House of Commons
House of Lords

Joint Committee on Human Rights

Safety of Rwanda (Asylum and Immigration) Bill

Second Report of Session 2023–24

Report, together with formal minutes relating to the report

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Joint Committee on Human Rights

The Joint Committee on Human Rights is appointed by the House of Lords and the House of Commons to consider matters relating to human rights in the United Kingdom (but excluding consideration of individual cases); proposals for remedial orders, draft remedial orders and remedial orders.

The Joint Committee has a maximum of six Members appointed by each House, of whom the quorum for any formal proceedings is two from each House.

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Summary

In November 2023 the Supreme Court of the United Kingdom found that the Government's policy of removing individuals who enter the UK without authorisation to Rwanda was unlawful. The Supreme Court concluded that Rwanda was not a safe destination because of the risk that asylum seekers removed from the UK might be sent on to face persecution or human rights abuses in another country. The Government's response was to enter into a new legally binding treaty with Rwanda and introduced the Safety of Rwanda (Asylum and Immigration) Bill, intended to establish that Rwanda is a safe country and to prevent legal challenges to that conclusion.

The Government has described the Rwanda policy as part of its response to the global migration crisis. In mid-2023, the UN Refugee Agency (UNHCR) estimated that there were 110 million forcibly displaced people worldwide, including more than 36 million refugees and 6.1 million people seeking asylum. We note that around 70% of all refugees settle in countries neighbouring their own, and that the number of asylum claims in the UK is currently approximately 10% lower than at its peak in 2002. Nevertheless, increasing numbers of individuals have been entering the UK on small boats across the Channel, often facilitated by organised criminal gangs. This Bill is intended to act as a deterrent to those making dangerous journeys using small boats. We recognise the UK's right to control its borders and agree with the Government that the prevention of further loss of life in the channel is a priority, especially given its obligations to protect life under Article 2 of the European Convention on Human Rights (ECHR). However, our role in scrutinising this Bill is to assess its compatibility with the UK's human rights obligations. On introduction of the Bill, the Home Secretary was unable to make a statement under section 19 of the Human Rights Act 1998 (HRA) that the Bill is compatible with the ECHR rights. Having considered the evidence provided to us, and taken into account other relevant material, we have concluded that the Bill does not comply with the UK's human rights obligations and would place the UK in breach of international law.

The Government maintains that the new treaty with Rwanda and recent developments on the ground mean that, despite the conclusions reached by the Supreme Court, Rwanda is now safe. We heard evidence in support of this view, but more witnesses told us that the problems identified by the Supreme Court could not be resolved so quickly. We note in particular that the UNHCR, whose evidence was considered significant by the Supreme Court, does not consider that Rwanda is now safe. We are not persuaded that Parliament can be confident that Rwanda is now safe. In any event, we consider that the courts are best placed to resolve such contested issues of fact.

By preventing the courts considering any claims that Rwanda is not a safe country, or that there is a risk of refoulement, regardless of what evidence is available, the Bill denies access to the court and to an effective remedy, which is guaranteed by Article 13 ECHR. The weight of the evidence we have heard from those with legal expertise is that, despite the Government's claims, neither the possibility of a claim for a declaration of incompatibility under section 4 HRA nor of a claim based on compelling evidence of individual circumstances under clause 4 of the Bill are enough to meet the requirements of Article 13.

The Bill disapplies laws that might prevent an individual's removal to Rwanda, including many of the key provisions of the HRA. The JCHR has previously criticised attempts to disapply section 3 HRA (the obligation to read legislation compatibly with human rights) in respect of certain groups, but this Bill goes further and in relation to decisions to remove to Rwanda would also disapply section 2 HRA (the obligation to take into account European Court of Human Rights case law) and sections 6 to 9 HRA (the duty on public authorities to act compatibly with Convention rights and the right to bring a legal claim and secure a remedy if they do not). This appears to expressly allow for public bodies to act in breach of human rights. It threatens the fundamental principle that human rights are universal and should be protected for everyone.

The Bill cannot prevent someone threatened with removal to Rwanda making an application to the European Court of Human Rights (ECtHR), which has the power to issue 'interim measures' telling States to refrain from removing an individual from the jurisdiction while their claim is considered. While there is a body of opinion that disagrees with it, summarised in Chapter 6 of this report, the clear position in international law is that interim measures issued by the Court are binding on the UK. By stating that it is up to Ministers to decide whether to comply with interim measures, the Bill openly invites the possibility of the UK breaching international law.

Concerns have also been raised about the impact of the Bill on Northern Ireland; that it would undermine both the Windsor Framework and the Belfast (Good Friday) Agreement. We call on the Government to provide a full explanation of why it does not accept these concerns before the Bill reaches Report stage in the House of Lords.

Finally, we note that the UK has a reputation for respect for human rights and the rule of law of which we should be proud. Legislation that seeks to disapply or fails to respect international law risks damaging that reputation and encouraging other states who are less respectful of the international legal order.

1 Introduction

Background to the Bill

1. The Safety of Rwanda (Asylum and Immigration) Bill was introduced in the House of Commons on 7 December 2023. It received an accelerated passage through the House of Commons, without amendment, and had its second reading in the House of Lords on 29 January 2024. It is due to start Committee stage in the House of Lords on 12 February 2024.

2. The Bill is a response to the Supreme Court's judgment in the case of *AAA and others v Secretary of State for the Home Department*, a legal challenge to the Government's policy of removing asylum seekers to Rwanda.[1]

The Migration and Economic Development Partnership

3. In April 2022, the UK and Rwanda agreed a Migration and Economic Development Partnership (MEDP), which included a five-year asylum partnership arrangement in a Memorandum of Understanding.[2] Under the MEDP, asylum seekers would be sent to Rwanda where their claims would be processed within the Rwandan asylum system. If successful, they would be permitted to remain in Rwanda. If unsuccessful, Rwanda would decide what to do with them, but would be entitled to remove them from its territory if they had no legal basis to be there. Within the MEDP, Rwanda committed to comply with international refugee and human rights law, including the principle of "non-refoulement", discussed further below.

Legal challenges

4. The first individuals chosen to be removed to Rwanda brought legal challenges arguing that their removal was unlawful. The High Court concluded that the Rwandan policy was lawful but noted that the "Home Secretary must consider properly the circumstances of each individual claimant". The Court of Appeal subsequently overturned the High Court's ruling, concluding, by a 2–1 majority, that the Rwanda policy was unlawful. This was on the grounds that Rwanda was not a safe destination, as there was a real risk of treatment in breach of Article 3 of the European Convention on Human Rights (ECHR) (the right not to be subjected to torture or inhuman or degrading treatment) for asylum seekers removed there.

5. The Government appealed to the Supreme Court, the most senior court in the UK. On 15 November 2023 the Supreme Court handed down its judgment, upholding the decision of the Court of Appeal. It concluded that the policy of removing asylum seekers to Rwanda was unlawful, because there were substantial grounds for believing that they would be at real risk of 'refoulement', essentially, being returned to a country where they would face persecution or inhuman or degrading treatment.

1 AAA and others v Secretary of State for the Home Department [2023] UKSC 42

2 Memorandum of Understanding between the government of the United Kingdom of Great Britain and Northern Ireland and the government of the Republic of Rwanda for the provision of an asylum partnership arrangement, Updated 6 April 2023

6. The Supreme Court noted that refoulement is prohibited by a number of international legal instruments by which the UK is bound, including the Refugee Convention and Article 3 ECHR, as well as in a number of domestic statutes.

Government response to the Supreme Court judgment

7. On the same day that the Supreme Court handed down its judgment, the Prime Minister announced that the UK would be entering into a new Treaty with Rwanda and that the Government would introduce "emergency legislation", which would "enable Parliament to confirm that, that with our new Treaty, Rwanda is safe."[3]

8. On 5 December 2023, the Home Secretary signed a new treaty with Rwanda in Kigali, replacing the MEDP. The treaty is intended to ensure that Rwanda will not remove any person relocated under the MEDP, in any circumstances, to a country other than the UK, and that Rwanda will at all times comply with its international obligations. On 6 December 2023 the Government made a statement to Parliament and published the Safety of Rwanda (Asylum & Immigration) Bill. It was introduced to the House of Commons the following day.

Previous relevant work of the JCHR

9. This Bill does not stand in isolation. The JCHR has previously considered the original Rwanda MEDP and conducted legislative scrutiny of the Illegal Migration Bill, now Act, under which the majority of those who the Bill will affect will be removed. The Committee's conclusions in respect of both are of relevance to our scrutiny of this Bill.

10. On 21 July 2022, following a one-off oral evidence session on the MEDP, the Committee wrote to the then Home Secretary, noting concerns about the partnership, including the policy's consistency with the Refugee Convention and the lack of adequate assurances as to the safety of those removed to Rwanda.[4] The letter said:

> We are … concerned that the MEDP could be seen as an outsourcing of the UK's own obligations under the Refugee Convention to another country. … Removing asylum seekers to a state where they face a real risk of serious human rights abuses, or of being sent on to a dangerous third country as a result of an inadequate asylum system, is inconsistent with the UK's human rights obligations.

11. In her response to the letter, the then Home Secretary said that "Rwanda … is a fundamentally safe and secure country with a track record of supporting asylum seekers … As mentioned previously, no one will be relocated if it unsafe or unsuitable for them."[5]

12. In June 2023, we published a report on the Illegal Migration Bill, which contained a number of clauses related to the removal of asylum seekers to third countries.[6] The report

3 PM remarks on Supreme Court Judgement: 15 November 2023
4 Letter from the Chair of the Joint Committee on Human Rights to the Home Secretary on the UK-Rwanda Partnership, 21 July 2022
5 Letter from the Home Secretary to the Chair of the Joint Committee on Human Rights on the UK-Rwanda Partnership, 14 October 2022
6 Joint Committee on Human Rights, Twelfth Report of Session 2022–23, Legislative Scrutiny: Illegal Migration Bill, HC 1241 and HL Paper 208.

concluded that "[t]he blanket denial of access to the asylum system for persons who enter or arrive in the UK irregularly and indirectly is a clear breach of the object and purpose of the Refugee Convention."[7] In response, the Government said that it disagreed with the JCHR's interpretation of the Refugee Convention and said that the Illegal Migration Bill "has been drafted in line with our good faith interpretation".[8]

13. The JCHR report highlighted that, in principle, the Refugee Convention does not prohibit moving asylum seekers to another safe state to be processed. However, it was noted that "the UNHCR draws a distinction between that form of arrangement and an arrangement designed to shift a state's responsibilities under the Refugee Convention to another state. It has described 'arrangements that seek to transfer refugees and asylum seekers to third countries in the absence of sufficient safeguards and standards' as 'contrary to the letter and spirit of the Refugee Convention'".[9] The report concluded that "[t]he designation of third states as safe "in general", in the absence of any individualised assessments of risk, is not an adequate safeguard against refoulement. The approach in the Bill runs a very real risk of breaching the prohibition on refoulement".[10]

14. The Government did not accept this conclusion, noting that anyone removed to a third country designated as safe "would have the opportunity to raise if they would have a real risk of serious and irreversible harm if removed to that country. That would include any claims raised about risk of refoulement."[11]

This inquiry

15. The accelerated Parliamentary timetable has made it challenging for the JCHR to carry out its duty of scrutinising the Bill. We launched this inquiry, *Legislative Scrutiny: Safety of Rwanda (Asylum and Immigration) Bill*, along with a call for written evidence, on 18 December 2023. We received and published 24 written submissions, all of which opposed the Bill, and have taken note of other published opinions on the Bill. We held three oral evidence sessions, having already put questions on the Bill to the Lord Chancellor.[12] We have heard from a range of witnesses, including legal experts, academics and NGOs. We are grateful to all of those who took time to share their views with us.

7 Ibid, para 122
8 Joint Committee on Human Rights, Eight Special Report of Session 2022–23, Legislative Scrutiny: Illegal Migration Bill: Government Response to the Committee's Twelfth Report, HC 1790
9 Joint Committee on Human Rights, Twelfth Report of Session 2022–23, Legislative Scrutiny: Illegal Migration Bill, HC 1241 and HL Paper 208, para 170.
10 Joint Committee on Human Rights, Twelfth Report of Session 2022–23, Legislative Scrutiny: Illegal Migration Bill, HC 1241 and HL Paper 208, para 169.
11 Joint Committee on Human Rights, Eight Special Report of Session 2022–23, Legislative Scrutiny: Illegal Migration Bill: Government Response to the Committee's Twelfth Report, HC 1790
12 Ministerial scrutiny: Human rights, HC 182, Wednesday 13 December 2023

2 Asylum and human rights

16. The focus of this inquiry and report is on whether the Bill is compatible with the UK's human rights obligations. It is a general principle of international law that a sovereign state is entitled to control its borders and regulate the entry and expulsion of immigrants. Yet that principle is subject to the state's treaty obligations, including those that relate to human rights and asylum, and customary international law.[13] The UK is bound by a number of provisions of international law that impact on the rights of asylum seekers. These are largely found in treaties that the UK has ratified and therefore expressly agreed to be bound by. The UK is under a legal duty to implement all its international treaty obligations in good faith.[14] While Parliament can and does legislate to alter the domestic law of the United Kingdom, it cannot legislate to alter agreements between states.

17. This chapter provides a summary of the international human rights law most directly relevant to the Bill.[15]

UN Refugee Convention

18. The United Nations Convention Relating to the Status of Refugees (hereinafter 'the Refugee Convention') is an international human rights agreement, ratified by the UK and almost 150 other states, which provides the legal framework for the granting of asylum.[16] It was drawn up in the aftermath of the Second World War and has its origins in the Universal Declaration of Human Rights 1948, which recognizes the right of persons to seek asylum from persecution in other countries.[17]

19. The Refugee Convention guarantees certain rights to those who fall within the definition of a refugee, which is a person who: "owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion, is outside the country of his nationality, and is unable to or, owing to such fear, is unwilling to avail himself of the protection of that country".[18]

20. One of the key protections in the Refugee Convention is the right not to be subjected to 'refoulement', i.e. being returned to a country where the refugee faces a well-founded fear of persecution.[19] This includes protection against being returned to face persecution via a third country.[20] A person who claims asylum is protected from 'refoulement' from the moment they enter the territory of a contracting state whilst the state considers whether they should be granted refugee status.[21]

13 Customary international law refers to those international legal rules that are established through the general practice of states and the general acceptance of their legally binding status, rather than through any treaty.

14 Vienna Convention on the Law of Treaties, Article 26. Article 31 of the Vienna Convention also provides that treaties "shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose."

15 More detail on the international law relevant to the rights of asylum seekers in the UK can be found in Chapter 3 of the JCHR's report on the Illegal Migration Bill: Joint Committee on Human Rights, Twelfth Report of Session 2022–23, Legislative Scrutiny: Illegal Migration Bill, HC 1241 and HL Paper 208.

16 UN Convention Relating to the Status of Refugees 1951

17 Article 14 of the Universal Declaration of Human Rights, proclaimed by the United Nations General Assembly in Paris on 10 December 1948 (General Assembly resolution 217 A)

18 Article 1 of the Refugee Convention

19 Article 33 of the Refugee Convention

20 R v Secretary of State for the Home Department, Ex p Bugdaycay [1987] AC 514, 532.

21 R (ST) v Secretary of State for the Home Department [2012] 2 AC 135, para 61

21. According to the UN High Commissioner on Refugees (UNHCR), "in order to give effect to their obligations under the 1951 Convention, States are required to grant individuals seeking asylum access to their territory and to fair and efficient asylum procedures."[22]

22. Many rights under the Refugee Convention are mirrored in domestic law, including the right to 'non-refoulement'. Most of the detail of the UK immigration and asylum system is set out in the Immigration Rules[23] and section 2 of the Asylum and Immigration Appeals Act 1993 currently provides that "Nothing in the immigration rules … shall lay down any practice which would be contrary to the Convention."

European Convention on Human Rights

23. The ECHR contains no rights that explicitly refer to immigration or asylum.[24] Nevertheless, the ECHR protects against refoulement, irrespective of refugee status. This is because the ECHR guarantees rights, including the right to life under Article 2 and the right not to be subjected to torture or inhuman or degrading treatment or punishment under Article 3. If individuals could be removed from a country to face violations of those rights, their protection would not be "practical and effective" as the European Court of Human Rights requires.[25] Thus, it is a violation of the ECHR for a person to be removed to another country where there is a real risk they will suffer there a violation of Article 2 or 3.[26]

24. In addition, Article 13 ECHR, which guarantees the right to an effective remedy, requires the State to give asylum seekers the opportunity to make a claim for asylum and have that claim considered.[27] In particular, this requires a procedure with automatic suspensive effect - i.e. which suspends the person's removal while their claim is considered.[28]

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22 UNHCR, Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, 26 January 2007, para. 8, Advisory Opinion: https://www.refworld.org/docid/45f17a1a4.html
Under Article 35 of the Refugee Convention, the UK is legally bound to "co-operate with the Office of the [UNHCR] in the exercise of its functions, and shall in particular facilitate its duty of supervising the application of the provisions of this Convention."

23 Which are made under section 3 of the Immigration Act 1971, have to be laid before Parliament and are subject to the negative resolution procedure. While they are not strictly speaking secondary legislation, they are treated as such for all practical purposes.

24 Protocol No.4 to the Convention does contain a right of free movement and prohibitions on expulsion of nationals and collective expulsion of aliens, but this protocol has never been ratified by the UK – although similar provisions in the International Covenant on Civil and Political Rights (ICCPR) are binding on the UK, such as Articles 12 and 13 ICCPR.

25 Rights under the Convention must be "practical and effective and not theoretical and illusory" , Airey v. Ireland, 9 October 1979, § 24, Series A no. 32

26 For Article 2, see Al Nashiri v Poland, Application No. 28761/11, 16 February 2015, § 576. Removal to face the death penalty also engages Article 1 of Protocol 13, the abolition of the death penalty. For Article 3, see Soering v UK Application No. 14038/88, 7 July 1989.
The ECtHR has also held that removal to face a real risk of slavery or forced labour is a violation of Article 4 ECHR. In rare situations where an individual may face a "*flagrant* denial of justice" in a destination country, Articles 5 (right to liberty) or 6 (right to fair trial) of the ECHR may also prohibit their removal. See Harkins v. the United Kingdom (dec.) Application No. 71537/14 [GC], §§ 62–65

27 Article 13 ECHR requires independent and rigorous scrutiny of any arguable claim that removal would expose an individual to treatment contrary to Articles 2 or 3 ECHR. See M.S.S. v. Belgium and Greece [GC], no.30696/09, 21 January 2011, §§ 265–322

28 MK and others v Poland, no.40503/17, 23 July 2020

This is in recognition of "the importance that the Court attaches to Article 3 of the Convention and the irreversible nature of the damage that may result if a risk of torture or ill-treatment materialises."[29]

25. Unlike the Refugee Convention, the ECHR has been incorporated into domestic law through the Human Rights Act 1998. It was not, however, considered necessary to incorporate Article 13 ECHR. This is because the right to an effective remedy is deemed to have been met by the introduction of the HRA and the right to bring proceedings for a breach of human rights contained within it.[30]

Other international law obligations

26. The UN Convention Against Torture (UNCAT), which has 173 states parties, also provides that a person cannot be removed to a State where there are substantial grounds for believing they would be in danger of being subjected to torture.[31] This obligation also means that the person at risk should never be deported to somewhere from which they may subsequently face deportation to a third State where they would be in danger of being subject to torture (i.e. onward refoulement).[32]

27. The UK has also ratified the International Covenant on Civil and Political Rights (ICCPR), which contains protections equivalent to Article 2 and 3 ECHR. These have been interpreted to include "an obligation not to extradite, deport, expel or otherwise remove a person from their territory, where there are substantial grounds for believing that there is a real risk of irreparable harm (…) either in the country to which removal is to be effected or in any country to which the person may subsequently be removed".[33]

28. As recognised by the Supreme Court in its judgment on the Rwanda policy, the United Kingdom has previously subscribed to the view that the principle of non-refoulement also forms part of customary international law.[34] These are international legal rules that are established through the general practice of states and the general acceptance of their legally binding status, rather than through any treaty. They are so fundamental that they bind nations even when they have not signed up to a treaty obligation.

Government's commitment to its international legal obligations

29. When the Lord Chancellor appeared before us in December, shortly after the Bill was introduced, he was questioned on the Government's commitment to human rights. We were heartened to hear from him that the Government was committed to remaining a party to the European Convention on Human Rights and that, "when you have the convention, we should comply with it".[35] In respect of the Bill itself, he made clear that the Government was committed to remaining within the requirements of international law:

29 MK and others v Poland, para 143
30 Under section 7 HRA
31 United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 1984, Article 3(1)
32 Committee Against Torture (CAT) General Comment No. 4, §12; CAT General Comment No. 1, §2; CCPR General Comment No. 31, §12, Husain Ibrahimi and Mohamed Abasi v. The Secretary of State for the Home Department [2016] EWHC 2049, §16
33 United Nations Human Rights Committee, General Comment 31 (2004), para 12
34 AAA and others v Secretary of State for the Home Department [2023] UKSC 42, para 21
35 Ministerial scrutiny: Human rights, HC 182, Wednesday 13 December 2023, Q1 and Q6

> As far as we are concerned, the position is that the Bill has been carefully designed and carefully engineered to ensure, as I have indicated, that we can do what we need to do while staying within the four corners of our international legal obligations.[36]

30. In a similar vein, in its public statement of its legal position on the Bill the Government has stated: "The United Kingdom continues to be bound by and respects its international obligations."[37] The Government also made clear that compliance with international law is a prerequisite for Rwanda's continued participation in the policy:

> The bill is predicated on both Rwanda and the UK's compliance with international law in the form of the Treaty, which itself reflects the international legal obligations of the UK and Rwanda. The government of the Republic of Rwanda has also been clear that it would withdraw from involvement in the scheme if the UK were to breach its international obligations (…).[38]

31. Despite these assertions, neither the Home Secretary in the House of Commons nor Lord Sharpe of Epsom, Parliamentary Under Secretary of State for the Home Office, in the House of Lords have been able to make a statement of compatibility in respect of the Bill. Instead, they have made statements under s19(1)(b) of the Human Rights Act that they cannot say that, in their view, the Bill is compatible with the ECHR rights that have been incorporated into domestic law, but the Government nevertheless wishes to proceed with the Bill.

32. The Lord Chancellor explained to us in writing that:

> this statement is not specific to one provision. It applies to the Bill as a whole. A statement under s.19(1)(b) makes clear, in this instance, that although the Home Secretary cannot state that the Bill is compatible with Convention rights with more than 50% certainty, the Government nevertheless is satisfied that there are respectable legal arguments for compatibility and wishes to proceed with it. All such a statement means is that the Home Secretary is not able to state now that the Bill's provisions are more likely than not compatible with Convention rights.[39]

An originalist interpretation

33. Martin Howe KC, a barrister and one of the authors of the 'Lawyers for Britain' ERG legal committee opinion on the Bill,[40] gave the Committee a different view on the extent to which the UK should consider itself bound by international law. The legal opinion to which he contributed states that the Bill contains:

36 Ministerial scrutiny: Human rights, HC 182, Wednesday 13 December 2023, Q2
37 Safety of Rwanda (Asylum and Immigration) Bill 2023: Legal position
38 Ibid
39 Letter from Lord Chancellor to Chair of the JCHR, dated 11 January 2024
40 The Legal Committee of the European Research Group of Conservative Parliamentarians opinion on the Safety of Rwanda (Asylum and Immigration) Bill, authored by Sir William Cash CH MP, Rt Hon David Jones MP, Martin Howe KC and Barnabas Reynolds, dated 11 December 2023

> some important statements of principle, in that it reasserts the sovereignty of Parliament and its right to legislate to cut through the morass of alleged international norms which currently frustrate the ability of the United Kingdom to control its own borders.[41]

34. When asked about that opinion also stating that "[t]he Bill in effect crosses the Rubicon of overt defiance of Strasbourg Court jurisprudence", Mr Howe explained that he did not consider defying the judgments of the ECtHR to be the same as defying the Convention itself:

> In many respects, the Strasbourg court has developed doctrines that go beyond the convention rights as adhered to by this country and others when they signed up to the convention. Without going into the ins and outs of it, it is a debatable whether defying the Strasbourg court's interpretation of the convention is in any way a breach of the actual convention rights.[42]

35. This is akin to an 'originalist' view of the ECHR - that the UK should only be bound by the Convention as it was interpreted at the time it was signed. It stands in marked contrast to the well-established 'living instrument' doctrine, which has been confirmed by the European Court of Human Rights as the basis for interpretation of the Convention since the case of *Tyrer v United Kingdom* in 1978.[43] It is also inconsistent with the approach taken in domestic law, as acknowledged by Mr Howe.[44] The living instrument doctrine recognises that the role of the ECtHR is to interpret the Convention in light of present day conditions across the Council of Europe countries. As the Joint Committee on Human Right concluded in its report on the now abandoned Bill of Rights Bill, this doctrine "ensures protection for the human rights we recognise now, rather than those accepted in 1950" and abandoning it would be "damaging to human rights in the UK".[45]

36. **The principle that individuals cannot be removed from a country to face a real risk of persecution, torture, inhuman or degrading treatment or death is a core principle of international law, to which the UK has committed itself on numerous occasions over the past 70 years. The Committee welcomes the Government's continued recognition of the binding nature of its international obligations and its commitment to respecting them. It is nevertheless disappointing to see, for the second time in the past year, the introduction of a Bill that the Government cannot say is more likely than not to comply with its international obligations under the ECHR.**

41 Ibid

42 Q67

43 Tyrer v United Kingdom 25 April 1978, § 31, Series A no. 26 : "The Court must also recall that the Convention is a living instrument which, as the Commission rightly stressed, must be interpreted in the light of present-day conditions." This case concerned the corporal punishment of juveniles, which the Court found to be a breach of Article 3 ECHR despite it previously having been considered acceptable.

44 Mr Howe told us at Q67: "In our own jurisprudence under the Human Rights Act, we have the House of Lords, subsequently the Supreme Court and Lord Bingham in particular, saying, in effect, that clear and consistent Strasbourg jurisprudence should be treated as binding. I agree that that is a widely held point of view, but it does not follow that it is right."

45 Legislative scrutiny: Bill of Rights Bill, Ninth Report of Session 2022–23, HC 611, HL Paper 132, para 46

3 Safety of Rwanda

37. The main aim of the Bill is to establish as a matter of domestic law that Rwanda is a safe- country for the purpose of removals. The key provision intended to achieve this is clause 2, which requires both the immigration authorities and the courts to "conclusively treat the Republic of Rwanda as a safe country".

38. We note that clause 2 would establish that Rwanda is a safe country not only for those who fall within the provisions of the Illegal Migration Act 2023, which covers those who arrive here without prior authorisation and who have not come directly from a state where they face persecution, but for all of those who are liable to be removed from the UK.

Is Rwanda now safe?

39. In November 2023 the Supreme Court, after considering all the evidence placed before it, held that Rwanda was not a safe country because of the risk that individuals sent there would be subjected to refoulement. Significantly, the Court did not hold that this was due to a lack of good faith on the part of Rwanda but rather "its practical ability to fulfil its assurances, at least in the short term, in the light of the present deficiencies of the Rwandan asylum system, the past and continuing practice of refoulement … , and the scale of the changes in procedure, understanding and culture which are required." It identified "a culture within Rwanda of, at best, inadequate understanding of Rwanda's obligations under the Refugee Convention", "the suggestion of a dismissive attitude towards asylum seekers from the Middle East and Afghanistan" and "that significant changes need to be made to Rwanda's asylum procedures". While recognising that changes could be made to address these inadequacies, it also stated that the "necessary changes may not be straightforward, as they require an appreciation that the current approach is inadequate, a change of attitudes, and effective training and monitoring."[46]

40. The Government's position is that the Supreme Court was considering the facts as they were some 14 months ago, that time has moved on and that all the issues identified by the Supreme Court have been addressed by the new treaty and the improved arrangements under it. The Lord Chancellor pointed out that under the treaty, unlike under the previous MoU, "if someone gets asylum, they stay in Rwanda, of course, but if they do not, they still have the right to settle and there is a complete bar on refoulement." This is set out in Article 10 of the Treaty, which provides that no relocated individual shall be removed from Rwanda except to the UK - and then only if the UK requests their return.[47] The treaty also introduces a number of changes to the asylum system in Rwanda designed to ensure greater expertise and independence. The monitoring committee that checks for compliance with the treaty would also be given a greater role, although its powers would largely be limited to reporting to a joint committee made up of representatives of the UK and Rwandan Governments (and subsequently publishing those reports as they see fit).[48]

46 AAA and others v Secretary of State for the Home Department [2023] UKSC 42

47 UK-Rwanda treaty: Article 10(3) states that: "No Relocated Individual (even if they do not make an application for asylum or humanitarian protection or whatever the outcome of their applications) shall be removed from Rwanda except to the United Kingdom in accordance with Article 11(1)…" Article 11(1) provides: "The United Kingdom may make a request for the return of a Relocated Individual."

48 UK-Rwanda treaty: Article 15

41. Lord Sumption, former Supreme Court Justice, explained to us his view that the key provision of the treaty is that which prohibits the removal of people sent there, other than to the UK, even if their asylum claim is rejected. He considered that this met the Supreme Court's concerns about refoulement.[49] This was also the view of Dr Mike Jones, Executive Director of Migration Watch:

> 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.[50]

42. However, the majority of witnesses disagreed with this view. Zoe Bantleman, Legal Director of the Immigration Law Practitioners' Association (ILPA), told us that it is their "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". She explained:

> 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… monitoring mechanisms in the treaty are wholly insufficient to guard against refoulement … 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… signing a treaty with Rwanda does not engender a culture of appreciation or understanding of obligations under the refugee convention.[51]

43. Similar views were expressed by the Public Law Project:

> Neither the Bill nor the treaty alter the reality that Rwanda is not a safe country for individuals subject to removal. While the concerns about discriminatory treatment, the risk of refoulement, and judicial independence are addressed on the surface of the agreement, the evidence on Rwanda's unreliability in upholding these rights, and lack of regard for its international obligations, has not changed.[52]

44. Professor Sarah Singer, Professor of Refugee Law at the Refugee Law Initiative, University of London, added:

> there are binding obligations in this new treaty with Rwanda, through which Rwanda undertakes not to remove people to a third country. The

49 Q47; similar views are explored by the think tank Policy Exchange in their research note "Safety of Rwanda (Asylum and Migration) Bill", 11 December 2023

50 As noted above, the Treaty, in Article 10(3), states that Rwanda may only remove a relocated individual to the UK in accordance with Article 11(1). That provision requires the UK to make a request for the person's return. Article 11(2) also states that a person shall then be made available for removal "with the Relocated Individual's consent".

51 Q6

52 Public Law Project (RWA0001)

> 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.[53]

45. Significantly, the UNHCR, whose evidence was given substantial weight by the Supreme Court when it reached its conclusion that Rwanda is not safe, have recently given their view on the safety of Rwanda under the new treaty arrangements:

> As of January 2024, UNHCR has not observed changes in the practice of asylum adjudication that would overcome the concerns set out in its 2022 analysis and in the detailed evidence presented to the Supreme Court …
>
> UNHCR notes the detailed, legally-binding commitments now set out in the treaty, which if enacted in law and fully implemented in practice, would address certain key deficiencies in the Rwandan asylum system identified by the Supreme Court. This would however require sustained, long term efforts, the results of which may only be assessed over time.
>
> In short, the treaty lays out an important basis for an improved asylum system, but until the necessary legal framework and implementation capacity is established, the conclusion of the treaty in itself does not overcome continued procedural fairness and other protection gaps.[54]

46. Lord Sumption suggested to us that the opinion of UNHCR should be given "limited weight" on the basis that it is "in principle, opposed to the whole notion of outsourcing adjudication of refugee claims" and its comments are "a mixture of legal and political".[55] However, we note that the Supreme Court, when accepting that the evidence of UNHCR was of "particular significance", took into account this view but did not consider that it undermined the importance of what they had to say about the safety of Rwanda.[56]

47. The House of Lords International Agreements Committee has scrutinised and reported on the new treaty. They noted that some of the measures in the treaty designed to protect against breach required further steps to be taken. For example:

> Article 10(3)—the provision which prohibits Relocated Individuals being removed from Rwanda except to the UK—requires the parties to "agree an effective system for ensuring that removal contrary to this obligation does

53 Q42

54 UNHCR Analysis of the Legality and Appropriateness of the Transfer of Asylum-Seekers under the UK-Rwanda arrangement: an update, 15 January 2024

55 Q54

56 AAA para 69: "As the Lord Chief Justice noted…UNHCR can be said to have an institutional interest in the outcome of these proceedings, since it has adopted the position (set out in its Guidance Note on bilateral and/or multilateral arrangements of asylum-seekers) that asylum seekers and refugees should ordinarily be processed in the territory of the state where they arrive or which otherwise has jurisdiction over them. The fact that UNHCR has adopted that position is a factor to be taken into account when assessing its evidence. However, its evidence and submissions were presented with moderation, and did not appear to reflect a partisan assessment. It has also to be borne in mind that, as a responsible United Nations agency accountable to the General Assembly, UNHCR will not lightly make statements critical of any state in which it operates."

> not occur". We asked the Home Office for further information about the nature and timing of these measures. The response was vague but indicated that the detail of measures had not yet been agreed …[57]

The report concluded that:

> It is clear from this that significant legal and practical steps have to be taken before the assurances provided in the Rwanda Treaty can be fully implemented. The Government has provided no indication of the timeframe for the completion of these steps, but plainly it will take some time.

48. It was also brought to our attention that a number of asylum claims from Rwandans have been accepted by the UK.[58] As Enver Solomon, Chief Executive of the Refugee Council, said:

> 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.[59]

49. This does not mean that Rwanda is not *generally* safe, but it does support the legitimacy of some asylum seekers' ongoing concerns about safety in Rwanda.

50. **We have heard different views on whether the new treaty with Rwanda meets the Supreme Court's conclusions as to the country's safety. We recognise that, if complied with, the Treaty's strict prohibition on the removal of any relocated individual to anywhere but the UK would prevent refoulement. However, we note that the House of Lords International Agreements Committee has reported on the need for further steps to be taken to establish a system for ensuring that removal contrary to this obligation does not occur. Particularly given the clear conclusions of the Supreme Court, it remains unclear whether compliance with the treaty can be guaranteed in practice.**

Why is the Bill needed?

51. Without the Bill, the courts would inevitably be asked to consider again whether Rwanda is safe, taking into account the new treaty arrangements and updated evidence. A number of witnesses queried why the Government would need to legislate to deny the courts the opportunity to do so if it was indeed confident in that position. Tyrone Steele, Interim Legal Director of JUSTICE, suggested:

> 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.[60]

57 Scrutiny of international agreements: UK– Rwanda Agreement on an Asylum Partnership, International Agreements Committee, 4th Report of Session 2023–24, HL Paper 43

58 "Revealed: UK granted asylum to Rwandan refugees while arguing country was safe", The Observer, 27 January 2024

59 Q8

60 Q5

52. We recognise that preventing the courts scrutinising the safety of Rwanda could potentially speed up the process of removal, but we also asked the Lord Chancellor why the Bill was necessary. He responded: "Because we say that there is a proper role for the democratically elected body to consider this on new facts … Is it constitutionally improper for the Crown in Parliament, which is sovereign, to consider these matters in the round and reach its own adjudication? Plainly not. That is open to a government to do."[61] This leads to another question:

Should Parliament legislate for the safety of Rwanda?

53. Compliance with the rule of law is of fundamental importance for the protection of human rights.[62] It is cited in the preamble to the ECHR and the Universal Declaration of Human Rights:

> Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law …[63]

54. We heard from numerous witnesses that Parliament legislating on the safety of Rwanda, as it would if the Bill becomes law, is not consistent with constitutional principles, including the rule of law. The Law Society described it as:

> a highly concerning response which is damaging to the rule of law, the role of the judiciary and the constitutional balance of powers by creating a legal fiction to bypass a judicial decision. While Parliament has the right to respond to a court judgment by passing legislation to change a point of domestic law, it cannot use law to change fact.[64]

55. Professor Tom Hickman KC also told us that "it is inappropriate and ill-advised for Parliament to determine that Rwanda is safe, or whether Rwanda is safe", explaining:

> 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.[65]

56. Lord Sumption took a slightly different view:

> It is not uncommon for statutes to deem things that may or may not be correct. It is usually intended to cut out forensic argument about disputable questions, and the courts give effect to them according to their terms…

61 Ministerial scrutiny: Human rights, HC 182, Wednesday 13 December 2023, Q3

62 As noted by the Bingham Centre for the Rule of Law in their "Safety of Rwanda (Asylum and Immigration) Bill: A Rule of Law Analysis for House of Lords Second Reading", 29 January 2024: " The Rule of Law, as Tom Bingham made clear in his authoritative account of the concept, includes the requirement that States act compatibly with their obligations in international law."

63 Universal Declaration of Human Rights, proclaimed by the United Nations General Assembly in Paris on 10 December 1948 (General Assembly resolution 217 A)

64 The Law Society of England and Wales (RWA0007)

65 Q33

> there have been immigration Acts, including the recent Illegal Migration Act, which included schedules of safe places, places that were treated as safe for the statutory purposes. What is unusual is to use a deeming provision in a case as controversial as this one, and to include a deeming provision that effectively forecloses the whole argument in a high proportion of cases.[66]

57. Professor Sarah Singer explained further how previous immigration legislation has deemed countries to be safe, but explained that this was different to the approach taken in the Bill:

> 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.[67]

58. **We have considered the Government's evidence that Rwanda is now safe, but have also heard from witnesses and bodies including the UNHCR that Rwanda remains unsafe, or at least that there is not enough evidence available at this point to be sure of its safety. Overall, we cannot be clear that the position reached on Rwanda's safety by the country's most senior court is no longer correct. In any event, the courts remain the most appropriate branch of the state to resolve contested issues of fact, so the question of Rwanda's safety would best be determined not by legislation but by allowing the courts to consider the new treaty and the latest developments on the ground.**

66 Q47
67 Q36

4 Judicial scrutiny

Prohibiting judicial scrutiny

59. In addition to requiring courts to treat Rwanda as safe, clause 2 of the Bill would also prohibit them from hearing any challenge to the safety of Rwanda. It provides that, in particular, a court must not consider any claim that a person will be removed from Rwanda in breach of its international law obligations; that Rwanda will not process their asylum claim properly; or that Rwanda will not comply with the terms of the treaty agreed with the UK. It is notable that this clause would specifically prevent any individual bringing a claim on the same basis as the claim that was successful before the Supreme Court in November 2023.

60. Crucially, this provision would apply regardless of the available evidence. As Liberty put it in their written evidence:

> even if a court heard overwhelming evidence that Rwanda was unsafe, it would have to stick its fingers into its ears, and pretend that it was.[68]

61. The vast majority of the evidence we received on this point was highly critical of this aspect of the Bill. PLP told us that:

> The Bill's near total exclusion of judicial scrutiny seeks to undermine the constitutional role of domestic courts in holding the executive to account.[69]

62. We heard from Amnesty International UK that:

> It is not human rights, rule of law or constitutionally compliant to fix facts upon which decision-makers, including courts, must act or adjudicate in relation to human rights obligations. Those obligations (including Articles 3 and 13 ECHR) can only be met by their proper application to the true facts (determined on the basis of currently available evidence) rather than 'facts' that are fixed and pre-determined regardless of the evidence.[70]

63. By denying access to the courts for those who wish to argue that Rwanda is not safe, or that they individually face a risk of refoulement, the Bill appears to expose anyone who does have genuine grounds to fear refoulement to a clear risk that their rights, including under Article 3 ECHR, will be violated. It would also deny access to an effective remedy under Article 13 ECHR, as Professor Singer explained:

> 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.[71]

68 Liberty (RWA0010)
69 Public Law Project (RWA0001)
70 Amnesty International UK (RWA0006)
71 Q38

64. Professor Hickman added:

> 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.[72]

65. While Lord Sumption differed from most of our witnesses in viewing the new treaty with Rwanda as sufficient to address the Supreme Court's concerns about Rwanda, he nevertheless agreed that denying access to the courts rendered the Bill incompatible with both the Refugee Convention and the ECHR. He told us that "the Rwanda Bill is inconsistent with international law in its closing down of access to the courts in very significant respects".[73]

Government position on Article 13

66. The ECHR Memo that accompanies the Bill does not dispute that the ECHR requires "independent and rigorous scrutiny of any arguable claim that there exist substantial grounds for believing that there is a real risk of treatment contrary to Article 2 or 3; and a remedy with automatic suspensive effect", but states that the Bill meets these requirements in two different ways.

Declarations of incompatibility

67. Firstly, the ECHR memo states that "The Government considers that a Declaration of Incompatibility is sufficient to provide an Article 13 effective remedy for challenges to decisions under the presumption of safety in clause 2 to treat Rwanda as safe".[74] The Lord Chancellor told us the same, that the requirements of Article 13 are met because the Bill does not disapply section 4 HRA:

> We say that we do give effect to Article 13, and we specifically think about Article 13, which runs like a stick of rock through this Bill. That is why we say that you do so first by ensuring that Section 4 on declaration of incompatibility is there so that the courts can be seized of this issue, and that an individual can make his or her points before the court.[75]

72 Q39
73 Q48
74 ECHR memorandum
75 Ministerial scrutiny: Human rights, HC 182, Wednesday 13 December 2023, Q4

68. It is correct to say that the Bill does not exclude section 4 HRA, and that this indicates the courts would still be permitted to issue a declaration of incompatibility in respect of the Bill once law. A declaration of incompatibility, however, has no binding effect. The courts could provide their view that the Act is not compatible with Convention rights, but this would not alter its continuing effect. It would be for the Government and/or Parliament to decide how to respond. As the Bingham Centre for the Rule of Law, in its briefing for the Second Reading of the Bill in the House of Lords, notes:

> A declaration of incompatibility under the HRA is not considered to be an "effective remedy" by the European Court of Human Rights which must first be exhausted before making an application to the Court.[76]

69. When asked what impact a declaration of incompatibility would have, Lord Sandhurst, Guy Mansfield KC, said "I suppose the strict answer is none. It would depend on Parliament and the Ministers."[77] Lord Sumption agreed, saying "Lord Sandhurst is correct to say that it has no legal impact at all … . What seems absolutely clear is that the declaration of incompatibility will not, barring a statutory amendment, affect the removal of the complainant or others to Rwanda."[78] Martin Howe KC told us a declaration of incompatibility being made "would cause severe political problems for the Government" and would encourage the Strasbourg Court to find against the UK, but also accepted that its effect would be "not to suspend anything or stop things happening."[79]

70. The Bingham Centre for the Rule of Law makes the position clear:

> It is clear from the Government's own explanatory material accompanying this Bill that were a declaration of incompatibility to be made in respect of any part of the legislation the Government would rely on the fact that such a declaration does not affect the legal validity of the legislative provision, and would proceed to treat the legislation as valid and of legal effect.[80]

Claims based on individual circumstances

71. The Bill would not, however, prevent all challenges to removal to Rwanda. Clause 4 would allow for claims "based on compelling evidence relating specifically to the person's particular individual circumstances (rather than on the grounds that the Republic of Rwanda is not a safe country in general)". The ECHR memo puts forward clause 4 as the second basis upon which the Bill ensures compliance with Article 13 ECHR:

76 Safety of Rwanda (Asylum and Immigration) Bill: A Rule of Law Analysis for House of Lords Second Reading", 29 January 2024.
The ECtHR held in 2006 that a declaration of incompatibility did not amount to a domestic "effective remedy" that needed to be exhausted before a claim could be brought to the Strasbourg Court (under Article 35(1) ECHR, an applicant may only bring a claim to the ECtHR if they have exhausted all the effective remedies that are available to them in their own country) – see Burden v UK, Application No 13378/05, Judgment, 12 December 2006. It has not, however, ruled specifically on whether a declaration of incompatibility is sufficient to amount to an effective remedy for the purposes of Article 13.

77 Q62

78 Q62

79 Q78

80 Safety of Rwanda (Asylum and Immigration) Bill: A Rule of Law Analysis for House of Lords Second Reading", 29 January 2024.

> Article 13 ECHR is engaged but will not be infringed because a person can challenge (based on personal circumstances) a decision that Rwanda is a safe country to be removed to.[81]

72. The Government has, nevertheless, emphasised the narrow nature of the exception clause 4 provides:

> [T]he bill does not entirely preclude the possibility of a person being able to rely on some exceptional, individual circumstance that is so rare that it could not have been predicted by Parliament… As noted above, the bill (together with the IMA) has removed the ability for people to make an asylum claim in the UK, from exploiting modern slavery protections to prevent removal from the UK, or a judicial review on those grounds. This bill goes even further to narrow the route to individual challenges that can prevent removal than the IMA did and also precludes claims under s. 6 HRA that removal would be a breach of human rights law, including the right to a family life, and a claim based on onward removal to another country.[82]

73. None of the witnesses who raised concerns about the Bill denying access to court were of the opinion that clause 4 met these concerns. Professor Sarah Singer explained that the narrowness of the exception provided by clause 4 means that it is not sufficient to ensure the Bill complies with Article 13 ECHR:

> 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 … 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.[83]

74. Amnesty International UK expressed the same view:

> Clause 4 may mitigate Clause 2 but is insufficient to ensure human rights compliance because: a. Clauses 2 and 4 permit no consideration of refoulement or any other human rights violation arising from someone being removed or sent from Rwanda. b. The individual consideration permitted by Clause 4 excludes any consideration of general risk.[84]

75. The Equality and Human Rights Commission, in their written evidence to us on the Bill, concluded that:

81 ECHR memorandum
82 Safety of Rwanda (Asylum and Immigration) Bill 2023: legal position
83 Q42
84 Amnesty International UK (RWA0006)

> Removing the ability of courts to consider the risk of refoulement under Clause 2 … risks giving rise to a breach of the Article 13 right to an adequate remedy, as courts will be unable to consider claims on this basis … the limited exceptions provided in Clause 4 are insufficient to address this risk.[85]

Interim remedies

76. Clause 4 also provides that interim remedies that prevent or delay removal to Rwanda, i.e. injunctions from the court, can only be secured in exceptional circumstances, even within a claim that is permitted under clause 4. Indeed, any claim challenging removal under the Illegal Migration Act 2023 (applicable to *inter alia* all those who arrive by small boat) is subject to a complete prohibition on interim remedies under section 54 of that Act. Only a 'suspensive claim' on very narrow circumstances could be used to prevent removal.[86] On the assumption that removals to Rwanda will take place as the Government claims, this means that even where the Bill does permit a claim to be made disputing the lawfulness of an individual's removal to Rwanda, in the vast majority of cases that can only realistically occur once they have already left the UK.

77. PLP told us:

> The Bill confines these interim remedies to cases that fall within the 'individual circumstances' exception, and even then, only where the court is satisfied that the individual faces a "real, imminent and foreseeable risk of serious and irreversible harm" if removed to Rwanda. This is a very high threshold, difficult to surmount in practice, especially when many individuals will struggle to access legal advice … the restrictions on interim remedies are likely to be incompatible with Article 13 ECHR. Not only is Article 13 breached by the near-total exclusion of judicial challenges in Clause 2, but in expulsion cases where there is a real risk of treatment contrary to Article 2–3, an effective remedy under Article 13 must allow for the removal to be suspended and stopped–otherwise the harm could well take place.[87]

78. Professor Hickman's view on depriving access to interim remedies was clear:

> [O]n 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 …[88]

79. **The overwhelming majority of the evidence we received supported the view that by denying access to a court to challenge the safety of Rwanda the Bill is not compatible with the UK's international obligations, most obviously Article 13 ECHR – the right to an effective remedy.**

85 The Equality and Human Rights Commission (RWA0022)
86 See sections 38 to 49 of the Illegal Migration Act 2023
87 Public Law Project (RWA0001)
88 Q43

80. **Given that a declaration of incompatibility cannot affect an individual's removal to Rwanda, we do not consider that it can meet the requirement of Article 13 ECHR that asylum seekers have access to an effective remedy with automatic suspensive effect.**

81. **Clause 4 of the Bill would mitigate the Bill's impact by allowing for claims based on individual circumstances. It would not, however, make the Bill compliant with the Refugee Convention or with Article 13 ECHR because it would continue to deny access to court for individuals with arguable claims that they face persecution or a violation of fundamental human rights as a result of Rwanda being unsafe generally or because there is a risk of refoulement. Neither would clause 4 provide for a suspensive process, as required by Article 13 ECHR, in all but the rarest of circumstances.**

5 Disapplication of human rights law

82. The Bill includes clauses that would disapply almost any law that might hinder removals to Rwanda.

Clause 2 and 3

83. Clause 2 of the Bill states that the requirement for all courts to treat Rwanda as safe applies notwithstanding (a) any provision made by or under the Immigration Acts, (b) the Human Rights Act 1998, to the extent disapplied by section 3, (c) any other provision or rule of domestic law (including any common law), and (d) any interpretation of international law by the court or tribunal.

84. Clause 3 sets out the provisions of the Human Rights Act that are disapplied, namely section 2 (which requires the courts to take into account, but not follow, the case law of the European Court of Human Rights), section 3 (which requires the courts to read legislation in a manner that is compatible with Convention rights, whenever possible), and sections 6 to 9 (which cover the obligation on all public authorities to act compatibly with Convention rights, the right of victims of human rights violations to bring proceedings in domestic courts and the ability of courts to provide remedies for those violations).

85. It is important to note that these disapplications of the Human Rights Act apply only in respect of the provisions of the Bill – i.e. to removals to Rwanda and claims brought in respect of them. Nevertheless, they are highly exceptional and indeed, in respect of sections 2 and 6 to 9 HRA, unprecedented.

Section 2 HRA

86. The disapplication of section 2 HRA, while concerning, appears likely to have the most limited impact. While the courts would no longer be bound to take into account Strasbourg jurisprudence, they would remain free to do so if they chose. As Martin Howe KC put it:

> … disapplying Section 2 removes the duty on courts that they must take account of Strasbourg court judgments. It does not tell them to disregard them. I am wondering what this would achieve in practice since, even if Section 2 had not been there, the courts would have been able, on general principles, to take account of the persuasive authority of international court decisions on the treaty with which they are dealing.[89]

Section 3 HRA

87. In 2023 the Joint Committee of Human Rights observed in respect of section 3 HRA that it is "crucial to the legal protection of human rights in the UK" and said that we were "unconvinced and troubled by its piecemeal disapplication" which "runs counter to the principle that those rights are universal."[90]

89 Q71

90 Joint Committee on Human Rights, Twelfth Report of Session 2022–23, Legislative Scrutiny: Illegal Migration Bill, HC 1241 and HL Paper 208, para 90

88. Zoe Bantleman of ILPA also noted that disapplying human rights protections in domestic law would make a finding of breach of the ECHR by the Strasbourg court more likely: "[t]he 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… 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."[91]

Section 6 HRA

89. Particularly alarming is the disapplication, for the first time ever, of section 6 HRA. By disapplying the requirement to comply with Convention rights, the Bill would effectively grant public authorities statutory permission to act in a manner that is incompatible with human rights standards. Regardless of the narrowness of the scope of this permission, noted above, it is very hard to see how it could be consistent with a commitment to complying with international law.

90. Tyrone Steele of Justice pointed to more practical consequences of disapplying section 6 HRA:

> 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.[92]

91. Draft guidance to the Civil Service that will come into effect if the Bill becomes law, set out in an exchange of letters between the Director General of the Propriety and Constitution Group in the Cabinet Office and the Permanent Secretary at the Home Office, also raises concerns about the emergence of a culture within Government departments that does not show due respect for human rights and international law.[93] This emphasises that, in respect of a decision whether or not to comply with an interim measure issued by the ECtHR (see Chapter 6 for further discussion), "[t]he implications of such a decision in respect of the UK's international obligations are a matter for Ministers" and if a Minister chooses not to comply "it is the responsibility of civil servants - operating under the Civil Service Code - to implement that decision." Home Office guidance will be amended to confirm that officials will no longer defer removal when an interim measure is made, but will refer the matter to a Minister and proceed with removal if so directed.

91 Q16
92 Q27
93 Civil Service Guidance - Safety of Rwanda Bill; An exchange of letters between the Cabinet Office and the Home Office regarding the future implementation of the Safety of Rwanda (Asylum and Immigration) Bill, 17 January 2024

Universality

92. In recent reports the Joint Committee on Human Rights has raised concerns that the disapplication of the HRA in relation to certain groups, such as asylum seekers or prisoners, is inconsistent with the core principle that human rights are universal.[94] Witnesses to this inquiry raised similar points about the implications of the disapplication of the HRA in the Bill.[95]

93. In their evidence, the Equality and Human Rights Commission told us:

> The Bill undermines the universality of human rights and damages the UK's human rights legal framework by disapplying core provisions of the Human Rights Act 1998 …
>
> The HRA has significantly improved human rights protections for everyone in the UK. These provisions, and their increased use in legislation, risk weakening these protections and undermining the effectiveness of the UK's human rights legal framework.[96]

94. The National AIDS Trust added:

> Disapplying any part of the HRA, to any group, is troubling, as it rejects the principle that human rights are universal. We therefore have serious concerns about the content of the Safety of Rwanda Bill, which signals to not agree with this fundamental principle of human rights law.[97]

95. **The Human Rights Act 1998 is the cornerstone of human rights protection in domestic law. The Joint Committee on Human Rights has previously been critical of disapplication of parts of the HRA because it weakens human rights protections for particular groups, and thereby undermines the fundamental principle of the universality of human rights. The Bill would go further than ever before, disapplying almost all of the key provisions of the HRA in respect of removals to Rwanda. This is inconsistent with respect for universal human rights and for the UK's obligations under the ECHR. By expressly legislating to allow public authorities to act incompatibly with Convention rights the Bill also risks undermining the rights-compliant culture that should exist in all public bodies. This risk is exacerbated by issuing guidance requiring civil servants to act incompatibly with interim measures from the European Court of Human Rights.**

94 Joint Committee on Human Rights, Twelfth Report of Session 2022–23, Legislative Scrutiny: Illegal Migration Bill, HC 1241 and HL Paper 208,para 90; Legislative Scrutiny: Bill of Rights Bill, paras 319–321

95 For example, in their written evidence to the Committee, Just Fair reminded us that: "Universality is a core founding principle of the human rights. It is non-negotiable and we are concerned that the Bill in its current form could undermine this, and thus undermine respect for human rights both in the UK and further afield." Just Fair (RWA0009)

96 The Equality and Human Rights Commission (RWA0022)

97 National Aids Trust (RWA0021)

6 Interim measures from the European Court of Human Rights

96. Individuals who face removal to Rwanda would still be able to bring applications challenging the legality of their removal on human rights grounds before the European Court of Human Rights in Strasbourg (the ECtHR). The Bill cannot affect their right to do so, because it forms part of the Convention, which the UK has ratified and by which it is bound in international law unless and until it withdraws.[98] We note that this means, under the Bill, domestic courts will be prevented from ruling on the safety of Rwanda but an international court will not.

Interim measures

97. Under Rule 39 of the ECtHR's Rules, the Court may indicate interim measures to any State party.[99] These are usually sought in connection with expulsion or extradition cases, and amount to a requirement that the expulsion or extradition be suspended until the case has been fully examined. Applications under Rule 39 usually accompany a substantive claim but can also be made before a claim is formally lodged with the ECtHR. Case law from the court has established that requests for interim measures are granted only exceptionally, when applicants would otherwise face a real risk of serious and irreversible harm.[100]

98. An interim measure was issued by the ECtHR in relation to the removal of asylum seekers to Rwanda, after domestic courts had ruled that an injunction preventing removal was not necessary.[101] As Rashmin Sagoo of Chatham House noted to us, it was this interim measure from the ECtHR that ensured the asylum seekers who brought their successful claim in the Supreme Court remained in the UK to do so.[102]

Is the UK legally required to comply with interim measures?

99. The caselaw of the ECtHR has been clear for almost 20 years that a failure to comply with interim measures would amount to a violation of Article 34 of the Convention, under which the States who are party to the ECHR undertake "not to hinder in any way the effective exercise" of the right of applicants to bring their claims before the court."[103] This has been recognised in recent reports by the Joint Committee on Human Rights.[104]

98 Article 34 ECHR grants the right of individual application. In respect of withdrawal from the Convention, under Article 58 ECHR the UK would in fact (a) remain bound by it for a further six months even if it did give notice of its intention to withdraw and (b) continue to be bound in respect of any contravention of the Convention that takes place before the end of that 6 month period.

99 European Court of Human Rights, Rules of Court, 22 January 2024

100 The Court has recently launched a consultation on *inter alia* making this threshold clearer by adding it to the language of Rule 39 itself.

101 European Court of Human Rights, Press release: The European Court grants urgent interim measure in case concerning asylum seeker's imminent removal from the UK to Rwanda

102 Q39

103 Since Mamatkulov and Askarov v. Turkey, Application Nos. 46827/99 and 46951/99, 4 February 2005.

104 JCHR, Ninth Report of Session 2022–23, Legislative Scrutiny: Bill of Rights Bill, HC 611; JCHR, Twelfth Report of Session 2022–23, Legislative Scrutiny: Illegal Migration Bill, HC 1241.

100. Nevertheless, we heard from witnesses who questioned the binding nature of interim measures. Lord Sumption told us that he disagreed with the Court's case law that has found they are binding:

> In my view, this was an excess of jurisdiction by the Strasbourg court, since the convention itself quite plainly limits the obligation in international law to comply with rulings to final orders … This is a very difficult situation because the only way in which a state can deal with a court that defines its own jurisdiction, without any process of legislative amendment or reversal being possible, is to make a declaration that it does not acknowledge the right of the court to proceed in that way. Personally, I think that would be justified.[105]

101. Martin Howe KC held a similar view:

> I do not agree with the court's view that interim indications of measures are binding in international law. I think the judgment which held that or at least is interpreted as holding that—the majority judgment—is incoherent … The interim indications are a creature of the court's rules of procedure. I cannot see a basis for a court being able to expand or create a new jurisdiction for itself through adopting rules of procedure, when its jurisdiction should be bounded by the treaty.[106]

102. The majority of the witnesses we heard from did not agree with these opinions.[107] Many of them noted that the European Court of Human Rights has made clear that a failure to comply with an interim measure amounts to a violation of Article 34 ECHR.[108] Rashmin Sagoo, Director of the International Law Programme at Chatham House told us that:

> interim measures are binding under international law, in my view [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.[109]

103. The President of the European Court of Human Rights, Siofra O'Leary, recently confirmed again that this is the legal position:

> There is a clear legal obligation under the Convention for states to comply with Rule 39 measures… Where states have in the past failed to comply with Rule 39 indications [the ECtHR] have found that the States have violated their obligations under Article 34… In relation to the UK … it has

105 Q64; similar views are explored by the think tank Policy Exchange in their report "Rule 39 and the Rule of Law", 5 June 2023

106 Q90

107 Including Professor Sarah Singer at Q39; The Law Society of England and Wales (RWA0007); The Equality and Human Rights Commission (RWA0022); Garden Court Chambers (RWA0014); Joint Council for the Welfare of Immigrants and Rainbow Nation (RWA0004); and Dr Rosella Pulvirenti and Dr Kay Lalor of Manchester Metropolitan University (RWA0012)

108 Mamatkulov and Askarov v. Turkey, Application Nos. 46827/99 and 46951/99, 4 February 2005. The European Court of Human Rights has the authority to interpret the meaning of the Convention under Article 32.

109 Q39

> always complied with Rule 39 measures, going all the way back to the old Commission in the 1950s… [T]he UK has also publicly declared the need for other states to comply with Rule 39 indications …[110]

104. While we acknowledge the body of opinion that interim measures ought not to be binding, the ECtHR has held that failing to comply with them amounts to a breach of the Convention; and the ECtHR is the body with ultimate authority to decide what the Convention means.[111]. While domestic law could be changed to say that they are not binding, this would not affect their binding nature on the UK in international law. We agree with the view of Professor Tom Hickman:

> There are judicial decisions … which you can criticise, but that does not mean 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 …[112]

105. **We recognise that there are differences of opinion over whether or not interim measures ought to be binding on the United Kingdom. However, as a matter of international law, they are binding. Failing to comply with interim measures directed at the UK would amount to a violation of the European Convention on Human Rights.**

Clause 5

106. Clause 5 of the Bill would establish that, in relation to any future interim measure issued by the ECtHR in respect of a proposed removal to Rwanda, it is for a Minister of the Crown (and only a Minister of the Crown) to decide whether the United Kingdom will comply with it.

107. It is arguable that this provision does no more than state the obvious. As the Joint Committee on Human Rights has previously observed, the obligation to comply with (or take account of) interim measures is not currently incorporated into domestic law—interim measures are binding on the UK as a matter of international law.[113] It is therefore for the UK Government to comply with its legal obligation—or to decide not to do so in breach of international law.

108. This clause does not expressly say that a Minister would not comply with interim measures. It only indicates that this is a possibility. However, clause 5 cannot be read in isolation. The Prime Minister has been quoted as saying:

> I've been very clear, I won't let a foreign court stop us from getting flights up and running and establishing that deterrent … The Bill that we've just

110 President of the Court, Press Conference 2024; BBC News, European court president warns over Rwanda rulings, 25 January 2024.

111 As Lord Bingham explained in the important House of Lords case of Ullah v Special Adjudicator [2004] UKHL 26 at para 20: "the Convention is an international instrument, the correct interpretation of which can be authoritatively expounded only by the Strasbourg court".

112 Q40

113 JCHR, Ninth Report of Session 2022–23, Legislative Scrutiny: Bill of Rights Bill, HC 611.

> passed through the House of Commons has a specific power in it that says ministers will get to make those decisions, I would not have put that power in there if I wasn't prepared to use it.[114]

109. Clause 5 also provides that a court or tribunal must not have regard to an interim measure when considering any application or appeal which relates to a decision to remove the person to Rwanda. The Joint Committee of Human Rights has previously addressed similar proposals in the abandoned Bill of Rights Bill, and we maintain the view that:

> Even if a court, as a public authority, is not strictly bound by an interim measure from Strasbourg as a matter of domestic law, the fact that the ECtHR has issued an interim measure which binds the State (including all branches of the State) as a matter of international law is plainly a relevant matter that the court should take into account when deciding whether it should grant relief. This clause would hinder the courts from taking account of highly relevant considerations and potentially put the UK in breach of its international legal obligations under the Convention.[115]

110. **Clause 5 of the Bill contemplates a Minister choosing not to comply with an interim measure and thus violating the UK's international human rights obligations. It also prevents the domestic courts taking into account what may be a relevant factor for any decision whether or not an individual should be removed to Rwanda. This is not consistent with a commitment to complying with the UK's obligations under the ECHR.**

114 The Telegraph, Europe's top judge sets up Rwanda showdown with Sunak, 25 January 2024.

115 JCHR, Ninth Report of Session 2022–23, Legislative Scrutiny: Bill of Rights Bill, HC 611, para.243.

7 Other issues

Northern Ireland

111. The Northern Ireland Human Rights Commission (NIHRC) is obliged, under section 78A of the Northern Ireland Act 1998, to monitor the implementation of Article 2(1) of the Protocol on Ireland/Northern Ireland in the EU withdrawal agreement (rights of individuals). In accordance with this function, it has produced an advice on the Safety of Rwanda Bill.[116] In addition to concluding that the Bill "requires immediate and thorough reassessment" due to its incompatibility with international law, the NIHRC advises that clause 2 and clause 4 of the Bill may be in breach of the Windsor Framework because they diminish the rights of asylum seekers that were previously protected by the EU Procedures Directive.[117]

112. The NIHRC also set out their concern that the Bill "does not consider the Belfast (Good Friday) Agreement, and the integral role of both the Human Rights Act and ECHR in the complex fabric of the NI Peace Process and devolution." They note that the Belfast Agreement imposed a duty on the UK Government regarding incorporation of the ECHR into Northern Ireland law, including "direct access to the courts" and "remedies for breach" and that the Bill appears inconsistent with this to the extent it disapplies elements of the HRA and would deny some asylum seekers access to the courts.[118]

113. We received evidence from witnesses who share these concerns, including the Committee on the Administration of Justice (CAJ) an independent human rights organisation in Northern Ireland, Liberty and CARE (Christian Action Research and Education).[119]

114. No particular reference is made to Northern Ireland in the Government's ECHR memo or its legal position paper on the Bill. In the course of the Bill's passage through the House of Commons, the Minister of State for Countering Illegal Migration, Michael Tomlinson KC MP, explained the Government's position that:

> Nothing in the Windsor framework, including article 2, or in the withdrawal agreement affects the Bill's proper operation on a UK-wide basis. Any suggestion to the contrary would be to imply that the scope of the rights, safeguards and equality of opportunity chapter of the Belfast/Good Friday agreement is far more expansive than was ever intended.[120]

115. Lord Sharpe, Parliamentary Under Secretary of State for the Home Office, said similarly in the House of Lords, adding:

116 NIHRC, Advice on the Safety of Rwanda (Asylum and Immigration) Bill, 23 January 2024.

117 Directive 2005/85/EC, 'Council Directive on minimum standards on procedures in Member States for granting and withdrawing refugee status', of 1 December 2005; particularly, Article 27 (the safe third country concept), which permits the application of the safe third country concept only where authorities are satisfied that key human rights principles will be respected and subject to safeguards set out in legislation, and Article 8 (requirements for the consideration of applications) which requires authorities to ensure that each asylum application is "examined and decisions are taken individually, objectively and impartially".

118 NIHRC, Advice on the Safety of Rwanda (Asylum and Immigration) Bill, 23 January 2024

119 CAJ (RWA0017); Just Fair (RWA0009) and Care (RWA0019). CAJ also drew our attention to similar concerns raised in a joint briefing on the Bill prepared by ILPA, JUSTICE and Freedom from Torture and supported by 93 other NGOs.

120 HC Deb, Safety of Rwanda (Asylum and Immigration) Bill, 17 January 2024, col 933.

> The Bill's provisions do not diminish the rights and commitments we have made on the convention on human rights in the Belfast agreement. The Government remain fully committed to that agreement in all its parts. The Government are unshakable in their commitment to the Belfast/Good Friday agreement, and the Bill does not undermine this.[121]

116. **We have heard serious concerns raised about the compatibility of the Bill with the Windsor Framework and the Belfast (Good Friday) Agreement, which guarantee human rights in Northern Ireland. The Government has not adequately explained why it considers those concerns are not merited.** ***The Government should provide a full explanation of why it considers the Bill to be consistent with the Windsor Framework and Good Friday Agreement before the Bill reaches Report stage in the House of Lords.***

International impact

117. Numerous witnesses told us that the approach taken to human rights and international law in the Bill would lower the UK's standing in the international community. Rashmin Sagoo of Chatham House referenced a previous attempt to legislate inconsistently with international law in the Internal Markets Act, and observed:

> 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… 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.[122]

118. In this regard, we note that, following November 2023 reports that China had forcibly repatriated North Korean refugees the UK raised the issue with Chinese authorities and, at the UN, called on all states to abide by the principle of non-refoulement.[123] When asked whether it places the United Kingdom in a difficult position to criticise countries such as China or Russia when they are in breach of international obligations, if we seem to be in breach of such obligations ourselves, Martin Howe KC gave an alternative point of view:

> My view is that we should look at whether these treaties and conventions actually serve our own interest as a country. I do not think that, say, Mr Putin or China will be influenced one way or the other by decisions by this country on what it does and does not do on a convention such as the European Convention on Human Rights.[124]

119. We have observed, however, that other nations may be influenced by the way in which the UK treats its international law obligations. For example, we note that the Prime

121 HL Deb, Safety of Rwanda (Asylum and Immigration) Bill, 29 January 2024, col 1099.

122 Q39. Other witnesses raised similar concerns about the UK's international standing, with Just Fair (RWA0009) saying:
"While the UK Government continues to position itself as a world leader in human rights, the eyes of the world rightly remain upon us in terms of how we realise rights domestically. By undermining rights through this Bill, we threaten to diminish the UK's position internationally."

123 See written question for the Foreign, Commonwealth and Development Office, UIN HL5, tabled on 7 November 2023 and answered on 23 November 2023

124 Q69

Minister of Pakistan has already referred to the UK's Rwanda policy in defence of his country's decision to expel from Pakistan hundreds of thousands of Afghans who have fled from the Taliban regime.[125]

120. **The UK has a reputation for respect for human rights and the rule of law, of which we should be proud. Legislation that seeks to disapply or fails to respect international law risks damaging that reputation and encouraging other states who are less respectful of the international legal order.**

Amendments

121. We often append to our reports proposed amendments to Bills, designed to resolve our concerns over the incompatibility of certain provisions with human rights. In respect of this Bill, the Government's Ministers have made s19(1)(b) HRA statements that they are unable to confirm that in their view the Bill is compatible with Convention rights. When asked to specify which provisions of the Bill caused him to reach this view, the Lord Chancellor told us that that the s19(1)(b) statement "applies to the Bill as a whole".[126] In the same way, **we consider that our concerns about the compatibility of this Bill with human rights and international law relate to the Bill as a whole. We have not provided amendments designed to render the Bill compatible because any such amendment would inevitably be inconsistent with the Bill's central purpose.**

125 The Telegraph, "Pakistan likens mass deportation of Afghans to UK's Rwanda plan", 17 December 2023.
126 Ministry of Justice, Letter from Lord Chancellor to Chair of the JCHR, 11 January 2024.

Conclusions and recommendations

Asylum and human rights

1. The principle that individuals cannot be removed from a country to face a real risk of persecution, torture, inhuman or degrading treatment or death is a core principle of international law, to which the UK has committed itself on numerous occasions over the past 70 years. The Committee welcomes the Government's continued recognition of the binding nature of its international obligations and its commitment to respecting them. It is nevertheless disappointing to see, for the second time in the past year, the introduction of a Bill that the Government cannot say is more likely than not to comply with its international obligations under the ECHR. (Paragraph 36)

Safety of Rwanda

2. We have heard different views on whether the new treaty with Rwanda meets the Supreme Court's conclusions as to the country's safety. We recognise that, if complied with, the Treaty's strict prohibition on the removal of any relocated individual to anywhere but the UK would prevent refoulement. However, we note that the House of Lords International Agreements Committee has reported on the need for further steps to be taken to establish a system for ensuring that removal contrary to this obligation does not occur. Particularly given the clear conclusions of the Supreme Court, it remains unclear whether compliance with the treaty can be guaranteed in practice. (Paragraph 50)

3. We have considered the Government's evidence that Rwanda is now safe, but have also heard from witnesses and bodies including the UNHCR that Rwanda remains unsafe, or at least that there is not enough evidence available at this point to be sure of its safety. Overall, we cannot be clear that the position reached on Rwanda's safety by the country's most senior court is no longer correct. In any event, the courts remain the most appropriate branch of the state to resolve contested issues of fact, so the question of Rwanda's safety would best be determined not by legislation but by allowing the courts to consider the new treaty and the latest developments on the ground. (Paragraph 58)

Judicial scrutiny

4. The overwhelming majority of the evidence we received supported the view that by denying access to a court to challenge the safety of Rwanda the Bill is not compatible with the UK's international obligations, most obviously Article 13 ECHR – the right to an effective remedy. (Paragraph 79)

5. Given that a declaration of incompatibility cannot affect an individual's removal to Rwanda, we do not consider that it can meet the requirement of Article 13 ECHR that asylum seekers have access to an effective remedy with automatic suspensive effect. (Paragraph 80)

6. Clause 4 of the Bill would mitigate the Bill's impact by allowing for claims based on individual circumstances. It would not, however, make the Bill compliant with the Refugee Convention or with Article 13 ECHR because it would continue to deny access to court for individuals with arguable claims that they face persecution or a violation of fundamental human rights as a result of Rwanda being unsafe generally or because there is a risk of refoulement. Neither would clause 4 provide for a suspensive process, as required by Article 13 ECHR, in all but the rarest of circumstances. (Paragraph 81)

Disapplication of human rights law

7. The Human Rights Act 1998 is the cornerstone of human rights protection in domestic law. The Joint Committee on Human Rights has previously been critical of disapplication of parts of the HRA because it weakens human rights protections for particular groups, and thereby undermines the fundamental principle of the universality of human rights. The Bill would go further than ever before, disapplying almost all of the key provisions of the HRA in respect of removals to Rwanda. This is inconsistent with respect for universal human rights and for the UK's obligations under the ECHR. By expressly legislating to allow public authorities to act incompatibly with Convention rights the Bill also risks undermining the rights-compliant culture that should exist in all public bodies. This risk is exacerbated by issuing guidance requiring civil servants to act incompatibly with interim measures from the European Court of Human Rights. (Paragraph 95)

Interim measures from the European Court of Human Rights

8. We recognise that there are differences of opinion over whether or not interim measures ought to be binding on the United Kingdom. However, as a matter of international law, they are binding. Failing to comply with interim measures directed at the UK would amount to a violation of the European Convention on Human Rights. (Paragraph 105)

9. Clause 5 of the Bill contemplates a Minister choosing not to comply with an interim measure and thus violating the UK's international human rights obligations. It also prevents the domestic courts taking into account what may be a relevant factor for any decision whether or not an individual should be removed to Rwanda. This is not consistent with a commitment to complying with the UK's obligations under the ECHR. (Paragraph 110)

Other issues

10. We have heard serious concerns raised about the compatibility of the Bill with the Windsor Framework and the Belfast (Good Friday) Agreement, which guarantee human rights in Northern Ireland. The Government has not adequately explained why it considers those concerns are not merited. (Paragraph 116)

11. *The Government should provide a full explanation of why it considers the Bill to be consistent with the Windsor Framework and Good Friday Agreement before the Bill reaches Report stage in the House of Lords.* (Paragraph 116)

12. The UK has a reputation for respect for human rights and the rule of law, of which we should be proud. Legislation that seeks to disapply or fails to respect international law risks damaging that reputation and encouraging other states who are less respectful of the international legal order. (Paragraph 120)

13. We consider that our concerns about the compatibility of this Bill with human rights and international law relate to the Bill as a whole. We have not provided amendments designed to render the Bill compatible because any such amendment would inevitably be inconsistent with the Bill's central purpose. (Paragraph 121)

Formal minutes

Wednesday 7 February 2024

Members present:

Joanna Cherry MP, in the Chair

Lord Alton of Liverpool

Lord Dholakia

Baroness Kennedy of the Shaws

Baroness Lawrence of Clarendon

Baroness Meyer

Jill Mortimer MP

Lord Murray of Blidworth

Bell Ribeiro-Addy MP

Legislative Scrutiny: Safety of Rwanda (Asylum and Immigration) Bill

Draft Report (*Legislative Scrutiny: Safety of Rwanda (Asylum and Immigration) Bill*), proposed by the Chair, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 35 read and agreed to.

Paragraph 36 read.

Question put, That the paragraph stand part of the report.

The Committee divided.

Content	Not Content
Lord Alton of Liverpool	Baroness Meyer
Lord Dholakia	Jill Mortimer MP
Baroness Kennedy of the Shaws	Lord Murray of Blidworth
Baroness Lawrence of Clarendon	
Joanna Cherry MP	
Bell Ribeiro-Addy MP	

The paragraph was accordingly agreed to.

Paragraphs 37 to 45 read and agreed to.

Paragraph 46 read.

Question put, That the paragraph stand part of the report.

The Committee divided.

Content	Not Content
Lord Alton of Liverpool	Jill Mortimer MP
Lord Dholakia	Lord Murray of Blidworth
Baroness Kennedy of the Shaws	
Baroness Lawrence of Clarendon	
Joanna Cherry MP	
Bell Ribeiro-Addy MP	

The paragraph was accordingly agreed to.

Paragraphs 47 to 49 read and agreed to.

Paragraph 50 read.

Question put, That the paragraph stand part of the report.

The Committee divided.

Content	Not Content
Lord Alton of Liverpool	Baroness Meyer
Lord Dholakia	Jill Mortimer MP
Baroness Kennedy of the Shaws	Lord Murray of Blidworth
Baroness Lawrence of Clarendon	
Joanna Cherry MP	
Bell Ribeiro-Addy MP	

The paragraph was accordingly agreed to.

Paragraphs 51 to 57 read and agreed to.

Paragraph 58 read.

Question put, That the paragraph stand part of the report.

The Committee divided.

Content	Not Content
Lord Alton of Liverpool	Baroness Meyer
Lord Dholakia	Jill Mortimer MP
Baroness Kennedy of the Shaws	Lord Murray of Blidworth

Content	Not Content
Baroness Lawrence of Clarendon	
Joanna Cherry MP	
Bell Ribeiro-Addy MP	

The paragraph was accordingly agreed to.

Paragraphs 59 to 78 read and agreed to.

With the leave of the Committee, a single Question was put on paragraphs 79 to 81.

Paragraphs 79 to 81 read.

Question put, That the paragraphs stand part of the report.

The Committee divided.

Content	Not Content
Lord Alton of Liverpool	Baroness Meyer
Lord Dholakia	Jill Mortimer MP
Baroness Kennedy of the Shaws	Lord Murray of Blidworth
Baroness Lawrence of Clarendon	
Joanna Cherry MP	
Bell Ribeiro-Addy MP	

The paragraphs were accordingly agreed to.

Paragraphs 82 to 88 read and agreed to.

Paragraph 89 read.

Question put, That the paragraph stand part of the report.

The Committee divided.

Content	Not Content
Lord Alton of Liverpool	Jill Mortimer MP
Lord Dholakia	Lord Murray of Blidworth
Baroness Kennedy of the Shaws	
Baroness Lawrence of Clarendon	
Joanna Cherry MP	
Bell Ribeiro-Addy MP	

The paragraph was accordingly agreed to.

Paragraphs 90 to 94 read and agreed to.

Paragraph 95 read.

Question put, That the paragraph stand part of the report.

The Committee divided.

Content	Not Content
Lord Alton of Liverpool	Baroness Meyer
Lord Dholakia	Jill Mortimer MP
Baroness Kennedy of the Shaws	Lord Murray of Blidworth
Baroness Lawrence of Clarendon	
Joanna Cherry MP	
Bell Ribeiro-Addy MP	

The paragraph was accordingly agreed to.

Paragraphs 96 to 104 read and agreed to.

Paragraph 105 read.

Question put, That the paragraph stand part of the report.

The Committee divided.

Content	Not Content
Lord Alton of Liverpool	Baroness Meyer
Lord Dholakia	Jill Mortimer MP
Baroness Kennedy of the Shaws	Lord Murray of Blidworth
Baroness Lawrence of Clarendon	
Joanna Cherry MP	
Bell Ribeiro-Addy MP	

The paragraph was accordingly agreed to.

Paragraphs 106 to 109 read and agreed to.

Paragraph 110 read.

Question put, That the paragraph stand part of the report.

The Committee divided.

Content	Not Content
Lord Alton of Liverpool	Baroness Meyer
Lord Dholakia	Jill Mortimer MP
Baroness Kennedy of the Shaws	Lord Murray of Blidworth
Baroness Lawrence of Clarendon	
Joanna Cherry MP	
Bell Ribeiro-Addy MP	

The paragraph was accordingly agreed to.

Paragraphs 111 to 115 read and agreed to.

Paragraph 116 read.

Question put, That the paragraph stand part of the report.

The Committee divided.

Content	Not Content
Lord Alton of Liverpool	Lord Murray of Blidworth
Lord Dholakia	
Baroness Kennedy of the Shaws	
Baroness Lawrence of Clarendon	
Baroness Meyer	
Joanna Cherry MP	
Bell Ribeiro-Addy MP	

The paragraph was accordingly agreed to.

Paragraphs 117 to 119 read and agreed to.

Paragraph 120 read.

Question put, That the paragraph stand part of the report.

The Committee divided.

Content	Not Content
Lord Alton of Liverpool	Lord Murray of Blidworth
Lord Dholakia	
Baroness Kennedy of the Shaws	

Content	Not Content
Baroness Lawrence of Clarendon	
Joanna Cherry MP	
Bell Ribeiro-Addy MP	

The paragraph was accordingly agreed to.

Paragraph 121 read.

Question put, That the paragraph stand part of the report.

The Committee divided.

Content	Not Content
Lord Alton of Liverpool	Baroness Meyer
Lord Dholakia	Jill Mortimer MP
Baroness Kennedy of the Shaws	Lord Murray of Blidworth
Baroness Lawrence of Clarendon	
Joanna Cherry MP	
Bell Ribeiro-Addy MP	

The paragraph was accordingly agreed to.

Question put, that the Summary be the summary to the report.

The Committee divided.

Content	Not Content
Lord Alton of Liverpool	Baroness Meyer
Lord Dholakia	Jill Mortimer MP
Baroness Kennedy of the Shaws	Lord Murray of Blidworth
Baroness Lawrence of Clarendon	
Joanna Cherry MP	
Bell Ribeiro-Addy MP	

Summary agreed to.

Question put, That the Report be the Second Report of the Committee to the House.

The Committee divided.

Content	Not Content
Lord Alton of Liverpool	Jill Mortimer MP
Lord Dholakia	Lord Murray of Blidworth
Baroness Kennedy of the Shaws	
Baroness Lawrence of Clarendon	
Joanna Cherry MP	
Bell Ribeiro-Addy MP	

Resolved, That the Report be the Second Report of the Committee to the House.

Ordered, That the Chair make the Report to the House.

Ordered, That embargoed copies of the Report be made available (Standing Order No. 134).

Published written evidence

The following written evidence was received and can be viewed on the inquiry publications page of the Committee's website.

RWA numbers are generated by the evidence processing system and so may not be complete.

1 Amnesty International UK (RWA0006)

2 Bail for Immigration Detainees (RWA0016)

3 Care (RWA0019)

4 Committee on the Administration of Justice (CAJ) (RWA0017)

5 Freedom from Torture (RWA0020)

6 Garden Court Chambers (RWA0014)

7 Helen Bamber Foundation; and Asylum Aid (RWA0008)

8 Humanists UK (RWA0005)

9 Joint Council for the Welfare of Immigrants; and Rainbow Migration (RWA0004)

10 Just Fair (RWA0009)

11 Konstadinides, Professor Theodore (Professor of Law, University of Essex) (RWA0002)

12 Lewis, Dr Olayinka (University of Essex); and Fluhr, Franziska (University of Essex) (RWA0018)

13 Liberty (RWA0010)

14 Medecins Sans Frontieres (RWA0015)

15 National AIDS Trust (RWA0021)

16 Public Law Project (RWA0001)

17 Pulvirenti, Dr Rossella (Manchester Metropolitan University); and Lalor, Dr Kay (Manchester Metropolitan University) (RWA0013)

18 Redress Trust (RWA0003)

19 Riaz, Ayesha (Senior Lecturer in Law, University of Greenwich) (RWA0012)

20 The Children's Society (RWA0011)

21 The Law Society of England and Wales (RWA0007)

List of Reports from the Committee during the current Parliament

All publications from the Committee are available on the publications page of the Committee's website.

Session 2023–24

Number	Title	Reference
1st	Draft Investigatory Powers Act 2016 (Remedial) Order 2023: Second Report	HC 464 HL 39

Session 2022–23

Number	Title	Reference
1st	Legislative Scrutiny: Public Order Bill	HC 351 HL 16
2nd	Proposal for a draft State Immunity Act 1978 (Remedial) Order	HC 280 HL 42
3rd	The Violation of Family Life: Adoption of Children of Unmarried Women 1949–1976	HC 270 HL 43
4th	Protecting human rights in care settings	HC 216 HL 51
5th	Legislative Scrutiny: National Security Bill	HC 297 HL 73
6th	Legislative Scrutiny: Northern Ireland Troubles (Legacy and Reconciliation) Bill	HC 311 HC 79
7th	Draft State Immunity Act 1978 (Remedial) Order 2022	HC 895 HL 103
8th	Draft Bereavement Benefits (Remedial) Order 2022: Second Report	HC 834 HL 108
9th	Bill of Rights Bill	HC 611 HL 132
10th	Legislative Scrutiny: Strikes (Minimum Service Levels) Bill 2022–2023	HC 1088 HL 157
11th	Human Rights Ombudsperson	HC 222 HL 175
12th	Legislative Scrutiny: Illegal Migration Bill	HC 1241 HL 208
13th	Proposal for a Draft Investigatory Powers Act 2016 (Remedial) Order 2023	HC 1264 HL 210
1st Special Report	Human Rights Act Reform: Government Response to the Committee's Thirteenth Report of Session 2021–22	HC 608

2nd Special Report	Legislative Scrutiny: Public Order Bill: Government Response to the Committee's First Report	HC 649
3rd Special Report	Protecting Human Rights in Care Settings: Government Response to the Committee's Fourth Report	HC 955
4th Special Report	Legislative Scrutiny: Northern Ireland Troubles (Legacy and Reconciliation) Bill: Government response to the Committee's Sixth report	HC 1179
5th Special Report	The Violation of Family Life: Adoption of Children of Unmarried Women 1949–1976: Government Response to the Committee's Third Report	HC 1180
6th Special Report	Legislative Scrutiny: Strikes (Minimum Service Levels) Bill: Government response to the Committee's Tenth Report	HC 1315
7th Special Report	Human Rights Ombudsperson: Government Response to the Committee's Eleventh Report	HC 1489
8th Special Report	Legislative Scrutiny: Illegal Migration Bill: Government Response to the Committee's Twelfth Report	HC 1790

Session 2021–22

Number	Title	Reference
1st	Children of mothers in prison and the right to family life: The Police, Crime, Sentencing and Courts Bill	HC 90 HL 5
2nd	Legislative Scrutiny: Police, Crime, Sentencing and Courts Bill, Part 3 (Public Order)	HC 331 HL 23
3rd	The Government's Independent Review of the Human Rights Act	HC 89 HL 31
4th	Legislative Scrutiny: Police, Crime, Sentencing and Courts Bill (Part 4): The criminalisation of unauthorised encampments	HC 478 HL 37
5th	Legislative Scrutiny: Elections Bill	HC 233 HL 58
6th	Legislative Scrutiny: Police, Crime, Sentencing and Courts Bill (Parts 7 and 8): Sentencing and Remand of Children and Young People	HC 451 HL 73
7th	Legislative Scrutiny: Nationality and Borders Bill (Part 1) – Nationality	HC 764 HL 90
8th	Proposal for a draft Bereavement Benefits (Remedial) Order 2021: discrimination against cohabiting partners	HC 594 HL 91
9th	Legislative Scrutiny: Nationality and Borders Bill (Part 3) – Immigration offences and enforcement	HC 885 HL 112

Number	Title	Reference
10th	Legislative Scrutiny: Judicial Review and Courts Bill	HC 884 HL 120
11th	Legislative Scrutiny: Nationality and Borders Bill (Part 5)—Modern slavery	HC 964 HL 135
12th	Legislative Scrutiny: Nationality and Borders Bill (Parts 1, 2 and 4) – Asylum, Home Office DecisionMaking, Age Assessments, and Deprivation of Citizenship Orders	HC 1007 HL 143
13th	Human Rights Act Reform	HC 1033 HL 191
1st Special Report	The Government response to covid-19: fixed penalty notices: Government Response to the Committee's Fourteenth Report of Session 2019–21	HC 545
2nd Special Report	Care homes: Visiting restrictions during the covid-19 pandemic: Government Response to the Committee's Fifteenth Report of Session 2019–21	HC 553
3rd Special Report	Children of mothers in prison and the right to family life: The Police, Crime, Sentencing and Courts Bill: Government Response to the Committee's First Report	HC 585
4th Special Report	The Government response to covid-19: freedom of assembly and the right to protest: Government Response to the Committee's Thirteenth Report of Session 2019–21	HC 586
5th Special Report	Legislative Scrutiny: Police, Crime, Sentencing and Courts Bill, Part 3 (Public Order): Government Response to the Committee's Second Report	HC 724
6th Special Report	Legislative Scrutiny: Police, Crime, Sentencing and Courts Bill, Part 4 (Unauthorised Encampments): Government Response to the Committee's Fourth Report	HC 765
7th Special Report	Legislative Scrutiny: Elections Bill: Government Response to the Committee's Fifth Report	HC 911
8th Special Report	Legislative Scrutiny: Police, Crime, Sentencing and Courts Bill (Parts 7 and 8): Sentencing and Remand of Children and Young People: Government Response to the Committee's Sixth Report	HC 983
9th Special Report	Human Rights and the Government's Response to Covid-19: Digital Contact Tracing: Government Response to the Committee's Third Report of Session 2019–21	HC 1198
10th Special Report	Legislative Scrutiny: Nationality and Borders Bill: Government Responses to the Committee's Seventh, Ninth, Eleventh and Twelfth Reports	HC 1208

Session 2019–21

Number	Title	Reference
1st	Draft Jobseekers (Back to Work Schemes) Act 2013 (Remedial) Order 2019: Second Report	HC 146 HL 37

Number	Title	Reference
2nd	Draft Human Rights Act 1998 (Remedial) Order: Judicial Immunity: Second Report	HC 148 HL 41
3rd	Human Rights and the Government's Response to Covid-19: Digital Contact Tracing	HC 343 HL 59
4th	Draft Fatal Accidents Act 1976 (Remedial) Order 2020: Second Report	HC 256 HL 62
5th	Human Rights and the Government's response to COVID-19: the detention of young people who are autistic and/or have learning disabilities	HC 395 (CP 309) HL 72
6th	Human Rights and the Government's response to COVID-19: children whose mothers are in prison	HC 518 HL 90
7th	The Government's response to COVID-19: human rights implications	HC 265 (CP 335) HL 125
8th	Legislative Scrutiny: The United Kingdom Internal Market Bill	HC 901 HL 154
9th	Legislative Scrutiny: Overseas Operations (Service Personnel and Veterans) Bill	HC 665 (HC 1120) HL 155
10th	Legislative Scrutiny: Covert Human Intelligence Sources (Criminal Conduct) Bill	HC 847 (HC 1127) HL 164
11th	Black people, racism and human rights	HC 559 (HC 1210) HL 165
12th	Appointment of the Chair of the Equality and Human Rights Commission	HC 1022 HL 180
13th	The Government response to covid-19: freedom of assembly and the right to protest	HC 1328 HL 252
14th	The Government response to covid-19: fixed penalty notices	HC 1364 HL 272
15th	Care homes: Visiting restrictions during the covid-19 pandemic	HC 1375 HL 278
1st Special Report	The Right to Privacy (Article 8) and the Digital Revolution: Government Response to the Committee's Third Report of Session 2019	HC 313
2nd Special Report	Legislative Scrutiny: Covert Human Intelligence Sources (Criminal Conduct) Bill: Government Response to the Committee's Tenth Report of Session 2019–21	HC 1127
3rd Special Report	Legislative Scrutiny: Overseas Operations (Service Personnel and Veterans) Bill: Government Response to the Committee's Ninth Report of Session 2019–21	HC 1120
4th Special Report	Black people, racism and human rights: Government Response to the Committee's Eleventh Report of Session 2019–21	HC 1210

Number	Title	Reference
5th Special Report	Democracy, freedom of expression and freedom of association: Threats to MPs: Government Response to the Committee's Third Report of Session 2019	HC 1317
6th Special Report	Legislative Scrutiny: Police, Crime, Sentencing and Courts Bill, Part 4 (Unauthorised Encampments): Government Response to the Committee's Fourth Report	HC 765
7th Special Report	Legislative Scrutiny: Elections Bill: Government Response to the Committee's Fifth Report	HC 911