Amnesty International UK

BRIEFING

Safety of Rwanda (Asylum and Immigration) Bill – Second Reading, Lords

Summary

This Bill is both the UK Government's response to the decision of the Supreme Court that its Rwanda scheme is unlawful and the latest of many attempts to produce a workable means of implementing the policy it first established in December 2020,[1] of refusing to process asylum claims. The desperation to make this underlying policy work has driven the Government to ever more draconian steps, including this Bill which is so extreme it risks provoking a constitutional crisis at home and rupture with the UK's commitments and relationships abroad.

It is Amnesty International UK's (AIUK) view that this Bill:

- **Is an attack on the most basic functions of the UK's independent judiciary and on the universal protection of human rights.**
- **Is the result of a mistaken belief that the UK can simply abandon its responsibilities under the Refugee Convention.**
- **Should never have been introduced and we urge Peers to oppose it in its entirety.**

What the Bill does

Requiring courts to treat falsehood as fact

The core purpose of the Bill (clause 2) 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. It requires the courts to conclusively treat Rwanda as a safe country, despite the recent clear findings of the Supreme Court,[2] the subsequent assessment of the UNHCR[3] (who the Supreme Court heavily relied on in reaching its own decision) and the conclusions of the Lords International Agreements Committee that the Treaty that the Government has signed with Rwanda, 'is unlikely to change the position in Rwanda in the short to medium term.[4]

[1] See Statement of Changes in Immigration Rules (HC 1043) on 31 December 2020; section 16 of the Nationality and Borders Act 2022; and section 5 of the Illegal Migration Act 2023.

[2] See Supreme Court Press Summary on 15 November 2023 for overview.

[3] See UNHCR Analysis of the Legality and Appropriateness of the Transfer of Asylum-Seekers under the UK-Rwanda arrangement: an update

[4] See International Agreements Committee 4th Report of Session 2023-24 published on 17 January 2024; Scrutiny of international agreements: UK-Rwanda Agreement on as Asylum Partnership.

Insufficient protection for individual circumstances

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. The Bill specifically bars any assessment of the risk of '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 basis on which the Supreme Court ruled Rwanda was not safe.

Undermining human rights protections

The remainder of the Bill consists of an elaborate set of measures, including but not limited to the near total disapplication of the Human Rights Act (HRA),[5] other common law rights protections and the application of other international law protections including the Refugee Convention, the Anti Trafficking Convention and the Convention Against Torture.[6] These measures are aimed at preventing access to courts for individuals to defend themselves against the implementation of the Rwanda policy and preventing domestic judicial consideration of anything that may undermine the assertion that Rwanda is safe. These measures also include an expansion of the steps already taken in the Illegal Migration Act 2023 (IMA) to give legislative legitimacy to the Government's threats to break its treaty obligations by refusing to implement 'interim measures' indicated by the European Court of Human Rights.[6]

Analysis

The Bill is calamitous for human rights and more broadly for the rule of law in the UK.

The Bill is the latest in an increasing line of Government measures seeking to implement its underlying policy of refusing to process asylum claims made by people that arrive irregularly in the UK; in practice, the vast majority of asylum claims. Having made that decision in the hope that people would stop coming, the Government has then had to deal with what to do about the inevitable reality that people would still come. The heat and sense of crisis around this issue has built up and been used to justify ever more elaborate and draconian schemes, both in terms of how people are dealt with while in the UK and in terms of how the Government will seek to expel them out of the UK.

It is from this policy background that the underlying intention of this Bill stems. In an effort to get them out of the country, the people targeted by this Bill are to be excluded from basic legal protections against refoulement – risking exposing them to the most serious forms of harm, solely on the grounds of their immigration status. Alarmingly, during debate around this Bill, the concept that migrant people should be prevented from being able to legally protect their fundamental rights against the state, and that preventing this is somehow both a sensible and moral thing to do, has become normalised. Such a proposal is, however, deeply authoritarian and contrary to constitutional role of the UK's courts.

The primary vehicle by which this goal is to be achieved in the Bill is clause 2's imposition of a duty for all decision makers to treat Rwanda as a 'safe country' and to not hear any evidence or argument to the contrary. Control over the determination of fact in this way would make it impossible for a person

[5] Clause 3

[6] Clause 5

to protect themselves against the state's actions, as it means factual reality cannot be faced and people are not in a position to counter whatever the state is asserting against them. For example, the ideas of monitoring mechanisms or oversight of the Rwanda deal once it is put into effect are made irrelevant by the Bill as if they were to find evidence of refoulement or other shortcomings in the general safety of Rwanda the courts would have to ignore it.

During the Bill's passage through the Commons there were claims that the Bill somehow preserves the rule of law, because the rule of law includes the sovereignty of Parliament. However, Parliament is not sovereign over factual reality. There have been suggestions that there is nothing new in the use of 'deeming provisions' or the creation of 'legal fictions'. However, this Bill does something distinct. Rather than creating a legal fiction, the Bill defines a concept, the 'safe country', by reference to whether or not the UK would be breaking any of its obligations under international law by expelling a person there, and then requires courts to treat Rwanda as such a country regardless of the facts. The Bill therefore places Parliament in the position of usurping the constitutional role of courts, by seeking to impose what is in essence a legal ruling for the judiciary to make; whether or not the UK is in compliance with its legal obligations in light of all the relevant facts. This unprecedented action drives a hole in the UK's independent judicial system, makes a travesty of courts' proceedings and places them in an impossible constitutional position.

Further claims have been made in defence of the Bill that it preserves the UK's compliance with international law and ongoing membership of the European Convention on Human Rights (ECHR). Yet, not only does the Bill contain an HRA s19(b) declaration that the Minister cannot confirm that it complies with Convention rights, the Bill will in fact lead to clear and obvious violations of multiple human rights commitments.

Clause 4's limitations of its rights of challenge, and most particularly its continued exclusion of the risk of refoulement, mean that it cannot function as a protection against breaches of multiple articles of the ECHR. These include the absolute right not to be subject to torture, inhuman or degrading treatment[7] and the core obligation on member states to provide an effective remedy against rights violations.[8] Meanwhile, the Bill's disapplication of most of the operative elements of the HRA, apart from Section 4 declarations of incompatibility, will inevitably funnel legal controversy around the implementation of this legislation towards the European Court of Human Rights (ECtHR). The Bill's repetition of the approach taken in the IMA of giving the legislative green light to Ministers to ignore interim measure injunctions issued by the Strasbourg Court is an indicator that such a showdown is being sought by the Government, for political purposes. This approach risks emboldening the calls from influential political and media actors for the UK to withdraw from the Convention altogether. It also takes an extraordinary risk with the UK's international reputation as a country that complies with the Convention, particularly in the context of the Belfast/Good Friday Agreement[9] and relations with the Republic of Ireland and the USA.[10]

Conclusion

Our assessment is that the Bill will place Parliament on a collision course with both the domestic courts and the ECtHR, risking a constitutional crisis at home and confrontation with Strasbourg. This

[7] ECHR Article 3

[8] ECHR Article 13

[9] The UK's continued membership of and compliance with the ECHR forms an integral part of the B/GFA. See here for further detail.

[10] See eg. https://www.nytimes.com/2023/11/23/world/europe/britain-rwanda-northern-ireland.html

Bill will do nothing to safeguard the rule of law in the UK, the UK's membership of the ECHR and compliance with international law more broadly. In fact, the Bill flies in the face of basic principles of universal human rights and equality before the law and oversteps Parliament's constitutional role by seeking to impose a legal ruling regardless of factual reality.

Ultimately, the view that the UK can abandon its asylum responsibilities must itself be abandoned; it is this that is putting the protection of human rights and the UK's continued adherence to international law at risk. Asylum claims made in the UK can and must be decided, fairly and efficiently, here.

We urge Peers to oppose this Bill in its entirety.