



OFFICIAL REPORT
AITHISG OIFIGEIL

Equalities and Human Rights Committee

Thursday 18 January 2018

Session 5



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EQUALITIES AND HUMAN RIGHTS COMMITTEE

1st 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:

Angela Constance (Cabinet Secretary for Communities, Social Security and Equalities)

CLERK TO THE COMMITTEE

Claire Menzies

LOCATION

The Robert Burns Room (CR1)

Scottish Parliament

Equalities and Human Rights Committee

Thursday 18 January 2018

[The Convener opened the meeting at 09:34]

Decision on Taking Business in Private

The Convener (Christina McKelvie): Good morning and welcome to the first meeting in 2018 of the Equalities and Human Rights Committee. I ask that all electronic devices be switched off and taken off the table. We have received apologies from our colleague Gail Ross.

Agenda item 1 is a decision on taking business in private. Does the committee agree to take items 3 and 4 in private?

Members indicated agreement.

Universal Periodic Review

09:34

The Convener: Agenda item 2 is an evidence-taking session with the Cabinet Secretary for Communities, Social Security and Equalities on the Scottish Government's response to the third universal periodic review—or UPR, as we might be calling it throughout the meeting—on human rights in the United Kingdom. I welcome Ms Constance, who is joined by the Scottish Government officials Duncan Isles, head of human rights policy, and David Holmes, human rights policy officer.

As this is the first time that the committee has considered the Scottish Government's response to the UPR, our main focus will be on understanding the process and the roles of the key players in greater detail so that we can understand what role the Parliament and the committee might play in future cycles. The Government's response covers a wide range of issues across many ministerial portfolios, and we realise that the cabinet secretary and her officials might not be in a position to respond immediately to any questions that fall outside her specific portfolio responsibility. Of course, we can follow up any such issues via correspondence after the meeting, should that be required.

Before we move to questions, I invite the cabinet secretary to make some opening remarks on her response to the UPR.

The Cabinet Secretary for Communities, Social Security and Equalities (Angela Constance): Thank you, convener, and good morning. I wish everyone a happy new year.

As the convener has said, the business at hand is to give evidence in relation to the third universal periodic review of the UK's human rights record and the Scottish Government's response to the United Nations Human Rights Council's recommendations. The UPR is a peer review mechanism co-ordinated by the UN Human Rights Council; it takes the form of a rolling review of the human rights records of all UN member states and results in formal recommendations to the state under review. The UK's record has now been examined on three occasions—in 2008, 2012 and 2017. The Scottish Government very much values the opportunity that the UPR presents for countries to set out the action that they have taken to fulfil their international human rights obligations. In addition, it enables good practice to be shared and offers a context within which civil society interests can raise awareness of human rights challenges and highlight issues of concern.

The UPR is a cyclical process, with each cycle running over a four to five-year period. It centres on a formal examination—or what is called an interactive dialogue—that is held at the Human Rights Council in Geneva and which consists of a question-and-answer session, with each UN member state able to make comments and offer recommendations to the state under review. States submit a national report in advance of that dialogue, and preparation of the UK report is co-ordinated by the UK Government on behalf of the member state. The Scottish Government actively contributes to the process and liaises closely with the Ministry of Justice to ensure that Scottish interests are represented. The most recent report to the Human Rights Council was submitted in February 2017, ahead of the May 2017 examination.

However, national reports are subject to a strict word limit and it is impossible in practice to include everything of relevance in the final version. To ensure that a more detailed account of Scottish-specific issues and actions was publicly available, including for the benefit of the Parliament and, indeed, domestic stakeholders, the Scottish Government published its own position statement in April 2017. Our intention is that the publication of Scottish-specific statements, outlining compliance with human rights obligations in Scotland, will become standard practice for exercises such as the UPR.

Following last year's interactive dialogue, the UK received a total of 227 recommendations from the UN Human Rights Council that covered both reserved and devolved matters. Prominent themes included violence against women and girls; hate crime; human trafficking; children's rights; the rights of asylum seekers and refugees; and UK Government proposals to repeal the Human Rights Act 1998. Many of those are areas in which the Scottish Government is already taking positive action. However, there are also areas where we acknowledge that further action is required. There are also areas where the powers that are necessary to fully implement treaty obligations are reserved to Westminster, for example, in relation to immigration and asylum.

The UPR is not a flawless process. Relatively little attention was paid in the UPR to issues that had been highlighted by United Nations human rights treaty monitoring bodies in recent reviews of the UK, such as the impact of austerity measures and welfare reform policies and action to realise the rights of people with disabilities. Those are all priority issues for the Scottish Government.

The UK Government responded formally to the Human Rights Council at the end of August 2017, indicating which recommendations the UK supports and which recommendations it notes.

Support for a recommendation indicates that a state intends to take action to implement it. In total, the UK Government supported 96 of the 227 recommendations and noted the remainder.

The Scottish Government published its separate response to the UPR recommendations on 8 December last year. The response provides a much fuller explanation of our position in relation to each of the recommendations. It also goes beyond the UPR recommendations to address many of the issues that were noted by UN treaty monitoring bodies in recent years but which were not explicitly covered by the UPR.

Throughout the UPR process, we have sought to engage actively with our civil society stakeholders. Stakeholder meetings were held on 27 October 2016, 25 April 2017 and 12 June 2017, and we have been very clear in our support for direct civil society engagement with the UN Human Rights Council and national delegations.

I hope that that overview of our engagement with the UPR has provided a helpful insight into key aspects of the process and our intentions for the future. I very much welcome further exploration of how the Government and Parliament can work together to engage with the UPR process in a way that leads to improvements in how the people of Scotland enjoy their human rights on a practical and day-to-day basis.

The Convener: Thank you, cabinet secretary. My colleagues have lots of questions in all of those areas, but I want to open with a question on Scotland's national action plan for human rights. You say that the norm from now on will be a distinct Scottish response to any of the reviews that come up. I was at an event in December at which the Scottish Human Rights Commission was doing a review of the action plan. Now that the plan is a couple of years in, how can it be used to ensure that we give a distinct response and that progress is being made in that regard?

Angela Constance: Scotland's national action plan is very important. I believe that Scotland as a nation and a civic society has shown great leadership and commitment to the practical and meaningful implementation of human rights. It is important to stress that the national action plan does not belong to the Scottish Government. It is a process in which we co-operate with the Scottish Human Rights Commission and other partners across the public, private and third sectors. We obviously contribute to that work.

I am pleased that you attended that national participation event in December, which was led by the Scottish Human Rights Commission. We have offered and will continue to offer to support the Scottish Human Rights Commission and other partners in using improvement services and

methodologies. We do not wholly own the process, but we are absolutely committed to it. We want to utilise it to best effect so that it can help make human rights real in Scotland.

09:45

The Convener: That leads nicely on to my next question. The event was incredibly well attended, with people from lots of statutory bodies and from social work and social care. There were people from smaller organisations and the third sector, as well as ordinary people. Lots of people were listed as just an “interested person”.

If we really want to make human rights real for people, they need to know in which areas of their lives human rights make a difference. People see the headline-grabbing stories, but they do not see the stories of how human rights can be used to realise better social care or to push along a judicial situation that they might be involved in. The participation of ordinary folk and organisations is incredibly important. What other measures is the Government taking to ensure that that level of engagement continues and increases?

Angela Constance: That takes me back to some important points around the UPR process, which supports participation and engagement from our national human rights institutions. The Scottish Human Rights Commission and the Equality and Human Rights Commission are accredited—I think that that is the right word—national human rights institutions, which have speaking rights in the UN monitoring bodies and the UPR process. That is a great opportunity. One of the many reasons why we publish Scottish-specific reports in advance of the interactive dialogue and in response to the UN Council recommendations is that it enables focused scrutiny from organisations in Scotland such as the Scottish Human Rights Commission, the Equality and Human Rights Commission and other civic organisations.

We do not just submit information to the UK Government for it to partially reflect the Scottish position; we go above and beyond that by producing full reports. The full Scottish report is available in advance of the interactive dialogue. That gives our civic organisations opportunities to read the report, to reflect on it, to co-ordinate their response and to make representations, in the case of the UPR, to the UN Human Rights Committee. That gives our national human rights organisations great international experience and promotes great capacity building not just in the bigger human rights institutions but in some of the smaller stakeholder groups.

Alex Cole-Hamilton (Edinburgh Western) (LD): Good morning to the cabinet secretary and her officials.

I remind the committee of my former membership of the leadership panel for Scotland's national action plan for human rights and that I was convener of the Scottish Alliance for Children's Rights.

It is fair to say that one of the problems with the UPR process is that state parties give a fairly glossy varnish of their records when they submit reports—in effect, they submit their own human rights CV. They put their successes and progressive activities to the fore and do not really talk about the bits where they have fallibility. With the best will in the world, that could be said of the Scottish Government's reports, which talk about where we are excelling on human rights delivery and not necessarily about the areas in which we are far behind.

In a panel discussion in June 2017, Hakim Benchamach from Morocco suggested that Parliaments should have a role and should be considered to be a mainstream vehicle for reporting to the UPR process. In that way, devolved Administrations within the state party could act as a critical friend to the activities of the state party, but there would also be a counterpoint to the reports that are published by the devolved Administrations, which in our case is the Scottish Government.

I will give an example of where the committee could feed into that. In our inquiry into the destitution of asylum seekers, we found significant problems with UK immigration policy that affect the life circumstances of people seeking asylum in this country. We would have wanted to feed that into the UPR process.

Would you support a parliamentary process to feed into a neutral or non-partisan report on behalf of the Parliament that would act as a counterpoint to the Scottish Government report that you have described?

Angela Constance: I suppose that that is the role of the national human rights institutions. We published our report in a transparent way. In advance of an active dialogue, I would contend that our report is an accurate reflection of our current policy and legislation. The whole purpose of the UPR is that it is a cyclical process that is about continuous improvement. We are not suggesting that the job is done, that everything is perfect or that there is no need for continuous improvement.

We do not have to publish a Scottish-specific report but we do so, because we recognise that there is a word limit for the UK report and, as one part of the UK, we want to show the full range of positions, what progress there has been and what need for further action there is in Scotland. Even with the best will in the world, that will not

necessarily be reflected in a UK report, given that there is a word limit. The Scottish Government already goes above and beyond what we have to do. We do not take a minimalist approach. The national human rights institutions have an opportunity and indeed a responsibility to scrutinise our report and come to a view.

I am supportive of Parliament taking an enhanced role. There is the question of whether it is for Government ministers to tell Parliament how to scrutinise Government. I am conscious of that issue, so I am being a little bit delicate about what I say, because it would annoy the parliamentary authorities and indeed parliamentarians if Government ministers preach about how that scrutiny should be done. However, in broad terms, I am very supportive of the role of Parliament in that regard.

There are existing opportunities—as a Government, we are open to further opportunities for Parliament to scrutinise how we feed into the process and what we prepare for it and then, crucially, to come to a view as a Parliament on where our priorities are and what we want to give further impetus to. I am also conscious that the commission on parliamentary reform ruminated on the role of Parliament as a guarantor of human rights and made recommendations for this committee in particular.

The benefit of increased parliamentary involvement and scrutiny would be that it would help to mainstream work in the area of human rights. Given my particular portfolio responsibilities, I have to contend with that issue, and I am sure that the committee contends with it as well. We do not want human rights and equality to be seen as the province of one committee or one portfolio. They have to be mainstreamed throughout the Government and the Parliament.

I appreciate that that was quite a long answer, although it was a long question. I would be very supportive of that direction of travel.

Alex Cole-Hamilton: Thank you for that answer. I congratulate the Scottish Government on producing the report. Not all devolved Governments within member states do that, so it is to be commended.

My question stems from the reality that, increasingly, Parliaments across the world, not just the Parliament in Scotland, are being looked to as guarantors of human rights in their jurisdictions, particularly as they act as a check on the work of the executive or Government. To that end, I feel that there is a missing piece of the jigsaw in the UPR process. If we are to be the guarantor of human rights, we cannot just have the Scottish Government prepare its report on the UPR and then let the human rights institutions act as critical

friends by challenging or seeking to mould that report. I would like the Equalities and Human Rights Committee—at least—to have a role in the preparation and scrutiny of the report in future UPRs. Would that be possible?

Angela Constance: It is entirely open to the committee to do that, whether in relation to the UPR process or monitoring processes around other international treaties. As with the process of providing information to the UK Government for participation in the UPR, we undertake monitoring and scrutiny of other international treaties that the UK has signed up to. It would be entirely reasonable for the committee to call for evidence or, as it is doing today, hold ministers to account in advance of the Scottish Government preparing its specific Scottish reports. I would expect there to be opportunities for the committee before and after the preparation of reports to look at the issues further. That will require the Government to give advance warning on timescales and frameworks. I am not averse to the suggestion—far from it.

The role of Parliaments is important, because we all have a role to play. It is a core responsibility of the Government but it is not solely the Government's job or something that it can achieve alone. I am sure that an enhanced role for the Scottish Parliament would be welcomed. It is not my job to speak on behalf of stakeholders, but I expect that they would welcome that.

Alex Cole-Hamilton: This will be my last question before I let other members in. To what extent do the Scotland-specific reports that you produce act as a critical friend to the UK Government in respect of reserved powers, particularly on the rights of asylum seekers who end up in Scotland and find themselves destitute, for example? How much of the content of the reports is introspective and focuses on where we are falling short on our human rights obligations?

Angela Constance: A report fulfils a number of functions—to put it diplomatically. We regularly and appropriately highlight differences in policy positions on both devolved and reserved matters. The differences in our approaches to and opinions on refugees and asylum seekers are an obvious example of that.

Our state of the nation report and then our response to the UN recommendations can act as a strategic overview. The reports are lengthy and provide a go-to place for considering our work overall. They are a kind of reference document as well as reports to help the process of reflection. Participating in the reviews and the debate and dialogue that goes on around that is what I mean by the process. It is reflective and helps to focus minds on further specifics and detailed actions. They are lengthy reports and I am sure that there are always ways in which we could do them better.

Alex Cole-Hamilton: I said that that was going to be my last question, cabinet secretary, but I have another follow-up. You said that the UPR conclusions cover reserved and devolved areas. When the concluding observations cover powers that are devolved to Scotland, what is the process for the Government to ingest those, deal with them and find a way in which to make them good?

10:00

Angela Constance: Around 100 of the 227 recommendations that were made by the UN Human Rights Committee relate to matters that are entirely reserved—although that is not to say that we cannot have a view on them. The other recommendations relate to matters that are devolved or ones that are a mix of devolved and reserved responsibilities. In addition, although some of the recommendations might relate to devolved issues, they have been crafted in a UK context. Therefore, we will be supportive of the spirit of them, but when it comes to how they have been crafted or worded, it might not be a simple shift-and-lift exercise.

I mentioned the fact that the UK supports 42 per cent of the 227 recommendations. If we strip out the recommendations that relate to matters that are wholly reserved, we would be supportive of around 80 per cent of the remaining ones. The recommendations that the UK talks about noting are not necessarily ones that it rejects but ones that it supports in part or on which further work needs to be done before a view can be arrived at or a statement can be made about how they will be enacted. It is important to emphasise that it is a reflective and considered process as opposed to a simple case of accepting or rejecting particular recommendations.

In our report, we tried to widen the issues, and that has been welcomed by the stakeholders. As I intimated in my opening remarks, the UN monitoring bodies raised particular issues. The UN Committee on the Rights of Persons with Disabilities was sharply critical of the UK Government in relation to the impact of welfare reform on the rights of people with disabilities. That was not encapsulated in the universal periodic review, and there were some other areas that were missing, too. In our response to the UPR recommendations, we looked at the monitoring bodies' recommendations on the UK's performance on individual international treaties in an effort to take a more holistic approach and provide a broader, more in-depth response.

Mary Fee (West Scotland) (Lab): Good morning, cabinet secretary. I want to discuss a couple of specific matters, the first of which is the Istanbul convention. A call has been made for full ratification of the Istanbul convention, and I know that you fully support that. In Scotland, we have

the equally safe strategy, which has done a huge amount of work to eradicate violence against women and protect families. Could you update us on where we are with full ratification of the Istanbul convention?

Angela Constance: Obviously, only the UK Government can ratify the Istanbul convention. Getting her private member's bill on the subject through Parliament was a huge personal achievement for Dr Eilidh Whiteford, the former member of Parliament for Banff and Buchan. She received great acclaim from women's organisations in Scotland. It was a great moment for her when the UK Government decided to support her bill and made a commitment to ratify the convention.

What needs to happen is that the UK Government needs to take action to resolve issues to do with extraterritorial jurisdictions. I think that that will require separate legislation, or at least regulation. Once that has been done, the UK Government will be able to move towards ratification. I think that it is a fair response to say that it needs to take action to enable it to ratify the convention. That is the proper process.

In the Scottish context, we have our equally safe strategy and our equally safe delivery plan. We have long been advocates of the Istanbul convention, because the correlation between our strategy and the convention is huge. We are confident that the tie-in is strong and direct; it would not take a lot more for Scotland as a nation to be compliant with the convention. The primary issue that needs to be resolved for ratification is extraterritorial jurisdiction.

Mary Fee: Do you have any idea when that issue will be resolved?

Angela Constance: I do not have a timetable, but we could follow up with the UK Government.

Mary Fee: It would be helpful to know how far along the road the UK Government has travelled.

Angela Constance: It would be helpful to know where the issue is among the UK Government's priorities when it comes to the legislation or regulations that are required to be taken through the House of Commons. As with most Governments, the UK Government has bills and legislation to pursue, so it would be good to know where this issue is in its priority list. I hope that it is high up.

Mary Fee: So do I.

My other question is about the European Union's "National Roma Integration Strategies" report. The section on the United Kingdom's key steps has only one reference to Scotland, which is about the development of a

"housing strategy with the help of EU funds".

There is recognition that nations have to adopt different policies to implement the Roma integration strategy. Across the UK, different approaches have been taken by the devolved Governments. Northern Ireland has done a number of things towards Roma integration, including an education programme, the provision of school uniforms, initiatives on Gypsy Traveller health and wellbeing, health support and mediation on housing issues. Wales has a grant for the education of Gypsy Traveller children, provisions for health and homelessness, the Mobile Homes (Wales) Act 2013 and a proposal for a statutory duty on local authorities to provide housing. I am keen to explore what more the Scottish Government could do. Across the devolved nations, there is the opportunity to do more to improve outcomes for Gypsy Travellers and the Roma, which I know the cabinet secretary is keen to progress.

Angela Constance: Committee members will be aware of the work that I am doing to lead and progress through the ministerial working group, which will involve a number of Scottish Government ministers who will meet throughout this year. They are determined to make progress in all the areas that you have touched on. The UPR recommendations include several that relate to the Gypsy Traveller community, with regard to integration strategies, strengthening and activating existing laws, elaborating a general strategy and preventing all kinds of discrimination. The recommendations will directly inform the work of the ministerial working group as we proceed.

The committee may also be interested in the four nations group that was convened by Lord Aberystwyth, the UK minister with responsibility for community cohesion and interfaith issues, before last year's General Election. Political representatives from all the devolved Administrations got together with him to discuss issues that included race and Gypsy Travellers, and we discussed Gypsy Travellers again and interfaith work when we met again, in Edinburgh. It has become a useful forum to exchange experiences and best practice in the UK's home nations, particularly in relation to measures to better support the Gypsy Traveller community. It will meet again sometime in the spring—I cannot remember whether it is in March or April—in Cardiff. I will take that opportunity to have a much closer look at what the devolved Administration in Wales is doing on Gypsy Travellers, as it has some strands of work that are of particular interest.

Although it is not necessarily possible, whether in a UK context or an international context, to shift and lift what other countries are doing, as systems and the legislative framework can be different, it is important to look at and learn from the

experiences and practices of other countries, and not to cherry pick. Given that it is easy to do that across the home nations at a UK level, I am keen to take the opportunity to do so.

We will keep the committee informed, both of the work of the ministerial working group and of learning across the UK.

Mary Fee: That is very helpful. I want to ask you briefly about one other area, which is action to improve prisoner safety. You would automatically think that the justice secretary would be looking at that, but there is a strong human rights element to the way in which people are detained in prison. There is a whole range of issues around their safety and human rights, and what needs to be done to protect them fully. Could you give us a brief update on any work that is being done on that?

Angela Constance: I can give a brief update on that, although it is part of the day-to-day work of justice colleagues. As a former prison social worker, I understand the tone, tenor and *raison d'être* of Ms Fee's questions. I entirely get the impact of human rights on the prison population's care and rehabilitation within the institutions.

The prison population has fallen. We had a period in Scotland when it continued to rise, but it is now going the other way. That has to be welcome. There are programme for government commitments that Parliament has still fully to consider on the presumption against short prison sentences. Important work is being done on a whole-systems approach that has had sparkling results in reducing offending among young people and young offenders. The population of the young offenders institution at Polmont is much decreased because of the work on prevention and alternatives to custody. That has enabled more in-depth work on the rehabilitation of those young people who are incarcerated.

The mental health strategy is important for our prison population. As a personal reflection, I was pleased that the Government—I think when Mr MacAskill was cabinet secretary—provided that the medical treatment of prisoners should be delivered as part of the national health service as opposed to under a contracting arrangement. That should be welcomed. The action was taken a number of years ago but was an important step forward, and compares favourably with my days of working on the prison estate.

There is also the violence reduction strategy, under which each prison has its own plan. The suicide prevention strategy is also important for our prison population. Those who have worked in a prison and experienced the impact that a suicide has on the mental wellbeing of other prisoners and staff working in the institution, never mind the

devastating impact on families, know that those things touch you for ever.

There is much greater awareness at the corporate level of the Scottish Prison Service and those that are working in the front line in our prisons of the importance and relevance of putting human rights into practice and how that is good for our communities. It is good for the rehabilitation of offenders and it is therefore good for our communities and our national interest.

10:15

Mary Fee: Thank you for that very thorough answer.

David Torrance (Kirkcaldy) (SNP): Human rights are part of the remit of all committees across Parliament. Would Parliament consider training for staff and members to allow a greater understanding and scrutiny of human rights within the committee system?

Angela Constance: The question of training is for Parliament, whether it be for the corporate body or the Presiding Officer.

Again from a personal perspective, when I was working in the prison estate at the state hospital at Carstairs, it was at a time when there was growing recognition of human rights and many tabloid articles about how it was all nonsense and it would lead to terrible outcomes. I remember that, as a social worker, I underwent training on the importance and relevance of human rights, as did hospital staff from other disciplines who were working at the state hospital. I would therefore testify to the importance of training for front-line professionals and staff. It can have the power to change people's practice and outlook.

With respect, your question is ultimately one for the Parliament, but I personally endorse the idea.

Annie Wells (Glasgow) (Con): I understand that a new advisory board has been established on human rights. Can you tell us what its make-up and role is?

Angela Constance: Yes. The 2017-18 programme for government made a commitment to give further and more meaningful effect to human rights around, for example, economic, social and cultural rights—colleagues might recall that the programme for government speaks about how we need to be aspirational and ambitious around our human rights obligations. As part of that, the First Minister was keen to establish an advisory group on human rights leadership—the L-word is important. We can recognise that we have a good record here in Scotland, but we are always striving to achieve more by working through some of the thorny issues and making sure that things can be delivered in practice.

The advisory group is chaired by Professor Alan Miller, who will be well known to the committee. There will be a participatory process involving various civic stakeholders, which will be overseen by the advisory group, and there is also a reference group of various organisations with specialist input that will inform the work.

The advisory group met for the first time yesterday.

Jamie Greene (West Scotland) (Con): Good morning, cabinet secretary, and happy new year. I want to go back to the broader picture on next steps. Thanks to an earlier question, we have clarification about how many of the 227 recommendations—which I presume were given to the UK as the member state—are reserved versus how many have full competency under devolution and how many have partial or shared competencies.

Some of the 12 key themes that are listed, such as immigration policy and so on, are clearly reserved. However, peppered throughout the recommendations are lots that are clearly devolved, such as closing the equality gap in employment, prison safety, guidance to schools and so on.

One thing that I am less sure about is, if the UK Government pursues a specific route to address some of those recommendations—such as guidance to schools or on justice—and the Scottish Government addresses them in a different way, how will that be reflected in the next review period, when all that work, combined, has to go back to the UN for it to address whether the member state has taken those recommendations into account?

I guess that the question is, how will the Scottish Government liaise with the UN and the UK Government to ensure that those joint efforts, although their manifestations might be different, are able to equally feed into the bigger picture?

Angela Constance: That is a fair question. I will say a bit about the process from now into the future. I should start by saying that we work closely and collaboratively with the Ministry of Justice on the preparation of the UK report to the UN. There will be a degree of to-ing and fro-ing between our respective officials on that. The UK Government will have prepared its report and we will have prepared the Scottish report. We will forward our report to the UK Government and it will provide us with the UK report, which we will comment on from a Scottish perspective, and so on. It is an iterative process, and various changes will be made.

I will just reflect—this is absolutely not a political point—that, with the best will in the world, a UK report is not going to reflect everything from a

Scottish perspective, hence we do our own specific reports. They do not go to the UN; it is the UK report that does that, for the obvious reason that the UK is a member state. However, as I indicated in my response to Mr Cole-Hamilton, our report can go to stakeholders and is available to parliamentarians and committees.

The UK Government has said that it will respond later this year with an update of where it is with four or five of the recommendations. I do not know which four or five recommendations it is going to focus on.

There is also going to be a mid-point review, which, again, is voluntary. The UK Government does not need to participate in it but it has agreed to provide a mid-point review report that will encapsulate progress against the recommendations.

We will, as we always do, engage very closely. We will want to give full information about Scotland and where we are in relation to the recommendations. We accept that, with the best will in the world, the UK Government is not going to just cut and paste our report in its entirety, so we want to produce our own reports. We will make sure that they are available to the committee should you want to pursue your own deliberations on them.

We have different approaches in some areas. The Scottish Government is hugely committed to the maintenance of the Human Rights Act 1998 and to the European convention on human rights, which obviously has an impact on the 1998 act and, indeed, the Scotland Act 1998. I would contend that we have a different approach on human rights in general, even before we get into specific policy matters.

I put to the UK Government that I felt that Scottish ministers should be going with the UK minister to represent the UK in the UPR process, given the nuances and our quite different approaches to human rights. The UK Government did not accept that proposal. The interactive dialogue of the UPR process involves a UK Government minister. In this instance it was Oliver Heald, one of the Ministry of Justice ministers, who made the verbal representations, although it should be said that Duncan Isles, our head of human rights in Scotland in the Scottish Government, was there, and we had informed the UK minister's briefing pack.

Given that those differences exist, ministerial representation from Scotland would be useful, and it is something that I will continue to pursue. We do it in other scenarios. When I was in my previous portfolios, I occasionally went to European committees as a Scottish Government minister. I was there representing the UK, which I

did, but it gave me an opportunity to speak more fully about Scotland's position.

Jamie Greene: Do you get a feeling that some of the work that is done in Scotland by the Scottish Government could assist the UK in meeting some of its obligations under the recommendations?

Angela Constance: In terms of the devolved settlement there are significant differences of policy on things that we have touched on, such as Gypsy Travellers, prisons, housing and education, and there are profound differences of opinion about immigration, asylum and welfare reform. Notwithstanding those differences, which we are, of course, within our rights to highlight, we are participating in the UPR process in order to demonstrate that we are not responsible for the performance at a UK level. However, I would contend that the Scottish performance helps the UK to demonstrate that we are meeting our obligations, if I can put it like that.

Alex Cole-Hamilton: One of the most challenging conventions to which the UK, as the state party, is a signatory is the Convention on the Rights of Persons with Disabilities. That is not just a reflection on UK or Scottish government policy; I think that every state party in the United Nations finds it difficult, particularly in relation to capacity and supported decision making. Effectively, the CRPD suggests that we tear up all of our capacity legislation and start again.

We have mental health tribunals in which, to make things easier for themselves, judges routinely appoint curators to act for people who could make meaningful decisions. What steps is the Government taking to review our capacity legislation and, indeed, the efforts that we make to support the decision making of people whom we have not previously credited with the capacity for that?

Angela Constance: It is fair to say that decision making and policy practice around issues of capacity or incapacity are quite challenging and always will be. Our existing legislation in and around the Adults with Incapacity (Scotland) Act 2000 is based on principles. If a practitioner takes action because it is their professional view that someone lacks capacity, they have to demonstrate throughout their applications as part of the court process that they are applying those principles.

All legislation needs to move on, but the basis of that legislation was to apply principles that would ensure that, at a rudimentary level, we would take a human rights-based and person-centred approach. That legislation is now old, and a review of it will be led by health ministers, who will also give consideration to issues for people with autism and learning disability in terms of the Mental Health (Scotland) Act 2015. They will consider the

way in which the act articulates issues around mental disorder, some of the definitions in the act and whether the legislation is best crafted to accommodate the rights, needs and interests of people with learning disabilities and autism. My day-to-day knowledge of that legislation is probably 10 years old, but health ministers are actively looking at those processes.

10:30

On the broader point of how we meet our obligations under the UPR process and the Convention on the Rights of Persons with Disabilities, we have been able to demonstrate progress in Scotland with our work around the disability employment gap. The First Minister and Jeane Freeman have been active around the disability employment summit, and there is the disability fairness plan for Scotland, which was crafted with a view to how we meet our international treaty obligations. Obviously, Parliament, through the Social Security Committee in this instance, has taken a big interest in the disability delivery plan.

Alex Cole-Hamilton: Finally, if I may, convener—you would be disappointed if I did not raise this—one of the aspects of the UPR was access to justice. One group of people in our society who seldom get access to justice is children. That is because their rights are not always enshrined in law.

This committee has actively called for this Government to consider the full incorporation of the United Nations Convention on the Rights of the Child. When we returned from the summer recess, we were very gratified that the First Minister signalled a willingness to consider doing so. How is that work progressing and what timescale might there be for the process underlying it?

Angela Constance: One of the reasons why we are setting up the First Minister's advisory group on human rights leadership is to consider further issues in and around incorporation. We want to work through the issues that need to be worked through. I understand the *raison d'être* for saying, and the desire that people have to say, "Let's incorporate and let's incorporate now," but to have a meaningful process that will result in a meaningful impact on the lives of, in this instance, children, across the Government we need to work through certain issues. I think that the First Minister's advisory group will, in part, help with that process.

Work has also started on an audit of our compliance with the UNCRC, led by education colleagues. That is a useful process to embark on and it will focus attention on particular areas. I am

glad that Mr Cole-Hamilton welcomes the indication in the programme for government of our acceptance of Mr Finnie's member's bill, and we are responding to various international scrutiny processes. We undertook in-depth work on how we would go about raising the age of criminal responsibility, which is a demonstration of how, by collaborating with experts and stakeholders, we can work through the issues and get to a position from which we can undertake action that is a step in the right direction.

Alex Cole-Hamilton: Great—thank you.

Mary Fee: What work has been done to monitor the effectiveness of anti-trafficking legislation?

Angela Constance: Obviously, we have particular legislation in that area. Our positioning work on human trafficking and the work on female genital mutilation were specifically mentioned as part of the interactive dialogue. We should take encouragement from that that there is a bit of international recognition of the work that we have done to date on FGM—which Annie Wells has been campaigning on—and on human trafficking. You will have seen the very successful campaigns led by justice colleagues that have been undertaken to inform the public of the existence of human trafficking and what to do in response to any concerns that they have.

There are a number of layers to how we monitor our progress. In my portfolio, we look in an overall way at how we responded to our international obligations. Bearing in mind that all committees and portfolios have human rights duties, there are specific responsibilities for justice ministers to review the effectiveness of our work on human trafficking. I will get back to the committee if my justice colleagues are looking at specific actions.

Mary Fee: That would be helpful, so that we can see whether anything has been picked up and whether any changes need to be made.

The Convener: I think that the cross-party group on human trafficking is carrying out a review with the Scottish Government ministers on progress on the Human Trafficking and Exploitation (Scotland) Act 2015 and the value that it has created.

I have two final questions before we can let you go, cabinet secretary. We have covered quite a lot of issues. If we look at the UPR recommendations and the concluding observations, not just from the current cycle but from the previous one, we can see how the Parliament and the Government have reacted to some of those through legislation. Obviously, we are building towards a social security system for people with disabilities and we have legislation on human trafficking, violence against women and climate change as well as the support for John Finnie's equal protection from

assault bill. All those pieces of legislation or proposed legislation are discrete to Scotland. We have created or will create legislation in those areas that, we hope, will make things better and create progress.

We have a letter from you on the Child Poverty (Scotland) Act 2017, which we will discuss later. How will that act address some of the specific recommendations in the UPR about children having the best life chances at the earliest stage?

Angela Constance: I was pleased that, in the Equality and Human Rights Commission's submission to the UPR process, it said:

"There have been some very positive developments. The Scottish Government has committed to reintroducing binding child poverty targets, after these were recently repealed at Westminster."

I was personally pleased with the recognition of the importance of the work that I and my portfolio have led on our child poverty legislation, which was unanimously passed by Parliament.

A number of child poverty delivery plans will be published between now and 2030, and our first, which will be published in April this year, will be very important in a number of respects. It will have to show cross-Government endeavour and it will be informed by the advice of the independent Poverty and Inequality Commission. I am absolutely sure that there will be parliamentary scrutiny of it. In terms of participation, engagement and accountability, the way in which our child poverty delivery plan, which comes from our legislation, is brought together will demonstrate the way in which we are trying to make real and meaningful the right of children to live free of poverty.

The Convener: Finally, we cannot let you go without mentioning the impact of Brexit, specifically from a rights point of view. We have talked about legislation that the Scottish Government and the Parliament have introduced to fill gaps or because we wanted to go a bit further by having a discrete piece of legislation on an issue, especially on the issue of rights. Given the voting on amendments to the European Union (Withdrawal) Bill the night before last, which put the European convention on human rights in a pretty precarious position, and some of the other pronouncements on human rights policy generally, does the Scottish Government have any plans to fill any policy or rights gaps that develop as a result of withdrawal from the EU? I know that that is about the future.

Angela Constance: As the committee will be aware, we do not want any diminution of the rights that we currently enjoy as a result of being a member of the European Union. Part of the reason why the First Minister established her advisory

group on human rights leadership was to look at the point that you raise about how, in the context of Brexit, we protect what we have and ensure that there is no step backwards. It will also consider how, as well as protecting rights, we extend those that we have. There is a job of work to do on that for a range of policy experts and the full range of ministers and cabinet secretaries, and the First Minister's advisory group will help us with that process. It will consider how, in the uncharted waters of Brexit, we protect the rights that we all currently enjoy and how we continue on the road of being aspirational and ambitious and wanting to go further on our human rights obligations.

The Convener: I am sure that we will come back to that issue.

Angela Constance: I imagine so.

The Convener: We have not exhausted all the questions that we have, but some of the other ones perhaps go a bit wider than your portfolio, cabinet secretary. We are grateful for your participation and your answers. There are many areas on which I am sure we will continue dialogue.

We will now move on to agenda item 3, which we have agreed to take in private.

10:41

Meeting continued in private until 11:09.

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