

WRITTEN EVIDENCE FROM THE COMMITTEE ON THE ADMINISTRATION OF JUSTICE (CAJ) (RWA0017)

1. The Committee on the Administration of Justice (CAJ) is an independent human rights organisation with cross community membership in Northern Ireland and beyond. It was established in 1981 and lobbies and campaigns on a broad range of human rights issues. CAJ seeks to secure the highest standards in the administration of justice in Northern Ireland by ensuring that the Government complies with its obligations in international human rights law.
2. We welcome the opportunity to submit evidence to the Committee to inform its legislative scrutiny of the Safety of Rwanda (Asylum and Immigration) Bill 2023. This submission will focus on the specific impacts of the bill in Northern Ireland.
3. The Safety of Rwanda (Asylum & Immigration) Bill 2023 ('the Bill') represents a fundamental attack on the Human Rights Act (HRA) and the application of the European Convention on Human Rights (ECHR) in the UK. The Bill is the latest piece of legislation brought forward by the UK Government with the purpose and effect of dismantling the incorporation of the ECHR in domestic law piece by piece. Previous examples include the Northern Ireland Troubles (Legacy and Reconciliation) Act 2023 and Illegal Migration Act 2023.
4. CAJ is strongly opposed to any legislation which undermines the Human Rights Act and European Convention on Human Rights, and considers any weakening of these protections to be in breach of the Belfast/Good Friday Agreement (GFA). This concern was also raised in a joint briefing by ILPA, Justice and Freedom from Torture endorsed by 93 organisations across the UK.¹

The European Convention on Human Rights, the Human Rights Act and the Belfast/Good Friday Agreement

5. The signatories to the GFA committed themselves to '*the achievement of reconciliation, tolerance, and mutual trust, and to the protection and vindication of the human rights of all.*' The incorporation of the ECHR into Northern Ireland law was a key ingredient of the human rights protections in the GFA. The GFA also committed the Irish Government to incorporation of the ECHR under the 'equivalence' provisions.² The GFA, in addition to being overwhelmingly approved by referendum, in Ireland, north and south, was also incorporated as a treaty between the UK and Ireland and lodged with the UN.³ Article 2 of the treaty binds the UK to implement provisions of the annexed Multi-Party Agreement, which correspond to its

¹ [ILPA, JUSTICE, FFT Joint Briefing - Safety of Rwanda \(Asylum and Immigration\) Bill](#)

² Taken forward through the European Convention of Human Rights Act 2003 (Ireland)

³ UK Treaty Series no. 50 Cm 4705

competency. These GFA commitments were given legislative effect through the Human Rights Act 1998 and the Northern Ireland Act 1998.⁴

6. The statement by the Secretary of State on the face of the Bill further to s19(1) (b) of the HRA, states:

I am unable to make a statement that, in my view, the provisions of the Safety of Rwanda (Asylum and Immigration) Bill are compatible with the Convention rights, but the Government nevertheless wishes the House to proceed with the Bill.⁵

7. This statement is an admission that if the Bill is passed, it may, or will, breach the UK Government's obligations under the ECHR, and by extension the GFA.
8. The provisions of the Bill, including clause 3 and clause 5, disapply key sections of the HRA and allow for the UK Government to ignore interim measures of the European Court of Human Rights. The Bill is not a full repeal of the HRA, but it removes key protections from its scope and undermines the application of the ECHR in the UK.
9. Clause 8 determines that this Bill extends to Northern Ireland. Given the particular circumstances of Northern Ireland, the relationship between the ECHR/HRA, and the GFA should have been a key concern for any UK Government when enacting this legislation. However, the GFA is not referenced in the Explanatory Notes or in the Human Rights Memorandum. The UK Government appears to be proceeding, without due regard to their commitments under the GFA.

Access to Courts

The GFA placed a codified and unqualified duty on the UK Government to incorporate the ECHR into the law of Northern Ireland, requiring both direct access to the courts and remedies for ECHR breaches:

The British Government will complete incorporation into Northern Ireland law of the European Convention on Human Rights (ECHR), with direct access to the courts, and remedies for breach of the Convention, including power for the courts to overrule Assembly legislation on grounds of inconsistency. (GFA; Rights, Safeguards and Equality of Opportunity section, paragraph 2.)

10. This commitment was met through the enactment of the Human Rights Act 1998.

⁴ The GFA also commits to safeguards to ensure the Northern Ireland Assembly, or public authorities, cannot infringe the ECHR. A commentator has stated that: "*The GFA ended three decades of unimaginable violence and death. It promised an era of peace and a future free of sectarianism. It did so not simply by pointing to the ECHR, but by wholeheartedly embracing it.*" Dr Anurag Deb, [UK Human Rights Blog, 'The Good Friday Agreement and the European Convention on Human Rights' 29 08 23](#)

⁵ [Safety of Rwanda \(Asylum and Immigration\) Bill \(parliament.uk\)](#)

11. The following clauses of the Bill are relevant to this commitment:

- Clause 3 disapplying Section 2 HRA attempts to prevent the interpretation of Convention rights in decisions on whether Rwanda is a safe country for a person to be removed to.
- Clause 3 disapplying Section 3 of the HRA attempts to prevent courts and tribunals from reading and giving effect to the Bill in a way which is compatible with Convention rights
- Clause 3 disapplying sections 6-9 of the HRA attempts to remove the protection which states it is unlawful for a public authority to act in a way which is incompatible with a Convention right, and where a public authority has acted contrary to a convention right, it prevents victims being able to bring domestic proceedings and accessing judicial remedies, in decisions taken regarding Rwanda's safety.
- Clause 5 provides the power for the UK government to ignore interim measures issued by the European Court of Human Rights, and to prevent courts and tribunals having regard to them. This therefore creates potential limitations on access to remedies for breach of the Convention.

12. These clauses demonstrate that the Safety of Rwanda (Asylum & Immigration) Bill precludes this direct access to the courts and remedies and is in breach of the UK's commitments under the GFA.

Article 2 of the Windsor Framework

13. Article 2 of the Windsor Framework commits the UK to ensure no diminution of protections in the 'Rights, Safeguards and Equality of Opportunity' chapter of the GFA, as a result of the UK's withdrawal from the EU. The official explainer on Article 2 of the NI Protocol (Windsor Framework) states:

The key rights and equality provisions in the Agreement are supported by the European Convention on Human Rights (ECHR), which has been incorporated into Northern Ireland law pursuant to the commitment in the Agreement to do so. The Government is committed to the ECHR and to protecting and championing human rights.⁶

14. The NI Human Rights Commission (NIHRC) alongside the Equality Commission for NI (ECNI), who are mandated with monitoring the implementation of Article 2 of the Windsor Framework, have taken the view that the rights of asylum-seekers and refugees fall within the protection of the relevant chapter of the GFA.⁷ The NIHRC and ECNI have also taken the view that the relevant chapter of the GFA and the range

⁶ [UK Government Explainer: UK Government commitment to no diminution of rights, safeguards and equality of opportunity in Northern Ireland](#)

⁷ [NIHRC, 'Article 2 of the Windsor Framework and the rights of refugees and persons seeking asylum'](#)

of rights protected under Article 2 of the Windsor Framework, must be understood as embracing, as a minimum, those rights set out in the ECHR, where underpinned by EU legislation in force before 31st December 2020.⁸

15. Any diminution of the relevant GFA rights, including the incorporation of ECHR rights that follow and relate to Brexit could amount to a breach of Article 2 of the Windsor Framework. These arguments have been set out in the recent NIHRC challenge to the Illegal Migration Act.⁹
16. Despite the UK's commitments in Article 2, the interaction of Article 2 with the Bill has not been raised in the Explanatory Memorandum or Human Rights Memorandum. There has been no attempt to ensure compliance with Article 2 of the Windsor Framework.

(12 January 2024)

⁸ [NIHRC and ECNI Working Paper on Scope of Article 2\(1\) of the Ireland/Northern Ireland Protocol](#)

⁹ [NIHRC Illegal Migration Act Factsheet](#)