Equality Commission
FOR NORTHERN IRELAND

Submission on the Safety of Rwanda (Asylum and Immigration) Bill

February 2024

1 Introduction

1.1 The Equality Commission for Northern Ireland ("the Commission") is an independent public body established under the Northern Ireland Act 1998. Its powers and duties derive from a number of equality statutes providing protection against discrimination on the grounds of age, disability, race, religion and political opinion, sex and sexual orientation. Its remit also includes overseeing the statutory duties on public authorities to promote equality of opportunity and good relations under Section 75 of the Northern Ireland Act 1998.

1.2 The Commission, along with the Northern Ireland Human Rights Commission ('NIHRC'), as the dedicated mechanism, has a mandate to monitor, advise, report on, promote, and enforce the UK Government's commitment under Article 2(1) of the Ireland/Northern Ireland Protocol ('WF Article 2'), now known as the Windsor Framework, to the UK-EU Withdrawal Agreement, to ensure there is no diminution of rights protected in the 'Rights, Safeguards and Equality of Opportunity' chapter of the Belfast (Good Friday) Agreement 1998 ('GFA') as a result of the UK's withdrawal from the EU.

1.3 The Commission provides this submission on the Safety of Rwanda (Asylum and Immigration) Bill[1], in advance of the House of Lords (HL) Committee stage of the Bill. This briefing focuses only on those matters which fall within the scope of the role and remit of the Commission, including as the dedicated mechanism. Aligned to our remit, our comments relate to the

[1] Safety of Rwanda (Asylum and Immigration) Bill (parliament.uk)

impact of the Bill in terms of the potential implications for asylum seekers and refugees in Northern Ireland.

2 General comments

Compliance with international human rights obligations

2.1 In general, the Commission has consistently made clear to the UK Government (UKG) the importance of ensuring that it complies with its obligations under international human rights Conventions, such as the UN Convention on the Elimination of all forms of Racial Discrimination (UNCERD), the UN Convention on the Rights of the Child (UNCRC), the Framework Convention for the Protection of National Minorities (FCNM), and the UN Convention on the Rights of Persons with Disabilities (UNCRPD).

2.2 Further, the European Convention on Human Rights ('the ECHR') is also relevant in the context of GFA[2]. For example, the UKG committed to the incorporation of the ECHR into Northern Ireland law, *with direct access to the court and remedies for breach of the Convention*. It has also confirmed that the "key rights and equality provisions in the [Belfast (Good Friday)] Agreement are supported by the ECHR".[3] It also stated it was "committed to the ECHR and to protecting and championing human rights".[4]

2.3 Further, as set out below, the Commission considers that the non-diminution commitment in WF Article 2 encompasses the full range of rights set out in the ECHR, to the extent that they are underpinned by EU legal obligations in force on or before 31 December 2020.

2.4 It is therefore essential that the Bill's provisions, if enacted, do not result in a weakening of current ECHR/ Human Rights Act 1998 protections, as regards Northern Ireland. As set out in

[2] Belfast Agreement (1998)
[3] NI Office, 'UK Government Commitment to "No Diminution of Rights, Safeguards and Equality of Opportunity" in Northern Ireland: What does it Mean and How will it be Implemented?' (NIO, 2020), at para 3.
[4] Ibid

more detail below, we have a number of concerns in this regard.

2.5 Further, aligned to the points above, the Commission is also concerned at how the Bill's provisions would interact with the UK's obligations under the GFA, including as regards the rights of individuals in terms of direct access to the courts. We are also concerned that the Bill's provisions, if they weaken rights under the ECHR/HRA, would not align with the UKG's stated commitment to the ECHR and to protecting and championing human rights.

2.6 As regards compliance with the ECHR, we note that the Home Secretary, Rt Hon James Cleverly MP, was unable to make a declaration under section 19(1)(a) of the Human Rights Act 1998 that the Bill's provisions are compatible with the ECHR and indicated that the UKG nevertheless wishes Parliament to proceed with the Bill.

2.7 We are concerned that provisions of the Bill, in clause 3, disapply sections 2, 3, and 6 to 9 of the Human Rights Act 1998.

2.8 Further, the outworking of the Bill's provisions include that courts and tribunals would not be required to consider any relevant judgment of the European Court of Human Rights (ECtHR) when determining whether Rwanda is a safe country and that decision makers involved in removal decisions would not be under an obligation to act compatibly with convention rights when making these decisions. In addition, we are concerned that clause 5 of the Bill permits the UKG to refuse to comply with interim measures of the ECtHR.[5]

2.9 We are also concerned that the provisions of the Bill which restrict the role of courts and tribunals to consider certain matters[6] apply "notwithstanding" any existing provision of statute, common law or international law, including the Human Rights Act 1998 to the extent disapplied in clause 3.

2.10 We note that significant concerns have already been raised by a range of stakeholders, including by the NIHRC[7], the Equality

[5] It would apply where the ECtHR indicated an interim measure in proceedings relating to the intended removal of a person to Rwanda.
[6] See provisions relating to courts and tribunals in clause 2 (3) and (4) of the Bill.
[7] NIHRC Advice on the Safety of Rwanda (Asylum and Immigration) Bill, Jan 2024.

and Human Rights Commission (EHRC)[8], and the chair of the Joint Committee on Human Rights[9], that the Bill breaches the ECHR and other international human rights conventions.[10] Concerns include that by restricting the access of asylum seekers to the courts, the Bill is contrary to international human rights law.[11]

2.11 Further, we note that in January 2024, the UNHCR[12] (the UN Refugee Agency), stated that the "*arrangement, as now articulated in the UK-Rwanda partnership treaty and accompanying legislative scheme, does not meet the required standards relating to the legality and appropriateness of the transfer of asylum seekers and is not compatible with international refugee law*". [13]

Implications for Constitutional principles

2.12 The Commission also considers that the Bill has implications for constitutional principles, and we have concerns that the Bill, under clause 2, risks undermining the rule of law and the separation of powers principle.

2.13 In particular, the Bill requires decision-makers, including courts, to conclusively treat Rwanda as a safe country, and prevents courts from considering the legality of UKG decisions. As mentioned above, provisions of the Bill relating to courts and tribunals and which restrict their ability to consider certain matters[14] apply 'notwithstanding' any provision of domestic law and "any interpretation of international law by the court or tribunal"[15].

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[8] ECHR submission: Safety of Rwanda (Asylum and Immigration) Bill: House of Lords – Second Reading submission , Jan 2024.
[9] JCHR, Chair's Briefing Paper, Safety of Rwanda (Asylum & Immigration) Bill , Dec 2023
[10] House of Commons House of Lords Joint Committee on Human Rights. Legislative Scrutiny: Illegal Migration Bill. Twelfth Report of Session 2022-23. 6 June 2023, para 80
[11] We note the evidence to the Joint Committee on Human Rights by Lord Sumption who considered that the Bill was inconsistent with international law, because it closes down access of parties to the courts. He considered it to be inconsistent with the Refugee Convention and the ECHR. He referred in particular to Article 16 of the Refugee Convention and Article 6 of the ECHR. See JCHR, Hansard, Uncorrected oral evidence: Safety of Rwanda (Asylum & Immigration) Bill, HC 435, Wednesday 24 January 2024 at page 2.
[12] The UN High Commissioner for Refugees
[13] UNHCR/UN Refugee Agency, 'UNHCR analysis of the legality and appropriateness of the transfer of asylum seekers under the UK-Rwanda arrangement: An update', 15 January 2024.
[14] Provisions relating to courts and tribunals in clause 2 (3) and (4).
[15] Clause 2 (5)

2.14 We note significant concerns have also been raised by the NIHRC[16], the ECHR[17] and the Law Society for England and Wales[18] in this regard.

2.15 Further, in its report on the Rwanda Treaty in January 2024, the HL International Agreements Committee noted, as regards the constitutional principle of the separation of powers, that "*it would therefore be constitutionally inappropriate for Parliament to seek through statute to overturn findings of fact by the Supreme Court, especially when the Bill includes an ouster clause excluding judicial review*." [19]

Recommendations

2.16 **The Commission recommends that the UKG ensures that the provisions of the Bill:**

- **are compatible with its obligations under international human rights Conventions;**
- **comply with the rule of law and the separation of powers principle; and**
- **do not breach or undermine the GFA, particularly as regards direct access to courts.**

Compliance with the 'no diminution of rights' commitment in Article 2 of the Windsor Framework

Introduction

2.17 The Commission has set out below its views on the Bill's compliance with WF Article 2. These views are on the basis of the provisions of the Bill to date, and if enacted.

2.18 It should be noted that we support a number of the concerns raised by the NIHRC in its submission on the Bill[20], in terms of its views on the Bill's compliance with WF Article 2.

[16] NIHRC Advice on the Safety of Rwanda (Asylum and Immigration) Bill, Jan 2024.
[17] ECHR submission: Safety of Rwanda (Asylum and Immigration) Bill: House of Lords – Second Reading submission , Jan 2024.
[18] LS England & Wales written evidence to JCHR on Safety of Rwanda Bill , Jan 2024
[19] House of Lords International Agreements Committee, 'Scrutiny of international agreements: UK-Rwanda agreement on an asylum partnership', 17 January 2024, HL Paper 43 of session 2023–24
[20] NIHRC Advice on the Safety of Rwanda (Asylum and Immigration) Bill, Jan 2024.

WF Article 2: Scope re Asylum seekers

2.19 The UKG's commitment in WF Article 2 means that the UKG must ensure there is no diminution of rights, safeguards and equality of opportunity, as set out in the relevant chapter of the GFA, resulting from the UK's withdrawal from the EU.[21] In addition to the no diminution commitment, the law in Northern Ireland must 'keep pace' with EU law developments relating to six EU Equality Directives listed in Annex 1 to the Windsor Framework.

2.20 As part of the UK EU Withdrawal Agreement, WF Article 2 is incorporated into domestic law via section 7A of the EU (Withdrawal) Act 2018.

2.21 In general, the Commission's view is that the rights of asylum seekers and refugees fall within the scope of the UKG's commitment in WF Article 2 and are protected by the 'Rights, Safeguards and Equality of Opportunity' chapter of the GFA. Further, the UKG must ensure that the rights of refugees and asylum seekers in Northern Ireland that fall within the scope of WF Article 2 must not be diminished as a result of Brexit.

2.22 The UKG's 'Explainer' document on WF Article 2 acknowledges that its protections apply to everyone who is "subject to the law in NI law-irrespective of whether that law has been passed by the NI legislature or Westminster".[22]

2.23 As made clear in the joint working paper on the scope of WF Article 2[23] , published by the Commission, together with the NIHRC, there is a commitment in the relevant chapter of the GFA to protect the "*civil rights and religious liberties of everyone in the community*". Aligned to this commitment, and as made clear in the joint working paper on the scope of WF Article 2, we are adopting a working assumption that the non-diminution commitment in WF Article 2 encompasses the full

[21] Windsor Framework Article 2 states:
"The United Kingdom shall ensure that no diminution of rights, safeguards or equality of opportunity, as set out in that part of the 1998 Agreement entitled Rights, Safeguards and Equality of Opportunity results from its withdrawal from the Union, including in the area of protection against discrimination, as enshrined in the provisions of Union law listed in Annex 1 to this Protocol, and shall implement this paragraph through dedicated mechanisms."
[22] NI Office, 'UK Government Commitment to "No Diminution of Rights, Safeguards and Equality of Opportunity" in Northern Ireland: What does it Mean and How will it be Implemented?' (NIO, 2020), at para 8.
[23] ECNI, NIHRC Working Paper: The Scope of Article 2(1) of the Ireland/ Northern Ireland Protocol, (ECNI and NIHRC, December 2022)

range of rights set out in the ECHR, to the extent that they are underpinned by EU legal obligations in force in NI on or before 31 December 2020. [24]

2.24 Further, in relation to the 'right to equal opportunity in all social, and economic activity regardless of class, creed, disability, gender or ethnicity', which is affirmed "in particular" in the relevant chapter of the GFA, we have identified that this right is underpinned by EU law relating to asylum seekers, including the Procedures Directive[25], the Reception Directive[26], the Qualification Directive[27] and the Dublin III Regulation[28] .

2.25 It is of note that the High Court in Northern Ireland, in the case of *Aman Angesom* (2023) [29], considered the rights of an asylum seeker who had been living in Northern Ireland and was subsequently transferred to Great Britain, in the context of his rights relating to WF Article 2. The Commission intervened in this case as regards the application and interpretation of WF Article 2.

2.26 Whilst the Applicant's application for Judicial Review was dismissed on all grounds, including those relating to WF Article 2, the following points are of note:

- The court stated that: "The applicant and respondent both agree that the rights, safeguards and equality of opportunity enshrined in Strand Three of the GFA do not exclude asylum seekers".
- The court held that Article 7 of the EU Reception Conditions Directive "is clearly capable of falling within the ambit of Article 2(1) of the Protocol insofar as it seeks to protect the human rights of asylum seekers".

[24] Ibid
[25] Directive 2005/85/EC, 'Council Directive on minimum standards on procedures in Member States for granting and withdrawing refugee status', of 1 December 2005.
[26] Directive 2003/9/EC, 'Council Directive laying down minimum standards for the reception of asylum seekers', 27 January 2003.
[27] Directive 2004/83/EC 'Council Directive on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted' 29 April 2004.
[28] Regulation 2013/604/EU, 'Regulation of the European Parliament and of the Council establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person', 26 June 2013
[29] *Angesom's (Aman) Application* [2023] NIKB 102 [2023] NIKB 102.

- The court indicated that it "rejects the submission by the respondent that the rights protected by Strand Three of the GFA are frozen in time and limited to the political context of 1998. The GFA was drafted with the protection of EU fundamental human rights in mind and was therefore intended to protect the human rights of "everyone in the community" even "outside the background of the communal conflict.""

- The court held that the "Charter of Fundamental Rights remains enforceable in Northern Ireland and falls within the ambit of Article 2(1) of the Protocol". It also confirmed that the UK, prior to 'Brexit', was bound by the obligation to respect rights contained in the Charter when carrying out its duties relating to asylum support, set out in domestic law (which were introduced as a result of implementing the EU Reception Conditions Directive). It indicated that "WF Article 2(1) guarantees that those rights will not be diminished" as a result of Brexit".[30]

2.27 The extent to which the rights of asylum seekers fall within the scope of WF Article 2 is also currently under judicial consideration by the High Court in Northern Ireland, further to the NIHRC legal challenge relating to the Illegal Migration Act[31]. The Commission will await the outcome of the court's determination in this case.

WF Article 2: Relevant EU law

2.28 In the context of the UKG's obligations under WF Article 2, the Commission draws attention, in particular, to the following EU measures that it considers relevant to the Bill, to the extent that those measures were binding on the UK on or before the end of the Brexit transition period (31 December 2020).

The EU Procedures Directive

2.29 We consider that the following provisions (recitals and Articles) of the **EU Procedures Directive[32]** on minimum standards on procedures in Member States for granting and withdrawing

[30] *Angesom's (Aman) Application* [2023] NIKB 102 [2023] NIKB 102.
[31] NIHRC, IMA challenge Fact sheet, Dec 2023.
[32] Directive 2005/85/EC, 'Council Directive on minimum standards on procedures in Member States for granting and withdrawing refugee status', of 1 December 2005.

refugee status ('the Procedures Directive') are of particular relevance.

- **Recital 8**: This recital makes clear that the Directive "respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union".

- **Recital 21**: This recital makes clear that: "The designation of a third country as a safe country of origin for the purposes of this Directive cannot establish an absolute guarantee of safety for nationals of that country. By its very nature, the assessment underlying the designation can only take into account the general civil, legal and political circumstances in that country and whether actors of persecution, torture or inhuman or degrading treatment or punishment are subject to sanction in practice when found liable in the country concerned. For this reason, it is important that, where an applicant shows that there are serious reasons to consider the country not to be safe in his/her particular circumstances, the designation of the country as safe can no longer be considered relevant for him/her."

- **Recital 27**: This recital makes clear that: "It reflects a basic principle of Community law that the decisions taken on an application for asylum and on the withdrawal of refugee status are subject to an effective remedy before a court or tribunal within the meaning of Article 234 of the Treaty."

- **Article 8 (Requirements for the examination of applications)**: This requires authorities to ensure that each application is "examined and decisions are taken individually, objectively and impartially." It sets the guarantee that decisions made by the determining authority follow an appropriate examination, as outlined in paragraph 2 of the Article. Paragraph 2 also requires that "precise and up-to-date information to be obtained from various sources" such as the UNHCR.

- **Article 27 (The safe third country concept)**

  This Article makes clear that Member States can only apply the safe third country concept where authorities are satisfied that asylum seekers will be treated in the third country in accordance with certain principles.

  These principles state:

  (a) life and liberty are not threatened on account of race, religion, nationality, membership of a particular social group or political opinion;

  (b) the principle of non-refoulement in accordance with the Geneva Convention is respected;

  (c) the prohibition of removal, in violation of the right to freedom from torture and cruel, inhuman or degrading treatment as laid down in international law, is respected;

  (d) the possibility exists to request refugee status, and, if found to be a refugee to receive protection in accordance with the Geneva Convention.

  Article 27 further states that the application of the safe third country concept is subject to national rules, including:

  (a) rules requiring a connection between the person seeking asylum and the third country concerned, on the basis of which it is reasonable for that person to go to that country;

  (b) rules on the methodology by which the competent authorities satisfy themselves that the safe third country concept may be applied to a particular country or to a particular applicant. Such methodology shall include case-by-case consideration of the safety of the country for a particular applicant and/or national designation of countries considered to be generally safe;

  (c) rules in accordance with international law, allowing an individual examination of whether the third country concerned is safe for a particular applicant which, as a minimum, shall permit the applicant to challenge the

application of the safe third country concept on the grounds that he/she would be subjected to torture, cruel, inhuman or degrading treatment or punishment.

- **Article 30 (National designation of third countries as safe countries of origin)** makes clear that: "The assessment of whether a country is a safe country of origin in accordance with this Article shall be based on a range of sources of information, including in particular information from other Member States, the UNHCR, the Council of Europe and other relevant international organisations."

- **Article 39** (**The right to an effective remedy)** provides that applicants for asylum shall have a right to an effective remedy before a court or tribunal for a decision on their application for asylum, including decision to consider an application inadmissible, and a decision taken at a border or transit zone.

Charter of Fundamental Rights

2.30 Of particular relevance to this Bill is Article 47 of the Charter on the right to an effective remedy and to a fair trial.[33]

2.31 As referred to above, in a recent decision, the High Court in Northern Ireland concluded that Charter of Fundamental Rights remains enforceable in Northern Ireland and falls within the ambit of WF Article 2.[34]

WF Article 2: Specific concerns

2.32 In the context of the Bill's provisions and the relevant EU law, set out above, we raise the following specific concerns relating to compliance with WF Article 2.

Rwanda as a safe third country

2.33 Clause 2 requires courts and/or tribunals, and others, to "conclusively treat the Republic of Rwanda as a safe country". It also states that no court or tribunal may consider a review of or appeal against such a decision where it is brought on the grounds that Rwanda is not a safe country. This applies

[33] Charter of Fundamental Rights: Article 47
[34] *Angesom's (Aman) Application* [2023] NIKB 102 [2023] NIKB 102.

"notwithstanding" any domestic law or international law, including the Human Rights Act 1998 to the extent disapplied in the clause 3[35].

2.34 We note however that the Supreme Court in *AAA* case (2023) concluded, on the facts, that Rwanda was not a safe third country.[36] Its conclusion was based on the fact that there were substantial grounds for believing that asylum seekers would face a real risk of ill-treatment by reason of refoulement to their country of origin if they were removed to Rwanda.

2.35 Under international human rights law, the principle of non-refoulement guarantees that no one should be returned to a country where they would face torture, cruel, inhuman or degrading treatment or punishment and other irreparable harm[37].

2.36 Further, the Supreme Court indicated that it was not disputed that if the Procedures Directive remained in force in UK domestic law as retained EU law, the Rwanda (MEDP) scheme was not compatible with articles 25 and 27 of the Procedures Directive.

2.37 Since the Supreme Court judgment, the UKG has progressed a treaty with Rwanda (Rwanda Treaty)[38], which the HL International Agreements Committee stated the UKG had presented to Parliament "as an answer to the Supreme Court judgment".

2.38 In its report on the Rwanda Treaty (2024), the HL International Agreements Committee made clear that the Bill "was dependent on the Rwanda Treaty"[39]. In conclusion, it stated that, "*The Government should not ratify the Rwanda Treaty until Parliament is satisfied that the protections it provides have*

[35] Clause 2 (5)
[36] R (on the application of AAA (Syria) and others) v Secretary of State for the Home Department, judgement of the Supreme Court, [2023] UKSC 42, 15 November 2023,
[37] ThePrincipleNon-RefoulementUnderInternationalHumanRightsLaw.pdf (ohchr.org)
[38] Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of Rwanda for the provision of an asylum partnership to strengthen shared international commitments on the protection of refugees and migrants ("the Rwanda Treaty")
[39] House of Lords International Agreements Committee, 'Scrutiny of international agreements: UK-Rwanda agreement on an asylum partnership', 17 January 2024, HL Paper 43 of session 2023–24

been fully implemented since Parliament is being asked to make a judgement, based on the Treaty, that Rwanda is safe."

2.39 The Committee stated that "*while the Treaty might in time provide the basis for such an assessment if it is rigorously implemented, as things stand the arrangements it provides for are incomplete*". It concluded that "*a significant number of further legal and practical steps are required under the treaty which will take time*", including "*a system for ensuring that non-refoulement does not take place*".

2.40 In addition, we note that on 15 January 2024 in its analysis on the updated UK-Rwanda scheme, the UNHRC stated that it maintained its position that the arrangement, as now articulated in the UK-Rwanda Partnership Treaty and accompanying legislative scheme did not meet the required standards relating to the legality and appropriateness of the transfer of asylum seekers and is not compatible with international refugee law. [40]

2.41 In light of the above, and in context of the requirements in the Procedures Directive, as set out above, we are concerned that clause 2 of Bill which requires that "every decision-maker must conclusively treat the Republic of Rwanda as a safe country", may potentially breach WF Article 2.

2.42 These concerns include as regards the following requirements in the Procedures Directive:

- in the context of the safe third country concept; the principle of non-refoulement in accordance with the Geneva Convention; the need for a connection between the asylum seeker and the third country on the basis that it is reasonable for that person to go to that country; the requirements relating to life and liberty not being threatened and the prohibition of removal in violation of rights relating to freedom from torture etc.;[41]

[40] UNHCR Analysis of the Legality and Appropriateness of the Transfer of Asylum-Seekers under the UK-Rwanda arrangement: an update | UNHCR UK , 15 January 2024

[41] Article 30 (National designation of third countries as safe countries of origin) is also relevant. It makes clear that: "The assessment of whether a country is a safe country of origin in accordance with this Article shall be based on a range of sources of information, including in particular information from other Member States, the UNHCR, the Council of Europe and other relevant international organisations."

- in the context of the requirement that authorities ensure that each application is “examined and decisions are taken individually, objectively and impartially”.

2.43 It will be noted that **Article 21 of the Qualifications Directive**[42] (Protection from refoulement), which places an obligation on Member States to respect the principle of non-refoulement in accordance with their international obligations is also of relevance. As noted above, the Commission considers that the Qualifications Directive falls within the scope of WF Article 2.

Right to an effective remedy

2.44 Any assessment of the Bill’s compliance with WF Article 2 should not be limited to the impact of the proposals on the substantive rights, but should also include the remedial dimensions of those rights.

2.45 In the Commission’s view, a GFA-protected right, for example, the right relating to ‘non-discrimination’, is underpinned not only by the substantive rules of EU law, but also the remedial rules of EU law; for example, the right to secure damages for breach of a rule by the state.

2.46 The substantive right would be much less protected and diminished if the remedial dimensions of the right were removed. We consider that the non-diminution obligation under WF Article 2 applies not only to the substantive rights but also to the remedial dimensions of those rights.

2.47 Research (2022) commissioned by the Commission, with the NIHRC and the Irish Human Rights and Equality Commission (IHREC) on the divergence of rights on the island of Ireland, has indicated that “the CJEU views effective judicial protection as a procedural right that is integral to EU law both in the field of equal treatment and in respect of other directly effective rights”. [43] Aligned to the Commission’s views, it also states that, “As such, effective judicial protection must be viewed as

[42] Directive 2004/83/EC ‘Council Directive on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted’ 29 April 2004.
[43] Sarah Craig, Anurag Deb, Eleni Frantziou, Alexander Horne, Colin Murray, Clare Rice and Jane Rooney, European Union developments in Equality and Human Rights: The Impact of Brexit on the divergence of rights and best practice on the island of Ireland, (ECNI, NIHRC, IHREC 2022)

inherent in the concepts of 'safeguards' and 'civil rights' within this section of the GFA".[44]

2.48 The Commission is concerned about the potential effect of the Bill on the rights of asylum seekers in terms of access to justice and effective judicial protection, and to effective remedies.

2.49 This is in the context of the requirements of the Procedures Directive relating to the right an effective remedy before a court or tribunal (Article 39), and the rights contained with the Charter for Fundamental Rights (Article 47), as referred to above.

2.50 Our concerns include as regards the following clauses:

Clause 2:

2.51 As set out above, clause 2 requires courts and/or tribunals, and others, to "conclusively treat the Republic of Rwanda as a safe country" and applies "notwithstanding" any domestic law or international law, including the Human Rights Act 1998 to the extent disapplied in the clause 3. [45] Clause 2(3) states that no court or tribunal may consider a review of or appeal against such a decision where it is brought on the grounds that Rwanda is not a safe country.

2.52 We draw attention to Article 4 of the Withdrawal Agreement which states that the provisions of the Agreement and the provisions of EU law made applicable by the Agreement shall produce in the UK the same legal effects as those which they produce within the EU and its Members States.

2.53 It also states that accordingly, legal and natural persons shall in particular be able to rely on the provisions contained or referred to in the Agreement which meet the conditions for direct effect under EU law.[46] The obligations in the Withdrawal Agreement,

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[44] Equality Commission for Northern Ireland, Northern Ireland Human Rights Commission and Irish Human Rights and Equality Commission, Policy Recommendations: European Union developments in Equality and Human Rights: The Impact of Brexit on the divergence of rights and best practice on the island of Ireland, (ECNI, NIHRC and IHREC, 2023) para 4.84 footnote 176.

[45] Clause 2 (5)

[46] Article 4(1) of the Withdrawal Agreement provides: 'The provisions of this Agreement and the provisions of Union law made applicable by this Agreement shall produce in respect of and in the United Kingdom the same legal effects as those which they produce within the Union and its Members States. Accordingly, legal and natural persons shall in particular be able to rely on the provisions contained or referred to in this Agreement which meet the conditions for direct effect under Union law.'

including under Article 4, have been given effect in domestic law by Section 7A of the EU (Withdrawal) Act 2018.

2.54 The Commission considers that should clause 2 of the Bill restrict an individual's ability to seek effective remedies relating to a breach (or potential future breach) of their rights under WF Article 2, then this would be contrary to the UKG's obligations under Article 4 of the Withdrawal Agreement.

Clause 4

2.55 Clause 4 permits a decision maker to consider challenges to removal decisions based on "compelling evidence relating specifically to the person's particular individual circumstances", rather than on the grounds of whether Rwanda was a safe country in general.

2.56 The clause would exclude consideration of whether a person would be subject to refoulement. It would also restrict the ability of courts or tribunals to grant interim remedies to prevent or delay removal so that they could do so only in cases in which the court or tribunal was "satisfied that the person would, before the review or appeal is determined, face a real, imminent and foreseeable risk of serious and irreversible harm" if removed to Rwanda.

2.57 We are concerned at the high bar set by this clause, in that an individual must show "compelling evidence" relating specifically to their particular individual circumstances. We consider that there are also difficulties in reaching this standard in light of the strict and short time limits relating to the asylum claim process, particularly for vulnerable individuals who may have been subjected to trauma and/or have mental health problems.[47]

Conclusion

2.58 In conclusion, for the reasons set out above, the Commission therefore considers that a number of provisions of the Bill may amount to a breach of WF Article 2.

[47] House of Commons House of Lords Joint Committee on Human Rights. Legislative Scrutiny: Illegal Migration Bill. Twelfth Report of Session 2022-23. 6 June 2023 para 3.43

Recommendation

The Commission recommends that the UKG ensures that the provisions of the Bill are compatible with its obligations under Windsor Framework Article 2.

Explanatory Memorandum: Consideration of compliance with Windsor Framework Article 2

2.59 The Commission is concerned that the Explanatory Notes to the Bill make no reference to any consideration being given to ensuring compliance with WF Article 2. The Commission has previously recommended that this should be the case regarding all relevant legislation. It is also of the view that compliance with WF Article 2 should be considered from the earliest stages in the development of policy and legislation.

2.60 Whilst we note that the UKG has indicated that its position is that the Windsor Framework, including Article 2, is not engaged by the Bill[48], it has not set out in the Explanatory Notes to the Bill, or in the Human Rights Impact Assessment, a detailed consideration of the Bill's compliance with WF Article 2.

Recommendation

2.61 **The Commission recommends that the Home Secretary sets out, in detail, in the Explanatory Notes to the Bill, what consideration was given to compliance with Windsor Framework Article 2 in the development of the Bill. Any assessment of the proposals' compliance with WF Article 2 should not be limited to the impact of the proposals on the substantive rights, but should also include the remedial dimensions of those rights.**

Equality Commission,
9 February 2024

[48] HMG, Safeguarding the Union, Command Paper, Jan 2024, para 46.