HOUSES OF PARLIAMENT

# Joint Committee on Human Rights

## Uncorrected oral evidence: Safety in Rwanda (Asylum and Immigration) Bill, HC 435

Wednesday 17 January 2024

3 pm

Watch the meeting

Members present: Joanna Cherry MP (Chair); Lord Alton of Liverpool; Lord Dholakia; Baroness Kennedy of The Shaws; Baroness Lawrence of Clarendon; Baroness Meyer; Lord Murray of Blidworth; Jill Mortimer MP; Bell Ribeiro-Addy MP.

Questions 4 - 45

## Witnesses

I: Zoe Bantleman, Legal Director, Immigration Law Practitioners' Association (ILPA); Tyrone Steele, Interim Legal Director, Justice; Enver Solomon, Chief Executive, Refugee Council; Dr Mike Jones, Executive Director, Migration Watch UK.

II: Rashmin Sagoo, International Law Programme Lead, Chatham House; Professor Sarah Singer; Refugee Law Initiative, School of Advanced Study at University of London; Professor Tom Hickman, Barrister, Blackstone Chambers, and Professor of Public Law, UCL.

# Examination of witnesses

Zoe Bantleman, Beatrice Stern, Tyrone Steele and Dr Mike Jones.

Q4 **Chair:** Good afternoon and welcome to today's meeting of the Joint Committee on Human Rights. We are a cross-party committee and a Joint Committee, which means we have Members from both the House of Lords and the House of Commons. Today, we are taking evidence on legislative scrutiny of the Safety of Rwanda (Asylum and Immigration) Bill 2023. Unfortunately, our evidence session last week was cut short, so we have reinvited some of the panel from then—Zoe Bantleman, Enver Solomon and Tyrone Steele—to give evidence on our first panel, alongside Mike Jones. After that, we will move to a second panel of legal experts. We will focus our questioning on the compliance of the Rwanda Bill with the UK's human rights obligations, particularly those arising from the European Convention on Human Rights and the refugee convention.

I thank our witnesses for joining us and will introduce them in no particular order. Zoe Bantleman is the legal director of the Immigration Law Practitioners' Association, Enver Solomon is the chief executive of the Refugee Council, Tyrone Steele is the interim legal director of the organisation Justice, and Mike Jones is the executive director of Migration Watch UK.

The Rwanda Bill has a requirement for Rwanda to be treated "conclusively" as a safe country. Starting with Justice, do you think this requirement complies with the United Kingdom's human rights obligations?

***Tyrone Steele:*** In simple terms, no, we do not think it is compliant with the UK's human rights obligations. I will start by taking a step back and referring to the Supreme Court's judgment from last November. It was asked to look at the Rwanda policy, as it then was, in the round, and to make a comprehensive and factual assessment of it and its compliance with not only the convention—the human rights obligation—but a number of domestic laws here and other international treaty obligations.

The judgment found the policy overall to be wanting on a number of levels, given the fact that Rwanda has poor compliance with its international obligations, poor understanding of the refugee convention, a poor human rights record, poor access to legal remedies in country, a lack of independence for the judiciary and legal representatives there, past failures with respect to other international agreements—notably non-compliance with a similar agreement with Israel some years before—and poor monitoring arrangements. On that basis, the Supreme Court's unanimous decision in November was clear that Rwanda is not a safe country. Indeed, there are a number of risks vis-à-vis breaches of human rights obligations, particularly Article 3.

On the Bill itself, it is clear that the Government probably agree with my assessment that Rwanda is not a safe country and that the agreement—this approach—would violate human rights principles and obligations. I say this given the fact that the Government are not able to give a Section

19(1)(b) statement on the face of the Bill to affirm that that compliance is present. I say that, given the fact that, as I am sure we will discuss later, the Government comprehensively, in a number of ways, try to exclude the courts from looking at the facts on the ground by trying to legislate this fiction that Rwanda is safe. I also say it given the fact that they attempt to disapply a number of the HRA obligations, which are clearly set out. So, in the round, my answer would be a firm no.

Q5 **Chair:** I suppose the Government would argue that, as a result of the Supreme Court decision, they have revisited their agreement with Rwanda and sought certain changes to the nature of the agreement, and sought assurances, which allows them to justify their view that Rwanda will be a safe country. What would you say to that argument?

***Tyrone Steele:*** If that were the case and the Government were so confident that that was the reality, they would not be afraid of independent judicial oversight. That is how these things work in this country: the Executive make those decisions and the policy, and the courts make that assessment.

I refer the committee to the new analysis put out by the UNHCR just two days ago, updating its analysis of the situation in Rwanda. It again affirmed that it is not a safe country. That evidence was very persuasive to the Supreme Court in making its decision and its finding that Rwanda was not safe, so I think it should attract a fair bit of weight in these circumstances, too.

Q6 **Chair:** Zoe, my question was really: do you think the requirement for Rwanda to be treated conclusively as a safe country by the UK complies with UK human rights obligations?

***Zoe Bantleman:*** In order to answer that, two sub-questions have to be asked. First, is Rwanda in fact safe? Secondly, does putting in legislation that Rwanda is conclusively safe breach our international human rights obligations?

I will tackle the first of those questions. Of course, ILPA does not operate on the ground in Rwanda—we have not conducted a fact-finding mission there—but we have carefully scrutinised the UK-Rwanda treaty and the policy statement that was initially published in December and updated just last week. We have also looked carefully at this new safety of Rwanda Bill. Looking at these three documents in the round, it is our firm view that the asylum partnership arrangements with Rwanda, including this treaty in its new legal form, do not meet the concerns of the Supreme Court regarding Rwanda's asylum system and the real risk that individuals would face ill treatment in Rwanda.

I will expand on four evidence-based reasons why. The first is that the treaty does not erase Rwanda's poor human rights record or the profound human rights concerns that remain, including that refugees have been ill treated when they have expressed criticism of the Rwandan Government. The UK Government provide no evidence at all in their policy statement that the human rights situation has changed in Rwanda, including since

the Court of Appeal's judgment in June and since the Supreme Court's judgment in November, particularly in relation to political oppression.

In fact, the policy statement states that they are still working with Rwanda to address "concerns around the limited space for political opposition and critical voices" and that "UK government Ministers and officials have regularly raised these issues, emphasising the need for more open political space". This suggests that the Supreme Court's concerns about political repression in Rwanda remain unresolved.

There has also been new evidence since the High Court's decision in mid-2022. For example, the events of 2023 report of Human Rights Watch, published this month, begins: "Commentators, journalists, opposition activists, and others speaking out on current affairs and criticising public policies in Rwanda continued to face abusive prosecutions, enforced disappearances, and have at times died under unexplained circumstances". The report then discusses Rwanda's military support for the M23 armed group in the eastern Democratic Republic of the Congo.

The BBC reported five days ago that Burundi has closed its borders to Rwanda after accusing its neighbour of funding rebel attacks. In his September 2022 annual report, the UN Secretary-General highlighted intimidation and harassment against a Rwandan refugee living in Australia following his engagement with the UN working group on enforced or involuntary disappearances. Home Office statistics, as we all know, show that six Rwandan nationals have been granted asylum in the UK since the memorandum of understanding was signed in April 2022.

The second reason is that the monitoring mechanisms in the treaty are wholly insufficient to guard against refoulement. There is no requirement for the Joint Committee to act on recommendations of the monitoring committee, and its own recommendations are non-binding. Monitoring remains undermined by the Rwandan Government's suppression of criticism, and the treaty requires some complaints to be made directly to a representative of the Rwandan Government. The treaty also provides no interim injunction process in the event of its breach, only lengthy arbitration proceedings. Our Supreme Court's fundamental concern, at paragraph 93 of its judgment, is that: "Such arrangements may be capable of detecting failures in the asylum system, and over time may result in the introduction of improvements, but that will come too late to eliminate the risk of refoulement currently faced by asylum seekers in Rwanda".

The third issue, very briefly, is that the mere existence of a treaty with Rwanda does not ensure that it will comply with these bilateral agreements, when in the past, according to our Supreme Court, it has failed to comply with its multilateral treaty obligations, including under the UN Convention against Torture and the International Covenant on Civil and Political Rights, in addition to the principle of non-refoulement in the refugee convention. If we are correct that there remains a real risk of refoulement, it is crucial to note that neither the UK treaty nor this Bill secures any suspensive legal remedy under Rwanda's legal system, or

ours, if an individual is removed to Rwanda and faces refoulement or ill treatment there. However, it bars our courts and tribunals from even contemplating this possibility.

My fourth and final point is that signing a treaty with Rwanda does not engender a culture of appreciation or understanding of obligations under the refugee convention, particularly when Rwanda has been hosting refugees for so many years and this appreciation or understanding has yet to arise.

Q7 **Jill Mortimer:** You are both adamant that Rwanda is not safe at all for refugees and asylum seekers, so how comfortable are you with the UNHCR using it as its emergency transport mechanism base for refugees and asylum seekers, and even funding scholarships for refugees to attend Rwandan universities?

***Tyrone Steele:*** The Supreme Court was happy with the UNHCR's evidence. That is our domestic courts taking that factual assessment. If the quality of the UNHCR's evidence is good enough for our Supreme Court, then it is good enough for me.

**Jill Mortimer:** That is not the question. I completely agree that the Supreme Court looked at UNHCR evidence and had to apply it under previous case law and give it proper weight. I asked how comfortable you are that the UNHCR used Rwanda as its base—it flies asylum seekers and refugees in great numbers—for its emergency transport mechanism and even funds scholarships for refugees to attend Rwandan universities. If it is so unsafe, how comfortable are you that the UNHCR does that?

***Tyrone Steele:*** Justice is not a refugee charity and we do not work in country, so we do not have a view on the UNHCR.

Q8 **Jill Mortimer:** How comfortable are you personally that it is doing that when you think Rwanda is so unsafe?

***Enver Solomon:*** I am happy to come in, if you do not mind. There are two things here. The Migration and Economic Development Partnership—the Supreme Court judgment was looking at this agreement—is wholly different from the UNHCR's arrangement to house refugees in Rwanda affected by the war in the Democratic Republic of the Congo.

**Jill Mortimer:** These people have migrated to Libya.

***Enver Solomon:*** If you would let me finish, this is in relation to regional conflicts and its operations there. That is a different refugee arrangement from the Migration and Economic Development Partnership. I do not think the two are comparable, because they do not involve an individual sovereign state receiving people who have come under the UN convention seeking asylum and then being transferred under an agreement, in this case the MEDP, against their will to be put through a different sovereign state's asylum system. That is a wholly different arrangement to what you are referring to. Given that, I do not think they are compatible.

**Jill Mortimer:** But it is still a fact of whether it is safe—

***Enver Solomon:*** But you must accept my point that those two arrangements are entirely different and therefore not compatible.

**Jill Mortimer:** So there can be arrangements in Rwanda that are safe.

***Enver Solomon:*** The two arrangements are not the same and therefore not compatible. You are asking whether Rwanda is safe. A whole evidence pack released by the Government on Thursday says that "while Rwanda is now a relatively peaceful country with respect for the rule of law, there are nevertheless issues with its human rights record around political opposition to the current regime, dissent and free speech". That is the conclusion of the British Government's assessment. In addition, Rwandan nationals have come to the UK—Home Office data shows this—applying for asylum in the UK, their cases have been assessed by Home Office decision-makers and they have been granted asylum in the UK. That relates to the conclusion in the evidence pack published by the Government last Thursday.

**Jill Mortimer:** Thank you for your comprehensive answer, but I was not asking whether Rwanda is safe; I was asking about your level of comfort with the UNHCR putting refugees into its universities. It clearly thinks that Rwanda is safe if it is giving scholarships.

***Enver Solomon:*** It is a legitimate question, but my organisation does not operate or provide services for refugees in Rwanda. You should ask the UNHCR that question. I am making the point from the expertise in my organisation that that arrangement is different and not comparable, as I have explained, to the externalisation arrangement under the MEDP. Our assessment of the externalisation arrangement under the MEDP is that it is not appropriate and is in breach of those individual human rights. You will have to ask the UNHCR whether it is comfortable with its role.

**Jill Mortimer:** So you cannot answer the question.

***Enver Solomon:*** No, its role is legitimate in the way that it plays it in other nation states across the world.

**Chair:** That was a point well made and a question answered.

Q9 **Lord Alton of Liverpool:** Thank you all very much for coming to the committee today; it is helpful to have your advice. I have a question for Ms Bantleman in particular, arising out of her exposition.

You may know that the Joint Committee is also currently carrying out an inquiry into atrocity crimes and the way in which we deal with their consequences. This has been on my mind. I visited Rwanda in the aftermath of the genocide there, when 1 million died, and saw the mass graves. As recently as this morning, at a round table I chaired here in Parliament, a witness said that there are still five genocidaires, who were complicit in the Rwandan genocide and are here in the United Kingdom, but who have not been deported back to Rwanda, because it would not be safe to do so because of the risk of torture.

There is obviously an inherent contradiction in this and in the Bill before us, which touches on the question that you have just been asked about safety. This is not about the United Nations; this is about United Kingdom policy. How do you respond to that, and how do you see this contradiction—not extraditing people who were involved in the genocide but who could, we are told, be at risk of torture?

**Chair:** Who would feel most comfortable answering that? Could we have a volunteer to take it?

***Zoe Bantleman:*** I can perhaps start an answer. As I would say in relation to Ms Mortimer's question, the real question for the United Kingdom is what its human rights and other international legal obligations require of it, not what other states require of it or what the legal obligations are of international organisations, but those of the UK. If moving, extraditing or deporting any individual to another country breaches the UK's international obligations, ILPA would say that the United Kingdom should not breach its obligations. It has signed up to an international rules-based order voluntarily and it should not seek to undermine that.

***Tyrone Steele:*** I have nothing further to add.

Q10 **Bell Ribeiro-Addy:** I know that the Government would probably say that we should not worry about the Supreme Court decision because of the treaty and any additional measures that they have put in place but, having looked at the decision, I want to understand what it would take to make Rwanda a safe country. How long would it take to make it safe? Who should we be listening to on this and who should the Government be taking advice from on whether it is safe? Even if it were safe, would it be within international law to remove people there?

***Zoe Bantleman:*** In a way, I feel that my colleague, Mr Steele, has already answered that question insofar as it should be for the court to re-examine the matter based on up-to-date factual evidence from the ground to see whether it is convinced by these new safeguards and guarantees, including the treaty and any new evidence that the Government or anyone else may wish to put before it. It could reassess whether Rwanda is, in fact, safe now or whether that is purely a legal fiction, as it is in the Bill.

***Dr Mike Jones:*** That is a really interesting question that circles back to the opening question: is Rwanda a safe country? What impact does this have on human rights? There is a misconception that the purpose of the Rwanda Bill is to undermine the authority of the Supreme Court and, if you like, reinterpret its decision. That is not true; it is the complete opposite. The Rwanda Bill is based on the Rwanda treaty, which was signed in December 2023. The purpose of the Bill or treaty was to respond constructively and intelligently to the decision made by the Supreme Court, which is the very opposite of what the chattering classes are talking about. In essence, it addresses the human rights concerns.

The core issue here is the principle of non-refoulement. The Rwanda treaty basically makes it impossible for the Rwandan Government to deport anyone to their country of origin or to an unsafe country. If the Rwandan authorities want to deport an individual, whether for security concerns or because they are unimpressed by their asylum application, they have to send them back to the United Kingdom.

**Bell Ribeiro-Addy:** Does that in itself make Rwanda safe?

**Chair:** We had quite a lot of evidence at the beginning about whether it is safe. I will just pick up on what Dr Jones said. You said that its purpose is not to undermine the authority of the UK Supreme Court, but many lawyers argue that its purpose is to undermine the authority of courts across the United Kingdom, in my jurisdiction of Scotland as well as England and Wales, by taking away from them the right to assess at a point in the future whether Rwanda is safe. The UK Supreme Court made its assessment at the end of last year, but I put to you that the Bill undermines the authority of all our courts in the UK, because it prevents them from assessing in the future whether Rwanda is, in fact, safe. That factual exercise would more normally be carried out by a court than by a government.

***Dr Mike Jones:*** I think it is very much the opposite. If anything, it reaffirms the authority of the Supreme Court, because the Rwanda treaty, which James Cleverly signed in December, addressed the specific concerns of the Supreme Court about refoulement. There are also measures relating to the monitoring regime and the appeals process. Obviously, the Appeal Court now needs one judge from Rwanda and one from the Commonwealth, so the treaty actually changed the facts on the ground. The purpose of the Rwanda Bill is to build on the treaty and remove any ambiguity around the implementation of the Rwanda plan, so I would argue the opposite.

Q11 **Baroness Lawrence of Clarendon:** Dr Jones, you were saying that Rwanda cannot deport anybody to another country because it has signed the treaty. Who will be there to monitor what it does? Once the refugee is in Rwanda, whatever is happening within the country, if Rwanda decides to move people to XYZ, you are saying that the treaty will stop them. But who is there to monitor that and to make sure that it does not happen?

***Dr Mike Jones:*** That is a really good question. We will have people there monitoring it.

**Baroness Lawrence of Clarendon:** Will they be from the UK?

***Dr Mike Jones:*** Yes, of course. Even before the Home Secretary signed the treaty, it was very difficult for Rwanda to deport anybody to their country of origin. This point was made in the Court of Appeal by Lord Burnett. He said that most of these people have destroyed their documents and are being sent to Rwanda with British documents. Rwanda does not have the bilateral agreements in place to deport these

people to their country of origin, so it would be very difficult for them to violate the principle of non-refoulement.

Now, with the treaty, it is set in stone. It is just easier for the Rwandan authorities: will they deport somebody to Iraq or Afghanistan, where there may be issues, or just send them back on a flight to Heathrow? It is a simple solution for them.

**Chair:** We are going to revisit the issue of safety with the legal panel, which is coming next, so I would like us to move on to some other issues.

Q12 **Lord Dholakia:** Parliament recently passed the Illegal Migration Act, which places a duty on the Home Secretary to make arrangements to remove many asylum seekers without their cases being considered. Where would they be sent to if Rwanda refuses to take them?

***Enver Solomon:*** This is a really important question, and I am glad you asked it. The data released by the Home Office on 2 January shows around 55,000 people in the asylum system who have come since either 7 March when the Bill was published or 20 July when it received Royal Assent. Of those tens of thousands of people, the vast majority—up to 50,000—arrived here irregularly. Under the Illegal Migration Act, they are not entitled to any kind of legal settled status in the UK. So the UK Government have created a new perma-backlog of people who are in the system, as we speak.

Now, the vast majority of those will have arrived irregularly and would, under the Illegal Migration Act, be sent to Rwanda as a third safe country. Therefore, the question that arises is: could Rwanda take them? From what has been said by the Government to date, we know that there will probably be hundreds in the first year and perhaps thousands in the second year. There is no way in which those tens of thousands of people who are eligible for removal, and who do not have a pathway to legal settled status in the UK, can be sent to Rwanda.

That raises the question: where will they go? My understanding is that they will be bailed into the community, because we do not have the places in detention—there is a maximum of 3,000 places. My organisation, the Refugee Council, and a number of other organisations—up to 40—working with people in the asylum system whom we carried out research with, are very clear that those people will be at risk of disappearing. One organisation has already reported that up to half of those it works with have already chosen to no longer remain in contact with the authorities. Some of those will be victims of trafficking and torture, and they will be at risk of exploitation and abuse. The consequences of that are very serious. That is as a result of the situation that is currently playing out, because it is very difficult to implement this legislation and make it work.

I remind the committee of a quote from the Government—indeed, from the Prime Minister—that I saw on social media: "If you come to the UK illegally, you will be DETAINED and removed to a safe country within

weeks". Those people—up to 50,000—in the system who will be eligible for removal under the Illegal Migration Act cannot be detained and removed to a safe country within weeks. So I suggest that that claim is somewhat misleading and fictional.

***Zoe Bantleman:*** I will add something small on the Illegal Migration Act. Without an ability to remove individuals to third countries with which they have no connection, the Illegal Migration Act is, on the whole, unworkable. If Section 59 of that Act is commenced, only a narrow set of individuals can be removed back to their own countries: those from EEA countries, Switzerland and Albania, and from India and Georgia, if they are added the list of safe states as the Government intend. Every other national can be removed only to a third country because of the inadmissibility policy, which is what creates the perma-backlog to which Mr Solomon referred. Because these individuals will not have their protection claims and human rights claims considered, they will be left in permanent limbo, unless there is a third country to which they can be removed. As we all know, Rwanda is the only country the United Kingdom has a third-country removal agreement with.

Q13 **Baroness Kennedy of The Shaws:** I want to know what scope the Bill will leave for a domestic legal challenge to the removal if you are an individual. I would be interested to know what is left if the Bill is introduced. Is it enough to ensure that the individual's human rights are protected? I see that Dr Jones waved at me as though he is keen to answer, so go ahead and tell us: what scope would the Bill leave for someone to make an individual challenge to their removal?

***Dr Mike Jones:*** That is a great question. The first myth I talked about is the idea that the Bill is there to challenge the authority of the Supreme Court. Some people are bullish on the Rwanda Bill and believe that it is completely watertight and bullet-proof against litigation. That is potentially not the case. The legislation is intelligent, and it is a consistent response to what the Supreme Court said, but, although it disapplies aspects of the Human Rights Act, it does not disapply Section 4. Under that, opponents of the Rwanda Bill could make a complaint to one of the higher courts and say, "Listen, this is incompatible with the European Convention on Human Rights". If the judges rule in favour of that, they can issue what is called a declaration of incompatibility, and Parliament cannot ignore that, because these are domestic courts. That is one way in which the Bill can be challenged.

The second way refers to Clause 4, under which asylum seekers can appeal their deportation to Rwanda. If they say, "I don't like Rwanda. It's not a safe country", that is declared null and void, because, generally speaking, it is a safe country. However, if an asylum seeker says, "I acknowledge that Rwanda is regarded as a safe country, but, for me personally, due to my individual circumstances, I may be unsafe due to irreparable harm that may be caused", that claim has to be taken very seriously and there has to be an evidence-gathering process.

There are two opinions on this. Individuals such as Robert Jenrick believe that it may lead to a merry-go-round and an attrition of legal challenges. However, the Prime Minister believes that, actually, Clause 4 applies to a very small number of cases—he cited medical grounds as one of his reasons. I will not say which side is correct on this, but it creates an avenue for appeals to be lodged to slow down the process. It is a logjam in the system. So although the Rwanda Bill is an intelligent response to what the Supreme Court said, there are legal loopholes and avenues for litigation there.

Q14 **Baroness Kennedy of The Shaws:** Just so you know, we have had evidence from the Lord Chancellor—the Minister for Justice—acknowledging that individuals can still appeal on the grounds that, for example, their personal circumstances would make Rwanda an inappropriate place for them to be sent to. There are different grounds, and medical grounds are certainly included in that. Would any of the rest of you like to say anything on this issue? What is the implication of the Bill for access to the courts? In Britain, one of the things that we take pride in is that people have access to courts when they feel an injustice is taking place or their rights are not being respected.

***Zoe Bantleman:*** I hope you will forgive me for refreshing this Joint Committee's memory, but a few months ago, in June 2023, it published a report on the Illegal Migration Bill. It had grave concerns about the denial of access to a fair and effective asylum system, in violation of Article 13 of the European Convention on Human Rights. This violation of Article 13 remains. Clause 4 is not the saving measure that the ECHR memorandum makes it out to be. To prevent an infringement of Articles 2 and 3 of the European Convention on Human Rights, the ability of the Home Office and a court or tribunal to consider whether Rwanda is safe is restricted to claims based on compelling evidence specifically relating to a person's particular individual circumstances. It also severely limits or excludes the ability of our courts and tribunals to grant interim remedies.

The Joint Committee was also very concerned with the age-assessment and age-dispute process, and that people with pending age disputes might be removed to a third country under the Illegal Migration Act. Again, this concern remains, because the UK-Rwanda treaty specifically contemplates the idea that an individual who is an unaccompanied child, with an age dispute ongoing with legal proceedings, is removed to Rwanda, and the courts find that that child is indeed a child and ask for them to be returned. The treaty has a specific provision in such a circumstance, so I again say that the committee's concerns there remain live.

I will briefly paint a picture of what a domestic legal challenge would look like, if you look at the Illegal Migration Act and this Bill. I do that, because you can see that the Bill contains nothing about any appellate mechanism. It does not change any of our law regarding how to appeal under the Bill. It only says that general claims cannot be considered but individual circumstances can be, and a court or tribunal can review that.

Let us imagine that a young person, Rishi, arrives next week on a small boat. He is still freezing, he is screened at Manston, and he receives a removal notice under the Illegal Migration Act that says that he is to be removed to Rwanda. He has eight days, beginning with the date of that notice to then make a suspensive claim. It also says that any protection or human rights claims that he wishes to make would be inadmissible. If he says that he is a child of 16 years but is disbelieved, the age assessment procedure will not stop him being removed to Rwanda.

What can Rishi do to stop his removal to Rwanda? He can try to urgently make a claim and say that Rwanda is not safe for him. He can try to make a human rights claim, but that is not suspensive, and he can try to make a suspensive serious harm claim under the Illegal Migration Act. However, under this Bill, he can make a suspensive serious harm claim or a human rights claim only on the basis of compelling evidence. So we have a new evidence threshold introduced, which is very vague and in undefined terms. In the Illegal Migration Act, we were promised that a statutory instrument would tell us what it meant, but that has still not been forthcoming.

Rishi can then lay out his individual circumstances, but no circumstances in relation to Rwanda's general circumstances. He cannot even say that Rwanda would refoule him back to his home country. It is foreseeable that a large number of people will not be able to express themselves with compelling evidence in that eight-day timeframe, particularly given the current issues in relation to legal aid.

If Rishi wants to say that Rwanda is not safe for all LGBTQI+ people, that they would face discrimination there—the Home Office's own country information note accepts that there is discrimination against LGBTQI+ people in Rwanda—it is unclear on the basis of the Bill whether that would count as something in relation to the general safety of Rwanda or something on the basis of his own individual circumstances. Of course, even if he is a victim of modern slavery or human trafficking, we know that the Illegal Migration Act still permits him to be removed and denies him any protection and leave.

If the Home Office or the courts or tribunals agree that Rwanda is not safe for him on the basis of his individual circumstances, that does not free the Home Secretary from the duty under Section 2 of the Illegal Migration Act to make arrangements for his removal. He cannot be removed to Rwanda, but the duty still exists. If the Home Office or the courts or tribunals consider that Rwanda is personally safe for Rishi, whether because he does not have compelling evidence or because they think it is not safe only on a general basis, he has no domestic remedy, if his Article 2 or 3 rights would be breached under the European Convention on Human Rights.

If Rishi is to be removed under the Illegal Migration Act—I start this example by saying that he received such a removal notice—Clause 4(6) is abundantly clear. The full ouster in Section 54 of the Illegal Migration Act applies. So the courts and tribunals cannot grant any interim remedies

with the effect of preventing or delaying his removal to Rwanda. He has no domestic remedy with automatic suspensive effect, which is in clear violation of Article 13 of the European Convention on Human Rights.

Q15 **Baroness Kennedy of The Shaws:** Young Rishi is 16, and he has arrived on our shores. Let us say that he is someone who has suffered torture in Syria, which is renowned for its torture, and has already had a breakdown because of that. In the days before he is due to be transported out, he has a psychotic episode. Is it possible for him to argue that Rwanda is not a safe place to go to, given that 25% of its population have mental health problems, and it is not possible for him to be adequately serviced by a system of healthcare that has only a small number of psychiatrists and an even smaller number of people who are psychologically trained?

***Zoe Bantleman:*** I would say that it is possible to argue it, on the basis of the definition of a safe country in Clause 1. A safe country is defined as a country to which, if a person is removed, they would not face treatment there that would violate the UK's international legal obligations. So if the argument—it would, of course, depend on Rishi's specific medical concerns—is that, if he were to go there, he would face treatment that would breach Article 3 of the European Convention of Human Rights or even Article 8, possibly such an argument could be made that Rwanda was not safe for him. But I go back to what I said about LGBTQI+ people: the "individual" and "general" is at a level of undefined vagueness that us lawyers would not be happy with, I am sure. It would probably be for the courts to interpret those terms.

Q16 **Baroness Kennedy of The Shaws:** Would asylum seekers be able to bring claims in the European Court of Human Rights, if they cannot bring them domestically—if they are excluded from that possibility, if an ouster clause prevents that?

***Zoe Bantleman:*** Certainly, yes. The fact that Section 3 of the Human Rights Act is disapplied in relation to this Bill only sets us on a further trajectory for a collision course with the European Court of Human Rights. We cannot prevent convention breaches on a domestic level. Then we have the issue of very limited domestic remedies available. Of course, nothing in this Bill or the treaty prevents a final judgment from Strasbourg, which would of course be binding on the UK due to Article 46 of the European Convention on Human Rights. So yes, we can expect claims to be made and final judgment from Strasbourg.

***Enver Solomon:*** It is really important to pull back here, because this is a critical point for the committee to understand. I want to make this point.

**Chair:** I want to hear it.

***Enver Solomon:*** The premise of this whole conversation is that people arriving here are guilty until proven innocent. They are guilty because the Act blanketly assumes them to be illegal immigrants, and withdraws their right to asylum. It deems that their right to asylum is no longer a legitimate right; in effect, it is extinguished in the rights of UNHCR

because of the inadmissibility provision. So it is effectively saying, "You're guilty until proven innocent". The due process that we are talking about is a limited due process that gives them the opportunity to say, "No, I'm innocent. I'm an individual who the UK Government should still protect within that narrow due process that the legislation allows for, because it says that all asylum claims are inadmissible".

That is an important point, because half of the people we are talking about here are from Afghanistan, Eritrea, Iran, Sudan and Syria. The current grant rate at initial decision for those nationalities is more than 80% or 90%. So they are refugees who are being told that they are not refugees—that they have to prove that they are refugees—even though the current system determines them to be refugees. They are not illegal immigrants but refugees. In effect, we are saying to them, "No, you're an illegal immigrant. Prove to us you are refugees", even though the current system says to them that they are refugees.

Q17 **Jill Mortimer:** I shall be very brief, because I have to leave. I would take issue with that, because anybody who arrives on a small boat arrives here illegally. That is the first thing.

***Enver Solomon:*** No, they do not. They arrive here irregularly.

**Jill Mortimer:** Forgive me, but it is my time now, Mr Solomon.

**Chair:** I think we have a fundamental disagreement. Anyone who arrives here arrives illegally, in terms of UK law, but they are not arriving illegally in terms of international law.

**Jill Mortimer:** But we are in the UK.

**Chair:** Yes, but the United Kingdom has signed up to many international treaties. It is trite law, and any undergraduate law student knows that merely by changing your domestic law you do not change your international law obligations. I think most lawyers would recognise that. I just want to make that point. I accept your view that, in terms of UK law, it is an illegal arrival. What Enver was saying was that, in terms of international law, it is not.

**Jill Mortimer:** But under domestic law, they are illegal arrivals. I want to strip away a lot of this academic and hypothetical argument, but I shall stick with Rishi, who has been tortured and is in France, about to get on a boat. To go back to the kernel of the intent of this Bill—assuming that Rishi, when he is in a camp in Calais, will have been advised of his rights by refugee charities over there—do you think that being told what would happen to him under this Bill would deter him from entering a contract with an illegal gang, probably to go into some sort of slavery arrangement over here to pay for his crossing, and stop him from setting foot in that boat and undertaking an incredibly dangerous crossing? Will it deter him? A yes or no answer, please, because I have to leave.

***Enver Solomon:*** No.

**Jill Mortimer:** You do not think it will deter him. Okay.

***Enver Solomon:*** No, and I am happy to share with you the evidence from 40 organisations that draw the same conclusion, including organisations that work with people in northern France.

***Tyrone Steele:*** I might add also the evidence from the Home Office, with respect to the value for money of the proposal and the fact that there had to be ministerial intervention for it to be signed off.

**Jill Mortimer:** It is not about money. I am just interested in stopping those kids getting—

***Tyrone Steele:*** From the Home Office's perspective, it would be value for money if it had a deterrent effect, but that was not what the Home Office found.

***Enver Solomon:*** I absolutely share your desire to stop those individuals taking very dangerous journeys and paying money to people smugglers. My argument is that this is not the right way to stop to that vile trade.

Q18 **Baroness Lawrence of Clarendon:** Zoe talked about the different stages of appeal that an individual has to go through in order to gain refugee status. The question is: who pays for all that? People coming here will not have the resources to challenge any of the things that are happening to them. How do they get over that hurdle, because they come here with no money? How do they challenge the different statuses they have to face?

***Zoe Bantleman:*** The Illegal Migration Act included, at a very late stage, an amendment that amended the Legal Aid, Sentencing and Punishment of Offenders Act to allow individuals to access legal aid once they are in receipt of a removal notice under the Illegal Migration Act. Additionally, under LASPO in any case, individuals were able to access legal advice in relation to making a protection claim. On that basis, individuals who do not have the means should be able to access legal aid in England and Wales. There are also legal aid arrangements in Northern Ireland, and Scotland has more liberal legal aid arrangements than we do in England and Wales.

**Baroness Lawrence of Clarendon:** So they will have some resources to challenge.

***Zoe Bantleman:*** The issue is that there are not legal representatives able to assist them, but that is a separate matter for a different committee.

**Chair:** Dr Jones, you wanted to come in on this point broadly.

***Dr Mike Jones:*** On the previous question, will it work if it goes through amended or unamended? That is the core issue. Potentially, the Rwanda plan can work, but it depends on one crucial factor. Deporting a critical mass of people depends on numbers. The purpose of the Rwanda plan is

to make it economically irrational to pay €4,000, or whatever it is, to a criminal to cross the English Channel, because if you end up in Rwanda, obviously, given the differences in GDP per capita between Europe and Rwanda, that is not a good use of money.

Has it worked in the past? Australia had a similar scheme with the island of Nauru. Admittedly, it was pushed by policies that took place at the same time, but the numbers went from the tens of thousands to zero within the space of a few years. The number of deaths in the ocean was zero. It worked. It is quite funny listening to people speak here, because the exact arguments—that it is expensive, that it will not work, that it is impractical—were made in Australia by the opposition party.

**Chair:** It is a very different set of circumstances in Australia, is it not? The solution they chose is very different from the solution chosen here.

***Dr Mike Jones:*** We could not have a push-back policy in the English Channel.

**Chair:** It was contemplated, but then decided against.

***Dr Mike Jones:*** You are referring to the armoured jet skis. No, you could not have that in the English Channel, because they are not boats; they are dinghies and they will capsize.

**Chair:** Pushing people back to where they came from in the sea seems to me to be very different from taking people who have arrived here and deporting them—to use your language—across the world to Africa. It is bit different. It is hard to compare the two.

***Dr Mike Jones:*** I am referring to the outsourcing policy, which is similar to what we have with Rwanda. That worked, and the opposition party were against it, but then they looked at the numbers and found that you cannot argue with the statistics. There was a bipartisan consensus. The only party that is against this policy now is the Green Party.

***Enver Solomon:*** I am not sure that is the case. I met with the Australian Immigration Minister from the current Labour Government, and he opposed that policy. He explained that the critical factor was push-backs, which you could not adopt, as you say Chair, in the UK channel. The conditions and circumstances in Nauru and some of the offshoring were different because it was offshoring, not outsourcing, so they remained under the jurisdiction of the Australian state when in Nauru. Here, we are talking about them not remaining under the jurisdiction of the UK state. They are being passed over to another jurisdiction—the Rwandan state—which is a fundamentally different arrangement.

**Chair:** Thank you.

Q19 **Bell Ribeiro-Addy:** We have established that the UK is a country on planet earth, and we have signed up to international laws, which means that we have to comply with them. Do the ouster clauses in this Bill prevent the courts from reviewing any challenge to the safety of Rwanda

comply with respect for the rule of law, and do they have any broad implications for human rights?

***Tyrone Steele:*** No, I do not think they are compliant with human rights and the rule of law. I will give a couple of examples of the ways in which the Bill attacks and ousts judicial oversight.

First, as I have highlighted, the Bill tries to strike out the ability of our domestic judges to consider any appeal or review to the extent that it is brought on the grounds that Rwanda is not a safe country, including claims or complaints that Rwanda will or may remove a person to another state, contravening its international obligations, including under the refugee convention, that a person will not receive a fair and proper consideration of their asylum or claim in Rwanda, or indeed that Rwanda will not act in accordance with the treaty.

That is outwith the ability of our domestic courts to look at. It is one of the ironies of the Bill that you have the disapplication of, or a kind of disregard for, international law through the Bill, and the expectation and requirement that, first, a treaty will fix will things, and secondly, that Rwanda will hold to its word. There seems to be an inherent contradiction in that approach.

Secondly, with regard to the limitations on the jurisdictions of our courts through these broad "notwithstanding" provisions that override rules of domestic law, common law, the Human Rights Act and any interpretation of international law by the court or tribunal, we have already heard of the disapplications of Sections 2 and 3 and 6 to 9 of the Human Rights Act.

The third important point, which others have iterated previously, is about the empowerment for Ministers to ignore Strasbourg interim measures; I think that is at Clause 5. It is worth reminding the committee that interim measures are used, or can be issued in exceptional circumstances, only where there is an imminent risk of irreparable harm, such as the risk of torture and ill-treatment. Parties can request the European Court of Human Rights to reconsider its decision, or to lodge a fresh request if those circumstances change.

The Bill introduces a panoply of different options to try to oust the domestic court's oversight. I reiterate the point I made at the beginning: that it is not credible to suggest that the Government actually consider the factual or legal situation to have changed on the ground, because otherwise why would they be afraid of this oversight? The potential precedent this Bill could set speaks to wider constitutional and rule of law issues that already pervade in the country in the policy that is being made. The Bill represents a marked escalation.

I will end with a quote from Lord Reed, the current President of the Supreme Court, talking in the Unison case about the principle of the rule of law and the fact that at its heart, "courts exist in order to ensure that the laws made by Parliament … are applied and enforced … people must in principle have unimpeded access to them. Without such access, laws

are liable to become a dead letter". That warning from Lord Reed, in the Unison Case, is particularly pertinent today in the context of this Bill.

Q20 **Bell Ribeiro-Addy:** Rwanda's Foreign Minister said that without lawful behaviour by the UK, Rwanda would not be able to continue with partnership, so what would be the likely consequence for this policy if the domestic courts, or the European Court of Human Rights, found that it was not compatible with international law?

***Tyrone Steele:*** I cannot speak for Rwandan foreign policy, but if that is the line he gave, and our courts find that it is in contravention or, indeed, that it goes all the way to Strasbourg—I think that was the point that was made before—the limitation of appeal rights here means that appeals go straight to Strasbourg, so ignoring all our domestic courts and going straight to the Strasbourg court will become incredibly more likely.

Again, I have seen nothing that would convince me that Strasbourg would take a different view from the Supreme Court, or indeed that enough factual elements have materially changed that the Supreme Court would decide differently today.

Q21 **Lord Murray of Blidworth:** Thank you. I first declare an interest as a barrister practising in human rights and public law.

**Baroness Kennedy of The Shaws:** Practising what?

**Lord Murray of Blidworth:** Human rights and public law. Mr Steele, in your view, in the event that this Bill is brought into force and a challenge was brought on a rule 39 application by a person subject to a removal flight, would the European court make a Rule 39 indication? I am interested to hear all your answers to this question.

***Tyrone Steele:*** In terms of judicial independence, that is a matter for the court, but if there was a risk of serious and irreparable harm, it would be entitled to do so. That is the issue in this Bill: it politicises the response to that, empowering Ministers to ignore them. That does not change the fact that under international law they would still be binding, but that is the political reality of what the Bill would imply.

**Lord Murray of Blidworth:** I wanted your view on the evidence you have in relation to Rwanda and what the Supreme Court said. In your experience, in the circumstances that I suggested in that hypothetical example, would a Rule 39 indication prohibiting a flight be granted?

***Tyrone Steele:*** Well, that was the case last summer, so I see no reason why that would not be the case now.

**Lord Murray of Blidworth:** So it is a yes. Mr Solomon, what would your answer be to that question?

***Enver Solomon:*** I think it could be, but unless one sees the particular circumstances of the individual case, it is difficult to make a clear and definitive assessment.

***Zoe Bantleman:*** I agree with my colleagues. I am sure Lord Murray agrees that, as barristers, we do not like to pre-judge what a court may or may not do.

**Lord Murray of Blidworth:** Barristers are paid to advise and suggest what a court may do, so that is what I am asking your opinion on.

***Zoe Bantleman:*** It may very well do so, yes.

***Dr Mike Jones:*** If Section 4 of the Human Rights Act is not disapplied and domestic courts issue a declaration of incompatibility—

**Lord Murray of Blidworth:** My question is about the Strasbourg court.

***Dr Mike Jones:*** If it does that, an intervention from the ECHR is much more likely. It would give it a much more robust case for challenging the British Government. One must remember that if one is an immigration restrictionist who wants the Bill as watertight as possible, the concern is with the domestic courts, because, from time to time, nation states ignore the judgments of the ECHR. In one recent example, France deported an Uzbek national called MA—we do not know his full name. The ECHR said "Listen, you can't do this". The French shrugged their shoulders and went on with it. The principle of parliamentary sovereignty means that Parliament is supreme to the ECHR.

There is, of course, another debate about whether we should be part of a transnational court. That debate can get quite heated. However, in terms of ensuring that the Rwanda plan works, the domestic courts are more important in this matter.

Q22 **Baroness Meyer:** Given the number of people who are crossing the channel and the number of people who die crossing the channel, it is obvious that it is all a little bit unsustainable. You believe that this Bill will not deter people from coming illegally to this country and will not deter the human traffickers. What do you suggest?

***Enver Solomon:*** That is a very good question. The first thing I would suggest is not to overpromise and underdeliver. When faced with a complex policy challenge and a complex set of international circumstances, it is incumbent on us to be realistic and evidence-informed in how we approach it.

I would not claim that there is a single magic bullet based on an agreement with a third-party state that will solve the problem. I would seek to adopt a multi-pronged approach based on a number of things. First, it is vital to identify the criminal activity of people smugglers and to have an international joined-up intelligence and enforcement approach, in the same way that countries seek to tackle the illegal drugs trade. Secondly, it is imperative to look at providing more safe routes, because otherwise, as has been clearly articulated by Members of this Parliament, people will continue to make dangerous journeys.

Conservative MP Tim Loughton, a member of the Home Affairs Committee, made the very pertinent point that refugees come from many parts of the world, seeking to reach safety in Europe and the UK, and there is no safe passage, no safe route, for them to do that. There is no mechanism such as the one whereby the Ukrainians had to apply for a visa to come to the UK. That is why my organisation is advocating the piloting of a humanitarian visa, targeting in particular countries where large numbers of refugees are coming from, such as Iran, Syria, Eritrea or Afghanistan, and piloting that to see whether there is a mechanism whereby people could apply for a humanitarian visa to come here safely and then go into the asylum process.

Fourthly—this is critical—there needs to be a bilateral agreement with the French. The French Government have acknowledged this. The last time—it is many years back—when a British Home Secretary sought an agreement with the French to look at what was happening with the Sangatte camp, there was an agreement that the British Government would provide safe passage for a specific number of people and allow them to come to the UK. We need some kind of shared arrangement that would allow people to come via safe passage as part of a responsibility-sharing agreement with the French.

Finally, this is a complex issue in the way that climate change is. The majority of refugees stay in neighbouring countries. Actually, only a fraction of them come to Europe. We need to recognise that the majority who are coming to Europe are coming from countries where there is instability and human rights abuses. Unless there is a collective global effort to create stability through conflict resolution and the promotion of rights in those countries, the number of refugees from those specific countries is unlikely to decrease.

**Baroness Meyer:** So you are making some countries preferential to other countries. In a sense, you are saying that we have to set up a system whereby we should be able to accept all the people who want to come into this country, which is, in a sense, unsustainable.

**Chair:** I do not think that is what he was saying. I think he said that we should pilot a humanitarian visa. We have had special arrangements in the past, such as during the height of the Syrian crisis when we took 20,000 Syrians. I do not think he was suggesting that we should take everyone who wants to come.

**Baroness Meyer:** No, but he is saying that we should have more safe routes. At the moment, the conversation in this country, coming from both the Conservative Party and the Labour Party, is that the number of immigrants coming into this country is unsustainable. We cannot accept as many as we would want to. With the Gaza crisis, for instance, you can imagine that if things go badly, more people will want to come. He has not really said how we deal with that.

***Enver Solomon:*** I would say two things. First, it is important to keep this in perspective. The majority of refugees do not want to come to the UK or Europe.

**Baroness Meyer:** But they do, because they come through—

***Enver Solomon:*** If you just let me finish—

**Baroness Meyer:** They come through Italy and France.

**Chair:** Hang on a second. Can we just let him finish, Catherine, because he is giving us some statistics again?

***Enver Solomon:*** Between seven and eight out of 10 refugees stay in neighbouring countries. They do not even try to come anywhere near Europe or the UK.

**The Chair:** Will you give me that statistic again? I missed it.

***Enver Solomon:*** Seven or eight out of 10 refugees will stay in neighbouring countries. That is where the large refugee crises are. A large number of Afghan refugees are Pakistan. They do not come here. We need to keep this in perspective. The idea that has been put forward by some former Home Secretaries, that hundreds of millions of people will come, is just not the reality. That is the first thing.

The second thing is that for those who come to Europe, two things need to happen. There needs to be mechanism to provide more safe routes, but we also need to recognise that it is legitimate for some to seek asylum in Europe under the UN convention and to share that responsibility with our European and western counterparts and uphold the right for them to seek asylum. That does not mean that we will be inundated. Far more people apply for asylum in France, Germany and other European countries.

I take issue with your final point that we cannot take more. People for many decades, including my parents and others from my family heritage, came here as immigrants and political refugees, and this country has not suffered as a consequence. It has continued to prosper, advance and progress. It has benefited from welcoming asylum seekers, looking at their claims fairly and allowing them to stay if they are refugees. Those refugees have gone on to contribute to our communities. The first private hospital on the NHS was bankrolled by an Iranian refugee and opened by a clinical director who was an Iranian refugee.

**Baroness Meyer:** I am not saying anything against that. That was not my point at all.

***Enver Solomon:*** You were suggesting that we do not have the capacity to take any more refugees. Please correct me if am wrong.

**Baroness Meyer:** I am just saying that British voters, both political parties and the European Union are discussing this issue, and everybody

is trying to find a solution to how we control who comes into this country. You do not like this Bill and think that it will not deter anybody, but what is your solution?

***Enver Solomon:*** I put forward a five-point plan.

**Chair:** In fairness to the witness, he has given us three answers. He said to identify criminal activity and have better international joined-up support; to provide more safe routes, as Tim Loughton pointed out in the Home Affairs Committee; and to pilot a humanitarian visa and have bilateral arrangements with the French. I think his overarching point was that the majority of refugees, seven or eight out of 10, stay in neighbouring countries, but that we need agreements with our European counterparts on how we share out fairly the two or three in 10 who come to Europe. He made the point, which I understand to be correct because I have read the stats elsewhere, that other European countries take more than Britain per capita. He then went on to say that Britain has a proud history of taking all sorts of refugees and that the country has not suffered but benefited. In fairness, I think he has answered the question.

***Dr Mike Jones:*** What works and what does not work is a fundamental question. Many politicians talk about smashing the supply chains of the criminal gangs. The Labour Party is big into this, and the Conservatives have recently done a deal with the Turkish Government and there is an academy over there. There is more co-operation with the Germans and so on. This will make some difference at the margins, but ultimately it is like whack-a-mole: if you close down one factory or gang, another pops up. The key is making it economically irrational for people to cross the channel. Rwanda can absolutely work, but you have to deport a critical mass of people. If you do not do that, it will not work.

Q23 **Baroness Kennedy of The Shaws:** How big would that critical mass be?

***Dr Mike Jones:*** It would have to be in the thousands.

**Baroness Kennedy of The Shaws:** Many thousands?

***Dr Mike Jones:*** Yes. If it is a few hundred, then, from the migrant's perspective, the cost-benefit analysis might tempt them that it is worth paying the €4,000 to cross the channel. It is all about incentives and disincentives. Of course, there are other ways of doing this. You could amend the Human Rights Act, which is the nuclear option. Obviously, the Government are not keen to do that; they want to circumnavigate the system through the Rwanda Bill, disapplying parts of the Human Rights Act rather than amending it. For whatever reason, it is very difficult for them to go to the root cause, but that is another option.

There has been much talk of safe and legal routes, but this has already been tried. President Biden has done it in the US. He has a bilateral agreement with the Mexican Government. The Mexicans have agreed to take people back who are in the US illegally and, in return, Biden is taking refugees from Latin America. This is a real-world example. The

figures initially plateaued, so people thought it was working. A few months later, the numbers spiked. The reality is that it has just increased the numbers and the pull factor. Look at what happens in the real world. There is a danger of paralysis through analysis and being too theoretical. We should look at what has happened, what has worked and what has not worked. It is clear that safe and legal routes do not work.

***Zoe Bantleman:*** A different solution that has not been mentioned is that carriers' liability legislation is at the heart of many dangerous journeys. If the intention is truly to end dangerous journeys and deaths in the channel, then altering carriers' liability legislation is the solution. If people arrived here without the appropriate visa authorisation clearance and we had a functioning, efficient asylum system, we could, without the Illegal Migration Act, remove them to their country if they were not going to face—

**Chair:** What phrase did you use at the beginning?

***Zoe Bantleman:*** Carriers' liability legislation. It is what stops people getting on to trains and planes and taking safe journeys.

**Baroness Kennedy of The Shaws:** Carriers' liability will not work with small boats.

***Zoe Bantleman:*** But it would break the people smugglers' business. There would be no business because people could get on a train.

**Chair:** As I understand it, the people smuggling business blossomed because the Government closed down other routes, such as people getting in the back of lorries. That had terrible humanitarian outcomes as well. Let us leave that to one side, as we have some questions on other routes.

Q24 **Lord Alton of Liverpool:** Dr Jones, as you were talking about root causes, I thought, "Yes, that's the key". According to the UNHCR—Lord Murray may correct me on the numbers, as he did on a previous occasion—about 110 million people are displaced in the world at the moment. That takes us back to what Mr Solomon was saying about where we have been before.

In the aftermath of the Second World War, the last time we had such a huge number of people displaced and having to accommodate and rebuild their lives, the international community stepped up with everything from Bretton Woods to the Marshall aid programme and the creation of the European Coal and Steel Community, the Universal Declaration of Human Rights 75 years ago, and the refugee convention in 1951. Winston Churchill took us into those treaties and conventions, because he thought the world had to step up to the plate. We have to be part of the solution, and this imposes collective responsibilities on us.

I will ask about the convention duties, because our mandate as a committee is to look at our obligations under the ECHR, but, first, under the 1951 refugee convention and the need for us to act collectively, what

effect will this Bill have on those obligations? Will it be negative? Is it possible to comply with those obligations or not?

***Dr Mike Jones:*** Both the Court of Appeal and the Supreme Court said that nothing in returning somebody to a safe third country is incompatible with the Geneva convention. The question is not whether this is compatible with the Geneva convention, but whether Rwanda is a safe country.

You have to remember that many of these international conventions, humanitarian obligations and treaties were created in the aftermath of the Second World War and during the Cold War. These treaties were aimed at much smaller groups of people—refugees from Nazi Germany, the Soviet Union, and the various satellite states. Many of the issues we have now—global communications, aviation accessible to everyone, really quick transport and people constantly on the move—were not anticipated by the people who drafted the legislation. Non-refoulement was aimed at refugees from behind the Iron Curtain, because if they were sent back they would be detained, interrogated, have a confession taken out of them and end up either dead or in a gulag. These laws were created for a very different time and place, so the key question is whether they are compatible with the world we now live in after the Cold War.

**Lord Alton of Liverpool:** It is not just about the world, but our duties.

***Tyrone Steele:*** I take a slightly different lesson from the post-Second World War settlement and the various treaties, obligations and conventions that flowed out of it. At its core was an aim to recognise the inherent dignity and value of every human being, born out of the horrors of what had happened.

We are talking about having a salami-slice tactics approach to whittling away human rights for this or that particular group. This is obviously in the Rwanda Bill, and we have seen it in the Illegal Migration Act with respect to Section 3, and in the Victims and Prisoners Bill, which is in the House of Lords at the moment. There has been a consistent attempt to try to undermine and separate particular groups, especially vulnerable ones, from these overarching protections. At its heart, we have to remind ourselves of the importance of that inherent dignity point.

Underpinning the refugee convention too is this principle of global solidarity and responsibility sharing, which makes the system work properly. On the suggestions that Mr Solomon made earlier on the multifaceted approach that would be needed to address this issue in an evidence-based manner, we have to ask ourselves, first, whether international co-operation is necessary and important for that. I would argue that, yes, it is. Secondly, we have to ask: does this Bill and our approach to international treaties and international law make it more or less likely that other countries will interact with us in a productive, useful and trustworthy way? I would argue that it damages that in that respect.

Q25 **Lord Alton of Liverpool:** On the convention duties, we were

disappointed as a committee that Suella Braverman did not come before us to justify her decision not to provide a compatibility statement and to give us an explanation of why that was the case. Do you think that amendments can be laid and are being laid? Indeed, we heard reference earlier to Mr Loughton, who was on his feet during the debate in the Commons at the very moment when we mentioned him. If amendments are made to this, is it possible for us to come to a place where the Secretary of State could sign a compatibility statement? Is that necessary anyway? Is this a desirable thing to do, and do we need to act in concert with others who are still subject to that treaty—the European Convention on Human Rights—at this time?

***Enver Solomon:*** If you are committed to a rights-based approach and the convention, it is important that you ensure that all pieces of legislation are compatible. Otherwise, what is the point of signing up to that rights-based international framework or convention? So, yes, it absolutely is.

I turn to whether the Bill is compatible with the UN Convention on Refugees, not the ECHR. The UN Convention on Refugees is often confused in these discussions, but it is separate. I would argue that the Bill is not compatible, and that was the clear judgment of the UNHCR, which is the international arbiter of the convention. Our domestic courts disagreed with that—their interpretation was different—but the UNHCR's view was very clearly that it is in conflict with the convention.

My final point is very simple. This goes to the heart of who we want to be as a country. I do not think that, as of this day in 2024, it is outdated to want to protect someone from torture or from human trafficking, or someone who is fleeing a conflict that they have been caught up in through no fault of their own. I think that is the right thing to do, and that is essentially what the UN Convention on Refugees is about. That is why we signed it. That is as true today as it was 10 or 20 years ago, and as it will be in 10, 20 or 30 years' time, because that goes to the heart of our worldview and our view of a collective humanity with a collective responsibility to provide protection to victims of heinous abuses.

***Zoe Bantleman:*** On the statement of compatibility point, I draw the committee's attention to what Lord Irvine, then Lord Chancellor, said on 3 November 1997, when the Human Rights Bill, as it was then, was being debated in the House of Lords. He said that, where a statement cannot be made, "parliamentary scrutiny of the Bill would be intense". For this Bill, as for the Illegal Migration Bill, as it then was, scrutiny has not been intense, and we can see from the debate that is currently ongoing that the debate taking place in a Committee of the whole House is different from the type of scrutiny to which the Nationality and Borders Act 2022 was subjected. So it is crucial and fundamental to make further inquiries in relation to the Section 19(1)(b) statement that we have on this Bill and, of course, in relation to the refugee convention.

This Bill, together with the Illegal Migration Act and building on the Nationality and Borders Act 2022, puts at risk the very question of access

to territorial asylum, and it puts in jeopardy the UK's compliance with its international legal obligations under the refugee convention. I am sure that my colleague, Dr Jones, will wish to correct the record at some point in relation to the Supreme Court not turning its mind to the question of Article 31 of the refugee convention in the way the Court of Appeal did.

**Baroness Kennedy of The Shaws:** I do not think that Dr Jones has understood your criticism.

**Chair:** I have noted this. Are you saying that the UK Supreme Court turned its mind to Article 31?

***Zoe Bantleman:*** It did not. That was not one of the particular issues that it addressed in its decision.

**Chair:** So what is your point?

***Zoe Bantleman:*** It did not look at the question of third-country removals and say that, in principle, they are lawful under the refugee convention. The Court of Appeal addressed that specific point, but the Supreme Court's judgment did not, unless I am missing a paragraph. I would be grateful if that were indicated in due course.

**Chair:** Fortunately, the committee has legal advisers, so we can get them to clarify that point. But, in fairness, I should let Dr Jones respond.

***Dr Mike Jones:*** It was a Court of Appeal transcript.

**Lord Murray of Blidworth:** The point was on appeal, so the Supreme Court did not disturb that finding by the Court of Appeal.

**Chair:** Please keep this really small, because we have kept these witnesses much longer than I said we would.

**Baroness Meyer:** To make a correction to Dr Solomon in particular, I do not think anyone in this committee said—this is certainly not what I intended to say—that we should not take care of people who are in genuine need of our help and who have been abused. That is not the point. The point is that what we are examining today is this Bill, and, if you do not like it, the solution you would have put forward.

***Enver Solomon:*** I understand, but, with all due respect, my point is that the convention is fundamentally about granting protection to victims of human trafficking and torture.

**Baroness Meyer:** But it is not about all the people who come.

***Enver Solomon:*** The convention is about allowing someone who has been a victim to have a fair hearing in any jurisdiction that they choose to seek safety in. That is the premise of the convention. My point is that that is not out of date. That is the right thing to do, and it goes to the heart of who you want to be as a country. Under this legislation, the Illegal Migration Act withdraws that right, because it rules all irregular arrivals' asylum claims inadmissible. So a victim of human trafficking

seeking protection in the UK, arriving irregularly, is not able to seek protection under the Illegal Migration Act.

Q26 **Lord Murray of Blidworth:** I want to clarify some points on the Section 19(1)(b) statement. You will obviously all agree that it does not of itself say that the Government think that the proposed Bill is in contravention of the European convention. The effect of signing such a statement is merely that the Government consider that there is no better than a 50% prospect of the Bill being found compliant with the convention. I can say this as someone who has signed a Section 19(1)(b) statement.

**Chair:** In fairness, we have had a letter from the Lord Chancellor stating that that is his view.

**Lord Murray of Blidworth:** The short point is that, as you understand it, the Government say that the Bill is compliant with the convention, but your view is to the contrary.

***Tyrone Steele:*** If the Government were so confident that it was compliant, they would not have tried as comprehensively as they have to remove the opportunity for judicial scrutiny and oversight and to disapply various aspects of the Human Rights Act. At the end of the day, a confident Government who were as sure of their position as they could be would not have tabled a Bill in this form.

Q27 **Baroness Kennedy of The Shaws:** I have a question about the "notwithstanding" clause. The general public will not know what I am talking about at all, so let us make it clear.

According to the Bill, the Bill would apply "notwithstanding" contrary provisions in domestic and international law. So they are going to say, "This Bill overrides that". That includes the Human Rights Act. I want to refer specifically to Section 6 of that Act, which requires "all public authorities to act compatibly with Convention rights". What does that ultimately mean for the UK's compliance with the ECHR? Does disapplication of the Human Rights Act in this Bill have implications for the future of the Human Rights Act? What do you make of that?

***Tyrone Steele:*** I started to make this point earlier. The Bill is the latest attempt to exclude and whittle away rights and protections under the HRA—save, notably, Section 4, as one of my colleagues noted. The committee will recall, I am sure very well, the so-called Bill of Rights and, as I mentioned previously, the attempts to remove Section 3 from the Illegal Migration Act and the Victims and Prisoners Bill.

It is worth recalling, again, that the whole point of the Human Rights Act was to ensure that human rights claims were decided and dealt with in our own domestic courts to "bring rights home", so to speak. This approach has worked well. The response to the Ministry of Justice's independent review and its consultation back when it was considering the Bill of Rights was overwhelmingly positive about the functioning of the HRA and the lack of a need to reform it in any material sense. That has led to a good track record of UK compliance at Strasbourg. I think there

were only four cases against the UK in 2022, with two fining violations, which is a small fraction of the overall caseload of the court.

That is the important context to have in mind. If we have, as now, a legal framework that is helping good compliance and helping public authorities to think in a rights-compliant manner, and on the other hand we have this Bill, which says, "Actually, let's start removing those considerations, or not having them as obligations on public authorities, or not allowing courts to make interpretations in that respect", we will end up having more violations, more breaches and more appeals in cases going directly to Strasbourg, at additional cost and with additional time and additional complications. So you end up with a culture in the Home Office and other departments of undermining and reducing the kind of rights-compliant culture that we should all aspire to have in our public bodies.

**Baroness Kennedy of The Shaws:** Thank you. Do any others want to come in on the likely impact on the Human Rights Act in the longer term, when you see legislation being introduced that will basically override it?

***Dr Mike Jones:*** The Rwanda Bill disapplies sections of the Human Rights Act in relation to illegal immigration policy. However, whether that applies to other areas of public policy or could apply in the future is speculative. Sure, the Bill has implications for managing the borders.

Q28 **Baroness Kennedy of The Shaws:** Do you think it will erode that business of there being this overarching thing that protects individual rights?

***Dr Mike Jones:*** That is a really interesting question, although it does sort of move outside the topic. I am quite libertarian in my outlook. I believe in habeas corpus and the principle of double jeopardy, freedom of speech, freedom of association. I am 100% in favour of that, but since the Human Rights Act was introduced in 1998, many of those basic liberties have been eroded. It has not protected those.

**Baroness Kennedy of The Shaws:** There has been huge protection of victims—victims of crime, of inhumanity, of abuses in many different circumstances. Do you agree with my statement about what it has done for victims?

***Dr Mike Jones:*** I am not saying that it has not protected some people, but there are other liberties that perhaps it has not protected.

**Baroness Kennedy of The Shaws:** Which ones are you saying those are?

***Dr Mike Jones:*** Freedom of speech, for example.

**Chair:** Can I just query that? This is an issue that you and I might agree on, Dr Jones. Some women in this country have suffered detriment in the workplace as a result of their beliefs in the area of gender identity ideology. It is the courts of this country that have prevented those women from losing their jobs by utilising Article 9 on freedom of belief

and Article 10. There has been a huge—and, I find, joyous; that is my personal view—explosion in the jurisprudence in this country on Article 9 and Article 10. So there is an example. I do not agree with you that the Human Rights Act is not working to protect free speech. I think it has—

**Baroness Kennedy of The Shaws:** Habeas corpus has not been affected.

**Chair:** —really been put to work in the last couple of years protecting free speech.

***Dr Mike Jones:*** We have actually gone down the rankings in international indexes on censorship.

**Chair:** My point is that when people want to defend themselves against attacks on their belief or their speech, it is to the Human Rights Act that they turn. Is that not the case? I know we are going off on a tangent here, but I just wanted to challenge your assertion.

***Dr Mike Jones:*** I am playing devil's advocate here. There are people who argue that it has not protected some liberties but has protected others. However, there is a trade-off between this legislation and controlling your borders. People talk about the legislation as though trade-offs do not exist, but they do in the real world, and many of the principles enshrined in the Human Rights Act may make it very difficult to maintain control of illegal immigration and detain and deport.

**Chair:** Equally, when this committee produced its report on the independent review of the Human Rights Act, it found that, by and large, it was working very well. It only recommended some tiny little tweaks, and this committee unanimously agreed with them. That was not just the view of this committee and the view of an elitist panel. To its credit, despite the pandemic, the independent review of the Human Rights Act did some fantastic community engagement across the United Kingdom to get the views of ordinary people—we often, as politicians, get a row for using that phrase—on the Human Rights Act, and it was quite positive.

***Dr Mike Jones:*** I think we are getting slightly off topic.

Q29 **Baroness Kennedy of The Shaws:** Yes, we are. I am interested in your saying that "trade-offs"—you used that expression—were necessary. You are talking about the trade-off that is necessary to erode human rights in order to protect your borders. It seems to me that you can do both; you can chew and walk at the same time.

**Baroness Lawrence of Clarendon:** Can we bring it back once it has been eroded?

***Dr Mike Jones:*** The principle of non-refoulement makes it very difficult to deport people who come to this country illegally from outside Europe, because their countries of origin are deemed unsafe. Even if there is a slight possibility that they could have been mistreated in some way, legally it is very difficult to remove them from the country.

**Baroness Kennedy of The Shaws:** We would not want to, would we?

***Dr Mike Jones:*** If that is your view, that is fine, but there is a trade-off between controlling one's borders and removing people who are here illegally, and following the word of the law on the principle of non-refoulement. I am just saying that the trade-off exists.

***Enver Solomon:*** Going back to your original question, Baroness Kennedy, about whether this legislation is likely overall to send a message that human rights are less important or more important and to erode a rights culture in the UK which the human rights legislation was very much about, on balance there is absolutely a risk of that, because you have very senior politicians, including the Prime Minister, effectively saying that there is one group of human beings who, whatever they have been through, do not have the right to protection in the UK, whether they are victims of torture, whether they are victims of trafficking.

**Baroness Kennedy of The Shaws:** They sacrifice it by coming in a particular way.

***Enver Solomon:*** Exactly. So they are, in effect, second-class global citizens who do not have legitimate rights to protection in the UK. That inevitably erodes the perspective of the importance and paramountcy of individual rights. I agree with you that there should be no tension between legitimately wanting to control your borders and, at the same time, recognising that there are inalienable rights of individuals that need to be taken into account and need to be given a fair hearing and due process. I would argue that that concept of granting people a fair hearing and due process are very British and go to the heart of British values within the UK—

**Baroness Kennedy of The Shaws:** Of course.

***Enver Solomon:*** —whether that is in terms of our unwritten constitution or the historical development of our legislature and our legal frameworks.

Q30 **Bell Ribeiro-Addy:** Two main arguments are always given about this Bill when pushing it forward. One is that the individuals we are talking about are illegal, and the other is about the amount of resources it takes this country to keep them. I think we have touched on this before, but can you confirm whether, under international law, the people we are talking about are illegal and whether there has been any comprehensive assessment of how many asylum seekers this country could support?

***Enver Solomon:*** As the Chair said eloquently earlier, under international law the right to asylum is not illegal. It is a legitimate right to seek asylum in the country of an individual's choosing, to put forward a protection claim, to have it heard with the right legal protections applied and, as part of that process, to have their individual rights respected. There is nothing illegal about that. Broadly speaking, most Prime Ministers, up to the recent few—there have been quite a few recently—have largely respected the right for an individual to come here, seek asylum and put forward a protection claim. That should be continued

today. That is the fundamental point about the convention. It is not outdated for a torture victim to come here and seek protection.

On the point about whether we can afford to process individual asylum applications, we seem to be able to grant £400 million to the Rwandan Government without them looking at any individual asylum cases. Of course we can afford to run an effective, efficient and value-for-money asylum system. We have been running an extremely ineffective and costly asylum system due to poor management, poor political decisions and poor political oversight. That is why the Government have been spending millions of pounds a day on hotels. If we processed cases efficiently, effectively, fairly and based on good-quality decision-making, we would not have had the backlog that led to the use of hotels. We can absolutely afford to run an asylum system.

The vast majority of people who become refugees and seek asylum here go on to stand on their own two feet. Based on our work at the Refugee Council, I can tell you that for most people who come here as refugees, the idea of not being able to stand independently on your own two feet, pay your own way or look after your family is deeply shameful. They do not want to have to live off support from the state. They want to be able to stand on their own two feet. The vast majority are incredibly entrepreneurial; they go on and do that and contribute to communities right across the country.

Q31 **Bell Ribeiro-Addy:** Are any of the assessments made in the general language used when talking about this Bill based on any sort of evidence at all?

***Zoe Bantleman:*** On illegality, I agree with the Chair. Article 31(1) of the refugee convention is abundantly clear: its purpose is to protect, not to exclude, individuals who have breached immigration law and are seeking protection or asylum in the UK. That is its purpose. A good-faith interpretation under the Vienna Convention of the Law of Treaties would result in a protective interpretation of Article 31(1), so they are not illegal under international law.

**Chair:** I will draw this panel to a close, because it has gone on for quite a long time. It has been a very useful exercise and we have covered a lot of ground. I am immensely grateful to all four witnesses for their time and forbearance with quite a lot of questions. Thank you very much.

## Examination of witnesses

Rashmin Sagoo, Professor Sarah Singer and Professor Tom Hickman.

Q32 **Chair:** Welcome back to this session of the Joint Committee on Human Rights, in which we are taking evidence about the safety of the Rwanda Bill. We are joined now by our second panel of witnesses, a panel of legal experts, and I shall introduce them in no particular order. We have Tom Hickman KC, who is a barrister at Blackstone Chambers and a professor

of public law at University College, London. We have Rashmin Sagoo, who leads the international law programme at Chatham House, and we have Sarah Singer, who is professor of refugee law at the Refugee Law Initiative at the School of Advanced Study, University of London. I thank all three of you very much for joining us this afternoon. I think some of you had the benefit of sitting in on the earlier panel. We will be covering some of the same ground, but it is important ground to cover.

The Bill is designed to give effect to the judgment of Parliament that the Republic of Rwanda is a safe country, despite the UK's Supreme Court having concluded just a few weeks ago that Rwanda is not a safe country to which to send asylum seekers. Is it an appropriate step for Parliament to take from a constitutional perspective: to substitute Parliament's judgment for that of the courts? What does it mean for the protection of human rights?

***Rashmin Sagoo:*** On the appropriateness of the decision-maker and what this means for the protection of human rights, I am sure my colleagues will have a lot to say on the constitutional aspects of this, and I may refer to them on those specific points. I would like to paint a couple of big picture points, if I may, to bring home the reality of what we are talking about here.

As a couple of initial opening points, the Government's response to the Supreme Court judgment is a package. We are looking at the Bill today, but there is also the treaty and the evidence pack that has been published. It is also important to remember that the Supreme Court's judgment was essentially a case about the facts. There was no dispute about the law. The court left open the possibility of the policy being implemented in future. The issue was really about the facts on the ground, and whether the diplomatic assurances that had been secured from the Government of Rwanda were credible and implementable in practice. So it was really about what was going on on the ground.

On your question of the appropriateness of the decision-maker, to me we are talking about safety—risk assessments, careful factual analysis, and probing and changing facts on the ground. Often these are really fine and delicate judgment calls that need to be made.

If you bear with me for one second, I have a story to illustrate what I think we are dealing with here. A few weeks ago, my son had an outdoor Christmas concert at his school, and the kids were really excited. They had been preparing and singing their hearts out, waiting for this joyous occasion. All the parents were super-excited. However, the decision as to whether it would go ahead went down to the wire, because there were storms over Christmas. The head teacher had to make a really difficult call on the day, in the hours and minutes leading up to the concert, as to whether it should go ahead. She had to talk to her staff at the school who were assessing whether the playground was safe for the children to have this concert. Has there been tree damage because of the storms? Does the weather forecast predict continuing lightning strikes? Is the water on

the pitch going to turn into ice, which would make it treacherous for the play to go ahead?

This situation required a continuous factual review of the situation on the ground, with members of staff who were also close to the ground, with analysis of all the facts and information that were available to the head teacher. Happily, the conditions were judged to be safe, so the concert could go ahead, and that was wonderful. But if the local authority had said that it had invested so much in its local schools and playgrounds and that it was a safe playground for children to play in and have outdoor concerns, that would not make sense. The decision-maker there is removed from the factual situation on the ground.

This is a completely different situation, but, to my mind, Parliament is being asked to take on a huge responsibility. It is difficult to see how the decisions to be made on such fact and time-sensitive matters can be made in a meaningful way, because the risk assessment decision is usually, in the first instance, for the Secretary of State in this case. In the ordinary course of proceedings, that is why the courts are then also able to review decisions of the Secretary of State: because they have the capacity to probe the evidence that was before the Minister at the time. That is what happens in a Supreme Court case.

The main point for me here is that you cannot divorce Rwanda's safety from the facts on the ground at the relevant time. Then the question is who is the most appropriate decision-maker to be able to probe those facts and to do so in a very acute, time-sensitive way.

I think your other question was about the means of protection of human rights. I have spoken for a while and defer to my colleagues on that.

Q33 **Chair:** Thank you. That is a very helpful answer. Professor Hickman, do you want to give us your comments on this and say what it means for the protection of human rights?

***Professor Tom Hickman:*** I certainly can, but, first, may I very briefly answer the first part of the question, because I understood that it was directed at all three of us?

**Chair:** Indeed.

***Professor Tom Hickman:*** Briefly—I am happy to elaborate—in my view, it is inappropriate and ill-advised for Parliament to determine that Rwanda is safe, or whether Rwanda is safe. Why is it inappropriate? First, the principle of the separation of powers is firmly engaged. In the case of Wheeler v Office of the Prime Minister in 2008, the Speaker of the House of Commons intervened in the case and made submissions in a successful effort to seek the court's restraint on certain issues. The Speaker of the House of Commons said that the principle of the separation of powers "requires the executive and the legislature to abstain from interference with the judicial function, and conversely requires the judiciary not to interfere with or to criticise the proceedings of the legislature". That is not an enforceable legal principle, as it applies to Parliament—of course,

because Parliament is sovereign. But it is a conventional principle, and requires Parliament to show restraint.

If Parliament was simply being asked simply to substitute its view of the facts for Parliament, that would be straightforward interference with the separation of powers. However, as I understand it, that is not quite the position. The Government purport to respect the principle of the separation of powers, which is precisely why the Government are saying that circumstances have changed. The hidden premise of that argument is that it is necessary to respect the separation of powers.

The difficulty is this. Parliament is effectively being asked to exercise a judicial function, to assess evidence, to look at detailed facts and, effectively, to distinguish the Supreme Court's judgment, to say that things have moved on and it is not binding on Parliament—I do not mean in a non-legal way—in making its judgment. In my view, that is an inappropriate exercise for Parliament to conduct. It is a judicial function. There might be circumstances in which Parliament has no option but to do that, but the difficulty here is that the matter will go back to the courts. This Bill does not prevent Parliament from assessing whether removing people to Rwanda is safe. It allows them to declare the legislation declaring Rwanda safe incompatible. So the matter is going to go back to the courts anyway.

Indeed, the Government could go back to the courts tomorrow. They could restart, or say that they are going to restart, removals to Rwanda, there would be application to court to stop that, and the Government could have their argument in court that circumstances have changed and that the judgment of the Supreme Court is no longer binding. They could do that next week. In my submission, therefore, the appropriate place to have those arguments, given that they are effectively judicial arguments, is in the courts, so it is not appropriate for Parliament to engage in that process.

Finally, I said that it was also ill advised. That is for the same reason I have just given: that this is going to go back to the courts, which will decide whether a piece of legislation, if enacted, that says that Rwanda is safe is or is not right.

**Chair:** So you anticipate that there will be some sort of constitutional challenge to the Bill.

***Professor Tom Hickman:*** No, I simply think that there will be—

**Chair:** Or will this arise from individual challenges under Clause 4?

***Professor Tom Hickman:*** An individual who is removed to Rwanda will not be able to stop their removal if the Bill as it stands is enacted. However, the individual will, it seems to me, be able to apply to the courts for a declaration of incompatibility under Section 4 of the Human Rights Act—that by declaring Rwanda safe, their rights under Article 3 have been violated. That will not affect the validity of the legislation

because, under Section 14 of the Human Rights Act, a declaration does not invalidate legislation. But the courts will decide whether or not Parliament got it right.

In circumstances where the Government can go back to court next week and argue that circumstances have changed and that things have moved on, presenting their evidence pack and their treaty, in my very respectful submission it is ill advised for Parliament to make that judgment. It is going to go back to the courts, and the courts will decide. Parliament may as well just avoid deciding on that issue and leave it to the courts.

Q34 **Lord Murray of Blidworth:** Professor Hickman, do you accept that Parliament has the power to legislate to this effect?

***Professor Tom Hickman:*** Of course.

**Lord Murray of Blidworth:** In your view, there would almost inevitably be legal challenges to the Bill once it comes into force.

***Professor Tom Hickman:*** If it comes in its present form. When you say legal challenges to it—

**Lord Murray of Blidworth:** Through the mechanism of individual claims.

***Professor Tom Hickman:*** I think there would be an application for a declaration of incompatibility. It seems to me that the clear intention of the legislation is to leave that on the table. That would not challenge legislation in the sense of seeking to invalidate it, although there may be challenges to try to do that. What I have been contemplating is an application under Section 4 of the Human Rights Act. It is a bit more complicated than that.

**Lord Murray of Blidworth:** So the remedy for that under the Human Rights Act is for the Government to consider whether a remedial order should be made.

***Professor Tom Hickman:*** The remedy the court would grant would be a declaration that the legislation is incompatible.

**Lord Murray of Blidworth:** The remedy that people would seek the Government to do, in the light of such a declaration, would be an order. Is that correct?

***Professor Tom Hickman:*** There would be two options. If a declaration is made under Section 4, it triggers a power under Section 10 of the Human Rights Act for a Minister to make a remedial order to amend the legislation. What has also frequently occurred in the past is that Parliament enacts further legislation amending the Act.

**Lord Murray of Blidworth:** Of course, it is open to Parliament to ignore such a declaration.

***Professor Tom Hickman:*** It is open to Parliament, as a matter of our domestic constitutional law, absolutely.

Q35 **Baroness Kennedy of The Shaws:** In your statement, Professor Hickman, you talked about Parliament taking over a judicial function, assessing evidence in the way that we in our system have courts doing normally. That is not to say that Governments do not, based on evidence, bring in the legislation that they want on policy—obviously—and there are evidential issues involved in making decisions with regard to policy. So that the general public can understand, will you make a distinction between that which is evidentially an appropriate thing to be in the courtrooms and that which is appropriate around the tables where policy is made, based on evidence? How would you make that distinction?

***Professor Tom Hickman:*** I entirely agree with the point being put to me that it is appropriate for Parliament to make judgments of policy, and it is much easier; Parliament is suited to make judgments of policy. But what we are talking about here, as was mentioned earlier, is that there was no dispute about the relevant rule. The Government do not dispute the relevant rule, which is that Rwanda has to be safe. There has to be no real risk to people who are removed to Rwanda that they will face torture or other mistreatment.

No one disputes that as a matter of policy. That is the policy, it is the law, and it is also international law. What we are talking about is whether, in looking at the facts, people would in fact be subject to a real risk. That involves looking in great detail at how the asylum system works in Rwanda, at the different agencies in Rwanda that are involved with and come into contact with asylum seekers, at the human rights record of Rwanda and at the different mechanisms put in place for monitoring, as well as looking at the complaints process. There is a whole raft of facts.

Q36 **Baroness Kennedy of The Shaws:** We will go through that, but I want to ask you this. Some people are in discussions in the Houses of Parliament and are saying, "We are arranging a treaty by which Rwanda is going to make a special commitment to us in Britain that the folk that we send to them will be all right. They won't be tortured; that won't be that done. We'll make sure that it doesn't happen to them. We won't refoule them or involve them in refoulement. We won't send them back to the places from which they've come. We'll make that promise to Britain".

Is it good enough for us to buy with money a special legal system to apply to the folk we are going to send there to comply with law and our standards here, while it might be happening to lots of other people within their system? You know, you train up some judges to deal with the British crowd that is being sent from Britain, because they came in in an irregular way.

Does it satisfy the standards that we would expect in our courts if the promise is simply made with regard to the people we will be sending? Do we care about the question of the whole system, and the questions raised about the capture of the judiciary—that the judges are not impartial,

because they are under the threat of the powers that be? The whole system is corrupted, but you can buy a little bit that is going to be clean and send out your Home Office officials to train people up so they might do it in a particular way. Does that satisfy standards?

***Professor Tom Hickman:*** It may seem morally abhorrent.

**Baroness Kennedy of The Shaws:** It sounds morally deeply abhorrent, but it also sounds illegal to me.

***Professor Tom Hickman:*** But you can buy safety, either by providing money or by giving other assistance to countries. There is a whole history of this country and other countries that want to send people back to their home countries, where they might face a real risk, and they come to special arrangements with those countries that will apply just to those individuals or to a small cohort. That will set them apart from the run of most people who are sent back, to give them special protection. What the courts will be concerned with is whether the individuals who are sent back will be harmed. They, for whatever reason, get special treatment. You may find that that is unfair and reprehensible, and I make no comment on that, but if they are protected, there is no breach of their human rights.

***Professor Sarah Singer:*** I might come in on those questions. The first question was about the appropriateness from a constitutional perspective of Parliament determining that Rwanda is safe. I very much agree with my colleagues that it is traditionally the role of the courts to determine questions of fact, and for Parliament to be taking on that role effectively usurps the court's role and makes it a political decision rather than a fact-finding exercise. There are constitutional implications for that in terms of the separation of powers and the respect to be given to decisions of the courts.

Parliament determining that a country is safe is not unprecedented; we have a list of safe countries in the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004. However, very importantly, first, the approach in that Act has been adjusted, so it is only a presumption of safety, which can be rebutted. That is not the approach taken in this Act, which determinedly qualifies Rwanda as being safe. In this situation, the legislation brought into play to determine that Rwanda is safe comes right on the heels of a unanimous and very clear decision of the Supreme Court. To contradict the Supreme Court in this way is, perhaps, not showing the respect to the court that should be owed as a constitutional principle. Furthermore, the legislation prohibits the UK courts from reopening and considering the question of whether Rwanda is safe.

In the previous session, there was quite a detailed discussion over whether Rwanda is safe now, as a matter of fact. We can have very long discussions about that. But equally it is about what happens in a year's time or in several years' time. What happens if there is a military coup in Rwanda? We have this determination set out in primary legislation that Rwanda is safe, and the courts are not permitted to reopen that or to re-

examine it based on the general situation in Rwanda. That is not an advisable situation for us to be in in this country.

Other very serious constitutional issues are raised, too. There is a very strong likelihood that legislation will put the UK in breach of its international obligations, particularly under the European Convention on Human Rights. We had some quite detailed evidence on that in the last session. This has very serious implications for fundamental rights protection in Northern Ireland, which is specifically protected under the Good Friday agreement and the Northern Ireland protocol. So it has really significant constitutional implications for our relationship with Northern Ireland. I believe that an amendment was proposed in the House of Commons recently by a Member from Northern Ireland, seeking to determine the extent to which this legislation would apply to Northern Ireland.

**Baroness Kennedy of The Shaws:** How could it apply to Northern Ireland?

Q37 **Chair:** I am sorry, but we are limited in our time, and we are only on our first question, so I am not sure that we can go down the Northern Ireland rabbit hole. I mean no disrespect to Northern Ireland, because it is extremely important that the agreement that you mentioned is protected.

You gave an example there of the 2004 Act where there are rebuttable presumptions about the safety of countries. Can you think of any other examples of Parliament legislating in a way that contradicts the finding of fact from the courts? I find it hard to think of any, but am I missing something?

***Rashmin Sagoo:*** I have not been able to identify any.

**Chair:** If Parliament were to legislate that the moon was made of cheese, that would not mean that the moon was made of cheese, would it?

**Baroness Kennedy of The Shaws:** Or dogs and cats, as Lord Garnier mentioned.

**Chair:** Yes, that was a very good example: if Parliament were to legislate that a cat can become a dog, it would not make it biologically possible, would it? Okay, let us move on to the next question. I am sorry for speeding things up, but I really want to make sure that we cover the ground, and we want to ask questions about the ouster clause, which I am particularly interested in having this panel's views on. I shall hand over to Bell for that.

Q38 **Bell Ribeiro-Addy:** The Bill will prohibit the courts from considering any claim that Rwanda is not a safe country, and we have gone over that already. Will such an ouster clause be effective? Would it be compatible with the UK's human rights obligation, in particular the right not to be subjected to inhuman and degrading treatment under Article 3 and the right to an effective remedy under Article 13?

***Professor Sarah Singer:*** In terms of whether it will work in practice, I presume that this refers to whether the courts will comply with this ouster clause in not considering those points. Is that what you are asking?

**Bell Ribeiro-Addy:** Yes, I am asking whether it will be effective overall; whether it will stop the courts and, basically, do as intended.

***Professor Sarah Singer:*** It is very difficult to pre-empt what a court would do, but I do not think that the courts could ignore the provision. It is set out very clearly in a piece of primary legislation, so the courts would be bound to follow it. The fact that we have "notwithstanding" clauses as well, which disapply certain provisions of the Human Rights Act, means that it will be very difficult for the court to interpret the provision in a matter that is compatible with the UK's human rights obligations.

The second part of your question was about the implications of the UK's human rights obligations. There are very serious concerns here. Under Articles 2 and 3, the UK has an obligation to ensure that people are not exposed to a risk of torture or inhuman or degrading treatment or arbitrary deprivation of their life. Under Article 13 of the European Convention on Human Rights, any suggestion that someone will be exposed to a real risk of these human rights violations has to be subject to an independent and rigorous scrutiny with suspensive effect. That is precisely what the courts have been prohibited from doing in this legislation.

There was some talk in the last session about the very limited scope for judicial review on the basis of compelling individual circumstances, but that is an incomplete assessment, because it does not enable a court to consider the general situation in Rwanda or the risk that someone will be moved from Rwanda to their country of origin or a third country.

Q39 **Bell Ribeiro-Addy:** That is quite clear. If the panellists do not have anything to add on that, I want to ask you all how you think such an ouster clause would affect the relationship between Parliament and the courts.

***Professor Tom Hickman:*** First, on the ouster clause, it is described as an ouster clause, but it is not a conventional form of ouster clause. Taking a step back, it seems to me, as I read the legislation, that the purpose is to prevent courts from stopping removals to Rwanda on the basis of the general situation in Rwanda. It is not, as I read the legislation, the intention to prevent the courts from opining on the compatibility of the legislation itself with the ECHR. This is the Section 4 declaration of incompatibility point. As I have said, that has no effect on the continuing validity of the legislation.

Preventing the courts from preventing removals cuts against the UK's international obligations. It would not always do so in all circumstances, but the issue here is that you have people who would be alleging Article 3

violations, who would have credible and arguable claims that removal to Rwanda would breach their Article 3 obligations. In the light of the Supreme Court's judgment, it would be very hard to say that they do not have at least credible and arguable claims, notwithstanding the suggested change of circumstances.

The Strasbourg courts' jurisprudence is clear. I mentioned in another forum the case of de Souza Ribeiro v France, and the decision of the Grand Chamber, in which the court said, at paragraph 82, that "in view of the importance the Court attaches to that provision"—that is, to Article 3—"and given the irreversible nature of the harm that might occur if the risk of torture or ill-treatment alleged materialised, the effectiveness of the remedy for the purposes of Article 13 requires"—these are the crucial words—"that the person concerned should have access to a remedy with automatic suspensive effect".

So Article 13 and the right to an effective remedy requires that people who have credible allegations that their removal would expose them to an Article 3 violation should have access to a court that can suspend the transfer. The very objective of the legislation—almost the only thing it does—is to prevent domestic courts from providing a suspensive remedy. Therefore, in my view, the legislation contravenes Article 13 of the European Convention on Human Rights, for that reason.

***Rashmin Sagoo:*** I agree on the potential breach to Article 13. Perhaps a bigger picture concern is where this is taking us as a country, with our tradition of having, hitherto, strong respect for the rule of law, domestically and internationally. I am sure this will come up further in our discussions, but an Act of Parliament cannot alter obligations that have been entered into on the international plane. The UK has traditionally gone to great lengths to ensure that its domestic laws are compliant with its obligations in international law.

However, the concern here, to take a step back from the Bill itself, is that the big picture view is that there has been a drip-feeding of the idea that it is okay to threaten or actually breach international law and not comply. Over time, my concern is that there will end up being some kind of public desensitisation or numbing to such ideas. That is pretty remarkable; it is not territory that we have been in before, except for in the last six or seven years or so, when we saw attempts with the Illegal Migration Act, with interim measures that set the precedent. That was on a separate issue, which perhaps we will come to. Also, in the internal markets Act, an amendment had to be made to remove a provision concerning the Government's ambition to breach international law in a specific and limited way.

On where this takes us as a country, all these provisions cumulatively, in the Bill and across Acts of Parliament that have been introduced, it is a question of whether the UK can be seen as a reliable international partner and what the implications are for UK soft power more generally, including in international law.

**Bell Ribeiro-Addy:** Do you have any examples of, or do any of you know of a time, when the Government have done something like this—the Supreme Court has made a decision and the Government have legislated against the fact? Could you give any example in which that potentially could be done and what the outcome might be?

***Rashmin Sagoo:*** On the facts?

**Bell Ribeiro-Addy:** Yes.

***Rashmin Sagoo:*** No, I would not be able to.

***Professor Tom Hickman:*** It is obviously relatively commonplace for Parliament to overturn judgments of the courts, if it decides that the laws as displayed in the ruling need to be changed. There are famous examples, such as the Burmah Oil case. These cases tend to raise issues, if the effect of changing the law would also affect the rights of the people who have had their claims upheld, if they have, in the court—the retrospective effect. But I am not able to think of any cases where Parliament has, as it were, made a ruling of fact, such as that Rwanda is safe, which departs from a finding of a court.

**Baroness Kennedy of The Shaws:** Are we still struggling with "notwithstanding" clauses? I think that we have covered this ground, have we not? We have already dealt with the whole business.

What I would like to ask you about is the business of interim measures, because there is a certain mythology around those measures. As I heard someone on the "Today" programme say, "How dare these foreign courts come in with their equivalent of an injunction and override our ability to remove people?" It would be helpful if you could explain for the general public what an interim order means and in what circumstances they happen. We heard in the last session that it is issued only in relation to preventing an action being taken that could involve serious and irreparable harm. You are stopping something. It is usually done when a case is being heard before a court—you do not interrupt a proceeding that is legitimately going before a court before it has actually happened, and you therefore protect the individual in the meantime; that is my experience of it.

Would you like to help us, and the general public, with the suggestion that this is somehow an interference and that it is a foreign court, rather than an international court that we have all signed up to making an intervention very carefully? It is not done that often. In what circumstances can that be done?

***Rashmin Sagoo:*** I am happy to start things off. Thank you for the question. I agree that there has been a lot of misreporting and mythology around this question. How I would explain interim measures is that they preserve the status quo; they put things on ice, pending the court's decision on the merits. That is the shortest way I could put it. But you are quite right: they are urgent, temporary measures that are issued in

the most exceptional of cases, and they take place when the applicant would otherwise face a real risk of serious and irreversible harm. Particularly against the UK, which traditionally has a very strong record of compliance with ECHR matters, the numbers for when these are issued are very low.

The interim measures are binding under international law, in my view.

**Chair:** Who are they binding on? There was some suggestion in the Commons today that they were binding only on the Government, the state party, and not on the courts.

***Rashmin Sagoo:*** They are only binding on the Government?

**Chair:** I was present for the debate and the amendments earlier, and a suggestion was made—by quite a distinguished source, so I took it seriously—that interim measures are binding only on the state's parties and should not be considered to be binding on the courts. I found that rather surprising. It seems to me that, if an interim measure is not binding on a court, it is not really much use.

***Rashmin Sagoo:*** It would be states that sign up to the treaty, and here it is the European Convention of Human Rights, which is a Council of Europe treaty. To my mind, it is binding on the state as a whole, and failure to comply would be against the well-established case law of the court and against treaty law—here Article 34—as well as being against the court's own practice directions on interim measures.

I add that the precedent and long-term concern here about what the Bill proposes and what the Illegal Migration Act did, in giving a power for the Minister to ignore interim rulings, is that this really indicates the UK's attitude to international law and its treatment of international courts. Traditionally, it has been extremely respectful of these courts, which it has itself established and worked extremely hard within, and is a leading light within, particularly in the Council of Europe context.

There is serious potential to undermine the rule of law in that context. Other states are watching what the UK does, and not only because they also have issues with irregular migration themselves. Many states do not hold the principle of the rule of law in a democracy as close to their hearts as we do, and they are looking for ways to attack it. We have a responsibility, as a state that has traditionally been held with so much respect for upholding these principles. To my mind, we are in a bit of an existential moment on these matters.

Professor Robert Spano, who spoke at Chatham House recently on the Bill—

**Chair:** He is a former president of the court.

***Rashmin Sagoo:*** Quite right. He is the former President of the European Court of Human Rights. He essentially referred to this as a Rubicon moment for the UK in where it is going, and explained that it is seen as a

leading light in the court structure and the Council of Europe structure. I very much agree, from my experience of multilateral institutions and working in international organisations and the Strasbourg system. It would be a great pity if, with a Bill that is dealing on the one hand with the intractable issue of deterring irregular migration, which has thwarted successive Governments and many other states, we made a very difficult situation worse by throwing out or damaging the rule of law—something that we have traditionally been seen as a real leading light on in the process.

Ironically, I would argue that, in this particular case, it was the interim measure that enabled the UK's own judicial process to run its course. We got to the point of the Supreme Court's unanimous decision by the five most senior justices of the UK, which was referred to earlier, only because of the interim measure that was issued.

***Professor Sarah Singer:*** I will make a short addition to the question about whether interim measures by the European Court of Human Rights are typically binding on courts.

Under Section 6 of the Human Rights Act, all public authorities, including courts, must act in a way that is compatible with human rights. I very much agree that interim measures are binding on states. That is most typically the Government, and it is typically Ministers who give effect to those. However, under the Human Rights Act, all public authorities would normally have to give effect to those and would not be able to act in a way that was incompatible with those.

Of course, under this particular Bill, there is an express disapplication of Section 6 of the Human Rights Act and an express provision that courts should not give effect to interim measures by the European Court of Human Rights, so our courts might be forced to behave in a way that is illegal.

**Chair:** I am very grateful to you for answering so clearly, Professor, that of course Section 6 means that the Human Rights Act applies to the courts. I may have misunderstood the point that was being made on the Floor of the House earlier, but it flummoxed me at the time, so thank you for answering the question so clearly.

***Professor Tom Hickman:*** I am sorry to dissent from that view, but I am afraid I do. I know that there is a respectable view to that effect, but it is not my view.

Briefly, you have to distinguish between bindingness in international law and bindingness in domestic law. Things that are binding in international law are binding in domestic law only if they are incorporated. The difficulty with the argument that Section 6 of the Human Rights Act would incorporate an obligation on the courts to give effect to interim remedies is that the interim remedy jurisdiction is effectively a feature of Article 13, the right to give an effective remedy. Article 13 is not an article that is incorporated by the Human Rights Act.

So yes, it is binding in international law and binding on the courts, in the sense that courts would be an emanation of the state—the state speaks with one voice, and all the acts of institutions of the state in international law are attributable to the state—but unless they are incorporated they are not binding on our domestic courts, and, in my view, would not be incorporated into domestic law.

**Chair:** Okay. That may explain the point that was being made today. I see that there are different views on it, but that is very helpful.

***Professor Tom Hickman:*** There are different views on it.

Q40 **Lord Murray of Blidworth:** I want to look a bit more at Rule 39 of the European Court of Human Rights. Obviously, there was no provision in the original treaty providing for the court to make interim injunctions. That is right, is it not? In the Rules of Court, they were described, and are still described, as interim indications—the suggestion being that they were not binding on the parties and it was only as a result of evolution of case law, particularly in 2005, in Mamatkulov, that the court then found that they were mandatory on the parties. That is right, is it not?

***Rashmin Sagoo:*** Yes, and it is the case law that helps to explain the court's position on the matter.

**Lord Murray of Blidworth:** So it cannot be said that the UK will be acting contrary to the black letter law of the text of the European convention. It is simply something that has grown out of the case law of the court.

***Rashmin Sagoo:*** This is an issue that the court is also seized of. It is aware of these different arguments, and there is a consultation going on at the moment on clarifying its position on interim measures. That exercise shows that it is listening to member states. The consultation has been going on for a long time, and these views have certainly been aired.

However, going back to earlier points, interim measures are not unique to this particular court. They are a feature of many international judicial systems.

**Lord Murray of Blidworth:** It is right, is it not, that commentators say that the procedure to obtain interim relief from the European court is very defective and, in particular, that there is no method—no way in which we would have a chance, as the UK Government—to address an application for interim relief made by a claimant?

***Rashmin Sagoo:*** As I understand it, it is the nature of the interim measure. Going back to the earlier point that these are temporary and urgent—given the nature of the imminent violation, they are time sensitive—that can be the case. But I believe there is opportunity for comments to be put in. Again, this whole issue of transparency—

**Lord Murray of Blidworth:** So you accept—

***Rashmin Sagoo:*** If I may finish, the whole issue of transparency in the system, and the ability for states' parties to put in their views and concerns, is something that the court is taking seriously and including in its consultations.

**Lord Murray of Blidworth:** But at the moment, as the rules stand, there is no opportunity. The decision is made ex parte, and I think it is made without reasons being given and without the judge being identified.

***Rashmin Sagoo:*** The reasons are given in the—

**Lord Murray of Blidworth:** Press release.

***Rashmin Sagoo:*** In the indication. Again, that is because of the speed at which this is all happening. The anonymity of the judge has been well discussed in the press, and, again, this is being considered by the court in its consultation. We need to remember that, traditionally, judges were not named for very serious reasons: they were receiving death threats in certain cases, for example, or the nature of the time—

**Lord Murray of Blidworth:** It is widely accepted that judges should be identified. As I said, it is certainly common practice on the domestic plane, is it not?

***Rashmin Sagoo:*** In the consultation, as far I am aware, the issue of transparency, including in the naming of judges, is being considered seriously. I cannot speak for the court, but it is part of a Council of Europe process, with all states able to put in representations.

**Lord Murray of Blidworth:** It has been looked at since—

**Chair:** Can I just interject there? I checked this point, because I was speaking in the debate this afternoon. My understanding is that, following negotiations with the UK, the Court of Human Rights has recently announced that it has provisionally adopted amendments to Rule 39. Those provisional amendment make it clear that interim measures will be issued only in cases of imminent risk or irreparable harm to a convention right, which, on account of its nature, would not be susceptible to reparation, restoration or adequate compensation. This will bring the rule into line with the current approach already taken by the court. Alongside this change to Rule 39, the court is changing the relevant practice directions, including clarifying the grounds for granting an interim measure, naming the judges who have made the decisions, and issuing formal judicial decisions. It sounds to me like many of the concerns that the UK Government had are now being addressed by the court.

But what I really want to ask is this. Interim measures are common in this jurisdiction and in my own. Judges are not infrequently got out of their beds in the middle of the night to make the sort of order that you have described, Rashmin, to preserve the situation in ice until the court hears the full argument. Frequently, those interdicts in my jurisdiction, and interim injunctions down here, are granted with only one party addressing the court. Rightly, in government cases, there would always

be what we call a caveat in Scotland, so the Government would be called in to address the judge. But what I want to stress is that these interim measures are not without parallel in our own jurisdictions—although, admittedly, in our jurisdictions the judge is named, and I think that that is rather important myself. But it is not a peculiar European Court of Human Rights thing to preserve the situation pending the final determination of the case, is it?

Furthermore, my understanding is that it was not part of the original treaty, but a Grand Chamber decision decided that this could happen in 2005, and the court has developed its jurisprudence since, so it is now well established. Correct me if I am wrong but, when the United Kingdom signed up to the convention on human rights, we signed up to the idea that it would be presided over by a court whose jurisprudence might expand its powers. Am I wrong about that?

***Professor Tom Hickman:*** No, you are right about that. Several things are bound up here. People criticise the interim measures jurisdiction, with some justification. The European Court of Human Rights case law originally said that it was not binding and then changed its mind and said that it was binding—and that is not great. The process, as was mentioned, has been less than one would have hoped for, and it is changing. But you can criticise judicial decisions in so many contexts. There are judicial decisions, and there is the way in which courts make decisions in our own domestic jurisdiction, which you can criticise, but that does not mean that that you do not have to follow them. It is fundamental to the rule of law that you follow the judgments when they are given. Yes, you might want to reform—and there are means of reform—but that does not mean that you can just turn your nose up at the judgments of the courts. That is what the rule of law means—or at least it is one of the things that it means.

The other thing I want to say is that I find all of this a little puzzling. The Government have accepted that it is important that there is an interim measures jurisdiction in Strasbourg and therefore, were there to be a protocol on this or something of that nature, no doubt this Government would accept such a jurisdiction in such a protocol. My note is that, on 13 June, Lord Bellamy, Parliamentary Under-Secretary of State for Justice, stated in a response to a parliamentary Question on this issue that: "The Government recognise that interim measures can be an important mechanism for securing individuals' convention rights in exceptional circumstances". So the utility of them, and in principle their existence, has been accepted.

**Chair:** Lord Murray, I am sorry that I interrupted your flow there. Did you want to ask further questions about interim measures?

Q41 **Lord Murray of Blidworth:** I have just one final question. In the view of each of the panel, in the event that the Bill was enacted and a flight was scheduled, would you anticipate one or more people on the flight making applications to Strasbourg for interim relief? What would you say the prospects are of such interim relief being granted?

**Baroness Kennedy of The Shaws:** There would have to be a preliminary matter. You do not apply for interim relief without there being a procedure that you have already embarked on.

**Lord Murray of Blidworth:** Indeed, but for this hypothetical, let us say that the same situation applied that pertained on 22 June, whereby you had been to the High Court, the Court of Appeal and the Supreme Court and they had all refused interim relief.

***Professor Sarah Singer:*** I would say that the likelihood of the Strasbourg court being called on for an interim measure is made much more likely under this legislation, because the grounds of our domestic courts to issue interim remedies are so limited under this piece of legislation.

It is quite ironic, in a way, that there has been a lot of political rhetoric about not wanting to have "foreign courts" making determinations. What the legislation is actually doing is limiting the ability of our domestic courts to appropriately address these situations. It is making the situation of a referral to Strasbourg in these kinds of cases much more likely.

As to the question of what a Strasbourg court would decide or do if such an application was made, that is a very difficult one to pre-empt. I cannot pretend to be a decision-maker sitting within the Strasbourg court with a particular case in front of me. But for me, if I was a judge, the fact that the Supreme Court has so very recently made such a forceful judgment, raising serious concerns about safety in Rwanda, would give me some cause for concern.

***Professor Tom Hickman:*** I totally agree with the point that has just been made about the irony of excluding our domestic courts: when such concerns are raised about the Strasbourg court making decisions, let our domestic courts decide if an interim remedy should be granted.

On whether the Strasbourg court would make an interim ruling, obviously I do not know—it would depend on the facts at that time and, again, it is a judicial decision. No doubt it would be a very tough decision for a judge to make; they would have to look at the mountain of material that is being adduced by the Government, and look at the treaty, and try to come to a view about whether that sufficiently mitigates the risks identified by the Supreme Court. That is the task that the court would have. I do not know what outcome the court—

**Lord Murray of Blidworth:** Given the urgency of the situation, with a plane about to take off, certainly in the domestic jurisdiction you would anticipate that a judge would make the injunction to prevent harm and hold the ring.

***Professor Tom Hickman:*** Not necessarily—they did not do so before, when the applications were made.

**Lord Murray of Blidworth:** The UK judge did not.

***Professor Tom Hickman:*** No, the UK did not, and your question was about the UK judge.

**Lord Murray of Blidworth:** Sorry, that was my example.

***Professor Tom Hickman:*** I see. But the starting point is rather different here, because you have a ruling of the Supreme Court and the Court of Appeal, which spent days going through all this material. So the starting point is rather different, if you are a claimant. Yes, you have, as it were, a starting factor in your favour, and the Government have the burden to show that those facts no longer pertain, so no doubt you would think that you have a better chance now than you had way back before. Having said that, you have the treaty and other changes in circumstances, which would have to be looked at carefully. I certainly would not want to hazard a guess now as to what the outcome would be.

***Rashmin Sagoo:*** I agree that there is no guarantee that interim measures would be indicated by the courts in this case. It is precisely for the reasons that have been given. Each case has to be considered on its merits. A lot has changed since 2022. As Professor Hickman says, we have had the Court of Appeal judgment and a very clear and unanimous Supreme Court judgment. The Government have responded to it with a package of measures, including the proposed treaty, which clearly they have done a lot of work on. I have comments about whether it goes far enough, but that is a separate issue. In those circumstances, it is very difficult to hazard a guess—but the situation has changed.

On that last point, about the situation changing, I am aware that the Government have said that the facts have changed and that they have addressed the Supreme Court judgment. I know we are not here to talk about the treaty specifically—it is being dealt with by another committee—but, if we are taking the proposals as a whole, my position is that clearly a lot of work has been done on the provisions of the treaty between the UK Government and the Government of Rwanda to turn the memorandum of understanding into a legally binding agreement and to work out how it can be operationalised. I would say that a treaty is capable of meeting the concerns of the Supreme Court. However, there is much more work to be done. The treaty provides the framework. There has been evidence in the evidence pack about how meat will be put on the bones of the treaty to operationalise it, but to do these things well takes a lot of time—to set up the necessary infrastructure, the capacity building, the new culture that would be required by the Rwandan authorities, and the new judicial architecture that is being set up.

This is one of the ironies here: that, on the one hand, there are concerns about the systems within the Strasbourg court but, on the other hand, the idea is that a new judicial structure will be set up in Rwanda to deal with these cases.

To go back to the Supreme Court judgments, the court was really clear that significant changes would be needed to the Rwandan asylum procedures. Paragraph 104 of the judgment goes into that in more detail.

It says that the current approach is inadequate and that changes of attitudes are needed, as is effective training and monitoring. It is very clear that much of that work has been done already—there is lots of evidence in the evidence pack. But for me, as an example of the work that needs to be done, there is the question of the appointment of the international judges at appeal level.

Traditionally, the UK's approach is that these matters are taken very seriously and looked at very rigorously. The recruitment of international judges with an appropriate level of expertise, the language requirements and setting up the infrastructure, such as court staff and interpreters, and integrating the new judges into the Rwandan system or enabling them to understand how it works, will take a lot of time to get right. The important point is that, if it is not done right, there are potential issues for transparency and credibility in the system, and trust in it, and therefore faith, not only in the system but in the international legal architecture as a whole.

**Chair:** That is very helpful.

Q42 **Baroness Lawrence of Clarendon:** Clause 4 would allow for some claimants to resist removal on the basis of compelling evidence relating to particular individuals' circumstances. Does this affect the Bill's compatibility with human rights and international law?

***Professor Sarah Singer:*** I started to address this question earlier. Although Clause 4 provides a limited exception to the prohibition on judicial scrutiny, it is not sufficient for a full and rigorous analysis, which is required by the UK's obligations under the European Convention on Human Rights. That is because there are very limited grounds for judicial scrutiny. A court is not permitted to look at the question of whether Rwanda is generally safe. All it is allowed to look at is the particular individual's circumstances and the compelling evidence behind that.

As was mentioned in the last panel, that is a very difficult case to make when someone is prohibited from looking at the general situation in Rwanda. Say, for example, I was an LGBT+ individual, would I be able to make a claim that my removal to Rwanda would put me at real risk of ill-treatment on these grounds? It is not clear whether a court would be able to look at the general treatment of LGBT+ persons in Rwanda.

Fundamentally, a court is also prohibited from looking at whether there is a risk of removal from Rwanda to the person's country of origin or a third country where there would be a risk of ill-treatment. That is an essential aspect of any risk assessment, so it is an incomplete risk assessment on very limited grounds.

As was mentioned, the ability of our domestic courts to then issue interim remedies is limited even further. Those remedies are only on these grounds, but, if an individual falls under the Illegal Migration Act 2023, it is envisaged that there will be a complete bar on any kind of interim measures being granted by the court.

In my opinion, it does not serve to satisfy the UK's obligations.

**Baroness Lawrence of Clarendon:** In the previous panel, it was said that, within Rwanda, there is a clause within a treaty that does not allow it to send people back to the UK or send them anywhere. How does that work around their circumstances? If Rwanda is not allowed to send them back, are they not allowed to go anywhere? How does that manifest itself for individuals?

***Professor Sarah Singer:*** You are absolutely right: there are binding obligations in this new treaty with Rwanda, through which Rwanda undertakes not to remove people to a third country. The issue is that, just because it is a binding treaty, that does not necessarily mean Rwanda will abide by that commitment.

In the Supreme Court judgement, the court was very clear that it was not calling into question the good faith of Rwanda in trying to abide by international agreements but the capacity of the country to do that. In particular, there has been the refoulement—the removal of individuals—previously from Rwanda, despite Rwanda's binding commitments under the convention against torture and the convention on civil and political rights. Just because there is a binding obligation there, that does not mean that it will necessarily be enforced.

In relation to this, under the Rwanda treaty there is meant to be an effective mechanism that reviews this and ensures that people are not removed. This has not yet been set up and we have not been given any details of this mechanism. That does not reassure me.

**Baroness Kennedy of The Shaws:** The Lord Chancellor gave evidence to us and assured us that individual rights would still be protected. He said that if an individual said that being sent there would affect them, as an individual, in a way that could be detrimental to their human rights, the protection would still operate. The example he gave was medical—for example, if someone had a medical condition that could not be treated appropriately in Rwanda.

I want to know what you think of the extent of that. Presumably that also involves engagement, in asking what is available and what the situation is in Rwanda. It involves an exploration of the context of what is available, to what extent it is available, and whether it would meet the needs of this particular individual's condition. This might also affect mental health.

***Professor Sarah Singer:*** I agree with you completely. I would find it difficult to undertake an assessment in the case you gave an example of without looking at the general situation in Rwanda and the amount of care and support it can provide to people.

The only possibility I can think of is that, in that case, a court would be looking at the general situation in Rwanda—not at its ill-treatment of people but at the general healthcare it can provide. That is the only distinction I can draw in my mind. I personally find it difficult to envisage

a case where someone will be able to argue compelling individual circumstances without looking at Rwanda.

**Baroness Kennedy of The Shaws:** In the treaty, taken from the memorandum of understanding—there was a paragraph in the memorandum of understanding which I think has been incorporated into the treaty—it said that a number of asylum seekers in Rwanda can come to Britain. There is reciprocity here, and I hope the general public get to understand that. Who are those people? I understand that they are people who cannot be properly cared for within Rwanda. Do we know anything more about the kind of people who would be sent here?

***Professor Sarah Singer:*** Rwanda quite generously hosts several hundred thousand refugees in country—it hosts a huge number of people. There is a clause in the agreement, as you mentioned, which is quite often overlooked, that provides that a certain number of people can be sent to Rwanda. We are not given any details.

**Baroness Kennedy of The Shaws:** To Britain from Rwanda.

***Professor Sarah Singer:*** To Britain from Rwanda.

**Baroness Kennedy of The Shaws:** I thought it was for medical conditions and where Rwanda could not meet their medical needs.

***Professor Sarah Singer:*** I did not see that specified in the treaty.

**Baroness Kennedy of The Shaws:** I do not know if it was specified, but I think that was what people had in mind. Perhaps Lord Murray knows, as he was in the Home Office at the time. Do we know?

**Lord Murray of Blidworth:** I do not know off the top of my head.

**Baroness Kennedy of The Shaws:** You do not know who it is they had in mind that Rwanda might send to Britain.

**Baroness Lawrence of Clarendon:** Professor Hickman, do you have anything to add to my question?

***Professor Tom Hickman:*** On the compelling evidence of specific individual circumstances provision, you asked if it would help make the Act compatible with international law. The point is that the Act is designed to preclude arguments in individual cases that removal would be a violation of Article 2 or Article 3 on the grounds found by the Supreme Court. This provision does not make the Act more consistent with international law in relation to that issue, because it is dealing with a separate issue; it is dealing with issues such as medical conditions, or people who might face discrimination in Rwanda because of their sexuality, or specific individual circumstances, or circumstances in Rwanda that mean they might face harm there.

The issue that the Supreme Court was dealing with was when people are removed from Rwanda and ultimately sent back to their original

countries, where they will face harm. They are dealing with completely different things.

Obviously, if the Act also precluded you from raising all the individual things that might go wrong in Rwanda, there would be yet another problem with international law. Arguably, the bar here—compelling evidence and so forth—is set so high that that does raise another issue with international law. But in so far as we are talking about the Supreme Court's judgment and Article 3 compatibility, this is simply a sideshow.

***Professor Sarah Singer:*** I stress, though, that the UK does have obligations to ensure that people are not exposed to real risk of ill-treatment in Rwanda, as well as of being removed to a third country. The UK still has obligations for that. Although the Supreme Court did not consider that as a specific area, because it did not need to in that case—it was looking at removal from Rwanda to another country—it still considered evidence of many situations in which refugees had been exposed to real risk, such as being shot at and ill-treated, within Rwanda itself, as well as at the refoulement issue. They are both very much live issues.

**Baroness Lawrence of Clarendon:** One of the questions I asked earlier was on monitoring. How do you know what is happening to individuals once they are in Rwanda? What is the monitoring mechanism? There are still things that need to be addressed where Rwanda is concerned, about individuals if something happens to them when they are in Rwanda, and what happens if Rwanda decides to send them away or back here.

**Baroness Kennedy of The Shaws:** Or to Uganda or somewhere.

**Baroness Lawrence of Clarendon:** Yes, it is about the monitoring.

***Rashmin Sagoo:*** That is such a good point that you raise on the monitoring side. Looking at the provisions in the treaty as a whole, we see that there are some provisions about monitoring arrangements. This has been thought through. However, what would be needed to meet the Supreme Court's concerns is establishing a pattern of behaviour, so that once the systems are in place we can re-evaluate, review and monitor, in exactly the way you mention. That takes a long time, because you are looking for a pattern of compliance with the mechanisms that have been agreed.

Q43 **Chair:** I want to touch briefly on the issue of interim remedies again—not interim measures from the court, as we have done. Can you answer this question quite briefly? Does the way in which the Bill deals with applications for interim remedies from domestic courts, including by allowing them only in really quite narrow circumstances, comply with the UK's international human rights obligations?

Professor Singer, I can see you shaking your head. Maybe you can just deal with it, and I shall ask the others if they disagree or want to add anything.

***Professor Sarah Singer:*** I would say that it does not. As was mentioned by Professor Hickman, Article 13 of the European Convention on Human Rights requires a remedy with automatic suspensive effect. Prohibiting our domestic courts from granting interim measures in such a broad range of cases means that that suspensive effect is not available for those cases. So it does not meet the UK's obligations in that respect.

***Professor Tom Hickman:*** Effectively, the problem under international law with the Act or the Bill is whether deeming Rwanda safe will violate Articles 2 and 3, because people will be sent back when it is unsafe. The courts will ultimately decide whether it does or it does not, depending on whether there has been a change of circumstances sufficient to mitigate the Supreme Court's judgment.

Secondly, on the removal of the ability for domestic courts to grant interim measures preventing people being sent back, in my view that is a straightforward violation of Article 13. That is the crux of it. Both the purpose and the effect of the Bill will be to breach Article 13 in that way; it is a much clearer case than with Articles 2 and 3, which depend on whether there has been a change of circumstances.

Q44 **Lord Alton of Liverpool:** Professor Singer has actually answered part of the question that I want to ask, about remedies. I do not know whether there is anything that you would particularly add to that about the remedies that would be available to people in the domestic courts and whether that needs to be strengthened in any way.

Let me ask you something broader, on efficacy. We are spending a huge amount of parliamentary time on this Bill. I was very struck by contrasting statements at the weekend. The first was from the Minister, Robert Jenrick, who oversaw the legislation and who resigned about it. He said that "as currently drafted, every single small boat arrival will be able to concoct a personal reason for why Rwanda is unsafe for them", and he went on to explain why therefore the Bill will not work. From a different part of the spectrum, Damian Green MP said: "Impractical measures that sound tough but achieve nothing" will not help us.

It begs the question in my mind whether this Bill, when it becomes an Act of Parliament, given that there will be domestic remedies and all the other issues in the courts, will achieve any of its intentions. If it will not, and reverting to a question that my colleague Lady Meyer asked in the earlier session, what would your advice be to this committee and the Government as to what we should be doing?

***Professor Sarah Singer:*** This Bill is obviously really devastating for asylum seekers who might be subject to it, but what really concerns me about it is the usurpation of the judicial function that is being implied here. For me, that has potentially really significant implications for the protection of fundamental rights more broadly in the UK. If I was a committee member, I would in no uncertain terms advise Parliament not to proceed with any approach that would affect the efficacy of human rights protection domestically in the UK or usurp the judicial role.

As we discussed, the question of whether Rwanda is or is not safe is something we can talk about for 1 million years. The appropriate place for the determination of that is within the courts; that is what they are set up to do. There are real dangers of the question being determined as a political issue within Parliament. As I mentioned, there is also the issue of that determination not being able to be subject to review further down the line.

The Bill will not achieve its objectives because, as was mentioned, it can be subject to challenge within the domestic courts, and the domestic courts could rule that it is incompatible with the UK's human rights obligations. I think that there is a very strong possibility that that will be the case. The lack of domestic remedies in the UK makes it more likely that there is going to be a case that goes to the European Court of Human Rights in Strasbourg, and that court is then going to make a decision, and Parliament is going to end up in exactly the same place again but with higher principles at stake.

A much better approach would be to take a step back and say that we are going to put in place this agreement with Rwanda, if indeed it is considered that that is the best way in which to spend money—personally, I think that money could be much better spent in other ways. We should then ensure that there are proper and effective processes in place, that are given the judicial stamp of approval before trying to proceed with this policy—which I think is going to waste a huge amount of time and money.

***Professor Tom Hickman:*** I agree that there is an issue of efficacy, but I have a slightly different spin on it. It seems to me that the efficacy issue rises in the following way—and this connects with something that I said at the beginning. If the Bill is enacted, very quickly the courts would be asked to decide whether Rwanda is safe and whether there has been a change of circumstances. If they decide that Rwanda is still not safe, the law will have to be changed. That is the reality of it, and indeed the Rwandan Government have made it very clear that they would not want to implement a scheme if it has been found to be contrary to international law.

**Chair:** Forgive me, but how could the courts make that determination when they have been specifically precluded from doing so?

***Professor Tom Hickman:*** As I said at the beginning, as I read the legislation, it very clearly leaves on the table the ability for people to seek a declaration of incompatibility. The Bill infringes Article 3 by requiring people to be transferred—

**Chair:** So you say that the leaving in of Section 4 of the Human Rights Act creates a huge loophole to circumvent the ousting of the jurisdiction on the safety of Rwanda?

***Professor Tom Hickman:*** I would not describe it as a loophole, but it seems that it is a deliberate and quite proper policy intention that the

courts ultimately will have to decide again whether or not Rwanda is safe. Even if the domestic courts do not decide that, the Strasbourg court will. If they decide it is not safe, the law will have to be changed. If they decide it is safe, then what has been gained by going through Parliament? The Government might as well go back to the courts now and they could win that argument much more quickly. The whole detour through this legislation is one that is unnecessary.

**Lord Alton of Liverpool:** That really answers my question about efficacy, and I am grateful to you.

Lady Kennedy asked a question earlier about the difference between policy-making and the law. It seems that this may be a charter for lawyers—I suspect it will involve an awful lot of them as it proceeds—and that policy-making has almost been set to one side, not least in the international sphere. I gave the figure earlier of 110 million people displaced worldwide. Do you think perhaps we should be spending rather more of our energy and time here in Parliament trying to draw together like-minded people in like-minded nations to find solutions to these root causes?

***Professor Sarah Singer:*** Yes, certainly. The UK has signed up the 1951 refugee convention, which was a really pragmatic response to addressing the worldwide global phenomenon of refugees, which is not going to go away any time soon. If the UK simply decides it wants to shirk its international obligations, what will stop many other countries shirking their international obligations as well?

That includes not just countries in the global north but countries in the global south, which are hosting over 80%-plus of the world's refugees. In the previous panel, Enver Solomon mentioned that Pakistan is hosting huge numbers of Afghan refugees. In the latter part of last year, Pakistan announced its expulsion of these Afghan refugees and cited UK practice.

**Lord Alton of Liverpool:** It cited this Bill. The Prime Minister of Pakistan used it as a justification for 450,000 people being forcibly returned from Pakistan to Afghanistan, including women, who will be persecuted by the Taliban, and Hazaras, who will be persecuted. Are we setting a different new international standard as a consequence—perhaps unintentionally—of driving through this kind of legislation? Is that what you are saying?

***Professor Sarah Singer:*** That is what I am saying. You can imagine the knock-on effect of several countries deciding to take this approach and how many people would be seeking asylum in the UK then. The UK proportionally takes a very small number of asylum seekers and refugees in a global context. Even within Europe, as was mentioned, we take far fewer than France, Germany and other countries do. Perhaps a more pragmatic approach would be to look at ways to avoid people having to make perilous journeys and to support them settling into the UK and becoming productive members of society.

**Chair:** I want to follow up on something. I am sorry to be a legal nerd—and probably quite a dim one at this time of day—but I do not

understand this business about a compatibility challenge. Clause 2 of the Bill says that, "Every decision-maker must conclusively treat the Republic of Rwanda as a safe country". It then says that, "A decision-maker means … the Secretary of State or an immigration officer when making a decision relating to the removal of a person to the Republic of Rwanda" and "a court or tribunal when considering a decision of the Secretary of State or an immigration officer mentioned in paragraph (a)".

That seems to state quite clearly that, when the vehicle of legal challenge is a challenge to a decision of the Secretary of State or an immigration officer on removal, the court or tribunal considering that challenge must conclusively treat the Republic of Rwanda as a safe country.

What do you see as the vehicle or mode of legal challenge that would procure a declaration of incompatibility and, in the process, make the court able to look at the issue of safety? It seems reasonably comprehensively precluded from doing so, if the vehicle is a challenge to the decision of the Secretary of State or an immigration officer?

***Professor Tom Hickman:*** Is it as clear as to preclude a Section 4 declaration? It may be that the point would be argued, but this is pointing at precluding a court from second-guessing whether Rwanda is safe when considering a decision to return. It is not saying that the court cannot consider whether the legislation itself is incompatible with Section 4. The Government's note to this Bill when published seemed to support the view that Section 4 declarations were being left on the table. Section 4 is not referred to in the provisions disapplied. As I understand it, there are amendments that are being moved to try to change that.

**Chair:** I accept all that. There is an amendment trying to change that, but I do not think it will succeed. I accept that Section 4 is left unchallenged by the Bill. I am just trying to understand who would have title and standing to bring an action that would procure a Section 4 declaration. How would you go about doing that, with the terms of Clause 2 standing.

**Baroness Kennedy of The Shaws:** Do you do it through an individual client or an organisation or legal body? Who takes the action?

**Chair:** Some commentators have suggested that this Bill is so egregious that it might admit what they call a constitutional challenge. Then you would go down the rabbit hole of the argument around what extent the sovereignty of Parliament overrides any constitutional challenge. There are various cases that suggest you might be able to have a constitutional challenge. I have tried to get my head around this, and I am struggling to get my head around what the vehicle for such a challenge might be.

***Professor Tom Hickman:*** The argument would probably be that the Bill says that domestic courts must conclusively treat, for the purposes of a removal, Rwanda as a safe country. The question would then be: in doing so, would they be acting contrary to the ECHR? I accept that there are arguments both ways on that, but the Government's intention seems to

be clearly to leave Section 4 on the table. You have to read Clause 2 with Clause 3 and the other materials that have been published.

**Baroness Kennedy of The Shaws:** If you do that, what is the outcome?

***Professor Tom Hickman:*** As I said, it seems to me that the purpose is to get people out of the country. It is to stop interim remedies. But it is not to stop the courts looking at it with more leisure to decide whether or not that has breached Article 3. In a sense, it does not really matter, because even if the domestic courts cannot issue a declaration of incompatibility, the matter will just go more quickly to Strasbourg. Strasbourg certainly could do that, and that would still trigger the Section 10 power under the Human Rights Act, because if there is an adverse ruling in Strasbourg that also triggers the Section 10 power of the Human Rights Act. In a sense, a court—whether it is our domestic courts or the Strasbourg court—will decide whether or not Parliament has been right to regard Rwanda as safe for asylum seekers. That is the key point.

**Chair:** I think I understand better now. Thanks.

***Professor Tom Hickman:*** A few weeks ago, I wrote something for the Institute for Government. It is quite a short little briefing note. Would it be appropriate to send it?

**Chair:** Yes please. Any help is gratefully received in working our way through this.

Q45 **Baroness Meyer:** I just wanted to ask a question. I am not a lawyer, so I am swimming in all this. From what I understand, obviously this Bill has a lot of loopholes, particularly because of Rule 39 challenges. If you were the Government and you were determined to pass this Bill, how would you, as lawyers, look at the two amendments—the "notwithstanding" amendment from Bill Cash and the Rule 39 amendment from Robert Jenrick? Would that solve quite a lot of problems, or not?

***Professor Tom Hickman:*** I do not really want to wade into those waters because I am not sure I am sufficiently familiar with the exact terms of those amendments. I have read about them in the press, but I am not sure that I have enough of a grasp of them to be able to deal with that question.

**Baroness Kennedy of The Shaws:** What you have read in the press is more or less accurate. It is the idea that if there are no interim measures—those will be prevented—and, at the end of the day, even if it went all the way through the courts here and there and wherever, a decision was made that was adverse, the Government would be prepared to dismiss the judgments that came from any international court.

***Professor Tom Hickman:*** If you are prepared to, in effect, tear up the European Convention on Human Rights, you can—

**Baroness Kennedy of The Shaws:** You can join the company of some

of the others who do so.

***Professor Tom Hickman:*** Exactly. A point I have made in other places is that a lot of attention is focused on the European Convention on Human Rights, partly because it is given some effect in our law, but it is about not only the European Convention on Human Rights. The rule that is the impediment to this policy—the non-refoulement principle—is embodied in lots of international agreements. For example, it is obviously in the refugee convention—it is in a slightly different form, but in substance it is the same, as far as we are concerned; it is the International Covenant on Civil and Political Rights, which is interpreted in the same way as the ECHR; it is in the torture convention. It is so well established that it has been regarded, even by the British Government in the past, as a rule of customary international law. It is a fundamental part of the international law order.

**Baroness Kennedy of The Shaws:** Is this not cured by getting Rwanda to sign up to saying, "Whatever refoulement we might do with other folks, we're not going to do it with the ones you send us"?

***Professor Tom Hickman:*** This is what the Supreme Court was asked to decide. It was asked to decide whether it is enough that Rwanda has said that it will respect the rights of people we send there, and the Supreme Court said no, it is not enough. The court did not doubt that the Rwanda Government have good faith, but there are all sorts of institutions of the Rwandan state that will come into contact with these individuals—the asylum system, the police, the national security directorate—and when it looked at the evidence, the court thought there was a real risk that, whatever the Rwanda Government say they want to do, they will not be able to stop people being sent back to their home countries.

**Baroness Kennedy of The Shaws:** I have a question that follows on from that. The Supreme Court's judgment was that there is not the infrastructure, the understanding at a real level, and the training and education that you guys have all had to understand how to make decisions in accordance with international law, and that the judiciary is not independent. Can all those things that we have been talking about have bene cured in a matter of weeks? I see Baroness Meyer nodding confidently. Do the witnesses think that, as experienced lawyers?

**Baroness Meyer:** I am nodding to your question, Baroness Kennedy.

**Baroness Kennedy of The Shaws:** Can you cure those structural impediments in such a short period of time?

***Professor Tom Hickman:*** As a lawyer, the way I would approach it would be to ask what were the findings made by the Supreme Court. They were very clearly about the culture, facilities and infrastructure on the ground, and about respect, knowledge and training among various different institutions of state. Has that changed by now? I do not know, but on the evidence I have seen it seems very doubtful that it has.

I draw attention, for example, to Article 10(3) of the treaty, which is quite revealing. It is a provision that the Government rely on quite strongly. They say that we do not have to worry about the asylum system in Rwanda being flaky or not producing the right outcomes, because Article 10(3) provides a guarantee that, even if people are not found to be genuine refugees, they will not be sent back to their country of origin. It is, effectively, an obligation to resettle everyone we send.

However, Article 10(3) actually says that further arrangements will be made to ensure that that obligation is effectively implemented and adhered to. It recognises the need for yet further arrangements in order for it to be effective. As far as I am aware, those arrangements are not yet in place.

**Chair:** I was very struck by what one of you said earlier—I think it was Professor Singer—about how the treaty is a framework for future improvements. As Baroness Kennedy says, it seems, as a matter of common sense, that the issues which the Supreme Court identified a few weeks ago could not be sorted out overnight. What we have is a framework for perhaps addressing them at some point in the future, but there are lots of different aspects to that framework that will have to be worked through, and you listed them very helpfully earlier.

That point about Article 10(3) is interesting, too.

***Professor Sarah Singer:*** It is a very interesting point about Article 10(3).

On that question of fact, the UN Refugee Agency, the UNHCR, issued a legal opinion just yesterday. It said that it considered that the introduction of the provisions did not "overcome refoulement risks, in the absence of the wider changes in structures, procedures, attitudes and understanding identified as being required by the Supreme Court". So in the UN Refugee Agency's opinion, those risks have not been overcome.

Article 10(3), which was just mentioned, is a really interesting provision. It is essentially trying to get around concerns about the Rwandan asylum determination system by saying, "Well, it doesn't really matter if that works well or not, because no one's going to be removed". But, actually, as UNHCR points out in its legal opinion, having that legal international protection status embedded in place, if you are entitled to it, is a really important part of protection. It is not something that should be overlooked.

However, the fact that the treaty envisages equal treatment of people who are recognised as refugees and people who are not means that, in practice, it may disincentivise people removed to Rwanda from applying for refugee status. So you might get large numbers of people who are just not going through the process because they see no benefit from it, and then, some years down the line, we might get statistics pointed back at us saying, "Ah. All those people we removed to Rwanda were not really refugees anyway". That is just something to think about.

**Chair:** A lot to think about.

I thank you both very much indeed and apologise that you have been kept here for such a long time. I found your evidence immensely useful. The gravity of the subject matter and the speed with which it is passing through Parliament justifies us having such a lengthy session this afternoon, but that does not necessarily justify us inconveniencing you. You were here for much longer than we thought you would have to be, so I want to thank you most sincerely for bearing with us and giving your evidence so clearly.

**Baroness Kennedy of The Shaws:** It was a very interesting session.

**Chair:** It was a fantastic session, and it has given us a lot to think about. Think you very much indeed.

**Lord Alton of Liverpool:** Thank you also for your promise, Professor Hickman, to share with us the article that you wrote. There was going to be a further question on things such as the role of sovereignty and international law, and no doubt we could have been here all night discussing some of these things. If either of the witnesses has anything further to add, would you be able to write to the committee to help us in our deliberations?

**Chair:** I would very much like it if our witnesses could do that. Thank you.