Amnesty International UK

BRIEFING

Safety of Rwanda (Asylum and Immigration) Bill – Report Stage, Lords

Summary

There are several profound legal and constitutional dangers presented by this Bill. Amnesty International UK (AIUK) urges peers to raise these at Report and make clear that legislation like this is improper and unacceptable.

To do this, AIUK urges support for a number of amendments which would:

- **Restore a basic principle of law** – being that law is applied to facts, and facts are determined according to evidence.

- **Restore a basic constitutional principle** – being that Parliament is the ultimate law-making power, and the courts the ultimate guardian of the proper application of law.

- **Restore a basic commitment to international order** – by reaffirming the UK's commitment to its domestication via the Human Rights Act 1998 ("the HRA") of the regional human rights agreement that it was so instrumental in founding.

- **Restore a basic commitment to the rule of law** – by reaffirming the vital function of both administrative and judicial decision-makers in determining individual cases according to the true facts as shown by evidence that is current.

Support for these amendments is not only vital for matters concerning the Bill, but also crucial to avoid setting any further precedent that these basic principles and commitments may be abandoned by any government now or in future, whether in relation to asylum or any other area of law and policy.

However, it should be noted that AIUK's ultimate position is this Bill should never have been introduced and no amendments – while important at Report – will ever truly right it. On completion of Report, we urge peers to refuse this Bill a Third Reading.

A basic principle of law – that law is applied to facts which are determined according to evidence:

Many speakers in debates on this Bill have highlighted the absurdity of Parliament attempting to fix facts by statute, regardless of the evidence today or tomorrow.[1] Cats are not dogs,[2] the

[1] Baroness Hale of Richmond is amongst participants in debates who have drawn attention to the permanence of a statutory declaration of fact and the impropriety of that: *Hansard* HL, Committee, 19 February 2024 : Col 403

[2] *Hansard* HL, Second Reading, 29 January 2024 : Col 1033 *per* Lord Clarke of Nottingham

grass is not blue nor the sky green,[3] and promises made in a Treaty are at best statements of intent – even assuming genuine commitment to any promise made, true understanding of what is required to fulfil it and real capacity to act upon it.[4] Parliament can declare the opposite. If so, it will declare a fiction. And Parliament should not declare fictions because to do so can only undermine respect for both law and Parliament. The implications of that in the UK and beyond are dismal. They include openly inviting other States, Rwanda amongst them, to regard themselves as equally at liberty to similarly abuse law, truth and any promises they may make.

- Peers can and should therefore reaffirm this basic principle of law by backing amendments 1, 3 and 5 or amendments 4 and 7.

A basic constitutional principle – that Parliament is the ultimate law-maker, whereas the courts are the ultimate guardian of the law's proper application:

This separation of powers[5] is not only vital in the UK's constitutional system, it is a vital constitutional principle globally. As Amnesty International has frequently borne witness, attempts by executives or legislatures – including where a government exercises substantial influence or control over a legislature – to effectively shut down courts and compel administrative bodies to merely serve the executive are at the heart of much human rights abuse over decades and across the world. Ironically, given the context of this Bill, it is precisely this sort of tyranny – including by an "elected dictatorship"[6] – that, together with conflict, is the primary cause of people seeking asylum, including in the UK.[7]

- Peers can and should therefore reaffirm this basic constitutional principle by backing amendments 8 and 12 or (if amendments 1, 3 and 5 are made) amendment 19.

A basic commitment to international order – the HRA:

The HRA is the cornerstone of how human rights are made real and enforceable in the UK. It enables the UK courts to take primary responsibility for the application of a regional human rights agreement – the European Convention on Human Rights – rather than leave that to the Court in Strasbourg. By giving this function to UK courts, the HRA allows the European Court of Human Rights to take a more distant, supervisory and deferential role;[8] while signalling the UK's commitment to a regional order across 46 European States from Iceland to Azerbaijan, from which only Russia (suspended following its invasion of Ukraine in 2022) and Belarus remain absent. The wider significance of that regional order is, amongst other

[3] *Hansard* HL, Second Reading, 29 January 2024 : Col 1020 *per* Lord Kerr of Kinlochard

[4] International Agreements Committee, 4th Report of Session 2023-24, *Scrutiny of international agreements: UK-Rwanda Agreement on an Asylum Partnership*, HL Paper 43, January 2024

[5] To which, amongst others, Baroness Hale of Richmond succinctly drew attention: *Hansard* HL, Committee, 19 February 2024 : Col 402

[6] To which Lord Clarke of Nottingham made express reference: *Hansard* HL, Second Reading, 29 January 2024 : Col 1033

[7] As the latest official statistics, published on 29 February 2024, confirm, the great majority of people seeking asylum in the UK, if and when permitted to have their claims decided, are found to be refugees. The grant rate for all initial decisions made by the Home Office during 2023 was 67%.

[8] *Hansard* HL, Committee, 19 February 2024 : Col 403 *per* Baroness Hale of Richmond

things, affirmed by the observer status of States including the USA, Canada, Mexico and Japan within the Council of Europe. Excluding the operation of the HRA is undermining of that order – in significant part established by the UK – sends an alarming signal to the rest of the world, and threatens the human rights of people in the UK.

- Peers can and should therefore reaffirm commitment to international order and the HRA by backing amendment 20 or amendment 21.

A basic commitment to the rule of law – that administrative and judicial decision-makers determine individual cases according to the facts and evidence:

The principles and amendments discussed above establish the basic position concerning the rule of law and its critical place in constitutional arrangements. That decision-makers – including both administrative and judicial – shall determine cases according to fact established by evidence that is current is a basic and necessary commitment for the rule of law to apply in practice.[9] It is also basic to any real commitment not merely to law, but also to truth.[10] In what is already a grossly unequal world, it is especially important that both law and truth are respected and promoted. Arbitrary power, as Amnesty International bears witness to daily, thrives in the absence of this. Again, there is dreadful irony in the context of this Bill – which, as currently drafted, is so demeaning of law and truth. The right to seek and enjoy asylum is a right that exists solely for the purpose of securing the life and liberty of people for whom arbitrary power is a cruel reality – a reality that is always advanced by a disrespect of law, frequently supported by a disrespect of truth too.

- Peers can and should therefore reaffirm commitment to the rule of law by backing amendment 33.

The wider picture and what is at stake:

AIUK urges peers to radically amend this Bill at Report – not because this in itself can save the Bill, but rather because it is necessary to make clear the fundamental importance of, at least, each of the principles and commitments to which this briefing refers. Nonetheless, we will be forced to urge peers to refuse this Bill its Third Reading. This is because – even if all that can and should be done at Report were to be done – the Bill will remain an affront to international law with disastrous consequences domestically and internationally.

The Refugee Convention is founded upon a principle of shared responsibility. That principle is given effect by the Convention, including its demand that all States cooperate with its guardian – UNHCR.[11] Yet, as UNHCR have emphasises, responsibility is not shared when relatively rich States, which still receive relatively few of the world's refugees, seek to cast off

[9] As succinctly elaborated by Baroness Hale of Richmond: *Hansard* HL, Committee, 19 February 2024 : Col 402ff

[10] To which many speakers have referred, but especially: *Hansard* HL, Committee, 14 February 2024 : Col 301ff *per* Lord Deben

[11] Article 35, 1951 Convention relating to the Status of Refugees ("the Refugee Convention"), in respect of which every statement of that body concerning this Bill and its predecessors, and concerning the agreement with Rwanda to which this Bill relates, makes palpable the lack of cooperation of the UK Government

the limited asylum responsibilities that fall directly to them. That responsibility includes managing a functioning system for determining asylum claims, providing asylum to those entitled to it, and bearing the responsibilities that come with all of that. Simply casting off all responsibility permanently for such people, as this Bill currently seeks to do, is wholly destructive of this basic principle on which the whole international asylum system depends. A similar, though moderately less strident, strategy of off-shore processing – by which States seek to immunise themselves from much, if not all, responsibility to and for people seeking asylum on their territory pending determination of their claims – is incompatible with that principle for essentially the same reasons.[12] If richer States merely exacerbate even further the huge disparity between, on the one hand, the responsibilities being taken by many far poorer States and, on the other, the ones they do or will accept for themselves, it is inconceivable that this system can long survive. It is already under great strain.[13]

Each of the following concerns are co-dependent on the maintenance of that system:

- respect for international law,
- the urgent rights of people fleeing persecution, and
- combatting the human exploitation that maintains a vice-like grip upon so many of these people – both on journeys seeking safety and all too often in places where that safety ought to have been found.

When that system falters, more people are at risk at home, on journeys and in places where they seek safety. More people are compelled to attempt more journeys seeking somewhere that may provide the safety that is theirs by right. More people are made vulnerable to the exploitation that is already thriving off a refusal to meet the needs of people who must flee.

There is a final truth that the Government and others need to face. Parliament has now been presented with three Bills in three successive parliamentary sessions, each more disastrous for refugees and respect for asylum law than the last. The reason for that lies with the policy the Government first adopted in December 2020 on the final departure of the UK from the EU – a policy of refusing to take responsibility for asylum claims made here. That policy has been ruinous in many ways, but successive Home Secretaries have responded to that ruin not by abandoning the policy but by ratcheting it up. That has merely accelerated the ruin. Peers cannot repair the policy by this Bill. But it is vital they recognise where this Bill and its predecessors originate; and set their efforts to not merely opposing these Bills but opposing the underlying policy that keeps bringing such Bills before Parliament.[14]

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[12] The dire human consequences of off-shore processing as introduced by Australia over a decade ago are a matter of record, notwithstanding attempts by that country to hide what it has done and is doing from the eyes of journalists, doctors and lawyers, amongst others. However, even were the consequences less dreadful, the refusal to abide by a responsibility that is shared would remain stark and highly damaging.

[13] The UN Secretary-General's remarks to the Human Rights Council on 26 February 2024 identified that the world is becoming less safe by the day. While his words were directed to the root causes of refugee migration, they emphasise the awful consequence at this time of undermining an international system designed to safeguard refugees.

[14] See Amnesty International's briefing *Gambling with Lives: how a bad policy wrecked an asylum system*, February 2024