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The Safety of Rwanda Act: a pointless exercise in performative cruelty

Why do politicians have such a low opinion of British people's compassion to think this policy is a vote winner, asks Martin McKee

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Late on 22 April 2024 the Safety of Rwanda (Asylum and Immigration) Bill cleared its final stages in the UK parliament.¹ Its stated purpose is to enable the government to send migrants who have reached the UK to Rwanda. The bill was deemed necessary because the government's previous attempts to send migrants to Rwanda were thwarted, firstly by a series of temporary blocks (Rule 39 orders) imposed by the European Court of Human Rights, and then by the UK Supreme Court.² The Supreme Court ruled that the government had failed to show that refugees sent to Rwanda would be safe and would not be sent on to another country and that its plans were incompatible with the UK's obligations under international agreements, in particular, the 1951 Refugee Convention. These decisions created two problems. Firstly, should the government want to proceed, it had to show that Rwanda was indeed safe. Secondly, it would have to prevent last minute orders by the European Court of Human Rights halting the removal of refugees from the UK.

The solutions were, superficially, simple. Firstly, the government declared that Rwanda is indeed safe, and will remain so unless it decides otherwise. The government rejected a role for the Independent Monitoring Committee that it established to give its policy a veneer of respectability. The idea that a country will remain "safe" regardless of what happens there is clearly ludicrous, as was pointed out in parliamentary debates.

Secondly, the bill allows ministers to instruct civil servants to disregard any orders by the European Court of Human Rights. However, as the president of the Court has pointed out, the UK has a "clear legal obligation" to follow these orders,³ a position that the UK's attorney general has stated is "beyond doubt," with "no respectable argument" to the contrary.⁴ Understandably, the body representing civil servants has threatened legal action given how this forces them to choose between obeying ministers and breaking international law.⁴

All of these points and more were made as the bill moved through the parliamentary process, entering what is termed "ping pong" as unworkable, illegal, or immoral components passed by the House of Commons were rejected by the House of Lords, with many of its own peers voting against them. Eventually the Lords were worn down and the bill was passed.

This does not, however, mean that anyone will ever be sent to Rwanda. Unusually, ministers have stated, on the face of the bill, that they cannot say that it is compatible with the European Convention on Human Rights.⁵ Consequently, those asked to facilitate removals, including doctors, would be extremely

unwise to participate in this "inhumane and unconscionable" process.⁶ Given the low threshold for acting against doctors breaking the law—even in climate protests when many might view it as justified⁷—one must assume that the General Medical Council would take a dim view of such transgressions.

Although the government has legislated to remove as many possible defences against removal as it can, leading the UN High Commissioners for Human Rights and for Refugees to express severe concerns,⁸ it has been unable to remove ministerial decisions entirely outside the scrutiny of the UK's courts. Thus, those subject to removal orders can challenge them if their individual circumstances place them at particular risk. This could place a substantial burden on a struggling justice system. The government has responded by saying it will deploy 150 additional judges with 5000 extra sitting days, although without explaining where they will come from. Meanwhile, the lady chief justice has pointed out that this is an attack on the independence of the judiciary's right to decide how to deploy resources.⁹

The government claims to have found an airline willing to transport those people subject to removal, but United Nations Special Rapporteurs have noted that any that do could be "complicit in violating internationally protected human rights and court orders by facilitating removals to Rwanda."¹⁰ RwandAir, the national carrier, and AirTanker, which operates the Royal Air Force's long range transport fleet, have both refused to do so.¹¹ Furthermore, it seems unlikely that military lawyers would advise service personnel to breach international humanitarian law given the wider implications.

Finally, even if a handful of people were sent to Rwanda, a future Labour government, now a virtual certainty within months, will stop the programme.¹²

There are, however, some wider issues. The government's claim that it has no money for the NHS or many of the other pressing issues facing the country seems implausible given its willingness to spend in excess of £370m¹³ on a plan that the Home Office's own impact assessment was unable to conclude would work.¹⁴ The inability of the House of Lords to prevent passage of what the Law Society has described as a "defective, constitutionally improper piece of legislation,"¹⁵—despite the strenuous efforts of some peers such as Lords Hope and Anderson—strengthens the case for constitutional reform. But perhaps the most important question is why any politician would have such a low opinion of the compassion and humanity of the British public that they believe such an exercise in

performative cruelty¹⁶ would actually attract large numbers of votes?¹⁷

Competing interests: MM is past president of the BMA and a member of the Expert Consortium on Refugee & Migrant Health of Doctors of the World, both of which have publicly opposed the UK government's Rwanda policy.

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