

Refugee and Migrant Children's Consortium

Safety of Rwanda (Asylum and Immigration) Bill Briefing House of Lords Committee Stage – February 2024 Amendment on accompanied children

Introduction

The Refugee and Migrant Children's Consortium is firmly opposed to the Safety of Rwanda Bill in its entirety. It is an affront to the rule of law. International law, including the UN Convention on the Rights of the Child, is integral to children's rights and their protection. The Bill disapplies domestically treaties that the UK remains bound by internationally – this clear violation of international law obligations sets a dangerous precedent, damages the UK's reputation on the international stage, and jeopardises the rights of children.

Under this Bill and the Rwanda Treaty¹ **children within families may be sent to Rwanda**. Forced removal of families to a country more than 4,000 miles away, with which they have no connection and where according to the Supreme Court they would be at real risk of ill-treatment, will have a devastating impact on children's mental and physical health. It is contrary to the UK's commitment to uphold the rights and give due weight to the welfare of children in line with Section 55 of the Borders, Citizenship and Immigration Act 2009.

Proposed amendment to protect children

Amendment

BARONESS LISTER OF BURTERSETT
THE LORD BISHOP OF CHELMSFORD
BARONESS NEUBERGER

Clause 4, page 4, line 44, at end insert—

“(6A) In section 54A of the Borders, Citizenship and Immigration Act 2009 (Independent Family Returns Panel), for subsection (3A) (as inserted by section 14 of the Illegal Migration Act 2023) substitute—

“(3A) The duty under subsection (2)(a) does not apply where the proposed removal is for the purposes of section 2 or 4(2) of the Illegal Migration Act 2023 (duty or power to make arrangements for removal), unless the removal is to the Republic of Rwanda.”

Member's explanatory statement

This amendment ensures the Secretary of State consults the Independent Family Returns Panel on how best to safeguard and promote the welfare of the children of families to be removed to the Republic of Rwanda under the Illegal Migration Act 2023 and the UK-Rwanda Treaty.

¹ [UK-Rwanda treaty: provision of an asylum partnership - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/news/uk-rwanda-treaty-provision-of-an-asylum-partnership)

Asylum ban and removal of children under the Illegal Migration Act

The Illegal Migration Act 2023 bans consideration of protection and human rights claims of adults and children in families, who have arrived in the UK irregularly, on or after 20 July 2023, who do not have permission to enter or stay, and who did not come directly from a country in which their life and liberty were threatened (i.e. in essence, almost anyone who does not come to the UK via one of the few, extremely limited resettlement routes).² It also provides for their removal to third countries, with which they have no connection. Rwanda is such a country.

Sending families to Rwanda is part of the Government's proposals and the current Bill and Treaty dangerously pave the way for this.

While awaiting removal, children in families will either be detained or left reliant on the minimal support and accommodation that is currently provided by the Home Office to those who have had their asylum claims refused. Given the numbers affected, this is likely to leave babies, toddlers, and other children in limbo for months if not years.

If the Government's intention is to detain and remove all those arriving on small boats, then more than 26,000 children in families would be at risk of removal in the first three years.³ The Illegal Migration Act 2023 removes the safeguards and 72-hour time limit (or 7 days with personal Ministerial approval) for detaining children and their families in pre-departure accommodation and the duty on the Home Secretary to consult the Independent Family Returns Panel on how best to safeguard and promote the welfare of such children.

Dereliction of duties towards children

The Secretary of State bears a duty to safeguard and promote the welfare of children who are in the United Kingdom under section 55 of the Borders, Citizenship and Immigration Act 2009. It is through section 55 that the spirit of the UK's obligation to the best interests principle – as set out in Article 3 of the UN Convention on the Rights of the Child 1989 – has been translated into UK law for children affected by immigration control.⁴

It is difficult to see how any assessment could deem it to be in the best interests of a baby, toddler, or child to be sent with their family to Rwanda, more than 4,000 miles away, with little, if any, recourse to challenge the decision. For this very reason, the UN Committee on the Rights of the Child, in recently reviewing the UK's child rights record, concluded and urged the United Kingdom 'to ensure that children and age-disputed children are not removed to a third country'.⁵ Notably lacking is any Child Rights Impact assessment or proper consideration of this Bill's compatibility with children's rights.

² See Section 2, Illegal Migration Act 2023

³ Figure based on the Refugee Council's [Impact Assessment of the Bill](#) which finds that in the first three years of the legislation coming into effect, between 225,347 and 257,101 people will have their asylum claims deemed inadmissible. This includes between 39,500 and 45,066 children, consisting of between 13,065 and 14,906 unaccompanied children and between 26,435 and 30,160 children with family members."

⁴ *ZH (Tanzania) v Secretary of State for the Home Department* – Lady Hale at §23

⁵ United Nations Committee on the Rights of the Child, '[Concluding observations on the combined sixth and seventh periodic reports of the United Kingdom of Great Britain and Northern Ireland](#)' (CRC/C/GBR/CO/6-7, 22 June 2023) §50(f.)

The impact of ‘offshoring’ families

While the Rwanda removals scheme is not strictly ‘offshoring’ in that the UK is actually *offloading* responsibility for people seeking asylum by sending them permanently to Rwanda, it is worth looking at Australia’s experience, often cited as evidence of offshoring working as a deterrent. Since 2013, Australia has sent people seeking asylum who try to reach the country by boat to cramped and dirty offshore processing centres in Papua New Guinea (PNG) and Nauru. Male asylum-seekers have been transferred to PNG’s Manus Island, while men, women, and children have gone to Nauru. NGOs have documented how individuals and families with children spent years living in substandard conditions in these centres, where they suffered severe inhumane treatment, violence, and medical neglect. At least 14 people subjected to Australia’s offshore detention system have died, half from suicide or suspected suicide.⁶

The impact on children’s physical and mental health and upon their parents’ parenting capabilities has been devastating,⁷ and there is little evidence to demonstrate that offshoring reduced the number of boat arrivals.⁸ The UK should heed international examples and avoid replicating the mistreatment of children who have sought safety.

The Independent Family Returns Panel

The proposed amendment seeks to maintain the current safeguard, which is in place when the Home Office is considering the removal of families to Rwanda. It is a safeguard that was introduced in 2014 after long consideration of how the removal process should treat children and how decisions should be reached about their removal.

Since 2014, the forced removal process of families has included a duty on the Home Secretary to consult with the Independent Family Returns Panel (IFRP) when a child is detained with a view to being removed from the UK.⁹ The IFRP provides advice to the Home Office on the safeguarding and welfare needs of families with children who face removal, as part of the Family Returns Process. This enables the Home Office to ensure that the welfare and safeguarding needs of such families are appropriately considered.

Section 14 of the Illegal Migration Act 2023, which is not yet in effect, disapplied this safeguard. There is no reason why this duty should apply to certain children in the immigration system facing removal and not apply to others, particularly children facing removal to Rwanda.

Children seeking safety in the United Kingdom should not face removal to Rwanda. But at the absolute minimum, the process should ensure that their welfare and best interests are considered. That is what the proposed amendment ensures and no more. It is necessary to add in this procedural safeguard to protect children and uphold the UK’s duties towards them.

⁶ [Australia/PNG: Refugees Face Unchecked Violence | Human Rights Watch \(hrw.org\)](#)

⁷ See Tosif S, Graham H, Kiang K, Laemmle-Ruff I, Heenan R, Smith A, Volkman T, Connell T, Paxton G. (2023). [Health of children who experienced Australian immigration detention](#)

⁸ [FactCheck: did Australian offshore asylum system reduce boat crossings? – Channel 4 News](#)

⁹ The ‘family returns process’ outlined that families would be encouraged to make a voluntary or ‘assisted’ departure but that for those who did not cooperate with these processes, a tailored ‘family return plan’ would be prepared. An Independent Family Returns Panel would consider the plan and suggest changes and then, as a last resort, ‘non-compliant families’ could be accommodated for a few days in pre-departure accommodation, before being subject to an ‘ensured’ (enforced) removal from the UK.