WRITTEN EVIDENCE FROM THE EQUALITY AND HUMAN RIGHTS COMMISSION (THE COMMISSION) (RWA0022)

The Equality and Human Rights Commission (the Commission) has been given powers by Parliament to advise Government on the equality and human rights implications of laws and proposed laws and to publish information or provide advice, including to Parliament, on any matter related to equality, diversity and human rights.

We welcome this opportunity to provide evidence to support the Committee's legislative scrutiny of the Safety of Rwanda (Asylum and Immigration) Bill ("the Bill").

The UK Government has been unable to provide a statement of compatibility with Convention rights on the face of the Bill, but states the Government 'nevertheless wishes the House to proceed with the Bill'. It does not specify which provisions or Convention rights this potential incompatibility is related to.

By preventing UK courts from considering the risk of refoulement, the Bill risks breaching the right to effective remedy under Article 13 of the European Convention on Human Rights (ECHR), as well as exposing people to risk of breaches of their rights to life and to be free from torture and inhuman or degrading treatment. These would be breaches of obligations under the ECHR as well as its obligations under international law on non-refoulement.[1]

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 (HRA). It also displaces the role of the courts in assessing evidence and risks of harm in order to ensure that Government policy and actions are lawful. Removing this important check on the lawfulness of government action and decision-making has concerning implications for the rule of law, which is essential to an effective human rights legal framework.

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?

[1]These obligations are set out under Article 33(1) of the Refugee Convention, Article 3(1) of the UN Convention against Torture, as well as forming part of obligations under Articles 6 and 7 of the International Covenant on Civil and Political Rights and Article 3 ECHR.

Clause 1 of the Bill defines a safe country. Clause 2 then requires decision makers and courts to treat Rwanda as a safe country. Subsection (5) requires this notwithstanding domestic legislation including the HRA, case law, or international law or rulings from an international court.

The courts will therefore not be permitted to consider whether, or decide that, Rwanda is unsafe in the way the Supreme Court has recently ruled. This is the case even if substantial evidence subsequently emerges that in practice the UK-Rwanda Treaty, which was signed following the judgement and sets out the terms of the asylum processing agreement, is not being followed. This could include for example that individuals are being removed from Rwanda in breach of the treaty, or that the determination of their claim or their treatment may be in breach of international law.

Article 3 ECHR requires contracting states to examine thoroughly whether or not there is a real risk of the asylum seeker being denied access, in a receiving third country, to an adequate asylum procedure, protecting him or her against refoulement. In order to comply with this, the state must consider the available general information about the receiving third country and its asylum system.

However, the Bill risks giving rise to a breach of these obligations under Article 3.

This is because it prevents courts from carrying out an updated assessment of the facts in relation to the risk of refoulement in Rwanda, and legislates that Rwanda is a safe country. That judgement rests on the existence of a bilateral treaty which contains provisions preventing refoulement. However, non-refoulement obligations have in the past been breached by Rwanda. .

Question 2:

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?

Removing the ability of courts to consider the risk of refoulement under Clause 2 similarly 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. As noted in response to question 3, the limited exceptions provided in Clause 4 are insufficient to address this risk.

As noted in response to question 7, remedies available through the HRA are also disapplied from the Bill, leaving only a declaration of incompatibility under section 4 HRA available to courts, which the ECtHR has found is not an effective remedy.

A declaration of incompatibility does not affect the continuing operation of the legislation and does not provide any other remedy for the claimant, such as compensation or preventing their removal. It therefore does not provide an effective remedy for a victim of a human rights violation.

Question 3:

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

Clause 4 provides an exception that if there is "compelling evidence relating to a person's particular individual circumstances" that Rwanda is not a safe country for the person in question, then a decision-maker does not have to treat Rwanda as safe.

The Government's ECHR memorandum argues Clause 4 prevents infringements of Articles 2 and 3 and achieves compliance with Article 13.

However, Clause 4 does not allow a decision maker or court to consider the risk of Rwanda removing an individual to another state in contravention of its international obligations on non-refoulement. Rather, it relies only on obligations in the bilateral treaty preventing refoulement.

In addition, Clause 4 sets a very high threshold for claims to be successful. The Government itself has stated it expects very few, if any cases to overcome what it refers to as a "very high barrier to cross". Those whose evidence does not meet the "compelling" threshold remain subject to removal.

The risk of breaches of Articles 2, 3 and 13 therefore remains.

Question 4:

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?

The Bill, in Clause 4(4), restricts the powers of domestic courts and tribunals to grant an interim remedy, such as an injunction preventing removal whilst the case is considered, to circumstances where they are satisfied an individual would face a real, imminent, and foreseeable risk of serious and irreversible harm (an exceptionally high threshold also to be found in the Illegal Migration Act 2023 (IMA)) if removed to Rwanda .

As we have raised in relation to similar provisions in the IMA, the threshold for interim measures preventing removal is unusually high, and the challenge in presenting evidence to this effect within the often short time frame needed, risks individuals being removed before their case is fully considered and so being subject to breaches of their Article 2, 3 and 13 rights. This risk is increased by the provisions of Clause 5, whereby even if an individual is granted interim measures preventing their removal by the ECtHR, they may still be removed (see question 5).

Question 5:

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?

Interim measures of the ECtHR are intended to protect individuals' human rights by preventing them being removed, while their case is being heard, where doing so may risk subjecting them to serious and irreversible harm.

The Commission has raised concern at the compliance of similar proposals under the Bill of Rights Bill and IMA with the ECHR, and therefore the potential impact on individuals' rights and safety.

In the event of a Minister deciding not to comply with an interim measure, as provided by Clause 5, the Minister would be acting lawfully under domestic law, but the Government would not be acting in accordance with its obligations under international law, as a failure to implement an interim measure would breach the UK's legal obligations under Article 34 ECHR.

Question 6:

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?

Clause 1 of the Bill asserts the sovereignty of the UK Parliament and that the validity of an Act is unaffected by international law.

Respect for the rule of law is essential to an effective legal framework for protection of human rights.

The Bill risks undermining the separation of powers and the rule of law by in effect requiring courts to deem Rwanda to be safe and not permitting any court challenge to that, regardless of the existence of changed circumstances or further evidence on this contentious issue. This is despite the Supreme Court's recent judgment which ruled, on the facts, that previous assessments to this effect were flawed.

Question 7:

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

The disapplication of a number of provisions of the HRA from the Bill raises serious human rights concerns, as it undermines the fundamental principle of the universality of human rights. This is set out within Article 1 ECHR, which requires each signatory to the Convention to "secure to everyone within their jurisdiction the rights and freedoms" set out in the Convention.

Clause 3 disapplies six sections of the HRA from decisions relating to removal to Rwanda. These are: section 2 (interpretation of Convention rights), section 3 (interpretation of legislation), and sections 6 to 9 (acts of public authorities).

The Commission has previously raised concern at similar provisions seeking to disapply core provisions of the HRA from certain groups, in the Illegal Migration Act regarding certain migrants, and in the Victims and Prisoners Bill regarding certain prisoners. The provisions of this Bill go further in disapplying significantly more provisions of the HRA.

While it is possible to limit certain rights, in a lawful and proportionate manner where it is necessary to achieve certain legitimate aims (including in the context of immigration control), the removal of protections under the UK's domestic human rights laws for a group of people is at odds with the fundamental principle of the universality of human rights. 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.

At an individual level, the disapplication of HRA provisions reduces the protections and remedies available to those subject to the legislation. It permits public authorities, including immigration officers, to breach ECHR rights when acting on individual cases under the legislation. Those affected by those breaches would no longer have recourse to a remedy in the domestic courts and would instead only be able to access a remedy through the European Court of Human Rights, which entails significantly more cost and delay.

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