



Safety of Rwanda (Asylum and Immigration) Bill – Clause 2 Amendment(s)

House of Lords Report Stage

March 2024

Introduction

1. JUSTICE is a cross-party law reform and human rights organisation working to strengthen the justice system. It is the UK section of the International Commission of Jurists. Our vision is of fair, accessible and efficient legal processes in which the individual's rights are protected and which reflect the country's international reputation for upholding and promoting the rule of law.
2. This briefing is in support of **amendments 9 and 12** to the Safety of Rwanda (Asylum and Immigration) Bill (**'the Bill'**) which would make the declaration that Rwanda was a safe country for asylum-seekers rebuttable by credible evidence to the contrary. These amendments are supported by Lord Anderson, Lord Carlile, the Bishop of Manchester and Lord Clarke.
3. The amendments would restore the role of the courts and our independent judiciary in the United Kingdom's constitutional settlement to review the legality of government policy. This is an important point of principle and central to respecting the rule of law in this country.

Proposed Amendments

4. The amendments would retain the Government's legal presumption that Rwanda was a safe country. However, if an individual presents credible evidence to the contrary, then the presumption would no longer apply and both Home Office decision-makers and

domestic courts/ tribunals would be required to consider that evidence and come to a factual assessment about the safety of Rwanda.

5. The proposed threshold is credible evidence, a widely used standard in assessing asylum claims. For example, [Home Office policy](#) highlights the following as 'credibility factors': sufficiency of detail and specificity, internal consistency and plausibility. Only evidence that meets this standard would be sufficient to rebut the presumption that Rwanda was a safe country.

The Supreme Court decision

6. The Supreme Court found unanimously that Rwanda was *not* a safe country after a comprehensive analysis of the available evidence and the likely risk of refoulement (returning asylum-seekers to their home country without adequately considering their asylum claim). This included compelling evidence of actual previous refoulement by the Rwandan Government from UNHCR, a lack of due process in the Rwandan asylum legal system and serious human rights abuses. The [Supreme Court concluded](#) that defective asylum practices in Rwanda would likely not change '*at least in the short term*' (§93).
7. The Supreme Court found that the Government's Rwanda policy was unlawful as it breached a number of international treaties that the United Kingdom has ratified; including the Refugee Convention, the European Convention on Human Rights, the UN Convention against Torture and the UN International Covenant on Civil and Political Rights.
8. As JUSTICE and ILPA [submitted in joint evidence to the International Agreements Committee](#), the newly agreed Treaty is unlikely to be enough to overcome the significant concerns of the Supreme Court, especially over such a short period of time. The [International Agreements Committee concluded](#) that the Treaty was '*unlikely to result in fundamental change in the short term*'. The proposed amendments would at least allow the courts to reconsider the factual position on the ground.

The Rule of Law

9. Independent, judicial scrutiny is at the cornerstone of the UK's constitution and its longstanding commitment to the rule of law. As John Laws said, '*judges must ensure, and have the power to ensure, that State action falls within the terms of the relevant published law*' (The Constitutional Balance, 2021). At heart of any definition of the rule of law is the notion '*that here every man, whatever be his rank or condition, is subject to the ordinary*

law of the realm and amenable to the jurisdiction of the ordinary tribunals' (A.V. Dicey, Introduction to the Study of Law of the Constitution, 1915).

10. However, clause 2(1) of the Bill would prevent executive decisions from being scrutinised by domestic courts, in all but very limited circumstances. It places a statutory obligation on Home Office officials and our independent courts and tribunals to conclusively, and indefinitely, treat Rwanda as a safe country for the UK to remove asylum-seekers to. Domestic courts, including the Supreme Court, would be prohibited from re-considering the factual issue recently and comprehensively determined by the Supreme Court.
11. Clause 2(3) of the Bill makes clear that a court or tribunal is prohibited from considering any review or appeal that seeks to argue that Rwanda is not a safe country, irrespective of what evidence they may have to the contrary. Clause 2(4) further prohibits a court or tribunal from considering an argument that Rwanda will remove an individual in contravention of the Refugee Convention, that an asylum claim will not be fairly and properly considered or that Rwanda will not act in accordance with the agreed Treaty.
12. It is important to stress that this would apply indefinitely into the future, including if there was *actual evidence* of Rwanda breaching its Treaty obligations, committing refoulement against asylum-seekers removed from the UK or unfairly dismissing individual asylum claims. Such evidence should plainly be considered by domestic courts. The only remedy for individuals in the Bill is a challenge based on an individual's personal circumstances, which the Government [has described](#) as an '*extremely limited route*' requiring '*wholly exceptional individual circumstances*'.
13. As Lord Clarke of Nottingham [said during](#) the Committee stage debate, '*[The Government] have decided to invoke the sovereignty of Parliament and to ask both Houses to pass legislation that declares that the facts are contrary to those which the Supreme Court declared to be the factual situation. The facts are to be regarded as the facts the Government state for the indefinite future, whatever happens from now on, unless or until this legislation is amended or repealed – if it ever is...I continue to be completely flabbergasted by the constitutional implications of the Government acting in this way*'.
14. The proposed amendments would restore the longstanding constitutional role of domestic courts to review the legality of government policy, ensuring the Government is not 'above the law'. Credible evidence of refoulement in Rwanda should plainly be considered by domestic courts and, in such litigation, the Government would be able to argue that the new Treaty addressed these concerns. Supporting these amendments would uphold the

rule of law, rather than unilaterally overturning detailed factual assessments of our most senior judiciary.

Conclusion

15. JUSTICE urges Peers to consider the serious consequences for the rule of law in this country if the Bill is passed unamended and support **amendments 9 and 12** to Clause 2 in the names of Lord Anderson, Lord Carlile, the Bishop of Manchester and Lord Clarke.
16. If you have any questions about this briefing, or the Bill more generally, please do not hesitate to contact Philip Armitage, Public and Administrative Lawyer at JUSTICE by email - parmitage@justice.org.uk.