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LIBERTY'S BRIEFING FOR SECOND READING OF THE SAFETY OF RWANDA (ASYLUM AND IMMIGRATION) BILL, DECEMBER 2023

The Safety of Rwanda (Asylum and Immigration) Bill is a constitutionally extraordinary and deeply provocative piece of legislation. Its cover states that the Government cannot say that it complies with the UK's obligations under the European Convention on Human Rights (ECHR). This sets the stage for legislation that undermines the principle of the universality of human rights and sets the UK up to turn its back on international law. The Bill must be rejected for three key reasons:

- It asks MPs to turn a blind eye to the Supreme Court's recent judgment and to disregard international law.
- It seeks to oust the jurisdiction of our domestic courts, by prohibiting them from making assessments of fact and disapplying our Human Rights Act.
- It abandons the UK's place on the international stage with a cavalier attitude to the rule of law and the separation of powers.

This Bill is an insult to Parliament and to our constitution. **Liberty urges Parliamentarians to oppose the Rwanda Bill in its entirety.**

OVERRIDING THE SUPREME COURT

The Rwanda Bill is the Government's response to the Supreme Court's recent judgment in which it held that the Rwanda policy was unlawful, on the basis of a finding of fact that Rwanda is not a safe country. What this Bill will do in practice, however, is tie the hands of every court in the UK while also abandoning the UK's international commitments.

For the Government to be legislating to overturn the Supreme Court's finding of fact and to create the legal fiction that Rwanda is safe is constitutionally extraordinary. In its judgment, the Supreme Court did not express "concerns" that can be addressed through legislation or indeed a treaty – it made an authoritative, unanimous ruling based on extensive expert evidence, including regarding the lack of independence of the judiciary in Rwanda, that it is not a safe country. Therefore, if the UK Government were to send a person to Rwanda under its policy, this would be unlawful. Writing in legislation that the "judgement of Parliament" is that Rwanda is safe does not make it so.

UNDERMINING THE ROLE OF DOMESTIC COURTS

The doctrine of the separation of powers exists to ensure an effective system of checks and balances to enable scrutiny of the actions of each arm of the State and to prevent abuses of power. It is fundamental to the rule of law.

The Rwanda Bill fundamentally undermines the separation of powers by eroding the ability of our domestic courts to scrutinise the legality of Government decisions. Clause 2 operates as a judicial blindfold. It dictates that courts must ignore the facts in front of them, and in particular not consider whether a person may face refoulement or not have their asylum claim fairly considered, or whether Rwanda may not act in accordance with the treaty that has been signed.¹ We would suggest that these factors would be more relevant to the question of whether Rwanda is a safe country than those words being written in a Bill.

Under the Bill, even if a court heard overwhelming evidence that Rwanda was unsafe, it would have to stick its fingers into its ears, and pretend that it was. It would be required to "conclusively" treat Rwanda as a safe

¹ Clause 2(4).

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country, and would be prohibited from considering any claim or appeal insofar as it is based on the argument that Rwanda is unsafe.² This applies notwithstanding previous domestic legislation, the Human Rights Act, any other provision or rule of domestic law, as well as any interpretation of international law by the court/tribunal.³

The Bill explicitly disapplies section 2, section 3, and sections 6 to 9 of the Human Rights Act (HRA). Section 2 HRA requires courts to take into account the case law of the European Court of Human Rights (ECtHR) in making their decisions. Section 3 HRA requires courts and other public bodies, as far as possible, to interpret legislation in line with the ECHR. Sections 6 to 9 HRA require public bodies to act in compliance with the ECHR and set out the relevant proceedings, remedies, and judicial acts that may arise from a claim made on the basis of the HRA. These are basic, minimum standards that protect us all. Members of Parliament should be deeply wary of the potential precedent set should these protections be jettisoned.

The Bill leaves scarce room for judicial scrutiny. It limits the courts' jurisdiction to assessing whether, in exceptional cases, an individual has "compelling evidence" that Rwanda is not a safe country for them.⁴ In considering such a claim, the courts are prohibited from considering if removal of an individual to Rwanda would violate the principle of non-refoulement, for example if deficiencies in the asylum system resulted in them being removed to a country where they would face torture, inhuman or degrading treatment.⁵ Again, courts are directed to ignore what is placed in front of them.

ABANDONING INTERNATIONAL COMMITMENTS

The Rwanda Bill puts the UK on a direct collision course with the European Court of Human Rights (ECtHR). Not only does it turn the UK's back on the principle of non-refoulement, which the Supreme Court found has been given effect by multiple international treaties to which the UK is a party as well as domestic legislation – it also enables a Minister to decide whether to comply with an interim measure and prohibits courts from having regard to any such measure.

Interim measures are issued only "on an exceptional basis, when applicants would otherwise face a real risk of serious and irreversible harm". They are a vital tool that allows the Court in extreme circumstances to place a temporary stop on an action likely to produce a significant breach of human rights to allow time for a full judgment to take place. Applications for interim measures are most often rejected. 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.⁶

In and of itself, enabling a Minister (who is part of the Executive) to unilaterally decide whether the UK should comply with an interim measure – failure of which would be a violation of international law – is a highly concerning shift of power away from Parliament and towards the Executive. However, the Rwanda Bill takes this a step further, by prohibiting courts in the UK from having regard to an interim measure when considering any application/appeal that relates to a removal decision to Rwanda at all. The ECHR memorandum to the Bill states that "the Government considers that the provisions is *capable* of being operated compatibly with Convention rights, in the sense that it will *not necessarily* give rise to an unjustified interference of those

² Clause 2(3).

³ Clause 2(5).

⁴ Clause 4(1).

⁵ Clause 4(2). The ECHR memorandum provides: "It is considered that it is consistent with the Convention rights and with Article 13 to prevent such an individualised claim to the extent it is brought on the ground that Rwanda will or may remove or send the person in question to another State in contravention of any of its international obligations (including in particular its obligations under the Refugee Convention)." See para 26(b): <https://publications.parliament.uk/pa/bills/cbill/58-04/0038/ECHRmemo.pdf>

⁶ See *Mamatkulov and Askarov v Turkey* (46827/99, 46951/99) 2005.

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rights” (emphasis added).⁷ This is an extraordinarily weak justification for ignoring an exceptional order granted to save a person from serious and irreversible harm.

Abandoning the UK’s international obligations in this way is as reckless as it is dangerous. Respect for the ECHR is integral to the Good Friday Agreement (GFA) – which underpins peace in Northern Ireland. The Prime Minister himself has said that the GFA left us an “extraordinary and precious legacy.”⁸ Leaving the power to decide whether to comply with the ECHR in the hands of a Minister is a direct threat to this legacy. Indeed, according to senior White House officials, Joe Biden’s administration have raised concerns that changes to Britain’s Rwanda policy could undermine the Northern Ireland peace process.⁹

We are concerned that the Government is willing to put at risk the rule of law and the constitution in order to make vague and performative statements like “the Parliament of the UK is sovereign” and that “the validity of an Act is unaffected by international law”¹⁰ – 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.”¹¹ But none of this is new. The purpose of this statement appears to be to sound a warning: that the UK Government is ready to ignore all its international commitments. In doing so, the UK will abandon its role on the international stage and fundamentally undermine its reputation as a member of the rules-based international order.

CONCLUSION

For those who believe in the rule of law and the separation of powers, the publication of the Rwanda Bill should be a source of grave concern. Faced with a comprehensive, well-reasoned and unanimous Supreme Court decision, the Government’s response has been to instruct the Court not to do its job in future. It proposes to trample over our international obligations and slice through our domestic human rights protections in the pursuit of a legal fiction, and all in the service of potentially removing a few hundred people to Rwanda, at the cost of several hundred million pounds. It is extraordinary that this is a proposition being put to Parliament. MPs should be clear about what they are being asked to endorse in this Bill, and should let it go no further.

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⁷ 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>.

⁸ PM: I will give everything to fulfil the promise of the Belfast (Good Friday) Agreement, 19 April 2023: <https://www.gov.uk/government/news/pm-i-will-give-everything-to-fulfil-the-promise-of-the-belfast-good-friday-agreement>

⁹ Sabur, R., *Biden ‘concerned’ UK’s Rwanda policy could hurt Northern Ireland peace process*, The Telegraph, 27 Nov 2023: <https://www.telegraph.co.uk/world-news/2023/11/27/biden-fears-uk-rwanda-plan-threatens-northern-ireland-peace/>

¹⁰ Clause 1(4).

¹¹ Clause 1(6).