



OFFICIAL REPORT
AITHISG OIFIGEIL

Equalities and Human Rights Committee

Thursday 29 March 2018

Session 5



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Thursday 29 March 2018

CONTENTS

	Col.
DECISION ON TAKING BUSINESS IN PRIVATE	1
HUMAN RIGHTS AND THE SCOTTISH PARLIAMENT	2

EQUALITIES AND HUMAN RIGHTS COMMITTEE

10th Meeting 2018, Session 5

CONVENER

*Christina McKelvie (Hamilton, Larkhall and Stonehouse) (SNP)

DEPUTY CONVENER

*Alex Cole-Hamilton (Edinburgh Western) (LD)

COMMITTEE MEMBERS

Mary Fee (West Scotland) (Lab)

*Jamie Greene (West Scotland) (Con)

*Gail Ross (Caithness, Sutherland and Ross) (SNP)

*David Torrance (Kirkcaldy) (SNP)

*Annie Wells (Glasgow) (Con)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Dr Katie Boyle (University of Roehampton)

Carole Ewart

Sanchita Hosali (British Institute of Human Rights)

Professor Kurt Mills (University of Dundee)

Mhairi Snowden (Human Rights Consortium Scotland)

CLERK TO THE COMMITTEE

Claire Menzies

LOCATION

The David Livingstone Room (CR6)

Scottish Parliament

Equalities and Human Rights Committee

Thursday 29 March 2018

[The Convener opened the meeting at 09:19]

Decision on Taking Business in Private

The Convener (Christina McKelvie): Good morning, and welcome to the Equalities and Human Rights Committee's 10th meeting in 2018. I make the usual request for mobile phones to be on silent and off the table. I have accepted apologies from our colleague Mary Fee, who is on other parliamentary business. I welcome to the committee our adviser, Murray Hunt, who will be advising the committee on our human rights inquiry.

Agenda item 1 is a decision on taking business in private. Do members agree to take item 4 in private?

Members *indicated agreement.*

Human Rights and the Scottish Parliament

09:20

The Convener: Before we move to the substance of item 2, I ask our colleague Jamie Greene to give us a related update on the focus group visit to Leith that took place on Monday.

Jamie Greene (West Scotland) (Con): Good morning. I take this opportunity to update the committee on my visit to Leith, where we held our first focus group meeting. We are holding a number of meetings across Scotland to meet members of the public, third sector stakeholders and many representatives of a wide range of communities. The purpose of the focus groups is to enable the committee, as part of our inquiry, to listen to people on the ground as they discuss what human rights and equalities mean to them.

On Monday, we held the first session in Leith, in Edinburgh. In the morning, we visited a housing association that is undertaking redevelopment work; it is fair to say that, historically, those buildings were quite dilapidated. We saw photographs of the difficult conditions that people lived in—they were quite shocking. A lot of work is being done, financed, I believe, by the City of Edinburgh Council. However, it is fair to say—and important to note—that none of that work would be happening if it were not for the residents, who took ownership of the issues that they were facing and who have been very forceful in and forthcoming with their views. They felt that their human rights were being breached as a result of the conditions in which they were living—in our capital city, in modern-day Scotland. That is powerful testament to what human rights can mean on the ground in our own country, when much of the discussion currently relates to what human rights mean overseas. The meeting in Leith gave us an excellent opportunity to visit and chat to people on the ground. We were invited into their homes and we had a good rummage around to see what work had been done.

We then held a session in the local community hall, which was attended by a huge variety of stakeholders—I think that I am correct in saying that there were more than 40 participants—from a wide range of groups including the Sikh community, the transgender community, refugees and women's aid groups. We also heard from individuals with their own vested interests in what human rights mean to them, and from many advocacy groups that work with and help people who are often unable to help themselves. We held an excellent session in which we quizzed people on what human rights mean to them; I think that

some of the feedback that we received will come out in our discussions this morning.

It is fair to say that the visit was a real eye-opener, and, for me as a parliamentarian, it really hit home to learn about people's perceptions of human rights in the real world outside this Parliament. It was a good start, and I very much look forward to the next couple of focus groups. I hope that they will form an integral part of the committee's work, as they enable us to listen to people on the ground rather than simply pontificating, as members do in the chamber and in committee. The visit was excellent, and I thank everyone who came along, as well as the staff who helped to organise it and the people who work at the community hall, who looked after us so well—I had a great lunch. It was an excellent day, and I thank the committee for allowing me the opportunity to speak about it.

The Convener: Thank you. Each member of the committee will take their turn in attending a focus group event, and we should all strive to get the same good feedback that Jamie Greene described. For this committee, testimony from stakeholders and real people has always been at the heart of what we do, because that is what matters, and it is where things get really interesting.

We move to the substantive part of the meeting, which is evidence for our human rights inquiry. With us we have Dr Katie Boyle, who is a senior lecturer at the University of Roehampton's school of law, and Professor Kurt Mills, who is professor of international relations and human rights at the University of Dundee. Good morning to you both. Dr Boyle will give us an overview of her work and Professor Mills will give us an opening statement, and we will then move to questions from the committee.

Dr Katie Boyle (University of Roehampton): I thank the committee for inviting us along to speak about human rights. I start by saying how welcome the inquiry is, and I commend the committee on its work in this area. I was very encouraged to hear that the committee has extended its remit to include human rights as well as equalities. You are making great strides in embracing the full spectrum of rights in the work that you do. I speak today in the context of my recognition of the great work that has been done in Scotland to engage with the international human rights framework as well as with statutory obligations and constitutional requirements. I thank you for having us here today to speak about what else Scotland, and the Parliament specifically, might do.

I have provided written evidence to support what I say today, so I will not go into great detail or speak for a long time. I encourage the committee, if you have specific questions or you would like

more information, to ask me to speak to certain points. I will give a brief overview of the evidence that I have submitted, and provide a rudimentary introduction to set out the position as I see it and the potential opportunities for the committee and Parliament, and for Scotland more widely.

I welcome Jamie Greene's comments about the work that has been done in Leith. The project is important, and it demonstrates the power that comes from people's understanding of what their human rights are. His comments also help me to begin by noting that—as I am sure that the committee has encountered in its work—we have in Scotland a system that partially favours some types of rights over others. We have a robust human rights framework, and the Parliament, the Government, the administrative sectors and the judiciary already engage to a great degree with civil and political rights, predominantly under the Scotland Act 1998 and the Human Rights Act 1998. However, there is a division in the enforcement of those rights, depending on whether a matter is reserved or devolved.

Beyond our civil and political rights—and, to some degree, our socioeconomic rights, in so far as the European convention on human rights captures those within a dynamic interpretation of civil and political rights—Scotland has obligations as a state under international law in relation to economic, social and cultural rights, and that is where I see a specific accountability gap. When I speak about economic, social and cultural rights, I am talking broadly about a lot of areas with which devolved competence engages. Those include education, health, housing and social security, which has now been partially devolved. They also include equality, which is a little more complex because of the reservation of equal opportunities under the Scotland Act 1998. We see, for example, that residents in Leith are faced with trying to claim their rights under a system that does not necessarily recognise the full spectrum of rights. That can be very difficult, especially if there is not enough capacity or knowledge to support an understanding of the full international human rights framework.

In my written evidence, I say that the committee can take strides, and this inquiry is in itself a huge and very welcome step in considering how we can enhance the protection of human rights beyond those that are contained in the European convention on human rights, with a view to trying to mitigate any loss of the rights or remedies that exist under European Union law. That should include consideration of economic, social and cultural rights.

My written evidence comes under broad headings. First, I say that the committee might take more steps on participation and engagement

through education mechanisms; through taking the broad spectrum of human rights work beyond this committee to the other work of the Parliament; and through considering whether there are opportunities for it to undertake pre-legislative scrutiny in relation to civil, political, economic, social and cultural rights.

Secondly, I suggest that parliamentary procedure and process could reflect that approach, and that a human rights scrutiny system could be embedded across the Parliament. I would very much welcome that—I do not know how it would work in practice, but one idea is that the committee could convene human rights rapporteurs to advise on work across the Parliament.

09:30

Thirdly, I suggest that there could be greater accountability. The Parliament's constitutional role is to hold the other arms of state to account, so it should ask the Government what steps it is taking to comply with and promote human rights, and it should reflect on what the judiciary has to say about human rights. The constitutional dialogue ought to be expanded beyond the national level to engage with Council of Europe systems—I understand that, to some degree, steps have been taken in that regard—and with United Nations mechanisms such as the universal periodic review. Consideration of human rights needs to expand across the Parliament's committees, and there needs to be external engagement with national, Council of Europe and UN systems in order to create a rich culture of human rights knowledge, capacity building and empowerment so that the people of Scotland can feel that they have access to, and can claim, their rights across the broad spectrum of human rights.

The Convener: Thank you, Dr Boyle—that was excellent. I flew in last night from Strasbourg after three days at the Council of Europe plenary session, during which we agreed a handbook of good practice on human rights that will be extended to local, regional and national Parliaments and Assemblies across the wider context of the Council of Europe's 47 members rather than the EU's 28 members. That was an interesting process—it looks like Scotland is a wee bit further ahead than most of those countries, which is quite satisfying.

We move to an opening statement from Professor Mills, following which my committee colleagues will ask a series of questions.

Professor Kurt Mills (University of Dundee): Thank you for inviting me to speak with you today. I apologise for not providing written testimony in advance of the meeting—unfortunately, the

invitation did not allow me sufficient time to produce a submission—but I am happy to provide my comments in written form after today's meeting.

I am particularly delighted to speak with you today because, almost exactly six years ago, I and a group of my students at the University of Glasgow, where I was teaching at the time, released a report entitled, "Scottish Parliament Committees' Perspective on Human Rights". The report was commissioned by the cross-party group on human rights, with a view to examining how all the Parliament's committees included human rights issues in their deliberations. Despite the limited timeframe for the report, it concluded that "the evidence for the period"

of study

"reveals a widespread disregard of the normative and institutional framework for conceptualizing and analyzing human rights issues."

It went on to say

"Although there is no evidence ... that this is deliberate most Committees did not seize the opportunity to imbue human rights in their respective field of activities."

The report called on the Parliament to move human rights to the Equal Opportunities Committee and to rename the committee to reflect its new mandate. Although I am not assigning any influence whatsoever to that one small report six years ago, I am nonetheless gratified that that suggestion has been implemented. The creation of the Equalities and Human Rights Committee represents a substantial commitment to embedding human rights in the work of the Scottish Parliament and across Scotland more broadly.

I am not a parliamentary or constitutional expert; most of my work focuses on how international institutions and other actors address human rights issues, and it frequently examines the domestic-international interface. For the most part, my comments will reflect that. Other witnesses will reflect on the intricacies of committee action and the constitutional mandate of this committee. I begin instead by reiterating the potentially transformative nature of the creation of this committee, and I encourage you to use its potential not only to scrutinise the work of other committees and to routinise the consideration of human rights throughout Parliament but as a platform to embed within Scottish society the positive values of human rights.

I have lived in Scotland for more than 13 years. In that time, it has been clear to me that Scotland as a whole appears to have a somewhat different approach from other parts of the United Kingdom to the issue of human rights. The open and welcoming response to Syrian refugees in

Scotland exemplifies that approach, and the very positive words and actions on the part of the Scottish Government and parliamentarians contribute to it.

However, that approach is obviously not uniform throughout society, and it is subject to significant regression. We have seen such regression in Westminster over a long period of time, with the proposals to withdraw from the UN Convention relating to the Status of Refugees and from the European convention on human rights and the European Court of Human Rights, and to replace the Human Rights Act 1998 with something that is sure to provide lesser protection for human rights. The committee should be an outspoken positive voice against such reductions in human rights protection, not only in Scotland but in the UK as a whole, given that any changes in Westminster will inevitably have an effect in Scotland.

In that regard, I have a few specific recommendations. First, the committee must be vigilant in scrutinising the effects of future proposals from Westminster on human rights protections in Scotland, including the effects of withdrawing from the EU charter of fundamental rights as part of the UK's withdrawal from the EU. Most of those rights are contained in other documents that will continue to apply to the UK and Scotland, but any reduction in protection should be clarified, and plans to mitigate such a reduction should be formulated.

Secondly, there has been much discussion about, and political commitment to, the direct incorporation in Scots law of human rights law such as the International Covenant on Economic, Social and Cultural Rights. Direct incorporation, to the extent that it is possible, would help to mitigate any attempts by Westminster to undermine human rights protection in Scotland. The committee should be proactive in investigating those possibilities.

Thirdly, the committee can play a significant role in developing scrutiny of the Scottish Government's submissions to the United Nations universal periodic review of the UK. The most recent submission was robust and positive, but the committee can continue to engage with the process by considering the outcome of the UN Human Rights Council's review and how the Scottish Parliament might respond.

Fourthly, and more broadly, the committee can play a role in following up findings, reports and recommendations from UN treaty bodies and evaluating the implications for human rights practice and protection in Scotland. In addition, it could potentially send reports and representatives to treaty bodies.

Fifthly, the committee can engage proactively with international organisations and actors such as other Parliaments to draw on best practice in human rights globally to inform its work and the work of other committees.

Sixthly, the committee can initiate inquiries into specific human rights issues, including those that span the domestic-international divide, and those that may relate directly to reserved powers but which nonetheless may have direct consequences for Scotland. For example, the conflict in Syria and the broader situation of refugees and migrants in the Mediterranean has a direct impact on Scotland, given its open and generous response in welcoming Syrian refugees. More generally, the UK's response to situations such as the Syrian crisis is of direct concern to many citizens in Scotland, who may not feel that their concerns are adequately represented in Westminster. The committee could therefore become another voice in broader discussions in the UK on how to address key international challenges.

Seventhly, the committee can welcome and support initiatives to directly protect individuals from human rights violations internationally. That might include making strong statements in support of welcoming refugees. It might also mean engaging with initiatives such as the Scottish human rights defender fellowship, which is funded by the Scottish Government and which will initially involve human rights defenders coming to the University of Dundee for a period of respite, research and interaction with human rights organisations. I am sure that those people would welcome the opportunity to speak with the committee and others in the Parliament about their concerns, and the provision of such a forum would be an important show of solidarity.

Finally, I appreciate the inclusion of academic voices in the discussion of human rights, and I urge the committee to draw on the significant resources that lie in Scottish universities and elsewhere to support its work. I am currently spearheading an initiative to create a Scottish centre for human rights, which would facilitate such interaction. However, even in the absence of such a formal centre, there are many academics in Scotland who are willing and able to support the committee's important work.

I encourage the committee to be proactive in mobilising public opinion in support of the broadest array of human rights—civil and political rights as well as economic, social and cultural rights—and in contributing to public discourse in Scotland and beyond on human rights issues. That may require thinking beyond a narrow understanding of a mandate that focuses only on scrutinising legislation and moving to a more holistic

understanding of positive support for human rights.

The Convener: Thank you, Professor Mills—that was a comprehensive introduction. We will go straight to questions, because we have two panels this morning and time is limited. I ask members for straightforward questions, please.

Gail Ross (Caithness, Sutherland and Ross) (SNP): Good morning, and thank you so much for that in-depth introduction. I think that we can all agree that the inclusion of human rights in the committee's remit probably should have happened long ago, but we now have to grasp the opportunity with both hands.

Jamie Greene made some interesting comments about the workshops that we are holding. I have been conducting a bit of a straw poll by asking constituents whom I have met, "What do human rights mean to you?" Most of the time, the reply is that human rights are something that happens to something else, or something to do with prisoners, refugees or international rights. I was therefore interested to see that Dr Boyle, in her written evidence, discusses what we can do to promote human rights not only across Parliament, given that the scrutiny of policies by other committees is key, but across society more widely. Dr Boyle, you make a number of suggestions for action, including education campaigns. Can you expand a little on how we can promote human rights to everyone in society?

Dr Boyle: That is a huge undertaking, and education is a very important part of it. There are some straightforward ways to proceed. I do not have any expertise in exactly what the school curriculum includes, but I have had a brief look over the parliamentary material on citizenship and I cannot see that it engages with rights to a great extent. We need to reframe our understanding of citizenship to include the idea that life as a human being in Scotland comes with a constitutional framework in which citizens live together and enjoy rights. We need to let people take ownership of that from as early an age as possible. Across all institutions and sectors—the public and private sectors, civil society, the parliamentary institutions, Government and the judiciary—we need to keep a conversation going. Scotland does that very well anyway; we are engaged and we like to talk. A big part of human rights is that the approach should not be top down. People take ownership of human rights when they feel that they are included. The phrase that is often used is, "Nothing about us without us", which the Leith residents will understand.

You will all have worked with people in your constituencies who face difficult situations, and who might not be caught by our particular legal framework in a way that might assist you to help

them. We need to revisit the question of what type of country we want to live in, and we need to allow people to take ownership in creating a participatory, informed, inclusive and deliberative forum in which we can talk about where we want to go. We need to enrich the dialogue on human rights that happens across all our institutions and public bodies and in the private and public spheres. That is a huge undertaking, and it will take more than a commitment from the committee alone, but you can make recommendations and encourage dialogue across society.

Gail Ross: Professor Mills, do you have any comments?

Professor Mills: I will comment briefly—Katie Boyle's answer was quite comprehensive. I note the Scottish Human Rights Commission's recent report "Building a human rights culture in Scotland: insights from audience research", which looks at public understanding of human rights. It is a very important piece of work, and it should be built on and continued in some manner. If we get the human rights centre going, we intend to produce a yearly report on that area. The committee can support that work in various ways—for example, by holding more inquiries like this one, by asking for pieces of research to be carried out and by supporting research. There is a lot of capability and appetite among universities and non-governmental organisations to continue that work.

Jamie Greene: I thank you both for your opening remarks, which were very interesting. To follow on from Gail Ross's question, my perception, which is based on the committee's discussions with individuals, is that people's awareness of their own human rights is an interesting area. People generally fall into one of two categories. Those in the first category are very aware that something that they have had or experienced has been removed or lost, and they feel that loss of human rights. They are aware of a particular human right only because it has been taken away or because something has changed. The second category of people have been without those rights all along, but they are simply not aware that that is the case. The people whom we met in Leith are a perfect example. They were living in conditions that clearly breached their human rights, but they were not aware of that—they simply thought that it was the status quo, or bad service. They just accepted what they had. I find that comparison very interesting.

Human rights affect every part of people's daily lives, including access to education, health, housing, social care, travel, access to the digital economy and so on. How do we raise awareness on the ground without talking about charters, treaties, intergovernmental agencies and NGOs? The people I met are not listening to those

messages. What messages should we be getting out there?

09:45

Professor Mills: That is an interesting insight. We see the same issue around the world—it is certainly not unique to people in Leith—and it is very hard to get at. Frequently, people who are in such situations do not have access to the information, resources and education that would enable them to start to understand that their situation is not right and that something can be done about it. In that respect, support for the excellent work of civil society organisations is key. Those organisations work with individuals, groups and communities on the ground to try to get across the message that they have rights. We do not have to talk about the European convention on human rights or whatever to let people understand that they can assert themselves and ask for their rights. The committee could take action by being proactively open to accepting such assertions from individuals and groups.

Dr Boyle: It is really important that we as a society distinguish between a recognition that people might not have full awareness of their rights and a recognition that our justice system does not facilitate access to accountability mechanisms when people's rights are violated. That distinction is difficult for us to face up to, but it is important. One might say that we could increase awareness of the international human rights system in helping people to claim their rights but, if there is no mechanism for access to justice that allows them to do that, it is almost—although not entirely—a futile exercise. It is, of course, important to continue to raise awareness; education is critical, and we need to have those conversations. However, we must recognise that, while we can advise someone to engage with a specific right under the UN Convention on the Rights of the Child or the International Covenant on Economic, Social and Cultural Rights, that will not, if the person cannot engage with an institution such as a local council and claim that as an actual legal right, necessarily result in any change.

There are many ways in which we can improve our legal structure to better account for rights. It is critical that we raise awareness and help people to gain a greater awareness of the entire human rights framework. However, although we can talk to people about their ECHR rights in relation to housing, health and education, those rights might not, in the context of our current structures, do enough for individuals in specific situations. That is really difficult. If our structures do not reflect the full body of international human rights law, an accountability gap can arise. People may be frustrated when they realise, for example, that they

ought to have access to better housing. There is a distinction to be drawn between the need to raise awareness and the need to create proper accountability mechanisms.

The Convener: Can you give us any examples off the top of your head to illustrate what you are talking about? We like to hear about case studies in which there is an impact on a real person.

Dr Boyle: One example could involve people seeking to access their rights under the ECHR. Article 8 provides for the right to private and family life. To some extent, that covers housing, as it includes the right not to be evicted, but it does not necessarily capture the right to adequate housing. In Scotland, we have quite good statutory obligations that differ from obligations under the housing law in England and Wales. One might say that those statutory obligations should be better pinned to international law to make things clear. For example, we could have an increased regulatory or inspection function that looks at whether housing is up to standard. I could draw on many comparative examples to explain how the system operates.

It is very important that Parliament always takes the lead in providing rights, which are put into operation through Government and the administrative sections of society. As a means of last resort, if other institutions have failed, people ought to be able to claim those rights in court. That should be the absolute last resort, because those rights should have been embedded earlier, but the existence of an accountability mechanism as a means of last resort helps to embed them.

I am happy to speak about comparative case law from other countries, if that would be helpful. In the Scottish legal system, people can take ECHR rights only so far, as in the example that I gave, because the treaty is not designed to capture the full spectrum of human rights. I could speak for a long time about other cases, but I do not want to go on.

The Convener: I will let Jamie Greene back in to finish his questions. We will then move to questions from Alex Cole-Hamilton, so that things are clear. We know where we are going, and we can come back to the issues that have been raised.

Jamie Greene: Dr Boyle makes an important point in highlighting the link between the obligations that exist in the international sphere and what already exists in domestic law, statutory regulations and so on. It is helpful if you furnish us with examples. When we pass legislation in Parliament, we often have political debates on whether statutory targets should be set for things such as class sizes in schools or waiting times to see specialists. A whole bunch of metrics exists in

Government policy but, if those targets are not met, how does that interact with any of the human rights to which people are entitled? At present, that link is very much missing.

We have heard about people's interaction with and awareness of human rights, and their moment of realisation that their issue is actually a human rights issue. Among those whom we met on Monday, we met representatives of advocacy and support groups, who are doing a lot of good work. People come together and help each other in their own community through peer-to-peer support. At that point, they come across someone who has adequate knowledge of the subject to be able to make the link with human rights and say, "Actually, the situation that you're facing is a human rights issue, and these are all the things we can do to help."

I will close with not a question but a comment. As I was leaving the session on Monday, someone asked me a difficult question. They said, "What do I do if I think my human rights are being breached? Who do I speak to?" I pondered that question, but I did not have an answer for them. In every other aspect of life, there is a phone number or a helpline, or a group, an organisation or a Government agency for people to contact. People can phone an 0800 number and say, "Something's not right." However, on human rights, I did not have an answer for that person. I felt quite ashamed to say, "I don't know who you speak to as the front-line person if you think that your human rights are being breached." If I cannot answer that question, clearly there is still a problem.

Sorry—that was not really a question.

The Convener: Let us move on to Alex Cole-Hamilton's questions, and perhaps we can come back to that point.

Alex Cole-Hamilton (Edinburgh Western) (LD): Good morning to the panel—thank you for coming to see us today. I would like to cover two areas. The first links in with a point that Dr Boyle made in her opening remarks about taking this committee's work across the Parliament and embedding human rights scrutiny in every committee. In some ways and on a small scale, we have tried to do that previously; I am thinking in particular of child rights impact assessments and equality impact assessments of new bills. That is all very well, and I think that it is fair to say that there is goodwill towards human rights across all parties in the Parliament. There is a lot of political rhetoric about making rights real. However, we know that, in the implementation and execution of our laws on the ground, those rights are lost in the midst of everything else. The child rights impact assessment, for example, has become a tick-box exercise.

Professor Mills mentioned incorporation. If we cannot get our approach right simply by voluntary action—if we can call it that—on child rights impact assessments and the rest, would incorporation be a way for us to give human rights, and respect for those rights, a legal imperative in the laws that we pass and in how they are delivered on the ground, especially by local authorities?

Professor Mills: I think that it would be, but I should put that comment in context. We have to recognise that the UK and Scotland already have many legal obligations—many of which the Scottish Parliament is responsible for implementing—through the European convention on human rights and other international covenants. I mentioned incorporation partly because some of those rights are not adequately incorporated in UK law, and partly because it would make those rights more real for the Scottish Parliament, which could then say, regardless of anything else that is going on anywhere else in the country, "This is something that is really important to us." Making that further commitment would help to make those rights real and allow those ideas and commitments to work their way down further into other committees and other aspects of parliamentary work. This committee in particular would need to be proactive in ensuring that that actually happened.

There has been discussion about the idea of having a human rights rapporteur on each committee. It is important that there is someone on each committee who takes responsibility for ensuring that things happen, and who can be a point person with whom this committee can engage to ensure that those ideas follow through all the way down.

Dr Boyle: The point about incorporation touches on some important issues. When we talk about duties, we are referring to what are essentially procedural duties, such as a duty to carry out a process that happens to take into consideration the impact of legislation in relation to equalities or human rights. Those obligations are process based, and we need to think about whether that is the best or most appropriate approach or whether other types of duties could be imposed. For example, we could put in place a duty to have due regard to international law in particular areas, or a duty to produce an actual substantive outcome. There are different constitutional arrangements around the world that include those types of duties.

We engage with process duties in many different respects, but they might not necessarily result in a substantive human rights or equalities outcome. Although the imposition of those duties might be a helpful step, the frustration around

them partly reflects the fact that they include an obligation not to reach a particular point but simply to take something into consideration. That is an important issue to note, and it is worth considering further what kind of duties ought to be imposed.

The SHRC is doing some important work to look at incorporation models and the introduction of justiciability mechanisms across the broad range of international human rights law. I echo what Professor Mills said: there are many different ways by which incorporation can be achieved. The ECHR is already partially incorporated and, generally speaking, that works in terms of ensuring that people comply with its provisions. There is a lot to be learned from that and it compares well; people internationally look to our incorporation of the ECHR as good practice. It is worthwhile for us to explore the options. I said in my written evidence that it is in the committee's power to introduce a committee bill along those lines. There might be other steps to take first, but the committee might want to consider that approach, if only to provide a set of instructions on what would be expected and how Parliament should incorporate—"incorporate" is such a wide term—different types of rights.

10:00

It is helpful for us to reflect on the examples of other countries, although not necessarily to borrow from them directly. In Switzerland, for example, the devolved cantonal legislatures are responsible for implementing international obligations and ensuring that the state, at the confederal level, is complying with those obligations. In that context, we can reflect on the idea that, if a devolved legislature takes steps to implement international obligations through some form of incorporation—it can take many different forms—it is helping the state to comply with its international obligations. The Scottish Parliament has the power to implement and observe international obligations, including on human rights—that is not necessarily a duty, but it is a devolved competence. We can think about the extent to which we want to utilise that particular power.

Alex Cole-Hamilton: Thank you for that, Dr Boyle. In my view, the key word in your remarks was "justiciability". To a certain degree, your comments answer Jamie Greene's question about where people go when they feel that their rights are being violated.

Various rapporteurs come and look at how we measure up against the international treaties to which we are a signatory, and we receive 600 or 700 concluding observations on things that we must do better, so it is clear that we are falling short in those areas. In my view, that always comes down to the lack of a legal imperative:

nobody is going to sue anyone, because they do not have a right to do so.

I am aware that time is short, so I will leave that issue for now and move on to my second line of questioning, which is about how political controversy can act as a barrier to making rights real. In certain areas, there are tensions between rights. The physical punishment of children is an interesting issue, as there is a view in some quarters that the rights of children clash with the right to family life in that respect.

I want to ask about end-of-life issues in particular, because that is a really controversial area from which politicians traditionally shy away, even at an international level—to my knowledge, there is no international human right to die. What do we need to do in order to transcend the barriers that result from political controversy, which prevent us from taking the right decision because we are all worried about getting re-elected?

Dr Boyle: That touches on another important issue. On the basis of my research, I would say that the best way to view potentially difficult and politically controversial human rights issues is to take a step back. To a great degree, it is the responsibility of Parliament and of this committee to try to depoliticise human rights—indeed, it is apparent that the committee's work and ethos embody that approach. People who come from different political positions might differ in their understanding of how to implement or realise a right, but I am sure that everyone in the room would agree that that is just a means to get to the end goal of dealing with human rights violations and the unacceptable situations that, as you will have seen, some of your constituents face.

We need to take a step back and depoliticise the issues. With regard to the broader framework of international human rights, we have gone through a centuries-long dialectic process to arrive at the realisation that we can all agree on some kind of understanding of human dignity as a basic component. We need to use that understanding as a basis for legal standards rather than political aspirations or objectives.

You highlight as an important issue the fact that human rights might sometimes be incompatible and might compete with each other. It is important that there is space available for dialogue to take place around issues—including end-of-life issues, which you mentioned—which might involve comparison of one person's freedom of expression with another person's privacy. We face such issues all the time. Legal tests, which might include an approach that is based on proportionality or reasonableness, can be introduced to provide a balance between rights—there is much that can be drawn on in that respect. However, the first step in creating a space in

which those difficult issues can be faced is to depoliticise them and come to an understanding of the legal standards on which everyone around the table can agree.

Professor Mills: That is an important point. We look frequently at how different human rights interact in a mutually supportive way, but, as has been pointed out, there are times when real tensions arise. The problem is that there might be real and fundamental disagreements between two people in approaching the tension between two rights. For example, is the tension purely political, or is it fundamental and moral? Does it highlight a substantial difference in how we think about the world and about what rights we have? That is really difficult.

I study politics, and I do not think that we can take politics out of the equation, no matter how many legal standards we have. However, it is important to have a committee such as the Equalities and Human Rights Committee that is committed to looking at what the law says and at how we interpret that law, given the multiple interpretations available, and which can act in good faith to reconcile some of the differences. We cannot get rid of the politics—maybe I am a cynic in that respect—but we can set up situations and approaches that try to minimise that aspect.

Annie Wells (Glasgow) (Con): I thank the witnesses for those comments. I have been thinking along the lines of the first few questions. What happens when we look at two different human rights and we cannot pull them apart? How can we say that everyone has human rights, and tell people, “Your rights are your rights”, when their rights will sometimes be trumped by the judicial system or by someone else’s rights? For example, I have a human right to privacy, but—as Dr Boyle said—that can conflict with other rights. How do we get across the message, not only to colleagues in the Parliament but to schoolchildren, people in various communities and the wider public, that, although human rights are human rights, comparisons sometimes have to be made and rights may have to be split up? I do not know how I would feel if I had to deal with two people and decide whose human rights were more important.

Dr Boyle: To clarify, when I say that we should depoliticise rights, I mean that we should be able to reach some kind of arrangement that is based on the concept of human dignity or something like that, and the politics can be filled in afterwards. There has to be space for negotiation on different aspects of rights, but there should be some minimum legal standards that include a commitment to progressive realisation.

You spoke about when rights clash, which is an important point, and you referred in particular to educating schoolchildren. We might say to a child,

“You have human rights”, and it is true that some rights should be absolute. We can all agree, for example, that nobody should be subject to torture, and we can put that in place as a standard. However, it is also true that rights sometimes compete with one another. In a school context, I would explain that by saying that we choose to live in a society together, which means that we need to share and that, sometimes, one person’s right may take precedence over another person’s right. That is about community. We almost need to step away from the private rights model and reflect on that aspect. It is perfectly reasonable to say that we may have to make decisions with a view to the impact on the community as well as on the individual, and I would reflect on the question in that context. Some rights are absolute, but not all rights are, and we sometimes have to find a balance between rights. The judiciary are already adept at doing that—for example, through proportionality. Ideally, however, those decisions should not have to go to court all the time. We need to embed in our decision making the approach that I described earlier, and balancing exercises are a perfectly reasonable way of doing that.

Professor Mills: I will contradict myself slightly here. Yes, there may be competing rights, and we may sometimes need to weigh different aspects of different rights. However, that can be overblown as an issue. We also have to be very careful about asserting, for example, that the right to security is absolute—whatever we mean by that; frequently, we do not know—and that it trumps the right not to be tortured or not to be thrown in jail for weeks, months or years with no due process or anything like that. We have to be careful about saying, in certain situations, that one right trumps everything else.

The Convener: David, do you have a quick question? I know that Dr Boyle has to leave at quarter past 10, and we have another panel to come.

David Torrance (Kirkcaldy) (SNP): I have two very quick questions. Professor Mills mentioned other committees in the Parliament. Like other members of this committee, I sit on another committee in addition to this one. How do we incorporate human rights in the work of other committees? As an example, I sit on the Delegated Powers and Law Reform Committee. When we take evidence or make decisions, no one has ever said to us, “Have you checked the human rights there?” Can you expand on how we might really incorporate those rights?

Professor Mills: I would simply say, “Why not?” Why is that question not being raised? Why is there not someone on that committee who is responsible for ensuring that such a discussion

takes place? They can say, “We are dealing with a particular set of issues that interacts with this set of rights in the ECHR or the Human Rights Act 1998—why are we not having a discussion about that?” Somebody needs to be responsible for raising that specific question, and the committee can go from there. I refer you to the “Scottish Parliament Committees’ Perspective on Human Rights” report that I mentioned earlier. In our research, we found that part of the problem was that no one had a remit or mandate to ask that question. If someone was given that responsibility, it could go a long way towards ensuring that issues are considered appropriately from a human rights perspective across committees. This committee could play an overarching role in ensuring that the process happens properly.

The Convener: I think that David Torrance has just given himself a job on the Delegated Powers and Law Reform Committee.

David Torrance: Perhaps I have. My second question is on Brexit, which is a year away. Do you think that, once the UK leaves the EU, our human rights will keep pace with European human rights, or will they become diluted and perhaps stagnate?

Professor Mills: I am worried, partly because of Brexit itself and partly because of the way that it interacts with other aspects—for example, what we have been hearing from Westminster about how certain parties are approaching how we think about human rights and our international obligations, and how we implement and understand those obligations domestically.

The UK’s withdrawal from the EU will remove one level of pressure to uphold human rights. As things stand, we will still be party to the European convention on human rights and the European Court of Human Rights even after we leave the EU, although we know that there are moves afoot to undermine that arrangement. Once we leave the EU, that may create a momentum to further undermine human rights protection, so, yes, I am worried.

The Convener: Dr Boyle, you have 40 seconds left.

Dr Boyle: Thank you, convener—I offer my apologies, as I have to leave to attend another commitment that I could not get out of.

The Convener: That is okay.

Dr Boyle: I echo what Professor Mills said. The First Minister has taken steps to highlight the fact that it is important to mitigate Brexit, and I cannot emphasise enough how important that is from a human rights perspective. The body of EU law that engages with human rights is much broader than just, for example, the EU charter of fundamental

rights. All parts of EU law engage with different aspects of rights, some of which go beyond what we already have. That applies to existing rights—for example, the right to access to justice under article 47 of the EU charter is much broader than the equivalent right under article 6 of the ECHR, and it allows people to access justice more easily.

10:15

The UK Withdrawal from the European Union (Legal Continuity) (Scotland) Bill takes steps to mitigate the removal of some of those protections, but in removing ourselves from the system we will lose not only the rights but the remedies, and we need to think about access to justice in that context. It is a grave concern. One of our greatest losses in exiting the EU relates to the potential for where the EU might go in furthering rights protections. That is an important point to bear in mind.

The Convener: That is a good point on which to complete your evidence to us this morning, Dr Boyle, but you will realise from our questions that we are not done with you. We may speak to you both again, either through correspondence or at committee, in order to pursue some of the areas that we have discussed. Today’s meeting is the opening salvo to our inquiry, and we are grateful to you for giving us clear lines that we can look at, and highlighting many issues that we can raise with the members of our next panel, who are sitting right behind you in the public gallery.

I offer our grateful thanks to Dr Boyle and Professor Mills—as I said, we will talk soon. I suspend the meeting briefly.

10:16

Meeting suspended.

10:22

On resuming—

The Convener: We continue with agenda item 2, which is our human rights inquiry. I welcome our second panel, who are Carole Ewart, who is a public policy and human rights consultant; Sanchita Hosali, who is the director of the British Institute of Human Rights; and Mhairi Snowden, who is the co-ordinator of Human Rights Consortium Scotland and who is well known to the committee. We are grateful to you all for giving up your time and for giving us written evidence, which has helped to push forward our work on this topic. You will have heard the evidence from the previous panel of two eminent academics, who gave us a clear understanding of where we should go and which areas we should look at. This

session will follow the same format as the previous one.

I do not know whether any of you have a brief opening statement. It would need to be very brief, but you are welcome to say a few words about the overarching work that you do and where the committee could focus its inquiry. Carole, would you like to kick off?

Carole Ewart: Thank you, convener. I am delighted to have the opportunity to contribute to the committee's inquiry, which is very welcome. As the agenda states, I am a public policy and human rights consultant, and I thought that it would be appropriate to tell the committee about my current clients, so that you understand where I am coming from when you hear my words. I have worked with more than 120 organisations in my 20 years of consultancy work. My current clients are Dignity in Dying, Voluntary Action Scotland, See Me Scotland and the Scottish Council on Deafness.

I am also the convener of the Campaign for Freedom of Information in Scotland. The committee has a copy of our submission. A key conclusion that we drew from comparing the operation of freedom of information legislation with the operation of human rights legislation concerns enforceability. The free enforceability of FOI rights has been the game changer—it has changed the culture of rights and increased people's understanding of and respect for their rights. The crucial point is that duty bearers understand their rights. I was intrigued to hear the evidence in the previous session; I would urge the committee to focus on the role of the duty bearer. There is absolutely no point in people knowing about and trying to assert their rights if they are ignored or laughed off and nothing happens. That is fundamentally disempowering.

Sanchita Hosali (British Institute of Human Rights): That is an excellent point on which I can come in. I am the director of the British Institute of Human Rights, which is a charity that works across the UK to bring human rights to life. We focus on supporting people to know about human rights and use them in practice. We work with duty bearers, regulators, individuals who hold rights and advocacy organisations, and we translate the story of the difference that human rights make to people in their everyday lives into policy at various levels.

A big portion of our work focuses on how we make duty bearers part of a culture of respect for human rights. Parliament has an important role to play in that regard, so I am pleased to be here to give evidence today. The other part of our work is international. We take evidence from people across the UK and use their voices to influence international monitoring processes. Again, there is a potential role for parliamentarians in international

monitoring—those processes are not as visible as they could be, so there is a real opportunity in that regard.

Mhairi Snowden (Human Rights Consortium Scotland): I thank the committee for inviting me here today. The committee's inquiry comes at a crucial time for human rights in Scotland, in the context of not only Brexit, which—as we heard in the previous session—takes away the framework that protects and pushes on a lot of rights, but the underlying negative rhetoric that often surrounds rights. Those aspects are a threat, so it is an important time for us to look at how Scotland can not only comply with human rights but progressively realise them. What is the best way for the Parliament to play a role in continuing to progress human rights?

Human Rights Consortium Scotland has submitted joint evidence from 15 different organisations. I will not go over it in detail, but I will highlight two particular aspects that have come out in evidence from other witnesses. Our first suggestion is that the committee could use the UN treaty recommendations and concluding observations, and the universal periodic review in particular, as a structure to look at various issues. We were quite concerned about the previous UPR process, although it was positive that the Scottish Government responded separately and undertook some consultation with civil society. There is a general feeling that, once the recommendations have been made and responded to, not a lot is done until the process comes round again, when once more we scuffle around to see how we can respond.

Our members have talked a lot about the importance of having a more positive review process in which we look proactively at the recommendations and implement them, and then report on what has been done. It would be useful if we were to turn the process on its head in that way. In the context of Brexit, it would be helpful and positive for the committee to use the international framework as a way to continue to progress rights.

The second point that we highlight is that participation is key. We need to ensure that the voices of different people influence what we prioritise. Although that is very challenging, it is extremely practical. This committee and other committees need to ensure that they speak to different groups at various times and build that approach into their work plans. A fundamental part of taking a human rights-based approach involves listening and letting the results affect your priorities.

The Convener: We will have questions from members as in the previous session, but the questions may be tailored slightly differently.

Gail Ross: Good morning, panel. You will have heard the excellent evidence from the previous panel. I have loads of notes, but do not worry—I will not ask you all the questions that I have written down.

In the previous session, I began by asking for a broad overview of human rights. I often ask my constituents, “In general, what do you think human rights are?” A lot of them say that human rights are something that happens to other people in relation to immigration, refugees or judicial rights. When I mention social and economic rights and civil and political rights, they say, “Okay—that does apply to me.”

I will come back to Carole Ewart’s point about duty bearers, but first I want to look at how we embed human rights in our society, from the very early stages of our lives onwards, through all aspects of life. Human rights are now a specific part of the committee’s remit, but they affect all the committees and portfolios, and all aspects of life. How do we embed that approach throughout society?

10:30

Carole Ewart: That is a fundamental question. A lot has already been done, and the committee needs to highlight and showcase best practice and urge replication. One of the best initiatives that I have seen in that regard is UNICEF’s rights-respecting schools award, which makes a big difference to children by addressing bullying and disrespectful behaviour from an early age. However, that approach needs to be continued all the way through secondary school. I have been to presentations in which children have explained what it is like to move from a rights-respecting primary school to a secondary school that is not officially rights respecting, and they have described the problems that arise. We should celebrate such solutions, but they need to be mandatory.

Secondly, when the Scottish Parliament set up the Scottish Human Rights Commission, it departed from previous practice and chose not to establish a commissioner. So far, the SHRC has received about £12 million, which is a huge investment that demonstrates the Parliament’s commitment to human rights. One of the SHRC’s functions is to provide education and training, and we should perhaps reflect on whether that should be part of its core work. Although the SHRC is an independent body, this committee is able to influence its priorities. Should it be a fundamental part of the SHRC’s work to provide free education and training to all 10,000-plus public bodies in Scotland and bodies that deliver services of a public nature? I suggest that that would change the culture pretty dramatically.

Sanchita Hosali: As Carole Ewart said, there is a lot of good practice out there, and it is important that we do not spend time and resources on replicating things—or rather, on trying to provide solutions when they already exist. We need to ensure that we know what the solutions are. One key problem concerns the mechanisms for enforcing human rights and how they work. There are national commissions and committees, but how do they use their powers in a way that will push forward the agenda? How do we create a human rights culture in society right from the start? That is a huge question that many of us are working on, and we need to think about how we bring together our work in that area. Fundamentally, what powers does the committee have that can drive forward change? You need to be clear about what you mean by human rights and which definitions you use.

Education is very important. There is a huge role for the national human rights institutions in that regard, and a huge opportunity for civil society to become involved and engaged in the process. To what extent do we see human rights as part of our core business across the piece? To what extent are human rights embedded in education, not only in schools but as part of mandatory professional qualifications? I am thinking about social workers, nurses and teachers—all those public officials who are responsible for ensuring that people’s rights are respected day to day. I spend a huge proportion of my time educating and working with those professionals and practitioners. It is great that we do that, but human rights should be part of what it means to be a nurse, a teacher or a doctor. What can the committee do to drive forward work in the practice space around human rights and to ensure that those who have duties to respect human rights do so as part of their core business?

Mhairi Snowden: Those comments are really useful. In some ways, it is easy to talk about increasing individuals’ awareness of their rights but, as has been said, people may already know what their rights are, and if that does not get them anywhere it can cause real frustration. Recently, I spoke to someone from a homelessness organisation who said that, although a homeless person has certain rights, it often takes a letter threatening a judicial review to enable that person to get those rights. The committee could play a role in ensuring that public authorities take a positive attitude towards human rights. That could involve practical measures such as staff training. The issue of training came up in the UPR, and the Scottish Government responded largely by saying that there is training in human rights for police officers and prison officers, but the issue is much broader than that. Training is crucial.

The committee could also play a role by asking public authorities to come before it once a year to say what they are doing to promote human rights and how they are taking those rights into consideration. That is a practical suggestion that could make a bit of a difference. In addition, I highlight incorporation, which was touched on earlier. We need to think about what incorporation looks like and whether it should be accompanied by duties or reporting. There are some practical things that can be done to improve the current situation.

The Convener: The committee has written to local authorities to ask them about a list of issues. Equality impact assessments and human rights assessments are one of my hobby-horses. In particular, we have pursued local authorities on implementing a human rights budgeting process. Since the Equalities and Human Rights Committee was set up, we have embarked on such an approach to the budget process in Parliament, and we have drilled down and found clear issues. We have asked local authorities how they ensure that their budget meets human rights standards, which involves a process that is very different from the usual budget process. That is one way in which we are attempting to influence public authorities.

Carole Ewart: I am worried that your committee might be drenched with public bodies appearing in front of it. One way to facilitate the process might be to focus on the regulators and, in particular, Audit Scotland, which focuses on 200 of the biggest budget-receiving public authorities in Scotland. Way back in 2007, we thought that the "Audit Scotland Annual Report 2006/07" would be a game changer, because it acknowledged that the Scottish Prison Service had set aside £87 million for the settlement of human rights cases in relation to slopping out and other issues. Audit Scotland is charged with ensuring the proper spend of the public pound, and £85 million is, in my opinion, a complete waste of money. We should prevent human rights abuses, rather than starting to pay compensation once they have happened.

At that point, I thought that the regulation system would be changed to ensure the centrality of human rights compliance in order to avoid replication of such a waste of public money. However, it does not seem that anything has changed significantly in how Audit Scotland goes about the audit process. For the ease of the committee, it might be best to focus on the regulators to see what they can do to mainstream human rights compliance in the routine regulatory process.

The Convener: Those invitations are in the post as part of our inquiry, so you may rest assured that the regulators are on our radar.

Carole Ewart: Excellent.

Jamie Greene: That segues nicely into my two lines of questioning, which are on finance and on public bodies' perceptions of human rights. My fear is that, whenever we mention the words "human rights" to public bodies, what comes into their heads is the idea that additional workload or casework, or additional costs or budgets, will somehow be involved. Those are very sensitive areas for public bodies in the context of any discussion. For example, it has been suggested that all public servants should have training. There are more than 10,000 of them, so it is clear that that would come at a cost. How do we approach the negative perception of human rights among public bodies, which believe that there may be implications or consequences as a result of being better at looking at those issues?

Carole Ewart: Human rights are seen as a problem and not as a solution, and that barrier is addressed partly by education and training. We have to change the powers of the Scottish Human Rights Commission so that it has the power to undertake casework and bring test cases. A fear of litigation preying on the current culture would presumably lead to a voluntary change in practice. There is currently a degree of complacency in which people believe that human rights do not matter because nobody is going to enforce them. In Scotland, we do not have a culture in which third sector organisations support their members or service users to go to court—we are not litigious. There is a role for the SHRC in that regard.

Sanchita Hosali: There are two aspects to the question. The answer is partly about seeing human rights as a solution. That would require investment in training and education, but people in every profession and public body have had training at some point in their career to enable them to do their jobs, so we could look at how we integrate human rights training into that process rather than leaving it as something extra that people end up having to do.

Another important aspect is the way in which we educate and empower public officials in relation to human rights and enable them to understand what those rights are about. In our work, we never tell people, "Now you're the human rights enforcer, and you have to think about human rights on top of everything else that you do." Instead, we ask, "How do human rights help you to do your job better?" That message is important. Once we are in the door and we are having those conversations, we see significant shifts and changes, especially in our work with front-line service staff in public authorities. Too often, those people are feeling the brunt of all the difficulties that exist in public service provision, and through

our work they become more empowered to challenge and change things. When change comes internally from those organisations, it is powerful.

Carole Ewart mentioned that the SPS set aside £85 million to settle claims. A significant proportion of the public authorities with which I work have brought in our organisation to support their staff to look at human rights as part of their job in order to prevent them from ending up in court. They are being smarter in the way that they think about their budget allocation, and they are investing money in a preventative approach rather than allocating money for costs in case they end up in court. We often talk about human rights in terms of prevention, which is better than cure, and that involves organisations doing a bit of smart budgeting in looking at finance.

Mhairi Snowden: It strikes me that the situation is similar for other committees in the Parliament. Human rights should be seen not as an additional burden that they have to take on but as a framework for making their work smarter and better. That framework can help them to ask questions, give them a way to look at different issues and ensure that they take into consideration the impact of policy on different communities.

Jamie Greene: That leads perfectly into my short second question, which is about how we as a Parliament and as committees scrutinise whether human rights are at the heart of how we pass legislation. There is a difference between Parliament and Government, and Parliament has a duty to hold the Government to account. Although it is important that we talk about Brexit and its long-term wider implications, we work on the assumption that there are things that we can do today, the bigger picture notwithstanding. As a Parliament, we have a duty and a daily responsibility to hold Government ministers and the Government of the day to account in the way that we approach bills and offer amendments to legislation at various stages. What can we, as parliamentarians and committees in the Parliament, do better to ensure that, across all the devolved competencies with which human rights interact, the Government is on track to put human rights and equalities at the heart of what it does? I am looking for some practical suggestions.

Carole Ewart: The Campaign for Freedom of Information in Scotland highlights in its written evidence the importance of MSPs being able to exercise their article 10 rights under the European convention on human rights, which include the right to form an opinion by receiving and imparting information. We do not think that MSPs currently have sufficient information on the human rights implications of a bill or an inquiry. You get an

edited summary of the legal advice that has been given to Parliament. I am not talking about the legal advice that the Government receives when it introduces a bill; I am talking about the separate legal advice that Parliament receives, which MSPs do not currently see.

In addition, changes to processes must be instigated. The Scottish Parliamentary Corporate Body should provide better briefings for MSPs on jurisprudence from the European courts, and from other courts such as the Inter-American Court of Human Rights—I like that one in particular, because it has made it clear, in a groundbreaking decision, that access to information is a human right. We have a lot to learn from other jurisdictions.

When budgets are set, although the Scottish Government may choose not to attach conditions to the budgets of individual public bodies or bodies that deliver services of a public nature, the Parliament should do so in order to ensure explicit compliance with human rights law, in the broadest sense. Under the International Covenant on Economic, Social and Cultural Rights, Governments have a duty to progressively realise, to the maximum extent of their available resources, the rights that it contains. The budget process is a way to give effect to that duty.

10:45

Sanchita Hosali: The parliamentary process is one issue, but the same point holds just as true for parliamentarians as it does for public authorities. If we expect our public authorities and their staff to know what human rights are and to use and act on them day to day, we should expect the same of parliamentarians. When someone becomes a member of the Scottish Parliament, where is human rights in the induction process? There is a need for general awareness. What are the ongoing opportunities for MSPs to keep up their knowledge in that area? Parliamentarians receive briefings, as Carole Ewart mentioned, but are there other opportunities to integrate awareness of human rights among them? We expect parliamentarians to pass legislation that complies with human rights and to take part in scrutiny and debate around human rights without a foundation of knowledge that would enable them to do so. We need to ensure that that is in place.

It is important to have a committee with a specific human rights remit, but what role do the other committees play in that respect? How do we ensure that the expertise that is developed in this committee is shared with other committees? Is that a formal or informal process? How does it happen? Is there a way for committees to use powers to undertake work jointly where that is required? There are real opportunities to think

about how we ensure that human rights is the job of not only this committee but all the committees in Parliament.

Mhairi Snowden: There is always a tension in wanting to mainstream something and embed it across the board while also requiring expertise from someone who has specific responsibility for pushing it on. Ideally, all the committees would take on board human rights in all that they do, from scrutiny of legislation to inquiries. Our consortium members discussed possible good models for that approach but, to be honest, there were no firm conclusions, aside from our aim of mainstreaming human rights across the board.

In the meantime, we might have human rights rapporteurs on committees to ensure that human rights issues are raised. They could hold evidence sessions as part of the scrutiny of legislation to focus specifically on the human rights aspects. Another issue concerns the information that those rapporteurs would have. For example, they might receive a policy memorandum beforehand that includes more detail and highlights the broad nature of compliance on human rights. There are different roles to be undertaken, but this committee has an important role in working with other committees in the Parliament to ensure that they take on board human rights in what they do.

Alex Cole-Hamilton: Good morning and thank you for coming to see us. My first line of questioning segues nicely from Jamie Greene's last question. You have all given eloquent answers on the need to embed rights scrutiny across the Parliament and on how that might be done, and I am sure that other members will pick up on that issue. In my view, human rights compliance falls down when it is implemented in the field, despite the fact that there is a lot of rhetoric and good will around rights on all sides of the parliamentary chamber.

I always use children's rights as an example—I have worked with at least two of you in that area. In 2012, the Government planned to introduce the rights of children and young people bill, which was meant to be groundbreaking legislation that would do what it said on the tin. However, it was subsequently conflated with the Children and Young People (Scotland) Act 2014, in which children's rights played only a very small part. We moved from a bill that included a duty to have due regard to the UN Convention on the Rights of the Child to an act that included a duty only to raise awareness of UNCRC requirements. As welcome as that duty was, it was met on implementation with a rowing back and the reduction by half of the number of children's rights officers in local authorities. In action, therefore, the provision was rendered completely meaningless in comparison with the original political will and rhetoric that lay

behind it. I ask you the same question as I asked the previous panel. Do we need to get tough and put in place a legal imperative to give people—not only children, but any recipients of human rights—access to justice when their rights are violated? Is incorporation of the various treaties into Scots law the only way that we can do that?

Mhairi Snowden: Incorporation is crucial. We should definitely be aiming for it, and we should properly explore the different models for doing it. Incorporation is not one concept—there are different ways of doing it. There is already on-going discussion about what incorporation might look like. It is not a panacea in itself—it needs to be accompanied by access to justice. Even when cases are taken to court, the messages from them need to be communicated properly so that the consequences are well known.

We are looking at how we can enable organisations to use litigation and press rights in the courts, not by creating anything new but simply by saying, "These are the rights that people have" and using the courts to highlight and clarify them. As Carole Ewart said, that does not often happen in Scotland, for many different reasons—there is not a culture of litigation here, and there are practical barriers in that regard. It should happen more often, and we need to look at access to justice, whether that is done through the committee's inquiry or as part of something bigger, because that is a crucial element in making rights real. There is no doubt that bringing cases to court is crucial in changing public authorities' actions. We need to have the positive approach and the carrot, but we also need a push from the courts to make rights real.

Carole Ewart: Incorporation is an ideal, but I would prefer that this committee invested its energy and expertise in ensuring that the public sector complies with its existing legal duties, in tandem with enabling people and organisations to assert and enforce their rights. Again, I emphasise, from my experience of FOI law, that it is the enforceability of FOI rights that makes the law strong. FOI provides a great model. People can get free advice from the Office of the Scottish Information Commissioner—there is a huge range of free materials on its website, and people can phone the office—and it is also free for them to make a complaint to the Scottish Information Commissioner. If such a simple process was in place for human rights, that would be a game changer.

There is nothing to prevent the Parliament from looking at incorporation in the longer term, but at present I think that it would create expectations that cannot be delivered within the current culture and practice in Scotland. I return to Alex Cole-Hamilton's point about children's rights officers.

He, along with other committee members, has a fine track record in standing up for rights, but the difficulty lies in people's practical day-to-day experience. I would like the committee to focus its attention on making a difference in the community.

Sanchita Hosali: I agree with that completely. Incorporation is where we should be—the point of having human rights standards is that they are supposed to be part of our domestic law and part of how we work and function as a society. However, the risk in focusing on incorporation is that we miss opportunities to enforce the standards that we already have. It is great if we look to incorporation to boost the rights that we already have, but if those rights are not being implemented and enforced sufficiently, incorporation will create—as Carole Ewart said—a certain level of expectation that cannot be fulfilled. It is probably more challenging to focus on how we secure the day-to-day implementation of the standards that we already have.

It is important that we develop a culture of enforcing those rights through court action. From my experience in the English and Welsh context, I know that litigation can help to drive change. Strategic litigation is incredibly important, but it is not the only answer, and we have to look at other mechanisms. As Carole Ewart said, the freedom of information model is interesting, and we need to think about comparative provisions for human rights. What are the SHRC's powers? Does it have sufficient powers to ensure that the same process can happen?

Alex Cole-Hamilton said that, once measures have been passed, implementation can be poor. What is the committee's role in post-legislative scrutiny? Can it revisit some of the key pieces of legislation that it has worked on and identified as a priority in relation to human rights? Would it be worth going back to look at how provisions have or have not been implemented? There are some models in the Westminster Parliament for undertaking such scrutiny, which has been quite useful. We can also think specifically about the committee's powers and functions in addition to its support for driving change through other processes and mechanisms. For example, is there a way in which the committee can look at implementation beyond the point of post-legislative scrutiny?

Alex Cole-Hamilton: Thank you—that is incredibly useful. My second question is similar to a question that I asked the previous panel. Political anxiety often creeps in and gets in the way of our ability to make rights real and to do what we should be doing in respect of human rights. A tension exists, for example, between the aim of extending to children equal protection from physical punishment and the views—they are

somewhat distorted views, I think—of some people who regard the right to family life as incompatible with that aim. In addition, there can be political controversy when we grapple with a particular issue. I am thinking in particular of end-of-life care—there is always a storm in the press or in wider society that leads politicians to cower away from doing the right thing. Other countries have transcended those issues. In your experience, are there ways in which we can enable politicians to take those tough decisions? Could that be done through free votes in Parliament, or through honest conversations with journalists offline about how to report those discussions? It is over to you.

Carole Ewart: That is a big question. I have long been associated with the campaign to end the physical punishment of children, and I still recall being mortified when the Scottish Parliament, in 2003, passed a defence of justifiable assault on children. That was the politicians' idea of doing the right thing—they were listening to what seemed to me to be a very vocal minority group. All these years later, we are in a much better position than we were then. Around the same time, the Scottish Commission for Human Rights Bill made parliamentary history as the first bill whose general principles the committee could not endorse, because—it was said at that time—human rights abuses were so rare in a country such as Scotland that we did not need an independent human rights commission. We can reflect on that in the context of where we are in the conversation now.

To answer your question, understanding human rights is a way to navigate the more controversial issues. We support dignity in life, so we should support dignity in dying. It is very important that politicians understand the human rights implications of issues. Over a long period of time, people outside the Parliament have been rather perplexed to hear that the new Scottish Parliament—a very early democracy, as it was then—passed a defence of justifiable assault. You have to think about your reputation as well as your ability to do the right thing.

Sanchita Hosali: I would definitely echo that. I also add that human rights are there specifically to deal with those difficult issues—that is what they are for. They provide a language and a framework to enable us to have those discussions and debates. Rather than coming back to politics with a big P or a small p, or to your personal moral judgments on certain issues, you are guided by a framework that is bigger, and which takes a principled approach based on how countries across the world say that they want to progress. Those rights have been set as the standards for society and for how we should work.

Your comments about political controversies and hot potatoes, and the fear of doing the right thing by using human rights, are interesting. I am always talking to public officials about that in relation to their day-to-day work—for example, when they make a decision about whether to turn off life support in a particular situation, or if they are discussing the right to life and the right to respect for private life, and how to decide which rights are absolute and which rights can be balanced with others. The language of human rights offers practitioners a useful practical approach with which to make difficult decisions, and there is no reason that it should not translate into the political sphere; the people who make legislation and policy should be using that language, too.

11:00

Mhairi Snowden: I have almost nothing to add to the discussion, apart from saying that, when I speak to people about which of their rights are important to them, they almost always talk about economic and social rights. We must not lose sight of the fact that those rights make the most difference in people's daily lives. We know that, if we want to convince people to support and to be positive about human rights, we have to talk about their daily experience and their economic and social rights. It is important that we do not lose touch with that aspect. That issue comes up in the context of incorporation. We do not currently have a way in which to enforce economic and social rights, but incorporation offers the potential for us to do that.

The Convener: We have about 10 minutes of questioning left. Gail Ross has a quick supplementary before we move on to questions from David Torrance.

Gail Ross: Carole Ewart in particular has driven home the point that we already have responsibilities, and that public authorities should be exercising those responsibilities. When somebody's human rights are violated, they might know about it, but how do they access the judicial process if that is the route that they want to go down? There are equalities officers in local authorities and other bodies. Would there be value in persuading those organisations to have human rights officers? The benefits would be twofold. People could go to the officers, who would have all the knowledge and could say, "This is what you should be doing." In addition, the officers could act as a point of contact for members of the public who feel that their rights have been violated.

Carole Ewart: That is an excellent suggestion, although I make the plea that the equalities officer and the human rights officer should be different people. In my experience, there is a great deal of

confusion, because people think that equalities and human rights are the same. When I have attended UN hearings, I have found that some of the expert committee members cannot understand the UK culture in that respect. They say that human rights come first, followed by equality of those rights, whereas we go for equality first and end up talking about human rights afterwards. That approach was demonstrated even when the Equalities and Human Rights Committee was set up—some submissions suggested that the Parliament should not add human rights to the committee's remit because it would allow for less of a focus on equalities. That shows that there is sometimes a bit of competition among some groups.

I believe that it would be helpful for public authorities to have a human rights officer, just as they have an FOI officer or a data protection officer. That would generate a focus and build up expertise in organisations and, within the comfort of private conversations, a lot of myths could be debunked. Systems could be put in place so that human rights issues do not arise in the first place. We really want prevention—we do not want a load of court cases, because that gives human rights a bad name and costs us all money, and the court process is often tortuous for the individuals who are going through it. I say to people, "You're never going to get justice—the hope is that you get some fairness." I do not believe that court cases are helpful, so having a focus in organisations—whether that is an officer, a department or specific resources—is very much the way to go. It also offers very public evidence that an organisation is taking human rights seriously.

David Torrance: Good morning, panel. My question is about how we incorporate the human rights agenda across all the committees in Parliament—several of this committee's members sit on other committees. Human Rights Consortium Scotland's submission states:

"All Committees when considering legislation and policy should specifically consider its impact on human rights and seek evidence on this".

How can we go about that in the different committees that we sit on?

Mhairi Snowden: Our members discussed that point when we considered which evidence to put in our submission. Practical suggestions included holding a specific evidence session as part of the scrutiny of any piece of legislation to look at its human rights implications. Another element is the participation side. How have people's views been taken into account? Have the potential impacts on different groups in society been considered? We have already discussed some of the other suggestions today—for example, the idea that each committee could have a human rights

rappporteur who would be responsible for considering those specific issues.

The challenge for each committee is to take on board human rights aspects as a core part of what it does, whether it is conducting an inquiry or scrutinising legislation. Each committee can follow particular lines of inquiry or questioning around human rights. For example, the Justice Committee could ask Police Scotland what it is doing to promote human rights. The committee could investigate specific aspects of Police Scotland's work, such as its overseas training work, and how it considers human rights within that. As the committees develop their own way of looking at human rights, they can identify specific areas to interrogate a little bit further.

The Convener: Should the equality impact assessment process cover both equality and human rights, so that the two aspects are considered in the same exercise? I have a thing about equality impact assessments, especially when they are completed badly. Last year, the committee carried out an inquiry into destitution among people who had secured asylum status. We heard evidence to suggest that, when those people turned up, the social work department put them through a needs assessment and came back six weeks later to do a human rights impact assessment. That seems like an incredible waste of time, and it caused a big delay of six or eight weeks in realising the rights of people who were in a crisis situation. The committee recommended that those two processes should be put together and undertaken at the same time.

Could this place use its functions in such a way to create a duty on duty bearers to ensure that the equality impact assessment process incorporates a human rights impact assessment?

Carole Ewart: That idea has a lot of merit. I have seen one example of the situation that you describe. It was incredible—the organisation in question said that there were no human rights implications at all as a result of what it was proposing. Such a change would have to be underpinned by training, and better-quality information would need to be gathered to ensure that the assessment was worth while.

I have worked with groups that have tried to undertake human rights impact assessments but the necessary information has not been available. That is why it is important that we look at what international treaties tell us about systems. Under article 31 of the UN Convention on the Rights of Persons with Disabilities, there is a duty on states to gather statistics and information to allow them—as it would allow this committee—to determine whether human rights are being progressed. In Scotland, we need more of a focus on gathering the right information and data, not only to

undertake impact assessments but so that the committee has access to better information during its deliberations.

The Convener: David Torrance has three minutes.

David Torrance: Three minutes? Okay, convener—I was just thinking of my previous comments to you about Brexit.

Brexit is now one year away. When the UK leaves the EU, will human rights here keep pace with human rights in the EU and continue to progress, or will they stagnate and possibly be diluted? Many powers—on employment law, for example—are still reserved to Westminster, so any work that this committee or this Parliament does in those areas will have no effect.

Mhairi Snowden: I think that Brexit is a fundamental threat to the progression of rights in the future, partly because it takes away the framework that the EU provides, but also because—as was mentioned earlier—there is a risk that we will lag behind. More than 150 organisations in civil society have now signed up to “The Scotland Declaration on Human Rights” to say that they do not want that to be the case: they want rights to keep on progressing, and they want Scotland to keep pace with what happens in the EU. There are currently specific issues around the European Union (Withdrawal) Bill and the UK Withdrawal from the European Union (Legal Continuity) (Scotland) Bill. The committee could help by building into its work plan the aim of ensuring that it keeps up with best practice internationally, whether in the EU or more broadly. If Scotland genuinely wants to be a leader in human rights, it needs to ensure that it keeps up with best practice and keeps on progressing in various areas of rights.

Unfortunately, Brexit weakens the framework, which means that the threat of repeal of the Human Rights Act 1998 or the UK's withdrawal from the ECHR is definitely more imminent. I am particularly concerned that, if Scotland does not give legislative consent to the European Union (Withdrawal) Bill, it will set a strong precedent with regard to what happens in future if the Human Rights Act 1998 is similarly repealed and legislative consent is not given. I am just putting that concern out there, as it could mean that Scotland has less say in any repeal. We need to continue to bear in mind the background noise while we keep on progressing rights—that is the answer. The Parliament must retain its determination, within its structures and in its annual work plan, to keep on progressively realising rights.

Sanchita Hosali: I agree with that. I have two additional points—one on substance and one on

principle. The substantive point is that, through Brexit, we are losing not only rights but the mechanisms to enforce them. It is hard to argue with that, because human rights are currently excluded from what we are going to carry forward. That will have an impact on all the other protections that are affected by those rights.

The second point is about the need for Scotland to move apace. So much of our equalities legislation, for example, has been driven by our membership of the EU, which will no longer be the driving force behind it. The process of turning regulations into equalities law was driven by the EU, and we will no longer have that impetus. There are real questions around which rights are at stake, whether rights will stagnate and the extent to which we will fall behind future developments. The Parliament can definitely play a huge role in pursuing a progressive vision of human rights, by using those rights across all its functions and pushing the agenda forward.

There are also matters of principle. The UK is setting a dangerous precedent in saying that it does not need to be bound by international standards; that is not a positive place for us to be. At the moment, we have Brexit, but what might we have in the future? That comes back to what Carole Ewart said: we need to focus on how we actually implement the laws and rights that we already have—otherwise, we are not creating a case for why what we have is important. We are saying that we do not know how to make those rights real, against a backdrop of questions around whether we really need national standards, and that could come together in a dangerous swell. That is why it is important that we focus on what we have, and on making it real and implementing it. We need to use the powers and functions that we have to drive forward the case for why human rights are important, and why it is particularly important that we develop a culture of respect for human rights in Scotland. That creates an important backstop for what might be coming.

Carole Ewart: I see Brexit as a human rights issue—I think that it is an abomination, but I will not go into that just now. As I said earlier, article 10 of the ECHR includes the right to form an opinion and to receive and impart information. People were misled by information during the Brexit campaign. I cannot speak to the motivation of the people who misled them, but I think that there has to be legal change to protect our human right to participate in free elections. Those elections have to be fair, and if politicians are deliberately misrepresenting the facts to secure people's votes, they should be punished by the law in the same way as advertisers and marketers. That is the real learning from Brexit, and the committee could usefully progress it as a human rights issue.

The Convener: Boom! What a place to finish—although we are not, by any stretch of the imagination, at the end of our inquiry. We have exhausted all our questions this morning, but with the same proviso that I gave the previous panel: we will no doubt continue to discuss all these issues as we continue with our inquiry. We have some clear lines and some great ideas to pursue from all the contributions, so we will no doubt talk again. I offer all of you the committee's grateful thanks for your participation this morning, your work so far and your continued work with us in order to realise the aims that we share.

11:13

Meeting continued in private until 11:31.

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