Safety of Rwanda (Asylum and Immigration) Bill

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. As we have set out previously, JUSTICE has very serious concerns about the Rwanda Bill as it is an attack on independent judicial scrutiny, contrary to the rule of law and in breach of the UK's international legal obligations. We have also set out in further detail our deep concerns with Clause 2 of the Bill and the lack of oversight of executive decision making by our domestic courts.

3. In light of these concerns, JUSTICE supports amendments which would ensure there is greater consideration of the factual situation in Rwanda, that domestic courts are able to fulfil their proper constitutional role in compliance with the rule of law, that the UK remains compliant with our international legal obligations and greater Parliamentary oversight.

Amendments

The Supreme Court declared that Rwanda was not a safe country

4. 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) and the House of Lords International Agreements Committee (IAC). As JUSTICE and ILPA submitted in joint evidence to the International Agreements Committee, the newly agreed Treaty it 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'.*

5. On this basis, we would support the following amendments which would require greater scrutiny of the Government's assertion that Rwanda is a safe country on the basis of the agreed Treaty:

   a) **Amendments 1, 3 and 5** in the name of Baroness Chakrabarti, which look to ensure that the Secretary of State considers all relevant evidence and provides a statement to Parliament on whether Rwanda is a safe country. The Government has as of yet not adequately addressed the issues raised in the Supreme Court judgment.

   b) **Amendments 7, 8 and 13** in the name of Lord Hope, which state that removals to Rwanda should not take place until the Secretary of State confirms to Parliament that the Rwanda Treaty has been fully implemented. This is important because much of the proposed legal changes in the Treaty, for example the new proposed asylum law in Rwanda have yet to be published.

   c) **Amendment 48** in the name of Baroness Meacher, which means the Act expires on the same date as the Rwanda Treaty is terminated. In light of the reliance of the unusual statutory declarations of fact in the legislation, and lack of court oversight, it is important that such legislation does not continue if the Rwanda Treaty is terminated.

The rule of law and domestic court oversight

6. 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 judgment and our concerns about the Treaty, we support amendments that would allow domestic courts to review whether they considered Rwanda to be now a safe country.

7. As set out in our briefing specifically on Clause 2 of the Bill, independent, judicial scrutiny is at the heart 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).

8. We therefore urge Peers to support the following amendments which would restore the longstanding constitutional role of domestic courts to review the legality of government policy, ensuing the Government is not 'above the law':

   a) **Amendments 9 and 12** in the name of Lord Anderson which make the declaration that Rwanda is a safe country rebuttable by credible evidence to the contrary. This would ensure that individuals could put forward evidence to challenge the Government's statutory presumption that Rwanda was a safe country, avoiding for example the perverse situation where Rwanda had to be treated as safe in domestic law even if there was current evidence of refoulement or human rights breaches.

   b) **Amendment 33** in the name of Baroness Chakrabarti and Baroness Hale, which restores the proper role of domestic courts and tribunals to consider whether Rwanda is a safe country for the individual person or a group of persons to which they belong and whether Rwanda will remove them to another country in breach of its international obligations. It also removes the restrictions on the courts ability to grant interim relief to prevent or delay removal. Interim relief powers are of

critical importance to prevent potential serious ill-harm in Rwanda and ensure the UK complies with its international law obligations.

The UK's international law obligations

9. 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, the Bill is abandoning the UK's international obligations and the UK's place on the international stage.

10. 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.

11. On this basis, we would support the following amendments that seek to ensure the Bill is compatible with international law:

    a) **Amendment 2** in the name of Lord Coaker which stresses that one of the purposes of the legislation is to maintain full compliance with domestic law and the UK's international law obligations.

    b) **Amendment 20** in the name of Baroness Chakrabarti and **Amendment 21** in the name of Lord German which seek to ensure full protection of the Human Rights Act. The Human Rights Act is the primary vehicle for ensuring that the UK Government acts compatibly with its obligations under the ECHR in domestic law. Such issues should be considered first by domestic courts, rather than requiring individuals to go straight to the European Court of Human Rights.

    c) **Amendment 18** in the name of Baroness Chakrabarti, which requires a Minister to come to Parliament within 28 days of a s4 HRA declaration of incompatibility to explain how the Government intends to proceed. In light of the Government

being unable to make a declaration that the Bill is compatible with the ECHR, this would ensure that any declaration by the courts that the legislation was not compliant with the UK's human rights obligations was swiftly addressed.

d) **Amendment 38** in the name of Baroness Chakrabarti which seeks to ensure that interim measures of the European Court of Human Rights are complied with and can be considered by courts/ tribunals. Interim measures are binding on the UK under international law and should be fully complied with.

Parliamentary oversight

12. In light of the controversial nature of the Bill, it is important that there is strong Parliamentary oversight of the provisions which are hugely troubling for the rule of law and our international reputation. On this basis, JUSTICE urges Peers to support the following amendment:

a) **Amendment 45** in the name of Baroness Chakrabarti which replaces the commencement of the Bill being triggered by the entry into force of the Rwanda Treaty and instead requires the Secretary of State to make regulations appointing a commencement date which must be approved by a resolutions of both House of Parliament. It also provides that the Act can only be in force for an initial two-year period. Any extension must again be approved by Parliament. It is important that there are formal mechanisms for reviewing whether the legislation should continue on the statute book in light of how it has been operating.

Conclusion

13. JUSTICE urges Peers to consider the serious consequences for the rule of law in this country if the Bill is passed unamended. The above amendments would at address some of the serious consequences of the Bill being passed into law.

14. 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.

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March 2024