WRITTEN EVIDENCE FROM AMNESTY INTERNATIONAL UK (RWA0006)

1. Our key observations in summary:

    a. 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.

    b. The consequences of what is attempted by this Bill are dire. Parliament is being invited to exceed its constitutional authority. If so, it will put the courts in conflict with either Parliament (if not acceding to what it has attempted) or the constitution and rule of law (if bowing to Parliament's will). This cannot do any good for the integrity or authority of Parliament, the courts or law. It will stress the UK's relationship with the ECHR (and that Convention's court). It will send a wider message – including to the Rwandan Government – that laws, including international human rights obligations, can be readily abused while claiming to respect them. The consequences for the Treaty to which this Bill is connected and wider respect for international asylum law are dreadful.

    c. The potential wider consequences in the UK of 'teaching' drafters and makers of legislation to construct 'law' in the fashion of this Bill – also the Illegal Migration Act 2023 – are dire. No legal right or duty of or to any person would be secure against this way of legislating, especially if that person is a member of any group facing significant societal and/or political marginalisation, demonisation or hostility.

    d. The underlying policy of refusing to take responsibility for asylum claims made in the UK, first developed in December 2020, must be urgently addressed. Among its many calamitous results is the increasingly intemperate Government effort to implement it no matter how harmful, costly and impracticable it may be. (Our submission to the Committee's inquiry *Human Rights of Asylum Seekers in the UK* highlighted this.)

    e. That the Home Secretary is so quickly again in this policy area unable to make a declaration of compatibility under section 19 of the Human Rights Act 1998 emphasises these concerns.[1]

[1] The same applied to Illegal Migration Act 2023.

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?

Does legislating, in clause 2, to prevent the courts considering any claim that Rwanda is not safe comply with the UK's human rights obligations, including in particular Article 13 ECHR?

2. The requirement to conclusively treat Rwanda as safe does not comply with human rights obligations. Like any legal duty or right, these must be applied to facts that are assessed on the evidence. The determination of fact based on evidence is a basic administrative and judicial function. Facts and evidence may and do change. Any attempt to fix the facts cannot comply with human rights because it deprives those rights of any real and proper substance by preventing their application to the true as distinct from the fixed facts.

3. The Supreme Court's judgment emphasises, but is not necessary for, the non-compliance. Even without the judgment, permanently and conclusively fixing the facts would not comply with human rights. Nonetheless, the judgment has drawn out the Government's position. When announcing the Bill alongside the Treaty,[2] to which it is intimately connected, the Home Secretary said:[3]

    > "*We do not agree with* [the Supreme Court]*... Rwanda is and will remain a safe country for the purposes of asylum and resettlement… Rwanda is a safe… country… But… we cannot be confident that the courts will respect a new treaty on its own. So today the Government has published emergency legislation to make it unequivocally clear that Rwanda is a safe country and to prevent the courts from second-guessing Parliament's will.*"

4. This contravenes Article 13 by denying an effective remedy, risking contravention of both the prohibition of *refoulement* and Article 3 ECHR. Whether or not it is Parliament's will that Rwanda be safe, Parliament has no more power than the Home Secretary to make it so as a matter of fact.

5. The Bill is constructed to prevent courts considering the relevant questions regarding safety directly. It is also constructed to prevent courts reviewing the lawfulness of ministerial or administrative decision-making. The means to achieve the latter is to require of ministers and officials exactly what is required of courts – to conclusively treat Rwanda as safe no matter any evidence that is or may be available and what it may show. Any review of the legality of decision-making is effectively curtailed by

[2] The Treaty to which Clauses 1(2)(a), (3) and 9(2) refer.
[3] *Hansard* HC, 6 December 2023 : Cols 433-434

providing the decision-maker the ultimate answer – 'I am required by Parliament to act in this way'.

Does allowing for some claims based on compelling evidence relating to particular individual circumstances affect the Bill's compliance with human rights?

6. 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.[4]

    b. The individual consideration permitted by Clause 4 excludes any consideration of general risk. It is unclear what this will require in practice. The precise formula in Clause 4(1) is to permit recognition of risk "*based on compelling evidence relating specifically to the person's particular individual circumstances*". This is problematic because any proper assessment of risk will always be based on all the evidence, including evidence relating to someone's particular circumstances and evidence relating to circumstances more broadly. Sometimes that wider evidence may demonstrate a risk to a wide category of people, even one constituting all or near all the people who might ever seek to show they are at risk. Rarely will there be no relevant evidence indicating nothing other than risk to the particular individual. However, there will be many occasions where the evidence solely relating to someone's particular circumstances is insufficient, but with the wider evidence is more than sufficient, to establish risk. We simply do not know how the decision-maker is expected to apply these considerations to the formula prescribed by Clause 4(1).

Does the way in which the Bill deals with applications for interim remedies from domestic courts, including by allowing them only in narrow circumstances, comply with the UK's human rights obligations?

Is expressly stating that it is for Ministers to decide whether to comply with interim measures issued by the European Court of Human Rights, and prohibiting courts or tribunals from having regard to them, consistent with the UK's obligations under the ECHR? Would deciding not to comply with interim measures put the UK in breach of the ECHR?

7. Clauses 4(3) to (7) and 53 effectively extend sections 54 and 55 of the Illegal Migration Act 2023 to people who are otherwise outside the scope of that Act.[5]

---

[4] Clause 4(2).

[5] Clause 9(2) applies the Bill to expulsion to Rwanda regardless of when the person arrived to the UK. The Bill generally makes no restriction of its application according to the circumstances of the person's arrival or

8. The Committee's evaluation of those sections of the 2023 Act (then clauses 52 and 53)[6] applies equally to these Clauses of this Bill. The only material distinction between the relevant provisions is that this Bill applies to a far wider group of people. While it applies only to expulsions to Rwanda, for all practical purposes that is currently the sole destination by which any of these provisions may be tested (at least for any significant number of people).

Does the Bill have any significant implications for constitutional principles, such as the sovereignty of Parliament, the separation of powers between the courts and Parliament and the rule of law, and the way in which they affect the protection of human rights in the UK?

9. As summarised below, it is and would be constitutionally reckless to pursue and pass this Bill.

10. Parliament is being asked to:

    a. Assert sovereignty over fact.[7] It has no and could never have such sovereignty.

    b. Interfere with the judicial function (also with basic executive functions and duties). Law is to be applied to facts, as best as these can be identified by properly considering the evidence. Ultimately, the court guarantees the sovereignty of law and, in that regard (as classically understood), the sovereignty of Parliament in making law by ensuring law is properly applied. Preventing the courts (and executive) properly assessing the evidence would mean law cannot be properly applied.[8]

    c. Partake in a fiction that this complies with – even fulfils – the UK's international law obligations.[9] This is done by expressly defining "safe country" as a destination to which removal complies with international law, and requiring the court to find Rwanda to be such a place regardless of what the evidence does or may show.

11. The position in which this would place UK courts, if passed, is dire:

---

presence in the UK. The Treaty is for expulsion of people to Rwanda and is not limited to particular circumstances of people's arrival or presence in the UK; and includes expulsion of people who do not seek asylum.

[6] The Committee's Twelfth Report of Session 2022-2023, HC 1241/HL Paper 208, 11 June 2023, paragraphs 350-352; paragraphs 125-133

[7] The primary provision here is Clause 2(1). Clause 1(2)(b) and (4)(a) are clearly intended to bolster this position.

[8] Again, the primary provision here is Clause 2(1).

[9] The primary provisions here are Clause 1(5), (6) and 2(1).

a. No court could legitimately treat Parliament as having a sovereignty it does not and cannot have. To do so would itself be unconstitutional and highly damaging to the rule of law.

b. A court by its very nature owes a duty to the rule of law. Whereas there may be circumstances where a particular matter of law may fall outside its jurisdiction, it cannot legitimately permit itself to partake in a fiction of compliance with any law – domestic or international. To do so would fatally undermine the integrity of both the court and law.

c. Whether a court could avoid either of these outcomes and still give effect to this Bill, if passed, is at best extremely doubtful because the court would be confronted with a statutory prescription that it must apply the law in contravention of basic legal principle – i.e., in ignorance of what the true facts may be as properly identified or identifiable by the evidence.

12. The critical ouster at this Bill's heart is, therefore, of a particular kind. There are provisions in this Bill, largely borrowed from the Illegal Migration Act 2023, that seek to oust the courts by simply excluding their jurisdiction.[10] However, at this Bill's heart is something more – an ouster of a basic judicial function in circumstances where the court nonetheless formally retains and exercises jurisdiction. This risks making the court (if acting on what the Bill demands) complicit to a fiction that a judicial function has been fulfilled in circumstances where that function is fatally undercut.[11]

Does the Bill give rise to any other significant human rights concerns?

13. We highlight three further matters:

a. The implications for compliance with international human rights law elsewhere, including Rwanda, is dire. If Parliament passes this Bill, it will join Government in sending an emphatic message to the rest of the world that compliance with that law is optional and political authority may legitimately be exercised to override it even while pretending the opposite. The implications of that for assurances contained in the Treaty[12] are fatal.

b. What was begun by the Illegal Migration Act 2023 concerning use of legislative authority, statutory language and structure, to override the rule of

---

[10] Our analysis of the key provisions and purpose of that Act is here: https://www.amnesty.org.uk/resources/illegal-migration-act-2023-analysis-acts-structure-purpose-and-key-working-parts

[11] Our analysis and briefings on the Bill are here: https://www.amnesty.org.uk/resources/safety-rwanda-asylum-and-immigration-bill-0

[12] *Op cit*

law and respect for international human rights law is to be continued by this Bill. Those drafting and making legislation are learning something dire. The potential ramifications for respect for anyone's rights – human rights or otherwise – are severe.

c. Finally, there is the underlying policy, of which we said in our submission to the Committee's inquiry concerning the human rights of people seeking asylum:[13]

> "*The foregoing concerns are all critically linked to an underlying policy of deterrence and avoidance of Refugee Convention responsibilities that is increasingly accompanied by active and vocal hostility towards people seeking asylum, those who support them, and human rights obligations intended to protect them. That hostility tends to both drive policy and be driven by the inevitable failings of that policy – including the backlogs and administrative dysfunction, the human suffering and alienation, and the increased opportunity for exploitation it causes. For so long as policy is set merely or primarily to avoid responsibilities, which refugees are entitled and need to demand (and which the UK expects other States to meet, often disproportionately so), this baleful cycle will likely continue and worsen. It can also be expected to further undermine wider international commitment with harmful consequences for refugees across the globe, reducing safe space and compelling increased migration.*"

(11 January 2024)

[13] See https://committees.parliament.uk/writtenevidence/113612/pdf/