Safety of Rwanda (Asylum and Immigration) Bill

Joint Briefing for Committee Stage in the House of Lords

9 February 2024

We jointly reiterate our unwavering opinion: this Bill is fundamentally contrary to the domestic and international rule of law.

However, we lend our general support to amendments mentioned in this briefing on the basis of five principles:

1. Parliament should not legislate to conclusively overturn the Supreme Court's findings of law and fact regarding the safety of Rwanda as it relates to non-refoulement. Rwanda is not (yet) a 'safe country' in this sense.

2. Parliament should not legislate permanent fact, irrespective of current and future available evidence.

3. Parliament should not usurp the role of domestic courts in reviewing the lawfulness of the Executive's actions, including its assessment of whether Rwanda is a safe country.

4. The United Kingdom should comply with its international legal obligations and interpret them in good faith.

5. The United Kingdom should not undermine the universality of human rights.

We have grouped key amendments we support on the basis of these principles.

1. Rwanda is not a safe country to permanently send asylum seekers.

Declaring Rwanda a safe country does not make it so. The highest court in the UK recently comprehensively ruled that Rwanda is not a safe place to send people seeking asylum. Its findings have since been updated and reinforced by the recent expert opinion of the UN High Commissioner for Refugees (UNHCR)[1] and the House of Lords International Agreements Committee (IAC).[2]

While the Supreme Court did not rule that Rwanda could never become a 'safe country', it is not presently one on all available evidence. To start with, the Rwanda Treaty has yet to be fully implemented—a point that led the IAC to recommend that the Government delay ratification which the House of Lords voted by majority to support.

[1] UNHCR Analysis of the Legality and Appropriateness of the Transfer of Asylum-Seekers under the UK-Rwanda arrangement: an update (15 January 2024) https://www.refworld.org/legal/natlegcomments/unhcr/2024/en/147086.

[2] International Agreements Committee, 'Scrutiny of international agreements: UK– Rwanda Agreement on an Asylum Partnership' (published 17 January 2024) https://committees.parliament.uk/publications/42927/documents/213461/default/.

Furthermore, there are arguably insufficient safeguards within the Rwanda Treaty to stop and address breaches of human rights, were they to *in fact* occur to persons sent to Rwanda.

In principle, we support the intention behind the following amendments introducing independent and expert scrutiny of whether Rwanda is a safe country and whether the Rwanda Treaty has been fully implemented:

- **Amendments 1, 2, and 5** (in the names of Baroness Chakrabarti, Baroness Hale of Richmond, the Lord Archbishop of Canterbury, and variously Viscount Hailsham) seeking to introduce that scrutiny through UNHCR, the guardian of the Refugee Convention.
- **Amendments 6 and 14** (led by Lord Hope of Craighead) stating that Rwanda *'will be a safe country when, and only so long as, the arrangements provided for in the Rwanda Treaty have been fully implemented and are being adhered to in practice'*, and requiring the Secretary of State to obtain a declaration from the Joint Committee and consult with the Monitoring Committee established under the Rwanda Treaty.
- **Amendments 81 and 82** (in the names of Baroness Chakrabarti, Viscount Hailsham, and variously Baroness Bennett of Manor Castle) to introduce a parliamentary trigger for commencement requiring both a report of the Joint Committee on Human Rights and resolution of each House of Parliament, and the Act's expiration after an initial implementation period of no more than 2 years, unless extended for further periods of each no more than 2 years.

2. Parliament should not legislate permanent fact.

The Bill writes into the statute book that Rwanda is *permanently safe* for the purposes of meeting the UK's obligations under the European Convention on Human Rights and the Refugee Convention, among other international conventions.

Even if it were true that Rwanda is *currently* a 'safe country' in this sense, and we are not satisfied that it is in light of the Supreme Court's judgement and insufficient subsequent action, we support amendments that acknowledge the situation on the ground may worsen. As the legal fiction (and accompanying statutory obligations and ousters) should not indefinitely be in place, we support:

- **Amendments 19, 21, 25 and 28** (in the names of Lord Carlile of Berriew, Lord Anderson of Ipswich, The Lord Bishop of Manchester, and variously Lord Etherton and Viscount Hailsham) to remove the ouster in Clause 2(3); ensure the declaration that Rwanda is a safe country is capable of being rebutted in law by credible evidence; and require decision-makers to consider credible evidence that Rwanda is not a safe country.
- **Amendment 34** (in the names of Baroness Chakrabarti, Baroness Hale of Richmond, the Lord Archbishop of Canterbury, and Viscount Hailsham) to restore the jurisdiction of domestic courts by rendering the future safety of Rwanda (based on UNHCR's advice) a rebuttable presumption.

- **Amendments 4, 17, 24, 27 and 84** (in the names of Lord German and Lord Scriven) to remove the conclusive legal fiction of Rwanda's safety; restore the ability of courts to consider Rwanda's general safety; provide that it is the judgement of the Secretary of State, rather than Parliament, that Rwanda is a safe country; and require further scrutiny of Rwanda and implementation of the Rwanda Treaty before the Secretary of State treats Rwanda as safe, and before a commencement order is passed by Parliament.
- **Amendments 22, 37 and 42** (in the name of Lord German and Lord Scriven) to require decision-makers to conclusively treat Rwanda as a safe country only on the basis of evidence that demonstrates that conclusion to be true.

We also support amendments that would result in the Act's suspension or expiry:

- **Amendment 71** (in the names of Lord German and Lord Scriven) which would require the Secretary of State to lay a draft statutory instrument (SI) every six months stating that in their assessment that Rwanda remains a safe country, which must be approved by a resolution of each House of Parliament. If either House does not approve the SI, removals to Rwanda under the Treaty must cease until a draft SI has been laid before, and approved by a resolution of, each House of Parliament, stating that, having addressed any issues identified, Rwanda is a safe country.
- **Amendments 64, 65 and 66** (in the names of Lord Coaker, Lord Hope of Craighead and variously Viscount Hailsham, Lord Blunkett, and Baroness D'Souza) to place the Monitoring Committee on a statutory basis, create reporting requirements, suspend the Act if the Monitoring Committee is not in operation, and place conditions on when the classification of Rwanda as "safe" can be suspended.
- **Amendment 91** (in the name of the Lord Bishop of Chelmsford, Lord Scriven and Lord Blunkett) creating a sunset provision two years after commencement, unless extended by Parliament following UNHCR producing a report containing evidence that the Rwandan government is fulfilling its Rwanda Treaty obligations.
- **Amendment 92** (in the names of Lord Anderson, Lord Kerr, Lord Carlile and Baroness Butler-Sloss) requiring the expiry of the Act on the date the Rwanda Treaty is terminated.
- **Amendment 93** (in the name of Baroness Jones of Moulsecoomb) to suspend the Act if the Secretary of State lays a statement before Parliament that Rwanda is no longer a safe country.

3. Parliament should not usurp the role of the courts.

The purpose of the deeming provision in the Rwanda Bill is to impose a legal and factual determination on all courts—that Rwanda is a 'safe country' for the purposes of removing migrants. In essence, the Bill introduces a judicial blindfold, so that when UK courts are making rulings about the safety of Rwanda, they will be required to ignore the facts placed in front of them and to conclusively treat Rwanda as generally a 'safe country'.

This is a highly unusual and extraordinary usurpation of UK courts' role in making legal and factual rulings based on the available evidence. It is particularly startling given the Supreme Court's recent unanimous and comprehensive ruling that Rwanda was not a safe country, reinforced by the expert evidence from the UNHCR and IAC, as mentioned above.

This legislative usurpation of the role of domestic courts is reinforced by the 'notwithstanding' provisions that seek to disapply key elements of the Human Rights Act 1998 (HRA) as well as other domestic and international law, severe restrictions on granting domestic interim remedies, and requirement on courts to ignore interim measures of the European Court of Human RIghts (ECtHR). Altogether, this is an affront to the rule of law and the separation of powers.

Our courts and tribunals should be able to consider claims regarding the general safety of Rwanda and grant interim remedies to prevent the Executive acting unlawfully. Accordingly, we support the following amendments:

- The Clause 2 stand part amendment of Viscount Hailsham, Baroness Jones, and the Lord Bishop of Manchester.
- The restoration of court jurisdiction in **Amendments** led by Lord German, Baroness Chakrabarti, and Lord Carlile of Berriew, highlighted above in section 2 of this briefing.
- **Amendment 31** (in the name of Lord German, Lord Kerr, and Lord Scriven) to delete Clause 2(5), which ousts the jurisdiction of domestic courts and tribunals, notwithstanding provisions and rules of domestic law, including the common law, and their interpretation of international law.
- **Amendments 39, 44, 49, 50, 52 and 53** (in the names of Baroness Chakrabarti, Baroness Hale of Richmond, the Lord Archbishop of Canterbury, and variously Viscount Hailsham) to Clause 4, restoring the ability of UK courts and tribunals to grant interim relief.
- **Amendment 48** (in the name of Lord Coaker, Lord Hope of Craighead, Viscount Hailsham, and Lord Purvis of Tweed) to remove the ouster in Clause 4(2).
- **Amendment 55** (in the names of Baroness Lister of Burtersett, the Lord Bishop of Chelmsford, Baroness Neuberger, and Baroness Brinton) which ensures that no person is removed to Rwanda before a court or tribunal can fully consider whether they are an unaccompanied child (given such children are not covered by the Rwanda Treaty).
- **Amendment 64** (in the names of Lord Coaker, Lord Hope of Craighead and Viscount Hailsham) to ensure that courts and tribunals can consider judicial reviews brought by individuals, if there is credible evidence that Rwanda is no longer safe on the basis of non-compliance with its obligations under the Rwanda Treaty.

4. The UK should comply with international law

The front page of the Bill contains an extraordinary statement: that the Secretary of State cannot state that the Bill complies with the UK's obligations under the European Convention on Human Rights (ECHR).

As the Supreme Court noted, the principle of non-refoulement is found in numerous international law agreements the UK is a signatory to including the Refugee Convention, the ECHR, the UN Convention against Torture, the UN International Covenant on Civil and Political Rights and arguably customary international law. By turning the UK's back on the principle of non-refoulement, denying people sent to Rwanda effective remedies for potential and/or actual breaches of their rights, and giving legislative validation to a Minister to ignore interim measures of the European Court of Human Rights,[3] the Bill is abandoning the UK's international obligations and the UK's place on the international stage.

Such a cavalier attitude towards international law is as reckless as it is dangerous. Respect for the ECHR is integral to the Good Friday Agreement, which underpins peace in Northern Ireland. More widely, reneging on conventions which the UK played an instrumental role in drafting and to which it freely entered will undermine its ability to champion the rule of law and human rights abroad. Accordingly, we support:

- The Clause 5 stand part amendment of Lord Etherton and Lord Anderson of Ipswich.
- **Amendments 58, 60 and 61** (in the names of Baroness Chakrabarti, Baroness Hale of Richmond, and the Lord Archbishop of Canterbury and variously Baroness Bennett of Manor Castle) to place a statutory obligation on the Secretary of State to comply with international law; ensure that courts and tribunals have regard to interim measures; and disapply the interim measure provision in section 55 of the Illegal Migration Act 2023.
- **Amendments 57 and 59** (in the name of Lord German, Lord Kerr of Kinlochard, Baroness D'Souza and Lord Scriven) to leave out Clauses 5(2), the provision that it is 'for a Minister of the Crown (and only a Minister of the Crown) to decide whether the United Kingdom will comply with the interim measure' and to leave out Clause 5(3), the provision that prohibits courts and tribunals from having regard to interim measures when considering applications or appeals relating to removal of a person to Rwanda.

The UK has signed up to the Refugee Convention, which is fundamentally a framework for sharing responsibility for refugee protection amongst its signatory states. Yet through this Bill and the legislation that has gone before it, the Illegal Migration Act 2023 and the Nationality and Borders Act 2022, the government is attempting to pursue a policy that flies in the face of that burden-sharing commitment. The government refuses to abide by its international obligations to process asylum claims fairly and efficiently in the UK. It is crucial that Peers consider the disastrous consequences of this policy position, which is not only driving this Bill but undermining the UK's wider commitment to compliance with international law.

[3] The President of the European Court of Human Rights, Siofra O'Leary, has reaffirmed the fact that states have "a clear legal obligation" to follow interim measures – noting that "where states have in the past failed to comply with Rule 39 indications, [ECtHR] judges have found that the states have violated their obligations." Casciani, D., European court president warns over Rwanda rulings, BBC News, 25 January 2024: https://www.bbc.co.uk/news/uk-politics-68093940.

5. The UK must not undermine the universality of human rights

All of us have human rights, but the Bill entrenches a two-tiered system of human rights protection, by explicitly disapplying key aspects of the Human Rights Act 1998 (HRA) for those targeted for removal to Rwanda. This violates the principle of universality and sets a dangerous precedent for all human rights protections.

We support:

- The Clause 3 stand part amendment of Lord German, Viscount Hailsham, Baroness Lister of Burtersett, and Baroness Bennett of Manor Castle.
- **Amendment 36** (in the names of Baroness Chakrabarti, Baroness Hale of Richmond, the Lord Archbishop of Canterbury) to substitute Clause 3 with a very limited disapplication of section 6 of the Human Rights Act 1998, such that the Home Secretary need not consider the accuracy of UNHCR's advice prior to laying it before Parliament.
- **Amendment 33** (in the name of Lord Kirkhope of Harrogate and the Lord Bishop of Chelmsford) to prevent delay in considering making a remedial order, if a court declares the Bill to be incompatible with a Convention right. Within 28 days, a Minister must make a statement to each House of Parliament about their proposed course of action and move a motion to be debated by each House within a further three sitting days.

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