

RWANDA DECISION OF COURT OF APPEAL (UK) 29 June 2023

This short statement summarises the “Rwanda decision” and s 26 of the Illegal Migration Bill in the UK. By a majority of 2:1 (Lord Chief Justice dissenting) the Court of Appeal held that it was unlawful to remove 10 asylum seekers to Rwanda for their claims to be determined there as Rwanda is not a safe country for two reasons:

- a) Asylum seekers run a risk of *refoulement* to their countries of origin where they are at real risk of persecution and
- b) The inadequate asylum process in Rwanda means that they are at risk of inhuman and degrading treatment there

All other grounds of appeal failed, including those of UK procedural unfairness which formed the basis of the High Court’s earlier decision to quash the removal notices to Rwanda of 10 asylum seekers in June 2022.

Permission to appeal to the Supreme Court has been granted, but nevertheless, in a dark world for refugees this decision gives hope that human decency will yet prevail.

Both grounds rely on Article 3 of the European Convention of Human Rights (ECHR) which is the right to freedom from torture, and inhuman and degrading treatment. Section 6 Human Rights Act 1998 renders it unlawful for the UK to act in a way which is incompatible with ECHR rights.

In his dissenting judgement the Lord Chief Justice held that the risk of *refoulement* was low as Rwanda has no bi-lateral agreements with any of the countries of origin of the asylum seekers (Iran, Iraq, Afghanistan, Syria, Vietnam, Sudan). He also said that monitoring would ensure there was no risk of breaches of Article 3 in Rwanda itself. This is likely to be included in the appeal of the Secretary of State to the Supreme Court.

The Court of Appeal held that removal to Rwanda is currently unlawful.

The **Unlawful Migration Act** became law on July 21st and includes at s 26 a requirement that emergency injunctions by the European Court of Human Rights (commonly known as Rule 39 orders) **should** be ignored if they fail to meet a new natural justice standard contained within the Bill. It relies on the argument that a single judge in Strasbourg has no right to grant binding interim relief in UK matters and that the ECHR needs reform. The lawfulness of s 26 will no doubt be tested if the Secretary of State’s appeal to the Supreme Court on Rwanda is successful. It may bar lawyers acting for potential deportees on a Rwanda flight from getting an Injunction to remove them from the flight list.

S26 orders Immigration Officers and Tribunal Judges to act incompatibly with the ECHR and with Article 31 of the Refugee Convention which refuses to penalise migrants due to the manner of their entry into the UK (or any other State). It also throws into question the UK’s future membership of the Council of Europe and its adherence to the ECHR.

A Bill of Rights and Withdrawal from the ECHR proposed by Dominic Raab was withdrawn on 27th June 2023, presumably to watch the Rwanda and Unlawful Migration Bill space but it is very likely that a new Bill will be introduced in the next and last pre-election Parliamentary sitting.

Such attempts to deny the most basic human rights to those arriving on our shores will create many problems for any future Labour administration. The UK is about to create a dangerous precedent for other countries to follow: that **no-one has the right to seek asylum in the UK** unless they have already been vetted by Resettlement programmes in Afghanistan or Syria.