



# Safety of Rwanda (Asylum and Immigration) Bill

Joint Briefing for Second Reading in the House of Commons

8 December 2023

**In no uncertain terms, we strongly and collectively urge the House to decline to give the Bill a Second Reading, and oppose it at each stage thereafter. This Bill is contrary to the rule of law.**

- It legislates a legal fiction, reversing the Supreme Court's factual assessment of the risk of harm in Rwanda, without properly addressing the Court's concerns about the Rwandan asylum system and ousting our domestic courts' jurisdiction to consider the issue; it is an abuse of Parliament's role.
- It disapplies domestically treaties that the UK remains bound by internationally, showing bad faith, setting poor precedent and making the UK an unreliable partner internationally.
- It breaches the European Convention on Human Rights ('ECHR'), when commitment to that is a part of the Good Friday Agreement and the Northern Ireland settlement, as well as the UK's treaty arrangements with the EU.
- It is an attack on judicial scrutiny, undermining our constitutional separation of powers.
- It threatens the UK's role as a global leader in championing the rule of law, democracy and human rights.

## **Breaches of International Law**

1. Reputations are hard won but easily lost. The United Kingdom's international reputation is based on its commitment to a rules-based international order, the constitutional principle of the rule of law and that we comply with the agreements which we sign up to as a country. This Bill, and the Treaty with Rwanda which underlies it, by breaching many of the UK's obligations under international law, sends a devastating signal to the world about our reliability as an international partner and opens up the UK Government to claims of hypocrisy whenever it tries to encourage other countries to comply with international law.
2. Compliance with international law has been a central part of the foreign policy of the United Kingdom for decades. This is a perilous moment for international law and human rights obligations, given the conflicts in continental Europe and across the world. Now is the moment for the UK to lead on the world stage, reinforcing the basic norms of international law and human rights contained in instruments such as the Refugee Convention and European Convention on Human Rights, not the moment for it to retreat.
3. We would highlight the following from leading members of the Government on the importance of full compliance and promotion of international law:

*'And we are also clear that we must work and they [Israel] must work to alleviate the suffering of the Palestinian people and **that their actions are in accordance with international law. I have spoken directly to the Israeli government about their duty to respect international law and the importance of preserving civilian lives in Gaza**'.* (emphasis added)

James Cleverly MP, then Foreign Secretary, [Statement to Cairo Peace Summit](#), 21 October 2023

*'It is important that people act in accordance with international law, that those procedures are followed and, indeed, that Israel takes every precaution to avoid harming civilians'* (emphasis added)

Rishi Sunak MP, Prime Minister, [House of Commons](#), 23 October 2023

*"While there is a conceptual debate about whether the rule of law includes compliance with international law – and my own view in that debate aligns with Lord Bingham – **it is certainly clear that the UK must comply with its international obligations and an important part of my role is to ensure that we do so**'.* (emphasis added)

Victoria Prentis MP, Attorney General, [Institute for Government speech](#), 10 July 2023

4. This Bill, building on the Illegal Migration Act 2023, *prima facie* places the United Kingdom at risk of breaching its international legal obligations under a raft of multilateral treaties, including the European Convention on Human Rights ('ECHR'); the 1951 Refugee Convention, and its 1967 Protocol; the 1984 UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment ('UNCAT'); the 1966 UN International Covenant on Civil and Political Rights ('ICCPR'), the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness; the UN Convention on the Rights of the Child. It also places at risk the UK's obligations under the European Convention on Action against Trafficking, given victims of modern slavery and trafficking are among those who face forced removal to Rwanda,<sup>1</sup> and Rwanda, according to the US Department of State [2023 Trafficking in Persons Report: Rwanda](#), *'does not fully meet the minimum standards for the elimination of trafficking'*.
5. Clause 1(4) of the Bill states *'(a) the Parliament of the United Kingdom is sovereign, and (b) the validity of an Act is unaffected by international law'*. Parliament's sovereignty does not prevent the UK Government from breaching international law. This will not stop our courts from finding this piece of legislation to be incompatible with rights under the ECHR and issuing declarations to that effect.<sup>2</sup> Whilst preventing domestic courts from revisiting their findings on Rwanda being a safe country for the purposes of Article 3 ECHR, the legislation does not prevent applications to and the final binding decisions from the European Court of Human Rights ('ECtHR'). Given the Supreme Court's unanimous findings, and the inadequacies of the Treaty to address those issues (see below), it is extremely likely that the ECtHR will agree with the decision of the Supreme Court and maintain that the policy is a breach of the ECHR. It will place the Government on a direct collision course with domestic courts, the ECtHR, the Council of Europe, and other international bodies. The UK will continue to be responsible for these breaches on the world stage.
6. Legislating in such a reckless manner in relation to our obligations under the ECHR risks damaging the UK's reputation as a country that led within the Council of Europe. Compliance with the ECHR is

---

<sup>1</sup> See, for example, [Rwanda Treaty](#), Article 13(2) and Illegal Migration Act 2023, s 5(1)(c).

<sup>2</sup> Human Rights Act 1998, section 4.

also critical to the Good Friday Agreement,<sup>3</sup> the UK-EU Trade and Cooperation Agreement,<sup>4</sup> and the Windsor Framework,<sup>5</sup> as JUSTICE has [highlighted](#) previously.

7. The UK's Supreme Court unanimously [decided](#) that individuals sent to Rwanda would face a real risk of ill-treatment. No legislative sleight of hand can change this. It noted how the principle of *non-refoulement* (i.e. to not directly or indirectly send individuals to a country where there is a real risk their life or freedom would be threatened, they would be at a real risk of irreparable harm, or would be subjected to torture) was '*enshrined in several international treaties which the United Kingdom has ratified*', including the Refugee Convention, UNCAT, ICCPR, and ECHR, and is given effect in numerous domestic statutes. Further, it forms part of customary international law and has arguably reached the status of a peremptory norm, as it is a norm from which no derogation is permitted.<sup>6</sup> The Government hides behind the Supreme Court's decision being only an '*interpretation of international law*' with which they disagree. However, the Supreme Court's decision was a unanimous decision of five Supreme Court Justices, including the President of the Supreme Court.
8. It is ironic that one of the central factors that the UK Government [stresses](#) has changed since the Supreme Court's decision is that the new [Rwanda Treaty](#) is '*binding in international law*'. However, the Government is not committed to its other international legal obligations in relation to this policy: the Bill specifically ousts our courts and tribunals *notwithstanding* any 'interpretation of international law by the court or tribunal'; it is accompanied by a statement that the Home Secretary cannot say it complies with rights under the ECHR; and it has also led to a situation where the Prime Minister [claims](#) he wanted to go further in breach of international law but was held back by the Rwandan Government.

### **The Fact is Rwanda is Not Safe**

9. Parliament should entirely reject the attempts by the Executive to legislate the falsity, the conclusive legal fiction, that Rwanda is safe. It should reject the judgement of the Executive, masquerading as the judgement of Parliament, set out in Clause 1(2)(b):

*'this Act gives effect to the judgement of Parliament that the Republic of Rwanda is a safe country.'*

10. This Bill will cause a constitutional crisis, by interfering with the separation of powers, seeking to overturn the evidence-based findings of fact, made not only by a court of competent jurisdiction, but in fact by the highest court in the United Kingdom, the Supreme Court. The Treaty does not change

---

<sup>3</sup> The UK affirmed 'mutual respect, the civil rights and the religious liberties of rights of everyone in the community', and agreed that '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. See the [Belfast Agreement: An Agreement Reached at the Multi-Party Talks on Northern Ireland](#) (April 1998, Cm 3883) 16, para 2.

<sup>4</sup> It threatens the withdrawal arrangements with the European Union, including in trade and law enforcement, as the [UK-EU Trade and Cooperation Agreement](#) allows the EU to suspend or terminate the agreement as a whole if there is a 'serious and substantial failure' by the UK to respect human rights and the international human rights treaties to which both are parties'. See Articles 763(1), 771, 772.

<sup>5</sup> Article 2 ensures no diminution of rights. See the [Protocol](#) on Ireland/Northern Ireland to the Agreement on the Withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community.

<sup>6</sup> Cathryn Costello and Michelle Foster, 'Non-refoulement as Custom and Jus Cogens? Putting the Prohibition to the Test' (2016) in Heijer, M., van der Wilt, H. (eds) *Netherlands Yearbook of International Law* (T.M.C. Asser Press 2015) vol 46.

those findings of fact; the Supreme Court was clear that *'there is a real risk that the practices described above will not change, at least in the short term'* (§93).

11. Clause 2(1) of the Bill goes further: *'Every decision-maker must conclusively treat the Republic of Rwanda as a safe country'*. This places a statutory obligation on the Home Secretary, immigration officers, courts, and tribunals to conclusively depart from the fact-finding of our Supreme Court.
12. A safe country is specifically defined in the Bill as a country *'in which any person who is seeking asylum or who has had an asylum determination will both have their claim determined and be treated in accordance with that country's obligations under international law'*.<sup>7</sup> However, our Supreme Court, relying on the particularly important evidence of the UN High Commissioner for Refugees (UNHCR), identified serious inadequacies in Rwanda's asylum system.
13. If Rwanda was truly safe:
  - the Bill would not need to exclude Rwandan nationals from its scope—their exclusion<sup>8</sup> makes clear that the incredibly high threshold for individual assessment in Clause 4(1) of the Bill *'based on compelling evidence relating specifically to the person's particular individual circumstances'* is insufficient to protect them from *refoulement*. Since 2020, the Home Office's own statistics show the UK has granted protection to 15 Rwandan nationals.<sup>9</sup>
  - the Home Secretary would have been able to make a statement that, in his view, the provisions of the Bill are compatible with Convention rights—he was not able to do so.<sup>10</sup>
14. Neither signing a treaty, which merely contains assurances that the Supreme Court found Rwanda could not fulfill, nor stating in a Bill that Rwanda is safe, changes the facts on the ground. The Bill and the Treaty do not address the following issues raised by the Supreme Court:
  - Ensure Rwanda will comply with these new bilateral treaty obligations, when it has failed to comply with multilateral treaty obligations in the past, *'including under UNCAT and the ICCPR'* (§76).
  - Engender a culture of sufficient appreciation or understanding of obligations under the Refugee Convention, when these have not developed in the years that Rwanda has hosted refugees. For example, between 2020 and 2022, UNHCR found that Afghan, Syrian and Yemeni asylum claims had a 100% rejection rate in Rwanda (§85).
  - Erase Rwanda's poor human rights record or the profound human rights concerns that remain, including that refugees have been ill-treated when they have *'expressed criticism of the government. The most serious incident occurred in 2018, when the Rwandan police fired live ammunition at refugees protesting over cuts to food rations, killing at least 12 people'* (§76).

---

<sup>7</sup> Safety of Rwanda (Asylum and Immigration) Bill, Clause 5(b)(ii).

<sup>8</sup> Safety of Rwanda (Asylum and Immigration) Bill, Clause 7(2): *'In this Act, references to a person do not include a person who is a national of the Republic of Rwanda or who has obtained a passport or other document of identity in the Republic of Rwanda'*.

<sup>9</sup> Home Office, ['Immigration system statistics data tables'](#) (updated 23 November 2023) see ['Asylum applications, initial decisions and resettlement detailed datasets, year ending September 2023'](#).

<sup>10</sup> The Bill was accompanied by a statement from James Cleverly, under section 19(1)(b) of the Human Rights Act 1998.

- Secure any legal remedy under Rwanda’s legal system if an individual is removed to Rwanda, and Rwanda *in fact* tries to *refoules* them, but it bars our courts and tribunals from even contemplating this possibility. As evidence of the prior failure of its legal system, the Supreme Court found that there had been no asylum appeals to the High Court since the right was established in 2018 (§82).
- Secure the independence of the Rwandan judiciary. Regardless of whether or not foreign judges and independent experts are sent to assist a to-be-established “Appeal Body”, the Supreme Court’s concern stands: *‘The system is therefore untested, and there is no evidence as to how the right of appeal would work in practice’* (§82).
- Secure access to *independent* legal representation for asylum claimants at each stage of the process, when it was the view of the FCDO that the legal profession may not operate independently if the matter became political (§83) and the view of the Rwandan government and the Supreme Court that the *‘introduction of such a significant change of practice is liable to raise a number of issues, for example as to the role of the claimant’s lawyer at each stage of the process, which may require time to resolve’* (§84).
- Do away with history, or render irrelevant the failures of the Rwandan government under its recent international agreement with Israel. As the Supreme Court has said *‘[a]lthough the terms of the agreement may well have been different’*, there was *‘no dispute that persons who were relocated under the agreement suffered serious breaches of their rights under the Refugee Convention’* (§100).
- Undermine the insufficiency of monitoring arrangements as a safeguard, as the Supreme Court expressed: *‘Such arrangements may be capable of detecting failures in the asylum system, and over time may result in the introduction of improvements, but that will come too late [...]. Furthermore, the suppression of criticism of the government by lawyers and others is liable to discourage the reporting of problems, and so undermine the effectiveness of monitoring. It is also unclear whether the monitoring arrangements could provide a solution to problems emanating from the Rwandan government’s interpretation of its obligations under the Refugee Convention, or from a lack of independence in the legal system in politically sensitive cases’* (§93).

15. Therefore, without calling into question the good faith and intentions of Rwanda, in the words of our Supreme Court, *‘intentions and aspirations do not necessarily correspond to reality: the question is whether they are achievable in practice’*, particularly, *‘in the light of the present deficiencies of the Rwandan asylum system, the past and continuing practice of refoulement (including in the context of an analogous arrangement with Israel), and the scale of the changes in procedure, understanding and culture which are required’* (§102).

### **Attack on Judicial Scrutiny**

16. There are four ways that this Bill attacks judicial scrutiny, but each is a clear indication that the Government lacks confidence that the Bill and the new Treaty are compatible with international law and that they have addressed the concerns raised by the Supreme Court.
17. First, if it were confident, the Government would not be trying to strike out the ability of our domestic judges to consider any appeal or review, to the extent it is brought on the grounds that Rwanda is not a safe country, including any claim or complaint that:

- Rwanda will or may remove or send a person to another State, contravening its international obligations, including under the Refugee Convention;
- a person will not receive fair and proper consideration of an asylum, or other “similar”, claim in Rwanda;
- Rwanda will not act in accordance with the Treaty.<sup>11</sup>

18. Second, a confident Government would not need to limit the jurisdiction of our courts and tribunals, including through broad “notwithstanding” provisions that override rules of domestic law, the common law, the Human Rights Act 1998 (HRA), and ‘any interpretation of international law by the court or tribunal’.<sup>12</sup> The Government would not seek to:

- disapply section 2 HRA, to insulate itself from interpretation of Convention Rights in decisions regarding whether Rwanda is a safe country for a person to be removed under immigration law;
- disapply section 3 HRA, to insulate itself from our courts or tribunals reading and giving effect to the Bill in a way which is compatible with the Convention rights;
- disapply sections 6 to 9 HRA, to immunise unlawful breaches of human rights; and inhibit domestic proceedings being brought by victims and judicial remedies being granted, in decisions taken on the basis of Rwanda’s safety, grants of interim remedies, or severely limit decisions regarding an individual’s particular circumstances.<sup>13</sup>

19. Third, the Government would not fear interim measures indicated by the European Court of Human Rights, themselves binding under international law,<sup>14</sup> if it was confident this Bill complies with the UK’s international legal obligations under the ECHR. It is a sign of the Government’s lack of confidence in this Bill’s compliance that it provides Ministers with the power to ignore such measures, and to block a court or tribunal from having regard to them.<sup>15</sup> To be clear, interim measures can only be issued in ‘*exceptional circumstances, in cases where there is an imminent risk of irreparable harm*’, such as when there is a risk of torture or ill-treatment. Parties can request the ECtHR to reconsider its decision or lodge a fresh request if circumstances change.

20. It should be noted that, since the passage of the Illegal Migration Act 2023, and the interim measure indicated in relation to prevent removal to Rwanda last June of a person the Home Office accepts had been the subject of flawed decision-making, the Court on 13 November 2023 decided to disclose the identity of judges who make decisions on interim measure requests, issue formal judicial decisions to parties, and maintain adjourning the examination of requests and requesting submission of information where the situation is not extremely urgent. As the Law Society President, Nick Emmerson, said, ‘*These steps will ensure that the procedure for issuing interim measures is transparent and fair to all parties involved.*’ The Government can, therefore, have no valid reason for barring our courts and tribunals from consideration of such measures.

21. Fourth, if it truly believed all individuals sent to Rwanda would have their human rights upheld, the Government would not need to restrict the test for our courts and tribunals granting any interim remedy delaying or preventing removal to Rwanda: ‘*that the person would, before the review or appeal is determined, face a real, imminent and foreseeable risk of serious and irreversible harm if*

---

<sup>11</sup> Clause 2(3)-(4) and Clause 4(2).

<sup>12</sup> Clause 2(5).

<sup>13</sup> Clause 3.

<sup>14</sup> The UK has an obligation under Article 34 ECHR responsibility not to hinder the effective exercise of individual application to the Court and an obligation under Article 1 ECR to protect the rights and freedoms set forth in the ECHR, see *Mamatkulov and Askarov v Turkey* (2005) 41 EHRR 494 at [128].

<sup>15</sup> Clause 5.

removed'.<sup>16</sup> Furthermore, the remedy is only available to a narrow category of individuals who are not to be removed under the Government's flagship Illegal Migration Act 2023. For the thousands the Home Secretary would be under a duty to make arrangements to remove, under its new Illegal Migration Act 2023, the Government seeks to uphold the not-yet commenced complete prohibition on granting such interim remedies.<sup>17</sup>

22. By continuing to restrict our courts and tribunals from granting interim remedies, the Government seeks to say *not only* do we want Parliament to enact provisions to give effect to our policy, *we also* want to remove judges from supervising the lawfulness of our conduct when we operate that policy. It is the latter ambition that offends the principle of the rule of law.
23. The common law of England and Wales operates by providing remedies for wrongs suffered. Injunctions (including interim injunctions) are private law equitable remedies that are also available against public authorities to restrain them from acting unlawfully. They are a cornerstone in ensuring that the Government acts within the law prescribed by Parliament in legislation. As a remedy, they function in particular to prevent intended and/or anticipated unlawful conduct. There is no warrant for the Home Secretary to escape being subject to the possibility of interim injunctions to restrain his intended and/or anticipated unlawful conduct. It is a fundamental aspect of the rule of law that such judge-granted remedies are available to all and against all. There is no theory of our constitutional law where they can be withdrawn from a class of persons or from a broad area of policy.
24. On 15 November 2023, the Home Secretary [stated](#) that the '*government of course fully respects the Supreme Court*'. If it truly respected judicial competence and had addressed the Supreme Court's concerns, it would have no fear of judges ensuring that the Government is not above the law made by Parliament.
25. The most orthodox statement of the nature of Parliamentary sovereignty and legislative supremacy, A.V. Dicey's *Introduction to the Study of the Law of the Constitution*, nonetheless still states:

'We mean...when we speak of the "rule of law" as a characteristic of our country, not only that with us no man is above the law, but (what is a different thing) that here every man, whatever be his rank or condition, is subject to the ordinary law of the realm and amenable to the jurisdiction of the ordinary tribunals.' (8th edition, 1915, Chapter IV, p. 114).
26. A modern restatement of that principle of the rule of law can be found in John Laws' (Lord Justice Laws when he was in the Court of Appeal) *The Constitutional Balance*:

'...judges must ensure, and have the power to ensure, that State action falls within the terms of the relevant published law.' (2021, p. 16)

### **Practical Concerns**

27. The UK should carry out its multilateral international legal obligations in good faith, rather than concocting and implementing ineffective, unworkable plans, such as this, which leave individuals in limbo and bar them from inclusion and integration in our society. Rather than signing treaties, and seeking to pass legislation that increasingly infringes upon the rule of law, the Home Office should instead reallocate their time and resource to fairly and efficiently determining asylum claims,

---

<sup>16</sup> Clause 4(4).

<sup>17</sup> Clause 4(6), referencing section 54 of the Illegal Migration Act 2023.

recognising individuals who are refugees to be refugees,<sup>18</sup> and providing them with the rights to which they are entitled as refugees under the 1951 Refugee Convention and its 1967 Protocol.

28. This is an eye-wateringly expensive plan to avoid the UK's role in global responsibility sharing. Permanent Secretary Matthew Rycroft [confirmed](#) the ballooning costs of the Rwanda plan: £240 million paid thus far, and another £50 million anticipated to be paid next year.
29. Cruel and inhumane third-country inadmissibility policies and legislation, such as these, do not pose a deterrent effect, as the Home Office's own statistics reveal. All small boat arrivals have risen, except for Albanian nationals, who remain the largest cohort of foreign nationals referred to the National Referral Mechanism as potential victims of modern slavery, as demonstrated in the Home Office's most recent quarterly statistics, and for whom traffickers may have simply varied their approach:

*'Small boat arrivals from July to September 2023 were 34% lower than in the same 3 months of 2022. This decrease is largely due to a reduction in Albanians arriving in the year ending September 2023 (further detail in Section 3.3 below). The number of small boat arrivals from other nationalities increased 9% over the year as a whole (from 32,466 arrivals in the year ending September 2022 to 35,508 arrivals in year ending September 2023).'*<sup>19</sup>

30. Inadmissibility policies such as the one underpinning this Bill are ineffective and only place undue strain on the asylum system, by creating a large backlog of asylum claims. Nearly 70,000 individuals claiming asylum have been considered for inadmissibility, with more than 30,000 issued notices of intent. Only 83 inadmissibility decisions were served, and 23 returns taking place only to EU countries and Switzerland. After this unnecessary waste of caseworker time, 43,000 individuals then had their claims admitted for consideration. This leaves 26,669 individuals still held in limbo, in a costly asylum backlog, barred from recognition and corresponding rights as a refugee.<sup>20</sup>

### **Importance of Parliamentary Scrutiny**

31. This Bill is not accompanied by a statement of compatibility with Convention rights, under section 19 HRA. Lord Irvine, then Lord Chancellor, stated in Committee stage on 3 November 1997, about a statement of compatibility under section 19, when the HRA was still a Bill in the House of Lords:

*'Where such a statement cannot be made, parliamentary scrutiny of the Bill would be intense.'*<sup>21</sup>

32. We urge Parliamentarians to take every opportunity to intensely scrutinise this deeply controversial piece of proposed legislation: it is an affront to our Constitution's principles of the rule of law and the separation of powers; it seeks to usurp the Supreme Court's powers in ensuring compliance with human rights; it seeks to implicate Parliament in the Government's fiction that Rwanda is safe which is an abuse of Parliament's role; and it drags the UK into disrepute internationally. **It should fall at the first opportunity.**

---

<sup>18</sup> As a matter of law a person is a refugee as soon as they meet the definition set out at Article 1A(2) of the Refugee Convention.

<sup>19</sup> Home Office, '[Irregular migration to the UK, year ending September 2023](#)' (published 23 November 2023).

<sup>20</sup> These rights include the right to engage in wage-earning employment and self-employment, and to practice a profession; access to public funds on the same terms as British citizens; the right to rent and access to housing; access to courts on equal terms to British citizens; freedom of movement and access to a travel document; and family reunion. Refugee Convention, Articles 13, 16, 17, 18, 19, 21, 23 and 28.

<sup>21</sup> [HL Deb 3 November 1997, vol 582, col 1233.](#)