Amnesty International UK

BRIEFING

Safety of Rwanda (Asylum and Immigration) Bill – Committee Stage, Commons

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 Parliamentarians of all parties to oppose it in its entirety.**

What the Bill does

Treating fact as false

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. Essentially, it requires the courts to conclusively treat Rwanda as a safe country.

Disapplication of the Human Rights Act (HRA)

The remainder of the Bill consists of an elaborate set of measures, including but not limited to the near total disapplication of the HRA, aimed at preventing all judicial consideration of anything that may undermine the assertion that Rwanda is safe.

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

[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.

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.[2]

Alarmingly, since Second Reading a series of amendments have been tabled which are intended to even more decisively close off any access to legal protections for an individual targeted under the Bill.

Analysis

The Bill is calamitous for human rights and more broadly for the rule of law in the UK. The people targeted by this Bill are to be excluded from basic legal protections against draconian measures taken against them by the state that risk exposing them to the most serious forms of physical harm, solely on the grounds of their immigration status. Somehow during debate around this bill, the concept that migrant people should be prevented from being able to legally protect themselves against such extraordinary steps by 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.

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 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, it renders effectively irrelevant any notion of monitoring mechanisms or oversight of the Rwanda deal once it is put into effect, as any adverse evidence arising from such mechanisms cannot be taken into account by the courts. It is absurd but true to point out that even if such mechanisms found clear incontrovertible proof of systematic onward refoulement to persecution of people expelled on the Rwanda scheme, the UK courts would be required to simply ignore that evidence and keep on rubber stamping the notion that Rwanda is a 'safe country' to send people to.

At Second Reading there were claims, that will no doubt be repeated during the coming Committee stage, 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. The Bill is premised on a fantasy. If Parliament passes this Bill, it will be enforcing this fantasy on the domestic courts, undermining the UK's independent judicial system by making a travesty of its proceedings and placing it in an impossible constitutional position.

Further claims have been made in defence of the Bill that in its original unamended form it somehow preserves the UK's compliance with international law. It is on this basis that some parliamentarians have resisted the attempts made in the new amendments to remove all individual access to courts entirely; arguing that whatever the extremity of the proposals in clause 2, the mechanisms in clause 4 as originally drafted somehow keep the UK on the right side of its international obligations. However, this view is sadly mistaken. While the new amendments certainly would make a bad bill worse, the Bill as originally drafted will lead to clear and obvious violations of multiple human rights commitments, not to mention basic common law standards of fairness. 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 European Convention. These include the absolute right not to be subject to torture, inhuman or degrading treatment[3] and the core

[2] AAA v SSHD [2023] UKSC 42
[3] Article 3 ECHR

obligation on member states to provide an effective remedy against rights violations.[4] More broadly the Bill is transparent in its rejection of the UK's obligations under the Refugee Convention and the Anti-Trafficking Convention as well as the Torture Convention.

Conclusion

Our assessment remains that the Bill:

- Represents a complete abrogation of the basic principle of universality that gives human rights their meaning and which the UK seeks to defend internationally.

- Invites Rwanda to copy the UK and simply engage in a legal fiction of compliance.

- Will further damage the UK's international reputation as a defender and promoter of human rights.

- 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.

Crucially, this 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. Ultimately, the fantasy that the UK can abandon its asylum responsibilities must itself be abandoned; it is this fantasy 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 Parliamentarians of all parties to oppose the Bill in its entirety.

[4] Article 13