

WRITTEN EVIDENCE FROM THE JOINT COUNCIL FOR THE WELFARE OF IMMIGRANTS (JCWI) AND RAINBOW MIGRATION (RWA0004)

Introduction

1. The Joint Council for the Welfare of Immigrants (JCWI), established in 1967, promotes justice, fairness and equality in British immigration and asylum law and policy.
2. Rainbow Migration, founded in 1993, supports LGBTQI+ people through the asylum and immigration system, so they can safely settle in the UK and lead fulfilling lives.
3. We welcome this inquiry, particularly because our clients and service users have been impacted by the Rwanda plan, and will likely be directly affected by the new Treaty and Bill. We have responded to questions 1, 2, 3, 4, 5 and 7 below (grouped by theme where relevant), based on our expertise.
4. In light of our extensive concerns, we strongly urge the Committee to recommend that MPs reject the Safety of Rwanda (Asylum and Immigration) Bill entirely, as it would put lives at risk and violate the UK's constitutional, international and human rights law obligations.

QUESTION 1: *Does the requirement to conclusively treat Rwanda as a safe country comply with the UK's human rights obligations, including in particular the prohibition of refoulement and the prohibition of inhuman or degrading treatment under Article 3 ECHR?*

5. In Clauses 1 and 2, the Bill attempts to designate Rwanda a safe country, despite overwhelming evidence otherwise. The Supreme Court ruled unanimously on 15 November 2023¹ that Rwanda is not a safe country, due to systemic issues with Rwanda's asylum and human rights systems, particularly the risk of refoulement. This Bill does not change those facts.
6. The Supreme Court's three principal concerns are: the human rights system in Rwanda; the adequacy of its asylum system (including its history of refoulement), and breaches of assurances in its previous agreement with Israel. The Court concluded that there can be no short-term remedy for these and monitoring alone cannot prevent such failures. This Bill would therefore place our clients and service users at risk of refoulement and inhuman or degrading treatment, contrary to Article 3 ECHR.
7. The UK Government lacks credible evidence that these risks can be mitigated, making the new Agreement's provisions theoretical and untested. Even if all practical

¹ R (on the application of AAA (Syria) and others) v Secretary of State for the Home Department [2023] UKSC 42

risks *could* be mitigated, we believe the Agreement would still violate the UK's moral and legal obligations.

QUESTIONS 2, 4 and 5: *Compliance with Article 13 ECHR, interim domestic remedies and interim measures by the European Court of Human Rights ("ECtHR")*

8. The Bill risks infringing individuals' Article 13 ECHR rights both in the UK, at the European Court of Human Rights (ECtHR), and in Rwanda.

9. The Bill severely limits which claims can be considered in the UK. This undermines people's ability to enforce their human rights, and our public authorities' duty to protect those rights. Clauses 2(3) and 2(4) limit independent judicial oversight, meaning people will struggle to get justice in our courts for rights violations, and Clause 3 effectively prevents courts from safeguarding people's rights.² Clause 4(2), which stops decision-makers from considering potential refoulement, is unconscionable given that the Supreme Court specifically raised the risk of refoulement.

10. Further, the Bill undermines the UK's compliance with ECtHR Rule 39 interim measures. Interim measures can only be issued in exceptional circumstances. Clause 5(2) affirms that compliance with interim measures will be a matter for ministerial discretion. Clause 5(3) effectively excludes individuals in the UK from protections available to all other ECHR jurisdictions, with life or death consequences. As a member of the Council of Europe, the UK must comply with ECHR interim measures. Even if domestic legislation allows, ignoring interim measures would breach the UK's obligations under the ECHR.

11. Furthermore, the Supreme Court highlighted risks under Rwanda's judicial system, including lack of independent legal advice and judicial independence, and worryingly high rejection rates for Yemenis, Afghans and Syrians. We cannot be confident that people seeking asylum will receive a fair hearing, decision, or appeal in Rwanda, contrary to Article 13 ECHR.

12. We have particular concerns around fair decision-making for people seeking asylum with complex needs, for example LGBTQI+ people. In these cases, there are often issues around delayed disclosure of a person's sexual orientation and/or gender identity, evidential barriers relating to 'credibility', and particular care and attention needed throughout the asylum process. Given the well-evidenced failings of the Rwandan asylum system, there remains a clear risk of LGBTQI+ cases, and similarly complex cases, not being considered properly.

13. The change from MoU to Treaty technically increases the Rwandan Government's obligations and provides more avenues of recourse. However, even if

² This is by disapplying sections 2, 3 and 6-9 of the HRA.

disputes or failures to comply can be addressed through complaints mechanisms, arbitration would come too late for individuals whose lives would already be irreversibly harmed.

14. The Bill also does not guarantee the right to appeal in Rwanda, risking violating Articles 6 and 13 ECHR. Parties to the Agreement have agreed to establish a new appeals body – unfortunately this remains wholly inadequate and untested. As above, the Supreme Court found deep, structural flaws within Rwanda’s judicial system. Simply creating a new appeals body would have little effect.

QUESTION 3: *Does allowing for some claims based on compelling evidence relating to particular individual circumstances affect the Bill’s compliance with human rights?*

15. Clause 4 provides minimal protection “based on compelling evidence relating specifically to the person’s particular individual circumstances”. This is the bare minimum. The Bill then further restricts this, demanding an exceptionally high threshold for serious harm, defined as extreme cases like imminent death or torture. This definition disregards other situations posing significant risk to life and wellbeing, like lack of medical treatment.

16. Evidential barriers may also prevent people from meeting the ‘compelling evidence’ threshold, despite risks to their human rights. For example, LGBTQI+ people must prove their sexual orientation and/or gender identity for their claim to be valid, but face the following issues in doing so:

- (a) Many LGBTQI+ people seeking asylum fear disclosing their sexual orientation and/or gender identity to the Home Office or even their lawyers. They may subsequently delay disclosure until they have built trust or self-acceptance. Even the Home Office’s own relevant Asylum Policy Instruction³ acknowledges these issues;
- (b) Many LGBTQI+ people rely mainly on their own accounts, because documentary evidence is unlikely to exist. It is unclear whether personal accounts would meet the threshold of ‘compelling evidence’, but given the pervasive ‘culture of disbelief’ in the Home Office⁴, and our experience, we believe it is highly unlikely to be sufficient;
- (c) Individuals detained on arrival and threatened with removal to Rwanda will struggle to provide ‘compelling evidence’. For instance, an LGBTQI+ person in detention will be unable to collect evidence of developing LGBTQI+

³ Home Office, ‘*Asylum Policy Instruction: Sexual orientation in asylum claims*’, Version 6.0, (3 August 2016), p.13.

⁴ Women for Refugee Women, ‘*See Us, Believe Us, Stand With Us: The experiences of lesbian and bisexual women seeking asylum in the UK*’, (March 2023), available here: <https://www.ein.org.uk/news/report-women-refugee-women-looks-experiences-lesbian-and-bisexual-women-seeking-asylum-uk>.

relationships in the UK, attending events, accessing support groups, or obtaining supporting letters from relevant people and organisations.⁵

Therefore, the Bill risks breaching people's human rights, particularly under Articles 2, 3, 6 and 13, if they cannot provide 'compelling evidence' through no fault of their own.

17. Further, since many people cannot access legal aid and remain unrepresented throughout the asylum process⁶, those threatened with removal to Rwanda will struggle to find lawyers in time to raise legal arguments and collect 'compelling evidence' to meet this high threshold.

QUESTION 7: *Does the Bill give rise to any other significant human rights concerns?*

18. The Bill risks violating individuals' Article 3 ECHR rights. There are multiple credible reports that torture persists in Rwanda, including:

- (a) Human Rights Watch reports from 2023, 2022 and 2021, all including examples of torture;⁷
- (b) United States Department of State's 2022 Country Reports on Human Rights Practices - Rwanda: includes reports of torture or cruel, inhuman, or degrading treatment or punishment by government officials;⁸
- (c) The UK's own submission to the UN Human Rights Council's Universal Periodic Review of Rwanda in January 2021 criticised Rwanda for "extrajudicial killings, deaths in custody, enforced disappearances and torture".⁹

19. Rainbow Migration has also repeatedly highlighted that Rwanda is unsafe for LGBTQI+ people seeking asylum.¹⁰ Even if the UK Government could provide 'sufficient' assurances that LGBTQI+ people would not be at risk of refoulement (which we do not believe is possible), they would still be at risk of Article 3 ECHR breaches in Rwanda.

⁵ Rainbow Migration, *No Safe Refuge: Experiences of LGBT asylum seekers in detention*, (2016), available here: <https://www.rainbowmigration.org.uk/publications/no-safe-refuge/>.

⁶ Public Law Project and Haringey Migrant Support Centre, *Access to immigration legal aid in 2023: an ocean of unmet need*, (September 2023), available here: <https://publiclawproject.org.uk/resource/lord-chancellor-faces-legal-challenge-over-legal-aid-crisis/>.

⁷ Human Rights Watch, *Country Page, Rwanda*, available here: <https://www.hrw.org/africa/rwanda>

⁸ US Department of State, 2022 Country Reports on Human Rights Practices: Rwanda, available here: <https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/rwanda/>.

⁹ 37th Universal Periodic Review, *UK statement on Rwanda*, (25 January 2021), available here: <https://www.gov.uk/government/speeches/37th-universal-periodic-review-uk-statement-on-rwanda>

¹⁰ Rainbow Migration, *Proposals to offshore asylum claims to Rwanda will be harmful to LGBTQI+ people*, available at: <https://www.rainbowmigration.org.uk/news/proposals-to-offshore-asylum-claims-to-rwanda-will-be-harmful-to-lgbtqi-people/>.

20. Human Rights Watch reported in 2021 that Rwandan authorities arbitrarily detained over a dozen gay and trans people, and guards and other detainees beat them up because of their clothes and identity.¹¹ A gay man who grew up in Rwanda also said: “Having experienced the discrimination faced by LGBTQ+ people - or those perceived to be sexual minorities in Rwanda - I am shocked that the UK would deport people from our community there.”¹² This Bill therefore does not prevent potential Article 3 ECHR breaches towards LGBTQI+ people whose asylum claims would be considered in Rwanda or who are granted refugee status there.

Further potential breaches of ECHR rights

21. Clause 3 would essentially end universal human rights protection in this country. By disapplying key sections of the Human Rights Act 1998, Clauses 3(1) and 3(2) strip away basic human rights protections. In addition to Articles 3, 6, and 13 ECHR discussed above, the Bill further risks infringing on individuals’ Articles 2, 4, 5, 7, 8, and 14 ECHR rights.

22. For instance, the UK Government cannot guarantee protecting people’s right to life if they are forcibly removed to Rwanda, in breach of Article 2 ECHR, and victims of modern slavery and trafficking could be at risk, contrary to Article 4 ECHR.¹³ We also highlight potential breaches of Articles 5 and 7 ECHR, due to risk of detention and extrajudicial punishment (see §20 above), and the infringement of rights under Articles 8 and 14 ECHR (again pertinent for LGBTQI+ people, who will not be able to enjoy their right to private life and likely suffer extensive discrimination).

23. We further highlight that though the Bill risks *future* human rights violations, people have *already been harmed* even before passage of the Bill. Even the thought of removal to Rwanda causes our clients and service users extreme distress. One Rainbow Migration service user, a gay man from a South Asian country, contacted us the day the draft Bill was published, expressing that he and his partner were extremely worried by the news.

24. One JCWI client who was issued a removal notice under the previous agreement said: ‘The reason I came to England was that I knew I will be safe [...]. When I received the news [about being sent to Rwanda], it felt like death again to me’. It is cruel and inhumane to treat people in need of protection like this.

¹¹ Human Rights Watch, ‘*Rwanda: Round Ups-Linked to Commonwealth Meeting*’, (27 September 2021), available at: <https://www.hrw.org/news/2021/09/27/rwanda-round-ups-linked-commonwealth-meeting>.

¹² Rainbow Migration, ‘*I fled Rwanda due to homophobia – I fear for gay refugees being sent there*’, available at: <https://www.rainbowmigration.org.uk/news/i-fled-rwanda-due-to-homophobia-i-fear-for-gay-refugees-being-sent-there/>.

¹³ Hope for Justice, ‘*What does the Rwanda plan mean for victims and survivors of human trafficking?*’, (23 November 2023), available at: <https://hopeforjustice.org/news/what-does-the-rwanda-plan-mean-for-victims-and-survivors-of-human-trafficking/>.

Potential breach of the right to seek asylum under the Refugee Convention and other international law

25. Clause 1(4)(b) alarmingly suggests the Government is willing to ignore international law in pursuit of this Bill. The list of international law and conventions to be disregarded includes not only the ECHR and the Refugee Convention but “any other international law, or convention or rule of international law”.¹⁴ This is unacceptable for a democratic country.

26. We are fundamentally concerned that this Bill and the planned asylum partnership – or any other similar arrangement – would breach the UK’s international obligations to consider asylum claims. State governments should not pass people seeking asylum around as though they are commodities. We believe that people seeking asylum are best placed to assess their own safety, given their individual circumstances.

27. The experiences of JCWI’s and Rainbow Migration’s clients and service users show that people have clear reasons for claiming asylum in the UK. These include the UK’s reputation for respecting human rights, the English language and family or community ties in the UK, particularly for those from former British colonies. These are all strong reasons for claiming asylum in the UK specifically, and not in another country.

28. JCWI represented a disabled Kurdish man from Iraq who was trafficked into the UK through Calais. After he arrived, the Home Office sought to remove him to Rwanda on 28 June 2022. He was taken off the flight following legal representations. But under the short time-frame of the new Agreement, he would have been unable to gather crucial evidence of his disability and past torture to support his human rights claim to stay in the UK.

Conclusion

29. We strongly oppose efforts to offshore or otherwise displace asylum responsibilities. For the global asylum system to function, States must consider asylum claims and support those granted protection. The UK must not shirk this responsibility through partnerships with Rwanda or any other State. We urge the Committee to support the fundamental right to seek asylum and uphold human rights protections in the UK, and reject this Bill.

(11 January 2024)

¹⁴ As stated in Clause 1(6)(g).