Bail for Immigration Detainees (BID) — Written evidence on the Safety in Rwanda (Asylum & Immigration) Bill, January 2024

About Bail for Immigration Detainees

Bail for Immigration Detainees (BID) is an independent national charity established in 1999 to challenge immigration detention. We assist those held under immigration powers in removal centres and prisons to secure their release from detention through the provision of free legal advice, information and representation. We also have a separate project providing legal advice and representation in relation to deportation appeals. Alongside our legal casework, we engage in research, policy advocacy and strategic litigation to secure change in detention policy and practice.

1. **Does the requirement to conclusively treat Rwanda as a safe country comply with the UK's human rights obligations, including in particular the prohibition of refoulement and the prohibition of inhuman or degrading treatment under Article 3 ECHR?**

No, the requirement to conclusively treat Rwanda as a safe country does not comply with the UK's human rights obligations as it stands in direct contradiction with the substantial evidence to the contrary, creating a real risk that those subject to removal will face ill-treatment amounting to a breach of article 3 of the European Convention of Human Rights.

The Supreme Court unanimously held in the case of R (AAA and others) v Secretary of State for the Home Department that the Rwanda policy was unlawful on the grounds that asylum seekers removed there would face a real risk of ill-treatment in breach of Article 3 ECHR and the right not to be subject to refoulement. The principle of non-refoulment is enshrined in several international treaties which the UK has ratified including the United Nations 1951 Convention for the Status of Refugees (the Refugee Convention), the United Nations Convention on Civil and Political Rights, the United Nations Convention against Torture, and the European Convention on Human Rights.

The question for the Supreme Court was whether or not there were substantial grounds for believing that there was a real risk of refoulment in Rwanda. The Supreme Court independently evaluated the evidence, including that presented by the UNCHR and found that there was a real risk of refoulment.

First, there was uncontested evidence of previous cases of refoulment. This included:

a. Six cases of people who would have been refouled without intervention from the UNHCR;
b. At least 100 allegations of refoulment or threat of refoulment;
c. Clear evidence of past refoulment from Rwanda's asylum deal with Israel; and,
d. 11 people from a country with close bilateral relations with Rwanda were denied access to the Rwandan asylum system.[1]

Second, the Supreme Court found the Rwandan authorities had an inadequate understanding of the Refugee Convention and refugee law, limited knowledge on how to assess refugee status and '*ingrained attitudes of scepticism by officials towards claims made by Middle Eastern nationals*' who would make up the cohort of those selected for removal under the Rwanda scheme.

Further, the Supreme Court identified concerns on the general human rights situation in Rwanda and non-compliance with international human right obligations including instigated political killings, extrajudicial killings, deaths in custody, enforced disappearances, political repressions, threats on

[1] R (AAA and others) v Secretary of State for the Home Department 2023

Rwandan refugees living abroad and torture. It also cited an incident in 2018 where the Rwandan authorities fired live ammunition at refugees protesting against conditions, killing at least 12 people.

This Bill seeks to legislate an alternative reality that Rwanda is safe and to prohibit the courts from assessing the safety of Rwanda despite the real risk of refoulment and a concerning human rights history.

2. Does legislating, in clause 2, to prevent the courts considering any claim that Rwanda is not safe comply with the UK's human rights obligations, including in particular Article 13 ECHR?

No. The combined requisites of 'individual circumstances', 'compelling evidence' with limitations of the use of interim measures and disapplication of sections 6 to 9 of the Human Rights Act 1998 impedes Article 13 ECHR right to effective remedy.[2] Further, it is not envisaged how it will be possible to challenge removal on the basis of an individual's circumstances as distinct from the general contention that Rwanda is unsafe with a real risk of refoulement.

This legislation relies on the newly-signed treaty between the UK and Rwanda, which the Home Office argues guarantees that people removed would not be refouled. However, as evidenced in the Supreme Court judgements, Rwanda has failed to comply with multilateral treaty obligations and international human right conventions in the past. Sufficient evidence that this new treaty will produce compliance remains unfounded. This mirrors the concerns highlighted in the Supreme Court judgement that *'intentions and aspirations do not necessarily correspond to reality.*'[3]

Legislating against reality is an illogical, authoritarian and despotic approach to the law, particularly when fundamental, absolute (unqualified) human rights are concerned.

The Treaty also allows for people who have been removed to seek legal advice or other counsel but does not provide for it. The legislation bypasses the assessment of independent courts that Rwanda is unsafe and impedes rights to effective remedy to unjustified, unfair or unlawful decisions.

3. Does allowing for some claims based on compelling evidence relating to particular individual circumstances affect the Bill's compliance with human rights?

The proposed regimes for considering "compelling evidence" are narrowly defined, restrictive and will be challenging for individuals to address, particularly without representation. It is unclear how this will work in practice without addressing the human rights context and political situation in Rwanda. The Bill does not cover the eventuality of the human rights situation in Rwanda deteriorating or if the country is subject to political or social change.

BID has significant concerns about the ability of individuals to access representation to effectively advance their submissions. It is suspected that these provisions alongside challenges in the legal aid system will deny those affected any meaningful access to justice. Many people detained and facing removal from the UK face difficulties accessing legal advice. BID's most recent Legal Advice Survey found 43% of respondents were unrepresented.[4] In the past 10 years of legal advice surveys, there have only been two surveys where levels of legal representative were above 60%, and the figure has frequently fallen below 50%.[5]

[2] Joint Evidence of JUSTICE and the Immigration Law Practitioners' Association - International Agreements Committee UK-Rwanda asylum Agreement page 13
[3] R (AAA and others) v Secretary of State for the Home Department 2023
[4] BID Summer 2023 Legal Advice Survey
[5] BID – Legal Advice in Immigration Detention- a 10 Year Review

The high evidentiary burden upon claimants will likely require them to receive early representation and access to expert reports in order to succeed. Individuals without this will be at a higher risk of breaches of their human rights occurring. Due to the nature of seeking asylum and fleeing persecution, many claimants will likely have mental and/or physical vulnerabilities and language barriers, which may further hinder their ability to understand and take steps to gain representation or to produce compelling evidence.

4. **Does the way in which the Bill deals with applications for interim remedies from domestic courts, including by allowing them only in narrow circumstances, comply with the UK's human rights obligations?**

No, the Bill's restrictions of interim measures risks letting executive authority go unchecked.[6] Clause 4(3) of the Bill limits the ability of the courts or tribunals to grant an interim remedy. Interim remedies can only be granted if the court is satisfied that the person would face a real, imminent, and foreseeable risk of serious and irreversible harm if removed to Rwanda. However, the scope of the court's power is further limited by the fact that this provision does not apply to those to whom the Illegal Migration Act 2023 will apply (see clause 5(4).

5. **Is expressly stating that it is for Ministers to decide whether to comply with interim measures issued by the European Court of Human Rights, and prohibiting courts or tribunals from having regard to them, consistent with the UK's obligations under the ECHR? Would deciding not to comply with interim measures put the UK in breach of the ECHR?**

The prohibition of UK courts or tribunals from regarding interim measures issued by the ECtHR would put the UK in breach of its ECHR obligations.

Interim procedures are only used by the ECtHR in extreme cases; when the ECtHR considers that the proposed act of the State places the individual at real risk of imminent and irreparable harm. Directing the courts to ignore such measures not only removes an important function of the court, but also creates a real risk that domestic courts will reach decisions that place the individual at a real risk of imminent and irreparable harm, which would amount to a breach of their Article 2 and/ or 3 rights.

Placing the decision-making authority in the hands of Ministers amounts to a significant erosion of the fundamental principles of liberal democracy, the separation of powers, in which even the supra-national court is not empowered to hold the executive to account.

6. **Does the Bill have any significant implications for constitutional principles, such as the sovereignty of Parliament, the separation of powers between the courts and Parliament and the rule of law, and the way in which they affect the protection of human rights in the UK?**

Yes, the Bill effectively overturns and circumvents the Supreme Court's evidence-based judgement that people removed to Rwanda face real risk of life, freedom, torture, inhumane or degrading treatment. The Rwanda Treaty largely mirrors the Memorandum of Understanding between the UK and Rwanda which the Supreme Court found insufficient to safeguard against refoulment and human rights breaches. It seeks to disregard the rule of law, which is a fundamental principle to the British constitution, by giving ministers absolute authority without accountability.

[6] JUSTICE/ILPA

The separation of powers exist to protect the liberties of citizens and to guard against tyranny. The Bill stresses the sovereignty of Parliament (clause 1(4)), and with the systematic removal and limitation on the powers of the courts, it enables the executive to go unchecked.

With the misapplication of the Human Rights Act and power of government Ministers to decide whether to comply with interim measures, this Bill indicates a slip into authoritarianism.

7. Does the Bill give rise to any other significant human rights concerns?

Furthermore, the UK government has stipulated that the purpose of the Act is to prevent and deter unlawful migration via irregular routes. However, as survivors of trafficking and modern slavery also face removal to Rwanda, this may prevent individuals from coming forward as victims, hindering their ability to access services, medical help and recovery, thereby 'aiding rather than facilitating'[7] traffickers.

[7] JUSTICE/ILPA