LIBERTY

LIBERTY'S BRIEFING ON LORDS AMENDMENTS TO THE SAFETY OF RWANDA (ASYLUM AND IMMIGRATION) BILL, MARCH 2024

Whatever one thinks of the Rwanda scheme, the Safety of Rwanda (Asylum and Immigration) Bill is a constitutionally extraordinary piece of legislation. In several places the Bill's provisions advance further than this country's Parliament has gone before, and into some potentially dangerous positions. Recognising this, the House of Lords has passed several amendments to its text. The ones that we endorse in this briefing seek to:

- Ensure the scheme's compliance with domestic and international law.
- Provide for adequate monitoring of the Rwanda Treaty for the purposes of the Act.
- Allow the presumption that Rwanda is a safe country to be rebutted by credible evidence to the contrary.
- Restore the proper jurisdiction of the courts.

These are moderate and commonsense proposals. They allow the Government's policy to operate with the customary and necessary safeguards that we would generally expect to be in place. Liberty does not support the Rwanda plan, or this Bill as a whole, but if it is to pass it must do so without jettisoning these vital protections. **Liberty urges parliamentarians to support the amendments in the names of Lord Coaker, Lord Hope of Craighead, Lord Anderson of Ipswich and Baroness Chakrabarti.**

COMPLIANCE WITH THE DOMESTIC AND INTERNATIONAL RULE OF LAW

The amendment to clause 1 in the name of Lord Coaker would add maintaining full compliance with domestic and international law to the purpose of this Bill. While this should go without saying for any piece of legislation passed by Parliament, the Bill contains several extraordinary provisions which bring this compliance into question. These resulted in the Home Secretary being unable to say that the Bill complied with the UK's obligations under the European Convention on Human Rights (ECHR), and making a section 19(1)(b) statement under the Human Rights Act 1998 (HRA). With this in mind, a clear statement of intent to ensure full compliance with domestic and international law is welcome.

Clause 3 of the Bill for example disapplies much of the HRA in relation to the scheme, while clause 5 enables Ministers to decide whether or not to comply with an interim measure from the European Court of Human Rights (ECtHR). These are extreme provisions, seen before in no legislation other than the related Illegal Migration Act (IMA), and with no amendments voted on in the House of Lords, they will form part of the eventual Act. The disapplication of the HRA goes further than has ever been done before, disapplying not only section 3 as the IMA did, but sections 2 and 6-9 as well. It is likely to fall foul of Article 13 ECHR, which requires States to grant an effective remedy to those whose Convention rights have been violated.

Interim measures of the European Court are issued only "on an exceptional basis, when applicants would otherwise face a real risk of serious and irreversible harm". When they are granted, it is on the basis of serious need, and contracting states are under an obligation to comply with them. To do otherwise would be a breach of our Article 34 ECHR responsibility not to hinder the effective exercise of individual application to the Court.[1] The ECHR memorandum to the Bill states that "the Government considers that the provision *is capable* of being operated compatibly with Convention rights, in the sense that it will *not necessarily* give rise

[1] See Mamatkulov and Askarov v Turkey (46827/99, 46951/99) 2005.

to an unjustified interference of those rights" (emphasis added).[2] This is an extraordinarily weak justification for ignoring an exceptional order granted to save a person from serious and irreversible harm.

The Bill states that "the Parliament of the UK is sovereign" and that "the validity of an Act is unaffected by international law"[3] – with the Bill defining "international law" as the ECHR, the Refugee Convention, the International Covenant on Civil and Political Rights (ICCPR), and the Council of Europe Convention on Action Against Trafficking (ECAT), as well as customary international law and "any other international law".[4] These are truisms, but their inclusion raises real concerns about the Government's commitment to these agreements to which we have freely signed up, and indeed, played a vital role in drafting. **Liberty urges parliamentarians to support Lord Coaker's amendment to clause 1.**

MONITORING THE SAFETY OF RWANDA

The amendments to clause 1 in the name of Crossbench peer and former Deputy President of the Supreme Court Lord Hope of Craighead very simply take the Government at its word that the Rwanda Treaty makes the country a safe place to send people seeking asylum. The amendments write into the Bill that Rwanda will be safe when and so long as the arrangements in the Treaty have been fully implemented and are being adhered to, and provides that this assessment will be made by reports of the Monitoring Committee. Where the Monitoring Committee finds that the Treaty is not being adhered to, the country will not be considered as safe for the purposes of the Act.

It is difficult to see any justification for not accepting these amendments. If Rwanda is safe because, as the Government says, its provisions *"address all of the concerns identified by the Supreme Court and make Rwanda a safe country to send migrants and meet our respective international obligations",*[5] it stands to reason that if the Treaty is not being adhered to, the scheme should not remain in operation.

Indeed, the amendments are more amenable to the Government's position than many would want, as it accepts the assertion that the Treaty makes Rwanda safe. This is not the stance of the UNHCR, for example, which holds that the Rwanda Treaty and Bill "are not compatible with international refugee law."[6]

As well as passing the amendments, the House of Lords has separately passed a motion agreeing with the recommendation of the International Agreements Committee (IAC) that ratification of the Treaty be delayed until all of its provisions and safeguards have been implemented, with the report saying that *"there are a significant number of legal and practical steps which need to be taken before the protections could be deemed operational such that they might make a difference to the assessment reached by the Supreme Court*".[7] If the Government is serious that the protections in the Rwanda Treaty address the Supreme Court's concerns and make the country a safe place to send people, there is no reason not to accept these amendments, which simply seek to formalise that. **Liberty urges parliamentarians to support Lord Hope of Craighead's amendments to clause 1.**

A REBUTTABLE PRESUMPTION

The amendments to clause 2 in the name of the Crossbench peer Lord Anderson of Ipswich make the Bill's declaration that Rwanda is a safe country rebuttable by credible evidence to the contrary. They are

[2] Home Office, Safety of Rwanda (Asylum and Immigration) Bill, ECHR memorandum, 6 December 2023, [29] https://publications.parliament.uk/pa/bills/cbill/58-04/0038/ECHRmemo.pdf.
[3] Clause 1(4).
[4] Clause 1(6).
[5] Safety of Rwanda (Asylum and Immigration) Bill 2023: legal position (accessible), 11 December 2023: https://www.gov.uk/government/publications/safety-of-rwanda-asylum-and-immigration-bill-2023-legal-position/safety-of-rwanda-asylum-and-immigration-act-2023-legal-position-accessible
[6] UNHCR Analysis of the Legality and Appropriateness of the Transfer of Asylum-Seekers under the UK-Rwanda arrangement: an update, 15 January 2024: https://www.refworld.org/pdfid/65a55d994.pdf
[7] House of Lords International Agreements Committee, Scrutiny of international agreements: UK-Rwanda Agreement on an Asylum Partnership, 17 January 2024: https://committees.parliament.uk/publications/42927/documents/213461/default/

reasonable and modest amendments, which correct a deficiency in the Bill whereby Parliament is asked to state that Rwanda is and will continue to be safe, and there is no mechanism by which this can be revisited. This is a moderate safeguard, which preserves the Rwanda Bill and scheme, but allows for people to be kept safe if conditions in the country were to deteriorate, and for courts not to be forced to close their eyes to compelling evidence of that change in circumstance.

Clause 2 as written operates as a judicial blindfold. It dictates that courts must "conclusively" treat Rwanda as a safe country, prohibiting them from considering any claim or appeal insofar as it is based on the argument that Rwanda is unsafe.[8] It directs them to ignore the facts in front of them. Lord Anderson's amendments shift this slightly, instead directing decision-makers to approach the question of whether Rwanda is safe for the purposes of removing asylum seekers with a presumption in favour. If Rwanda becomes unsafe, then the rebuttable presumption will provide an important backstop for the courts to prevent abuses of human rights and ensure the UK's continued compliance with its international obligations. **Liberty urges parliamentarians to support Lord Anderson of Ipswich's amendments to clause 2.**

RESTORING THE JURISDICTION OF THE COURTS

New clause 4 in the name of Baroness Chakrabarti would replace the current clause with a new one restoring the proper jurisdiction of the courts. The current clause as written limits the courts' jurisdiction to assessing whether, in exceptional cases, an individual has "compelling evidence" that Rwanda is not a safe country for them.

New clause 4 reinstates the ability of the Secretary of State and the courts to make judgments on the factual issue of Rwanda's safety for an individual or for the group of persons to which that individual belongs (such as LGBTQ+ people). It also confirms that a decision-maker may consider whether there is a risk that Rwanda will remove or send an individual to another State in contravention of Rwanda's international obligations.

In addition, new clause 4 reinstates the ability of a domestic court or tribunal to grant an interim remedy (such as an injunction), so as to prevent individuals' removal to Rwanda until their case has been properly and fully considered. This is particularly important given that individuals' cases may raise issues involving risk to life or inhuman or degrading treatment.

As with Lord Anderon's amendments above, this provides another route to restoring the function of the courts to hear evidence and scrutinise the legality of Government decisions – in this case, the factual issue of Rwanda's safety – while ensuring that interim relief is possible from our own domestic courts. **Liberty urges parliamentarians to support Baroness Chakrabarti's new clause 4.**

CONCLUSION

Each of the amendments endorsed above passed the House of Lords by large majorities. Each of them allows for the operation of the Rwanda scheme with the simple addition of minor but necessary safeguards. The scheme should operate in compliance with the law, it should only run when the treaty is being adhered to, the factual statement that Rwanda is safe should be able to be revisited if the evidence changes, and our own domestic courts should be able to grant interim relief in the usual way in cases where it is needed. Laid out like this, it is extraordinary that these safeguards are missing from the Bill as drafted. **Liberty urges parliamentarians to support the amendments in the names of Lord Coaker, Lord Hope of Craighead, Lord Anderson of Ipswich and Baroness Chakrabarti.**

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[8] Clause 2(3).