagement like that—considering that up to seven or eight years ago, Eritrea was incredibly isolated—has to be seen as something positive.

**Martin Plaut:** I am not sure I agree with that. I am not sure that there is actually anything to be gained. The problem is that there are repeated, concrete instances where attempts at making these links have failed. All they have done is to reinforce the belief of President Isaias that he can play you as long as he wants to. The idea of reaching out to him—he is not somebody who moves.

For my money, the most positive thing is that there are still sources of resistance inside the country. There are still people who are smuggling information out at their own risk. There is now intense scrutiny of the cafés at which you can go on the internet and there is intense scrutiny of the phone calls that are made, but still people get information out. They get video and pictures out and it is possible to know from time to time what is going on. The country is not hermetically sealed. That is positive. Where in the end change will come from is, I think, anyone's guess.

**Chair:** Gentlemen, thank you very much for your evidence. I have to say that we did try to get other perspectives, not least from the Eritrean embassy. Unfortunately, they don't answer their telephone and the contact details on their website don't actually work.

I have noticed during the course of the hearing that the body language of some of the people behind you hasn't been entirely congruent with your answers. I would say to those people who have listened to the evidence, either in the room or by following the broadcast, that if they take a view and have other evidence to give to us, we would very much welcome that in writing, and the same from you, gentlemen, if there is anything more that you want to add to your answers on the issues that we have raised, particularly on the Foreign Office's management of the Eritrea human rights situation that is the principal focus of our inquiry. We would be very grateful to receive any further particulars. Thank you all very much indeed for your time this afternoon. I am extremely grateful.

## Examination of witnesses

Witnesses: Victoria Barnes, Kapil Gupta, Philippa Drew, and Jesse Sperling.

Q44 **Chair:** Welcome to our second session on one of the issues that we are following in connection with trying to mark the Foreign Office's homework on how it sustains human rights. The issue is LGBT rights in the Commonwealth. We would be grateful if our witnesses introduced themselves for the record.



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**Philippa Drew:** Thank you very much, Chair, for inviting us to come and speak to the Committee. I am Philippa Drew, a trustee of the Kaleidoscope Trust and of the Human Dignity Trust, but I am appearing here mainly on behalf of the Kaleidoscope Trust because it is without an executive director at present—he does not take up post until 20 March. On my left is Jesse Sperling, programme manager for the Kaleidoscope Trust. On my right is Victoria Barnes, who is the legal director of the Human Dignity Trust, and on her right is Kapil Gupta, who is the programme information officer for the Human Dignity Trust. Questions about individual countries will probably be answered by Victoria and Kapil, whereas—

- Q45 **Chair:** By and large, we have hopefully prepared ourselves sufficiently to be able to direct our questions to be fair. If they are undirected, I leave you and the organisations—one of you on each side, from whichever respective organisation—to pick the questions up. Who will lead for the Human Dignity Trust?

**Victoria Barnes:** I will, to the extent that I am currently the legal director, but Téa Braun is on a period of adoption leave so I am covering her for nine months. Kapil has joined me here in case there are areas in which he has more expertise than I do, but for the most part you can direct questions at me.

- Q46 **Chair:** I will start with a general question. You are very interested in these areas right across the world. The Committee has chosen to focus its examination of the Foreign Office's work in respect of Commonwealth countries. Were we right to do so?

**Philippa Drew:** Yes, I think so, because the United Kingdom has a particularly important role to play in relation to the Commonwealth, probably made even more important by the forthcoming negotiations on article 50 and the prospect of leaving the European Union. We have an important role in the United Kingdom—the Foreign and Commonwealth Office has a particularly important role—because of our historical interest in the Commonwealth. The laws that criminalise LGBT people are of course British colonial laws, so the United Kingdom also has a moral concern with LGBT rights in the Commonwealth.

There are also opportunities such as the Commonwealth Heads of Government meeting where with various diplomatic means it is possible to promote LGBT rights, whether overtly or quietly, behind the scenes with diplomatic measures. So I would say yes, it is very important that this Committee should focus on the Commonwealth.

Having said that, there are of course very serious issues in other countries where LGBT people are suffering. So I would not want to say by any means that the Committee should not look at other countries, but I understand that for the purposes of this afternoon you are looking at the Commonwealth.

- Q47 **Chair:** Where has progress been best in the Commonwealth, and where has it been worst?



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**Victoria Barnes:** In the past 18 months there has been significant progress on the decriminalisation of homosexuality. For those Members who are not aware of the work that the Human Dignity Trust do, we focus on supporting local partners and groups in countries which criminalise consensual adult same-sex sexual—

- Q48 **Chair:** It is really important that the focus is on the Foreign Office. Which countries should we be looking at as case studies where the work of the Foreign Office has been either particularly helpful or not made an impact in preventing things getting worse?

**Victoria Barnes:** To the extent that we have knowledge of exactly where the Foreign Office is working—we do not have perfect knowledge of that—there certainly are countries where there has been progress in the past 18 months. In terms of decriminalisation, we have Belize, Mozambique and Nauru, where there have been particular legislative reforms. In the case of Belize, there was the successful litigation there. Also, Seychelles has repealed their provision which criminalises. We understand that the Foreign and Commonwealth Office may have been involved in some work in Mozambique and Seychelles, but we are not aware of exactly what their engagement was in those two particular countries.

**Philippa Drew:** And we would like to know. One of our points—if you could make this to the Foreign and Commonwealth Office—is that we see ourselves as their partners, so they should tell us, because we, through the Commonwealth Equality Network, have a network of LGBT organisations in pretty well every Commonwealth country. If the FCO is, for example, talking to a particular country about decriminalisation in whatever form, it would be good if they told us because we could let the local LGBT group know.

- Q49 **Chair:** I would suggest you see them as your partners but they do not see you as their partners. Is that right?

**Philippa Drew:** I would not want to sound as critical as that, but I think they could be a little more open with us about what they have done. As Victoria has said, they have talked about Mozambique, but we were completely unaware that they were saying anything to Mozambique.

- Q50 **Mr Holloway:** The Chairman will remember that a few months ago we both watched an absolutely horrifying film on the internet, shot on a mobile phone, of two gays literally being beaten to death by a crowd in Nigeria. Do you remember?

**Chair:** I do.

**Mr Holloway:** There was a police car there and police officers faces were in full view while these guys were having breeze blocks thrown on their heads. Can you give us some idea of how a society comes to that? It just seems to us extraordinary that a crowd of 500 people and police officers could be condoning this. Give us some way of visualising it.

**Philippa Drew:** It is pretty hard, actually. I share all your horror at such things. I am not an expert on the history of Nigeria or indeed on Nigeria.



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What I would say is that in every part of history and in probably almost every country there have been minorities who have been persecuted. After all, the 20th century saw some horrific persecution of Jews, for example. That sort of scene might have been seen in Europe in the 20th century. I think religion is an aspect of it, and culture, but I also think that sometimes politicians or rabble-rousers seek to deflect attention away from problems that a country has—problems of poverty and inequality—and focus people's anger on a minority that can be used as a scapegoat.

**Victoria Barnes:** Just to add to that, the issue of criminalisation fosters this homophobic climate. Where there is criminalisation, that sends a strong signal to the general population that it is okay to discriminate against and commit acts of violence against the LGBT community. Decriminalisation again sends a strong signal to the general population that LGBT people are not criminals, and that they actually deserve the same equality and rights as the rest of the population. I don't know if you want to say anything particular about Nigeria, Kapil?

**Kapil Gupta:** Within every country within the Commonwealth, persecution is multi-faceted. I think Philippa has already touched on the religious groups that rabble-rouse, and there is rank political opportunism, but behind it all there is this pernicious criminal legislation that gives it all legitimacy. It is a well known fact that there are these laws that were exported from this country, which underlines the importance of this country in helping the world to get rid of these laws.

Beyond that, a point that I wanted to make is that, beyond murder and violence, the real violence faced by people is everyday violence, which is when you have to pay a bribe around the corner. That is the lived reality of most LGBT people in these countries that criminalise that in the name of these legislations that are there. There is actually a trend in Nigeria going beyond criminalisation. They have introduced more legislation that gets close to even criminalising the identity of people; they are not there yet, but they are looking at criminalising just being gay, as opposed to sexual acts.

The major problem is actually being forced to pay bribes, day-to-day harassment and blackmail. That is the real violence, because that is upon pretty much every LGBT person living in Nigeria and such countries—most of the Commonwealth, actually.

**Mr Holloway:** You guys should have a look—there is an enormous amount of mobile phone-shot material on the internet of gays being beaten or killed. Have a look.

- Q51 **Nadhim Zahawi:** You will know this already, but obviously despite the Commonwealth charter being signed by all Commonwealth Heads of State in 2012, 40 out of the 53 states continued to criminalise same-sex activity in some way. That obviously means that 90% of Commonwealth citizens live in countries in which LGBT people are criminalised, which is the point that you were making.



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My question is whether pushing for the decriminalisation of homosexual acts in the Commonwealth would be a good priority aim for the FCO, or should that be done in tandem with other legal issues, such as anti-discrimination laws, hate crime and anti-harassment legislation, laws governing gender identity, expression and recognition of diversity, laws on equal partnership and the right to a family life? Should we have laser focus on this, or should it be part and parcel of a much bigger campaign?

**Victoria Barnes:** The answer is that it kind of depends on a case-by-case and country-by-country basis. Specifically on criminalisation and decriminalisation, decriminalisation is the gateway to further progress; it is kind of that hurdle you have to get over first in order to be able to tackle other aspects. It is difficult to bring in anti-discrimination legislation that includes non-discrimination provisions for sexual orientation when you actually have a criminalising statute on the books.

That said, you have seen a couple of examples of countries that have very progressive equality legislation, such as Mauritius, yet they still criminalise. I don't think it is something that the FCO should not be focusing on, but for us at HDT, we see decriminalisation as a threshold that needs to be gotten over before you can proceed.

There is also the ability to perhaps look at anti-discrimination or hate crime legislation as a kind of incremental approach, leading up to decriminalisation. In our recent experience on the litigation side in countries such as Botswana and Kenya, we have seen quite progressive constitutional court decisions with respect to freedom of association rights for the LGBT community. That has kind of led on to a full decriminalisation challenge before the courts there. Tackling these issues through legislation on anti-discrimination could be seen as a kind of incremental approach, and in some places that might be the right road to go down, but to go back to my first point, I think the issue of criminalisation should be a key focus of the FCO.

Q52 **Nadhim Zahawi:** That is really useful. Could you unpack that for us—maybe not now, but in writing—country by country? That would give us a better idea of those countries where there should be straightforward decriminalisation as the first step, and that should be the immediate focus, and those countries where a different approach may be appropriate. That would be very useful for our Committee.

**Philippa Drew:** May I add a point? There are, of course, different ways of decriminalising. You can, as in Belize, challenge the existing law. Another way is to reform all the sexual offences laws, and acts by consenting adults in private just fall away. There are different approaches. Victoria will have more to say about this, but the law reform route is potentially quite a helpful one, because you can decriminalise without obviously doing it, if I can put it in that way.

**Victoria Barnes:** As I alluded to at the very start, the places that have decriminalised in the past 18 months, bar Belize, have done so through legislative reform. In two particular examples—Nauru and Mozambique—

they did that through a wholesale review of their criminal codes. Those criminal codes are very outdated and come from British colonial rule of the time. Not only is the criminalisation of homosexuality being removed, but you have the benefit of wholesale reform of key sexual offences within that updating process, which has the added benefit of protection for women and children and so on.

We have been running a project in the past few months, supported and funded by the FCO, as part of a tripartite arrangement with the Kaleidoscope Trust and the Royal Commonwealth Society. We have been researching to what extent the laws within the Commonwealth are outdated, focusing on the 36 countries within the Commonwealth that still criminalise, and to what extent those countries could be amenable to some sort of legislative reform, to see if we can replicate what has happened in Nauru and Mozambique.

We are also looking at what legal tools or legal assistance packages could be used to assist that. Would a model law, drafted in conjunction with the Commonwealth Secretariat, be useful? Is providing legal technical assistance on a country-by-country basis the better approach? In Nauru, for example, there was great assistance from the Australian Attorney General's office with the legislative drafting of their new criminal code. There was also legal technical knowledge sharing and training between the two countries. We are looking at whether that approach is more appropriate. That is an ongoing project. We are looking at a roundtable in the middle of March, to present some of our findings, and groupings with stakeholders to get feedback and input, to see if we can take this forward. The FCO has been very helpful in supporting that.

**Q53 Chair:** You have spoken of the legal inheritance that the Commonwealth nations have, to a significant degree, from the British empire. This might be a question for the Kaleidoscope Trust. How important are the religious sources of unequal treatment and intolerance? Is that really best addressed by the Foreign Office and the Commonwealth as an institution?

**Philippa Drew:** You have to start with the criminalising laws, which came in with British colonial rule, but of course, what also came with British colonial rule were the missionaries. Quite how one unpicks those two strands is not for me to say, but it is clear that religion does play an important part in cultural attitudes towards homosexuality.

The more modern phenomenon, as I am sure the Committee knows, is that of Protestant evangelical churches, funded in the main from the United States, bringing extremely hateful attitudes towards homosexuality with them. They are able to build on existing religious attitudes towards homosexuality. The difficulties that the Church of England currently has with homosexuality exist even more strongly in many, many Commonwealth countries. But it is not impossible to decriminalise while religions keep their own views to themselves. Indeed, that is what has happened in this country. Religion is an important factor, but I go back to the point that Victoria has made: so long as homosexuality is criminalised, it makes it easier for people to point fingers and quote the scriptures, or



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whatever it may be. Interestingly, last year, the FCO's conference centre, Wilton Park, had a very interesting conference on LGBT and faith, where some of these issues about what the scriptures say and don't say, how one can reach out to people of faith to have a more constructive discussion about the place of homosexuality in society, and having a more compassionate attitude within the framework of a religion were explored very interestingly. But it is a difficult one.

- Q54 **Chair:** How much do you think the religious leadership in a number of these countries, particularly the Christian leadership—the bishops in these countries—are in fact bought by this Protestant evangelical money coming from the west?

**Philippa Drew:** It is very hard for me to say. I think that many of the leaders actually believe these things. I don't think they are being bought by anyone; I think these are very sincerely—perhaps that is not quite the right word. They are very genuinely and strongly held beliefs. The danger of the Protestant evangelical movement is that it brings with it money, schools, hospitals and all sorts of other provisions in countries that may not have them, and then its obnoxious views become part and parcel of what is being imparted, as well as some good things. I am going to turn to Kapil, who may have some more to add, particularly in relation to Uganda or Nigeria.

**Chair:** We will come on to that in a minute.

- Q55 **Daniel Kawczynski:** There was decriminalisation in India between 2009 and 2013, but how many prosecutions have there been since 2013, and under what circumstances?

**Philippa Drew:** My understanding is that there has been none, but I am going to turn to Kapil, because he has just come back from India, where he met groups and discussed the current situation. If you want it hot off the press, Kapil is your man.

**Kapil Gupta:** The International Commission of Jurists just last week came out with a report analysing that very question, but there is a problem with the way in which the police authorities record these cases under—in India's case, it is section 377 of the Indian Penal Code. The data are very difficult to disaggregate. From the limited lens of the number of prosecutions, it is very difficult to tell, because most of these cases are recorded, by default, using non-consensual language—in northern Indian states the language is Hindi—that says they are non-consensual acts. It may very well be that in some cases people are being arrested and even prosecuted for consensual acts, but it is very hard to tell that. That said, there is one person against whom there is a case in Mumbai, and he has joined the proceedings at the Supreme Court. That is ongoing.

The larger discourse by Indian LGBT activists and anyone who has lived in India is that you have to look at the issue of persecution beyond the limited lens of prosecution. I revert to my first point: the lived reality is that because of the existence of these laws—the ICJ report that came out just last week throws a light on that—people have to pay bribes, they are



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blackmailed and they are beaten up. It is all increasingly well documented. One has to look much beyond the limited lens of the number of prosecutions, because it is just unfair to the real impact of these laws. Therefore, right now the community is strategising around how to highlight this problem, which is much deeper than prosecutions.

- Q56 **Daniel Kawczynski:** So you say that they are categorised in a different way, using different terminology, and that is why it is difficult to give us a definitive figure. You mentioned someone from Mumbai taking their case to the Supreme Court. Is that right?

**Kapil Gupta:** There was a challenge at the Supreme Court. The Supreme Court of India reversed the progressive judgment of the Delhi High Court. The 2013 judgment of the Supreme Court of India that essentially recriminalised millions of LGBT people in India is being challenged by a process called the curative process. As part of that, one of the petitioners who has joined the ongoing case is somebody who has been prosecuted under section 377. A series of other actors, including parents of LGBT people and broader civil society organisations, have joined the petition to challenge the recriminalisation in India.

- Q57 **Daniel Kawczynski:** The governing party, the BJP, state that they have no plans to re-decriminalise. Is there anything that the United Kingdom can do to get them to change their mind?

**Kapil Gupta:** I think that if this country, like India and most Commonwealth countries, were to listen to what the local activists want, you would get a resounding answer that there are ways in which you can engage, but it has to be on a country-by-country basis. In India's case, as opposed to a lot of other Commonwealth countries, the majority of political parties and senior leaders, including in the ruling BJP, have openly supported the decriminalisation of same-sex relations. Sometimes they have made statements such as, "We might not condone this behaviour, but at least we support decriminalisation." That is a welcome change. I think that if the voices of those senior leaders from all political parties can be supported, amplified and made stronger, that is one way that this country can play a major role in encouraging politicians to act on their words. It is a fact that, across the political spectrum in India, unlike most other Commonwealth countries, there is support for getting rid of that pernicious criminalisation, at least.

- Q58 **Daniel Kawczynski:** Do you monitor and note the politicians in the BJP—I presume they are from the younger generations—who are actively saying that the law needs to change? Do you monitor those names, and could you let us have them?

**Kapil Gupta:** I am not following each and every politician very closely, but it includes some of the most senior politicians. In fact, our Finance Minister, who is one of the most senior lawyers and used to be law Minister in the previous BJP Government more than a decade ago, has openly supported the Delhi High Court's decision of 2009, which so resoundingly decriminalised same-sex relations in India. I am happy to share the names. I think we have already produced a note on India as



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part of our previous report, in which we documented supportive views that were expressed by senior politicians from across the spectrum.

Q59 **Chair:** It's not just Arun Jaitley, is it? What other supporters are there in the BJP, other than Arun Jaitley?

**Kapil Gupta:** The former Health Minister is there. Even the current chairman of the BJP has expressed such views, and there are a few other politicians as well. Of course, there are a lot from the Congress party and some of the regional major parties as well. We are happy to share that material.

Q60 **Chair:** When do you expect action on 377? Is there any timetable for the Supreme Court?

**Kapil Gupta:** The Supreme Court has agreed that a five-judge bench has to re-look at the matter, which could mean anything. It could summarily dismiss the challenge—

Q61 **Chair:** Just the timetable.

**Kapil Gupta:** It is expected that a bench will be constituted any time this year—we cannot tell when—and we can hope for a judgment in the next two years.

Q62 **Daniel Kawczynski:** South Africa has been a leader in constitutional and legal reform in the area of LGBT rights. Has its example had a noticeable impact on other African Commonwealth countries?

**Philippa Drew:** That is a very interesting question. If you had asked me a few weeks ago, I would have said positively negatively, if you see what I mean. As you may know, the UN Human Rights Commission appointed an independent expert on LGBT rights. That appointment had to go through various UN processes, and at one point it looked as if South Africa, along with some other African countries, was actually going to oppose the appointment. Let me give credit to the FCO and others, who worked incredibly hard on that in different parts of the UN. South Africa did not in the end oppose it. The processes went through, and the independent expert's appointment has been concerned. There was, as it were, a sharp intake of breath when it looked as if South Africa was going to oppose the appointment. I think that the answer to your question is, probably, that South Africa has not had as much influence as some of us would have wished it to.

Q63 **Daniel Kawczynski:** Despite South Africa taking a lead on this in comparison with other, neighbouring countries, there are still social stigma and discriminatory attitudes in rural and particularly deprived parts of the country. Are there lessons that the FCO and the Commonwealth can learn from South Africa about the limitations of any focus purely on legal and constitutional reform?

**Philippa Drew:** As Victoria has said, you have to look at each and every country separately, because there is violence against LGBT people, particularly against lesbians, in South Africa, but South Africa does



actually have quite a violent culture. I have not recently looked at the FCO's website on advice to travellers, but I am sure that it contains some cautionary words about tourism in South Africa. We are talking about violence in a context, and I think that is the way in which one has to approach this, to say that the violence against lesbians in South Africa of course is completely contrary to the South African constitution, but it reflects a wider culture of violence in that society, which has its roots no doubt in apartheid.

- Q64 **Chair:** Perhaps this is for you, Victoria, and Kapil, for HDT. You have made it clear that decriminalisation is the centrepiece, the most important proxy for whether a country meaningfully possesses democratic values and a rule of law. Do the FCO and the Commonwealth Secretariat both share that view?

**Victoria Barnes:** I am not sure that I can answer that to any great extent. Obviously the FCO's key priorities are on the rule of law and democratic values. To the extent that we have engaged with them with our briefing notes on these particular issues—they have welcomed those and, I believe, circulated them—that is as much as I can say, unless you can add to that.

**Kapil Gupta:** As Philippa pointed out, it is one of the points that we wanted to make to you: we are not very aware of the extent to which the FCO engages on our issues. It is very hard to tell to what extent decriminalisation is a priority for them. I am looking at Philippa. But our point is that once we have a much more transparent dialogue with them, and when we know exactly what they are doing in each country—it need not be public, for obvious reasons—we will be in a much better position at least to answer that question. Right now it is a big unknown.

**Philippa Drew:** I would say that the FCO is committed to the rule of law. That is a very fundamental and important part of the United Kingdom's foreign policy—

- Q65 **Chair:** Ergo decriminalisation as the central issue.

**Philippa Drew:** I think the FCO rightly looks to its posts to advise it about what the situation is in each country. What we would wish is for posts to reach out to their local LGBT organisations, so that that advice when it comes reflects a good understanding of what the situation is and what local LGBT people will actually want. They may not see decriminalisation as the top priority. They might have a different view of how to approach this. We have to ask them. We have to be led by what local people say about the situation.

To come back to the FCO, there is no doubt that it considers that the rule of law is a very important issue. You also asked about the Commonwealth Secretariat—well, the Secretary-General has set up an Office of Civil and Criminal Justice Reform in the Commonwealth Secretariat. We know that she has said that the issue is an important one for her.



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If I may just build a bit on that, our Commonwealth network of LGBT organisations were paid by the FCO to come and have a conference here in January, about the Commonwealth Heads of Government meeting to be held next year. Their strategy—one of the outcomes that they want to see—builds on this very issue. What they want to see is a ring-fenced sum of money, which would be given to the Commonwealth Secretariat—probably to this Office of Civil and Criminal Justice Reform—to take forward the work that Victoria was just describing, which is work that will come out of HDT's study of the penal codes of different Commonwealth countries, and potentially model legislation, so that the Commonwealth Secretariat is then able to give technical advice and model legislation to those countries that want to reform their laws. We, the Commonwealth Equality Network, are keen to see the FCO embrace that, following up on the work that it has been funding the Human Dignity Trust to do, and thus enable the Commonwealth Secretariat to help countries.

This is not telling people what to do; it is saying to countries that want to reform their law, "Here is some technical assistance. We can help you with this." When we had our Commonwealth Equality Network members with us in January and we discussed that, I have to confess I was surprised that more than one said, "We know our countries want to reform their laws for all sorts of reasons—protection of women and children—but they cannot afford to do it." They cannot afford to pay parliamentary draftsmen to do the drafting. This is classically something that the Commonwealth Secretariat could do, but it will need some funding to do it.

- Q66 **Daniel Kawczynski:** This is for the Human Dignity Trust. You believe that the FCO could realistically aim to see between six and 10 countries decriminalise homosexuality by 2020 if Government resources are applied strategically. How should they go about achieving that target?

**Victoria Barnes:** That figure was in our previous evidence to you. At that time it was based on—lots of things changed last year with Brexit. The Cameron Government was still in place. It is hard to know what the FCO's focus will be in terms of resources, but in 2016 we saw three countries decriminalise within the Commonwealth—

- Q67 **Daniel Kawczynski:** Forgive me. You talked about the change in leadership between Cameron and the present Prime Minister, but you are not suggesting that there is any deviation from the prioritisation of this issue in the FCO as a result of that.

**Victoria Barnes:** No, not necessarily. As we have said previously, it is difficult to know exactly what the FCO want to do and where at this present stage, because there is not great transparency in how they are focusing on this—although we do know that it is a focus for them. That said, we think they should focus on supporting UK civil society and our engagement on these issues of decriminalisation—so the Human Dignity Trust and other groups within the UK. They should also be looking to support local posts and their engagement with local civil society, on a country-by-country basis, on the best route for decriminalisation; putting resources into projects that we have been discussing on legislative reform;



supporting decriminalisation challenges that are ongoing—particularly ongoing cases in Kenya and other parts of the world—and also perhaps looking at supporting incremental litigation. As we have seen, there have been progressive judgments in Kenya and Botswana on freedom of association rights for LGBT individuals. Those can be, as we have seen in Kenya, a springboard to a full decriminalisation challenge. We are hoping that that case will be heard this year, with a likely judgment either at the end of this year or early next year—the prospects there are very good. By using the FCO’s resources in those respects, we can see that there will be positive movements and developments on decriminalisation.

**Q68 Daniel Kawczynski:** In terms of the six to 10 countries that you identified in your previous report, which ones are they? Which countries are the bright spots that we should be aware of?

**Victoria Barnes:** Our evidence was back in January 2016, I believe. In May we saw decriminalisation in the Seychelles, and we understand the FCO may have had some involvement there. That was one country that decriminalised. We also saw Nauru decriminalise in May through wholesale legislative reform. The decriminalisation in Belize happened in August 2016 with successful litigation in that country, although there is an ongoing appeal. As I said, we have ongoing decriminalisation in Kenya, feeding off the successful freedom of association litigation there. There have been progressive judgments in Botswana on freedom of association, and some very positive statements have been made by some political leaders there. We can see it as a potential place where support and resources could be put in or assistance given. Maybe that is one particular country.

There is ongoing litigation in Jamaica. Very new litigation has started in Trinidad and Tobago; we think the prospects there are somewhat uncertain. Constitutional reform is also ongoing in Sri Lanka, where there has been a public consultation that recommended including within their constitution sexual orientation as a ground for non-discrimination. That is obviously a long process, but it is something that should be supported.

Originally, there was a plan to repeal the criminalisation provision in Sri Lanka’s national human rights plan, but in a recent development in January, the Government removed their pledge to repeal that statute; they prefer to go through the route of their constitutional reform process. We had hoped, obviously, for more progress on that, but there seems to be an ongoing dialogue, at least, on reforming Sri Lanka’s laws, albeit through the constitution and then a post-judicial legislative review of the existing laws.

In other places, Mauritius has very progressive equal opportunities legislation. They said some positive things at the universal periodic review, such as that they would look to their laws and consider them. We had hoped more progress would be made in Mauritius, but it is obviously a place where there is potential. Other positive statements have been made recently in Antigua and St Kitts and Nevis as potential areas. There are positive developments in various places around the globe.

Namibia is another example; the human rights ombudsman recently spoke up about the need to decriminalise. There is potential for engagement in various places around the globe where we can see positive developments in regard to decriminalisation.

Q69 **Chair:** So you are on track.

**Victoria Barnes:** Potentially. Obviously, it is a long process and a decades-long struggle, but we are always optimistic.

**Philippa Drew:** It is a long and winding road.

Q70 **Chair:** Just before this session, I met Randy Boissonnault, Justin Trudeau's special envoy. I imagine that you would support the case for a British special envoy on LGBT rights.

**Philippa Drew:** Yes. I think we would want to be involved in drawing up that person's terms of reference.

Q71 **Chair:** Last year, you told us that high-level leadership in the Foreign Office on the issue had diminished somewhat. Perhaps you could explain why you said that and whether things have improved since.

**Philippa Drew:** I think they have improved. What counts, quite often, is money. As Victoria has explained, the Human Dignity Trust and the Kaleidoscope Trust have received money from the FCO to do some really good work. I want to put on record that we are very grateful to the FCO for that money. Without it, HDT's work on legal reform would not go ahead, and we would not have been able to get the Commonwealth Equality Network members over to draw up a strategy for the Commonwealth Heads of Government meeting.

However, it is not clear to us that the FCO will be able to continue to fund us in the next financial year. We have written to Baroness Anelay about this, and we are awaiting a reply from her. That funding is, of course, a matter of concern to us. All our interactions with Baroness Anelay have been very positive. I know that she herself has been extremely energetic on LGBT issues in Geneva and other places, so this is not in any way a criticism of her personally. She has made it very clear that she is personally very committed to this issue.

Q72 **Chair:** Any contacts with the new Foreign Secretary?

**Philippa Drew:** None. Other than that he did, of course, allow the flying of the rainbow flag, which was a positive move.

Q73 **Chair:** We will come on to that issue in just a moment. What about the FCO network? How has engagement with the network gone? Have you seen any change in the course of the last year? We can cut this either between Mr Cameron and Mrs May or between Mr Hammond and Mr Johnson.

**Philippa Drew:** In the FCO terminology, network means our posts abroad. I do not think I have noticed any particular differences between the Mr Cameron era and the Mrs May era. I think that posts vary in the



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extent to which they are active in this issue. It is worth telling you that Stonewall are working with the FCO to update a very old toolkit that the FCO had on LGBT rights. This will be an excellent job of work when it is done, because I think posts do need a bit of help and a user-friendly toolkit will assist them in dealing with the issue.

I should say, for example, that our high commission in Kampala have been completely brilliant. They really do a great job in supporting LGBT people in Uganda. We know that they are quietly in contact with people and also with the Government.

Can I just say that I have a worry about Brexit in this context? The European Union, with strong support from within from the United Kingdom, has done good work on LGBT issues in other countries. As you know, EU missions get together regularly to discuss common issues in places abroad. I am worried that when the United Kingdom leaves the European Union, first of all our very strong voice on LGBT issues will be missing, and I do not know what effect that will have on EU policy on these issues. Secondly, we will not be participants in EU discussions in, for example, Kampala, Abuja or wherever it might be. I think that somehow we need to make sure that the FCO's commitment to LGBT issues is, if anything, strengthened further when we leave the European Union so as to ensure that there is no lessening at all in work on promoting LGBT rights.

Q74 **Andrew Rosindell:** Why would we not be part of discussions in Kampala?

**Philippa Drew:** The missions all meet together as the EU and, once we are no longer a member of the EU—it is possible that the missions might invite the United Kingdom to discussions in Kampala. I am just saying that this is what happens in the network. Because we are members of the EU, we have meetings with other EU missions in capitals around the world where we are posted.

Q75 **Chair:** But on these issues we would expect to be moving in lockstep with the Americans, the Canadians and our European partners.

**Philippa Drew:** Indeed, yes. I am not making a huge issue; we just need to note that the UK voice will be missing in EU circles on this issue.

**Chair:** I think the European Union is likely to remain reasonably sound on these issues, despite the unfortunate departure of the United Kingdom, with its weight on these issues. I cannot imagine the Swedes and the Germans being backward in coming forward.

**Philippa Drew:** I hope you are right.

Q76 **Chair:** A final question before I pass to Mr Rosindell. There was this dreadful murder in Bangladesh of LGBT rights activists. Why was the British response not as robust as the American response to that atrocity?

**Philippa Drew:** That is a question you should put to the FCO.

Q77 **Chair:** You have no insight?



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**Philippa Drew:** The answer they give—it seems strange to me to be speaking on behalf of the FCO, but—

**Chair:** You are in a helpful position to critique it for us.

**Philippa Drew:** The answer they give is this: the man who was murdered in Bangladesh was an employee of USAID. He was one of their own employees, so they clearly had to say something about it. That, I think, was the reason why the Americans were very forward in making a comment at the time. That is the answer the FCO give if you ask them that question.

Q78 **Andrew Rosindell:** You mentioned a few moments ago the rainbow flag, which the new Foreign Secretary has agreed should be flown above high commissions and embassies on the occasion of the international day against homophobia. How important is that to you as a symbol?

**Philippa Drew:** It is very important, actually. I know that LGBT groups, and not so long ago in eastern Europe, have found huge encouragement from seeing the British embassy flying the rainbow flag. I have spoken to activists in places in eastern Europe who have said that it was extraordinary to have had this, and to have the British ambassador, perhaps, walking in a Pride march. It is just one of those things that is enormously powerful for human rights defenders generally to feel that there is a country there that recognises them. I think that it is this point of recognition that the rainbow flag gives that is very important. It is a symbol, but it is a very important symbol, so we are very pleased that that is the decision.

Q79 **Andrew Rosindell:** I am not decrying this—I think it is right that we should fly it—but do you think that maybe lots of other groups with causes would say, “Well, the rainbow flag flies, what about my cause? What about my minority group, my identity?” Should we not fly flags on high commissions for all sorts of reasons? Is it not setting a precedent that could potentially open the floodgates for all types of symbols and flags being displayed on high commissions and embassies around the world?

**Philippa Drew:** I had not noticed that lots of other people have flags that they want to have flown. I would not want to oppose people if they have a very strong view about it and if the view of the Foreign Office was that it would help. I am saying that it does help—it gives people encouragement.

Q80 **Andrew Rosindell:** You think it is a really positive symbolic gesture?

**Philippa Drew:** It is a very positive symbolic gesture, yes.

Q81 **Andrew Rosindell:** And it is helping people in countries where they are feeling persecuted?

**Philippa Drew:** Yes, absolutely.

**Andrew Rosindell:** Okay. That is good.

**Philippa Drew:** There is something very powerful about a symbol that says, “We recognise that you exist”.

**Chair:** That is music to Mr Rosindell’s ears.

**Andrew Rosindell:** Yes—it is the right answer; thank you.

**Daniel Kawczynski:** He has a passion for heraldry.

- Q82 **Andrew Rosindell:** FCO missions abroad supposedly have discretion about when they fly the rainbow flag. This is quite a tricky issue sometimes, because often high commissions and embassies have only one flagpole. Would they take the Union Jack down in order to fly the rainbow flag? Perhaps there might be other occasions that they are also celebrating at the same time—there are practical issues here.

**Philippa Drew:** I don’t mind if it is waved out of the window.

- Q83 **Andrew Rosindell:** Okay: that is a very good answer. In this context, what should guide ambassadors and high commissioners when they decide whether to fly the rainbow flag and what precedence it should take?

**Philippa Drew:** I go back to the point of absolute principle on this—they should consult their local LGBT group. That is the most important thing: after all, if they said, “Please, don’t, it will make our lives difficult”, I would certainly not be one to say that the embassy or high commission should fly it. Ask the local people what they want.

- Q84 **Andrew Rosindell:** Finally, the FCO seemed to not row back but look as if it was not quite as enthusiastic as it was originally in saying that to fly the flag risks the real story, namely, the substance and impact of its work.

**Chair:** This was when Mr Hammond had the position of Foreign Secretary.

**Andrew Rosindell:** It was almost saying, “Flying the flag is fair enough, but it is missing the real point. Look at the work we do”. Do you think they have a point or not?

**Philippa Drew:** No, I don’t think there’s a point. These are two separate things. My point was about the importance of the symbol, the naming of LGBT by a British embassy. This is the really good thing about the United Kingdom. We have a reputation. We are respected around the world and if a British embassy or a British high commission flies the rainbow flag it is giving a very important and powerful message to people who may be persecuted, beleaguered or suffering harassment. It is just one of those things and it is free. It does not cost anything.

- Q85 **Andrew Rosindell:** I think we can all sympathise with that. Just to clarify, you do not think it should take precedence at any stage over our national flag?

**Philippa Drew:** No, of course not. The Union Jack has to be the most important flag, but as I said, I don’t mind if it is flown out of the window or

if somebody has some other means of making it visible. The world is full of creative diplomats, they will find ways to make the rainbow flag visible if they want to. I think we should allow their creativity.

**Chair:** Lighting up the embassy, as has been done.

- Q86 **Mike Gapes:** Just a comment on the matter: the Russian embassy in London has certainly agitated against the rainbow flag being flown in this country or other parts of the European Union. They even tweet cartoons attacking the idea. The symbolism does matter.

About the Commonwealth Heads of Government meeting that is due to be held in London in 2018, the last time LGBT issues were considered was at the 2015 CHOGM. What would a success on those issues look like in London 2018?

**Philippa Drew:** One success would be to have the ring-fenced funding that I mentioned earlier, so I won't repeat that, to support legal reform in the Commonwealth and to give the Commonwealth Secretariat some money to do that.

Another success would be to have some positive language in the CHOGM communiqué—we are back here to diplomatic language. We did get some language in Malta. We didn't have the words LGB and T, but we did have some stuff about violence, which could clearly include LGBT. We would like to do better at that in the communiqué.

For us, even more important is the civil society segment, which precedes the meeting of Heads. There are a number of different forums there. There is a people's forum, a business forum, a youth forum and a women's forum. At Malta, with the support of the Commonwealth Foundation, we had two side events on LGBT rights. One had a Minister from the UK together with a Minister from Malta and our activists. I can tell you because I was there that it was standing room only—there was clearly a huge interest in the issue. We had another event where it was just our activists from the Commonwealth Equality Network speaking; again, that was standing room only.

What we want for next year is to be in all the forums, and in particular in the business forum. We were not present at all. I am guessing here, but my guess is that next year's Commonwealth Heads of Government meeting will have a very high focus on trade, business, investment: economic issues. We think there is a very important, powerful and positive message to be made, which is that diversity brings prosperity. There is already evidence in the business world—we can give the Committee the evidence if you want it—that organisations that are inclusive and encourage diversity do better than those that don't. The same is true of economies. There has been research that costed the Indian economy's losses because of its discrimination against LGBT people. Again, we can send you all of that information.

We feel that there is a huge opportunity for the British Government as the host country to ensure that a very positive message about diversity and



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prosperity can come into all the business discussions. We would very much like to see that campaign and that message there.

- Q87 **Mike Gapes:** Have you been asked by either the British Government or the Commonwealth Secretariat to be involved in preparations for CHOGM?

**Philippa Drew:** Yes. We have already presented ourselves. We have been to see the Commonwealth Secretariat. We went to see the chief operating officer, Sir Simon Gass, and we met with him and the head of the human rights unit. We also met with one of the members of the just-being-set-up Commonwealth Summit team in the Cabinet Office. We have given them our ideas and they have been received very positively.

- Q88 **Mike Gapes:** Has the Commonwealth Secretariat begun to receive extra support from the FCO for the organisation of CHOGM?

**Philippa Drew:** I don't know.

- Q89 **Mike Gapes:** Do you think it is likely to?

**Philippa Drew:** I wouldn't want to speculate. I hope that they will have enough resource to produce a very good CHOGM, but I am not privy to discussions between them and the FCO about funding.

- Q90 **Mike Gapes:** You made reference earlier to Uganda. Clearly, decisions are taken in the Commonwealth by unanimity. How difficult do you think it would be to get some unanimous statement dealing with these issues?

**Philippa Drew:** I don't think that would be the right way to go about it in a sense—not a statement that is condemning any particular country. I certainly think that would be the wrong way to go about it.

I would not want to put a lot of my personal fortune—small as it is—on the chances of our getting LGBT rights mentioned in the CHOGM communiqué. We might, but what would interest me a lot more is if, in the retreat, which is the private part of the Heads meeting, there was a private discussion on decriminalisation led by a southern Commonwealth country. That is what I think could be quite powerful, a private discussion among Heads, led by one of these countries that Victoria has mentioned that has decriminalised—let's say Seychelles or somewhere like that—about how that country went about it and what the experience has been. Has it been negative? Has it had positives? In a totally private setting, which would not be splashed all over their own local newspapers back home, that, I feel, would be a very significant achievement. Progress can be made better sometimes by, rather than finger-pointing, assisting and facilitating.

- Q91 **Chair:** What is your assessment of the commitments and the actions of the Secretary-General, with respect to LGBT rights?

**Philippa Drew:** I was fortunate enough to be in Malta when she was at the hustings as a candidate for Secretary-General, and one of our network members, Kenita Placide from St Lucia, asked her that very question. She asked the other candidates as well, and I have to say that I was pleased

to hear Baroness Scotland make an unequivocal commitment to LGBT rights.

**Chair:** And she got the job.

**Philippa Drew:** She got the job.

Q92 **Chair:** The Kaleidoscope Trust suggests that the FCO, with your help, would focus on 10 countries. We had a discussion about which 10 countries they would be. What are the main countries in which you think progress will be made by 2018, as opposed to 2020?

**Victoria Barnes:** In the short term, we definitely have ongoing litigation in particular places. Kenya, for example, has ongoing litigation to decriminalise, and it is possible that there will be a positive judgment this year, or in early 2018, which would see decriminalisation in that country. We are very hopeful about that but, as you said, litigation is always an uncertain course. Obviously, as I mentioned before, there are ongoing reform processes and other litigation, but whether we will see any further decriminalisation—that particular issue—between now and CHOGM is perhaps unlikely. It is a very short timeframe.

Q93 **Chair:** Which countries are in the different category where they publicly take a hard line but in private you think there is a possibility of movement, where you think that private dialogue might be more effective than public statements? Are there any countries like that?

**Victoria Barnes:** Yes, often with particular countries it is better to have private bilateral discussions. Philippa alluded to the retreat, and to having that sort of engagement out of the public sphere. For example, in Sri Lanka, with the new Government in that country, there is in some parts real political will to decriminalise. So on engagement with that particular country in private to encourage, a lot of work has been done with local partners there, with their engagement with the EU, and the dialogue between the EU and the Sri Lankan Government with respect to GSP plus has been ongoing, with the EU raising the issue of decriminalisation at all political levels. That sort of quiet diplomacy and dialogue is obviously very helpful. We had hoped that more progress would have been made in that respect in Sri Lanka, but I think there is still the potential for that particular jurisdiction to make change.

Q94 **Chair:** What about countries in Africa or the Caribbean?

**Victoria Barnes:** In the Caribbean, one very important country, Belize, has become—

Q95 **Chair:** You already mentioned that. I am wondering more about the countries that have not yet shown any movement, where we might quietly get some progress.

**Victoria Barnes:** The importance of Belize is that that judgment is resonating around the region. Other countries are very alive to that decision. They are looking at their current legislation. In Antigua, very interesting things have been said by their Minister of Social Transformation



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about the need to decriminalise. The Prime Minister is against repeal, but he is very alive to the judgment and the fact that if a case was brought in Antigua, which has very similar constitutional provisions—he has said this publicly—a similar outcome could happen in Antigua. So they are very alive to these issues. In those particular countries, there is scope and opportunity to encourage change.

**Q96 Mike Gapes:** Finally from me, you said last year that the FCO's democracy and equality team was supportive of your idea to focus on particular countries, but that that request had not been actioned by Ministers. Has there been any progress since then?

**Philippa Drew:** In a way, circumstances have partially overtaken that comment, for all the reasons that Victoria has given. Countries have made progress in their own way and at their own speed. What we would like the FCO to concentrate on from now is the Commonwealth Heads of Government meeting and to maximise the opportunities that it presents.

There is another issue we would like the FCO to focus on. We think that it should take the lead in Whitehall in getting a coherent policy on LGBT issues in the wider world. The FCO is involved, DFID has a great interest, as does the Government Equalities Office, and the Home Office has an interest, and of the course the Department for International Trade is a potential player in this area as well, because it is not impossible to conceive of trade agreements that have some human rights conditions in them.

Victoria referenced the EU's negotiations with Sri Lanka. We see an opportunity in the post-Brexit situation, where international trade agreements have to be negotiated, for the United Kingdom to focus on human rights generally, not just on LGBT issues. There needs to be a coherent cross-Whitehall approach to this issue. We very strongly ask the Committee that when you examine the FCO, you ask what it is doing to ensure that.

Let me give you an example. It is not just across Whitehall; it is also within the FCO. Yesterday evening I was at a reception where the Foreign Secretary launched the FCO's gender envoy. We had three speeches on promoting women's rights. We heard stuff about FGM, violence against women and forced marriages. Not once was sexual orientation mentioned—not once—yet lesbians suffer all the negative issues that it was concerned about, plus they are often chucked out of their families, meet hatred in society, cannot get jobs and so on. Indeed, the Human Dignity Trust published an excellent review of the situation of lesbians, who do not often get discussed in these contexts. I recommend it to the Committee—in fact, we will send you a copy. What was interesting was that even in the FCO itself, when it was talking about its gender envoy, somehow sexual orientation just was not there.

**Q97 Daniel Kawczynski:** That brings me nicely to the question I was going to ask you, Mrs Drew, which goes back to the point about an LGBT rights special envoy. You said that you would want to have an input into their



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remit. What representations are you making specifically to the FCO about the urgency of having an LGBT rights special envoy, and do you have any views as to what would be the most appropriate type of person and from what type of sector?

**Philippa Drew:** We put pressure on the then Labour Government before the 2010 election. Indeed, I think they had it as a manifesto commitment—I can't remember. I certainly think they were sympathetic to the idea, but we didn't get any traction with the coalition Government. If I am absolutely honest with you, we have rather left that particular issue to one side, because we have been focusing on other things.

Our focus at the moment is very much with CHOGM and what the FCO can do there. That is not to say that I don't think an LGBT envoy could be helpful and useful. It would be interesting to know from Randy Berry what he thinks he has achieved in the time that he has been the LGBT envoy for the United States.

Like you, Chair, I met Mr Boissonnault, and I was interested to find out that he actually considers that only about 20% of his time is to be focused on LGBT issues outside Canada; most of his remit is focused on the position of LGBT people within Canada. That is one of the reasons I said I would like to write the terms of reference if there was going to be an envoy. I think we would want to look very carefully at how such a person could make an impact and in what sort of way.

Q98 **Daniel Kawczynski:** Is there anybody who springs to mind and whose name you would like to share with us?

**Philippa Drew:** I would like notice of that question.

Q99 **Daniel Kawczynski:** Perhaps you can write to us?

**Philippa Drew:** I am not sure. There might be certain people who would perhaps not be permitted to be, but who might be my preferred candidate. It is quite a difficult one to answer.

**Daniel Kawczynski:** Thank you.

**Chair:** Not to mention the time Mr Boissonnault would have to represent his own constituents. Thank you very much indeed for the evidence you have given. I know that you will all obviously stay across this issue as campaigning organisations, and we look forward to continuing to receive your evidence as we intend to continue marking the Foreign Office's card on this subject through the course of this Parliament. It goes with our work on human rights, and your engagement with it is absolutely central to our effectiveness in doing that. Thank you all very much indeed.

**Philippa Drew:** Thank you for making it a priority. We are very grateful to the Committee for its scrutiny.

**Chair:** Not a problem. The meeting is now adjourned.