Amnesty International UK

BRIEFING

Safety of Rwanda (Asylum and Immigration) Bill – Second Reading Briefing December 2023

Introduction

The Safety of Rwanda (Asylum and Immigration) Bill (the Bill) is in the first instance the UK government's response to the decision of the Supreme Court that its Rwanda scheme is unlawful. As such, it also represents the latest of a number of attempts by the government to produce a workable means of implementing the policy it first established in December 2022[1], of refusing to process asylum claims and to pass off on to some other country responsibility for those people who arrive in the UK seeking international protection. The desperation to make this underlying policy work has driven the government to ever more draconian steps, with this latest bill constituting a fundamental assault on the rule of law in general, and human rights in particular. In doing so, the Bill risks provoking a constitutional crisis at home and rupture with the European Convention on Human Rights (ECHR) and the UK's other international commitments and relationships.

As such we urge Parliamentarians of all parties to oppose the Bill in its entirety.

What the Bill Does

The core purpose of the Bill is to compel courts, and all other decision makers, to treat as fact things that have already been found to be false and to bar courts from considering any evidence or arguments to the contrary. This is done by clauses 2(1), which states that 'Every decision-maker must conclusively treat the Republic of Rwanda as a safe country', and 2(3) which states that, 'a court or tribunal must not consider a review…to the extent that the review or appeal is brought on the grounds that the Republic of Rwanda is not a safe country.'

In an attempt to fully achieve this aim, the Bill expressly defines what is meant by safety as being compliance with all international law; but then goes on to disapply most of the key functioning parts of the Human Rights Act 1998 (clause 1(5)(b) and clause 2(1) and (2)) and any other provision of domestic law (clause 1(5)(c) and any interpretation of international law (clause 1(5)(d)). Much of this is an elaborate belt and braces exercise, overlapping with each other to try to prevent all judicial consideration of anything that may undermine the assertion that Rwanda is safe.

The Bill goes on to create a residual mechanism for individuals to escape the effect of the legislation (clause 4), but this is strictly limited to claims that the person would face an especially high and immediate risk of harm in Rwanda that is specific to the individual's particular circumstances. This was not an issue considered by the Supreme Court in its recent judgment simply because the question

1 *This was first done by new rules on inadmissibility of asylum claims introduced by Statement of Changes in Immigration Rules (HC 1043) on 31 December 2020. It was later made law by section 16 of the Nationality and Borders Act 2022; and is to be made mandatory and inflexible by section 5 of the Illegal Migration Act 2023.*

for the court had been whether the evidence showed Rwanda to be safe in general. The Bill specifically bars any assertion to the Home Office, tribunal or court on the basis of onward 'refoulement' (clause 4(2)), i.e. that the person would be sent on to a third country where they would face a **real risk of persecution or other serious harm**. This was the specific basis on which the Supreme Court concluded Rwanda was not safe.

Finally, the Bill expands measures already passed in the Illegal Migration Act to restrict the UK's domestic courts' ability to issue injunctions to prevent a person's removal and hand powers to the Minister to ignore 'interim measure' injunctions from the European Court of Human Rights (ECtHR), despite the fact that the latter are regarded as binding on state parties to the ECHR.

What this means

In the run up to the Bill's publication there was much discussion of whether it would be half fat, full fat, semi skimmed etc. What has become clear is that the Bill is calamitous for human rights and more broadly for the rule of law in the UK.

Human rights protections, like the Human Rights Act but also common law rights and the legal framework they function in, cannot work if the factual reality of any claim cannot be faced and people are not permitted to show evidence that destroys or undermines what the state is asserting against them. In the coming debates there will be claims that the Bill somehow leaves the Rule of Law unaffected because a key element of it is the sovereignty of Parliament. However, Parliament is not sovereign over the facts; particularly not when they form the basis of decisions about the most fundamental rights an individual has, including the right to life itself.

The Bill is premised on a fantasy. If Parliament passes this Bill, it will be enforcing this fantasy on the domestic courts. This kind of fantasy is a danger to us all and Parliamentarians of all parties and political persuasions should be extremely wary about validating this type of law making. Fixing the facts on which the law is to be applied is a type of law making that would allow any of us to be effectively deprived of our rights in practice – including our right to a fair trial of any prosecution of us, our right to political participation or our right to possess or use our own property. This is because by fixing the facts, any assertion of a right can be made irrelevant. If Parliament can or does require courts to accept that up is down and brook no argument to the contrary, then there is no limit to what a future government of any party can do.

The Consequences

Disapplying the Human Rights Act and other crucial human rights protections such as those against torture and trafficking is a complete abrogation of the basic principle of universality that gives human rights their meaning and which the UK seeks to defend internationally. It is a grim irony that the Treaty the UK has signed requires the government of Rwanda to abide by the standards of international law while the UK government is legislating to ignore those standards at home. Indeed, the nature of this bill further undermines any hope of Rwanda itself complying with human rights and its international obligations. This is because the Bill invites Rwanda to copy the UK and simply engage in a legal fiction of compliance, whatever the truth may be now or tomorrow. Legislation of this kind will further damage the UK's international reputation as a defender and promoter of human rights.

More immediately, the effort to enforce a fantasy that Parliament can force a set of facts to be regarded as true in perpetuity by the courts, will place Parliament on a collision course with both the domestic courts and the ECtHR, risking a constitutional crisis at home and a major show-down with the ECtHR. The UK constitution relies on conventions and restraint, which govern the use of Parliament's sovereign powers. Parliament could, for example, pass laws abolishing elections or dispensing with all judicial processes. It does not because it exercises restraint and so the courts are spared from being forced to determine whether they would have to enforce such laws. Were Parliamentarians to support this bill, which strays well beyond the ordinary bounds of restraint that Parliament exercises, then they would risk forcing the domestic courts into an extremely difficult position. Senior judges in the recent past have raised the notion that there could be circumstances in which the courts are forced to disregard a statute passed by Parliament, but this has not yet been put to the test.[2] Meanwhile, the ECtHR, which is not bound by this legislation and therefore not bound by the fantasy that it seeks to impose, is highly likely to find numerous breaches of the ECHR if and when it is implemented. This will inevitably create the opportunity for those that wish to drag the UK out of the ECHR to further agitate for the government to take this course of action.

What must be done

Parliamentarians who think that supporting this bill will somehow safeguard the rule of law in the UK, the UK's membership of the ECHR and compliance with international law must face reality. This bill does none of those things and will in fact fuel the forces that are seeking to undermine them. In doing this, it also attempts something that no rational person could ever wish for themselves; removing the role of evidence in assessing how law may apply to their individual circumstances. Ultimately, the government needs to return its focus to taking responsibilities rather than attempting to shirk them. That means decided asylum claims made in the UK, fairly and efficiently, rather than casting around for some other country to which to pass that responsibility on.

We urge Parliamentarians of all parties to oppose the Bill in its entirety.

[2] Privacy International, R (on the application of)v Investigatory Powers Tribunal & Ors [2019] UKSC 22 (15 May 2019) *http://www.bailii.org/uk/cases/UKSC/2019/22.html,* Jackson & Ors v. Her Majesty's Attorney General [2005] UKHL 56 (13 October 2005)*, http://www.bailii.org/uk/cases/UKHL/2005/56.html*