WRITTEN EVIDENCE FROM FREEDOM FROM DR ALICE DONALD AND DR JOELLE GROGAN (RWA0023)

Introduction

1. The Safety of Rwanda (Asylum and Immigration) Bill aims to give effect to the determination of Parliament that the Republic of Rwanda is a safe country for asylum-seekers. The Supreme Court unanimously ruled in November 2023 that Rwanda was not safe due to evidence that asylum seekers sent to the country would face a real risk of ill-treatment due to insufficient guarantees against refoulement.

2. The Bill thus aims to use law to determine a factual situation for as long as the law is in force. This submission discusses the risks inherent in using law to predetermine a factual situation and how the Bill could be amended to mitigate this risk.

Using law to predetermine a factual situation

3. The Rwanda policy, announced in April 2022, would see some asylum seekers who arrive in the UK via illegal routes removed to Rwanda where their claim would be processed and where they would settle if their claim to refugee status were successful. The safety of the country both for the processing of claims, and for settlement, is therefore pertinent for the purposes of abiding by both national and international law on the protection of refugees.

4. The UK-Rwanda Treaty creates legally-binding safeguards that were not in the original non-binding agreement with Rwanda, including new first instance and appeal bodies. The Rwanda Bill states that every UK decision-maker - meaning the Home Secretary, courts and immigration officers when deciding on the removal of a person to Rwanda - must 'conclusively' treat it as a 'safe country'. The Bill further states that courts 'must not consider' any challenge to a removal decision by a UK authority on the basis that Rwanda is not safe, or that there is a risk of refoulement, or that a person will not receive fair and proper consideration of their asylum claim in Rwanda.

5. The Bill thus cements into law Rwanda's designation as a 'safe' country, no matter what the evidence to the contrary either now or in the future.

6. The Supreme Court adduced a significant body of evidence, mainly from the UN refugee agency UNHCR, to conclude that Rwanda is not - presently - a safe destination for people claiming asylum. It referred to 'serious and systemic defects in Rwanda's institutions and procedures for processing asylum claims'. These deficiencies included

Rwanda's 'past and continuing practice of refoulement' in the context of a previous agreement with Israel, which in the view of the Supreme Court required 'changes in procedure, understanding and culture' in Rwanda. Of particular concern was Rwanda's 100% rejection rate of asylum seekers from countries such as Afghanistan and Syria - nationalities that are nearly always recognised as refugees in the UK.

7. Both sides agreed on the national and international legal obligations to which the UK is bound on the principle of non-refoulement. The Supreme Court did not find the policy of removing asylum-seekers to a third country unlawful, only that Rwanda is not currently a safe country to do so. The Court's judgment recognised the fluidity of conditions in Rwanda. Home Secretary James Cleverly also acknowledged this changeability when he noted in his response to the Supreme Court judgment that it was 'made on the basis of facts from 15 months ago'.

8. The Bill as currently drafted forecloses any future assessment that the situation in Rwanda has changed - whether for better or worse. The inherent risk here is that this Bill, if enacted, would create a precedent for predetermining the safety of any country. If, say, a civil war broke out, a coup was staged, the country went to war with another, there were environmental disaster, or the situation severely worsened for any other reason, then no matter the evidence provided, it would require another Act of Parliament to designate that country was no longer safe, or for MPs to repeal the measure, in order to suspend the operation of the policy. Indeed, it would be just as illogical to legislate that Rwanda - or any country - was *not* safe, since this assertion, too, may not withstand future evidence to the contrary.

The uncertainty of deciding *when* a country is safe

9. Compounding this risk is the uncertainty about *when* a determination of safety could reliably be made. It is possible that the Bill will enter into force and removals begin before safeguards guaranteed by the Treaty are fully functioning, or before they even exist.

10. The timeline for the creation of the safeguards contained in the UK-Rwanda Treaty is unclear. The government's policy statement on the Bill issued on 12 December 2023 states that establishing the two new bodies for processing claims and appeals in Rwanda (the latter involving judges from other jurisdictions) requires the introduction of a new, domestic asylum law which Rwanda 'will pass … in the coming months'.

11. The Treaty could be ratified in the UK as early as 30 January, assuming MPs do not vote to delay ratification. It is thus conceivable that the Treaty will be ratified, the Bill will pass through Parliament, and people will start to be removed to Rwanda before these

bodies exist and certainly before they have been functioning for sufficient time to determine the efficacy of their operation in practice.

12. When questioned on this concern by the House of Lords International Agreements Committee, Home Secretary James Cleverly stated that the government 'will not operationalise this scheme until we are confident that the measures underpinning the treaty have been put in place; otherwise, the treaty is not credible'.

13. However, the policy statement says that, 'Once the treaty is ratified and the Bill passed, we can begin to operationalise the Partnership'. These statements could be reconciled if the UK delays ratification of the Treaty, and any removals to Rwanda, at least until the Treaty mechanisms have been created.

The question of the appropriate decision-maker

14. By predetermining the question of whether Rwanda is safe, and also by excluding the possibility of judicial review in almost all cases, the Bill effectively preempts the decision-making process in individual cases entirely. Even if, say, an Immigration officer or a court could be satisfied on the evidence that there was a risk of refoulement if an individual was sent to Rwanda, they would still be unable to make a decision against removal in order to avoid a breach of the UK's obligations under international law.

15. An immediate question is whether Parliament *should* replace judicial and administrative decision-makers on the safety of a country for each and every individual facing removal. Even once the Treaty mechanisms are up and running, the Bill asks Parliament alone to determine the actual and (until then) potential effectiveness of the Rwanda asylum system. As a matter debated in Parliament, it risks being framed as primarily a political question, whereas the safety of a country should principally be a factual matter based on empirical evidence, which is subject to change over time.

16. Courts or administrative bodies are arguably a more appropriate forum for decision-making which should be based upon the evidence particular to each individual claimant. Natural justice incorporating the principle of *audi alteram partem* also requires that people should have the opportunity to challenge the legality of decisions which affect them. Making a blanket predetermination about Rwanda's safety excludes potentially thousands of people from such access to justice.

Mitigating the risk inherent in predetermining a factual situation

17. There are a number of amendments which could mitigate the problem of predetermining the safety of a country for both the processing of asylum claims and the settlement of refugees. We consider two possible changes here.

18. The first would be to delegate power to a government minister to assess, on an ongoing basis, the safety of Rwanda for refugees. Such a power would allow the relevant minister to begin the operation of the policy, and/or to suspend it through a statutory instrument [SI] without the need for Parliament to pass a new Act. The parliamentary oversight of such a power could be further enhanced through making the SI subject to the negative procedure, which would give Parliament a period of time to reject the SI confirming the safety of Rwanda before it comes into force.

19. The concerns of the Supreme Court could also be addressed by enhancing the strength of the evidence required in the minister's decision-making. The decision on the safety of Rwanda could be premised on whether the minister is satisfied that certain conditions have been met including, for example, fulfillment of the commitments laid out by Rwanda in the Treaty. A role could also be given to relevant expert bodies. For example, the minister could be required to obtain evidence from the UNHCR and the Monitoring Committee responsible for the oversight of the policy in Rwanda.

20. A second option for amendment to the Bill would be to introduce a sunset clause to the operation of the legislation, requiring Parliament to vote periodically on the continuation of the Act. This would ensure that parliamentary time would be allocated to regular consideration of the Act, as well as building in consideration of new evidence on the evolving safety of Rwanda as a destination for asylum-seekers.

21. These amendments would mitigate the problems identified in this submission, but would not remove them entirely. First, the problem would still remain of seeking to determine whether or not the Rwandan asylum system is, in practice, safe (i.e. functioning in accordance with the Treaty safeguards) could only be tested *after* the new mechanisms have been created, people have been removed, and decisions at both the first instance and appeal stages have begun.

22. Second, periodic voting required by a sunset clause, and to a lesser extent delegating decision-making to a minister, still risks framing the safety of refugees as a political matter, rather than factual question to be assessed on the basis of evidence.

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