**Amnesty International (AIUK) submission to**
**House of Lords International Agreements Committee**

**UK-Rwanda Asylum Agreement**
**December 2023**

**Introduction and summary:**

1. Amnesty International UK (AIUK) welcomes the opportunity to contribute to the Committee's inquiry into the Government's Agreement with Rwanda on "*the provision of an asylum partnership*" ("the Treaty"). Our submission is structured according to the six questions in the Call for Evidence, several of which we address only in very short form. First, however, we make two relatively brief observations:

    1.1. We are, as is the Committee, responding to this at pace, having regard amongst other things to the Supreme Court judgment ("the judgment'),[1] the Treaty and the Safety of Rwanda (Asylum and Immigration) Bill ("the Bill").[2] What we are able to say in the limited time – which we acknowledge is outside the Committee's control – is necessarily limited and may, at least to some extent, be regarded as preliminary.

    1.2. Any focus on the Treaty must, in our view, put it in the context of both the judgment, to which it is a response, and the Bill, to which it is intimately connected. We explain this further in answer to the Committee's sixth question where we express various concerns regarding the propriety of the Treaty and its making. To that end we draw to the Committee's attention that we have slightly reformulated that question to make it more expansive.

    1.3. We have since first drafting this submission had the benefit of seeing the oral evidence session of the Committee with the Home Secretary on this Treaty. We have, therefore, made some revision to address some of the matters arising; including to distinctly address a couple of such matters in response to the Committee's sixth question.

2. In summary:

    2.1. The Treaty is not an effective means to answer the concerns raised by the Supreme Court, nor an effective answer to wider concerns. The starting point

[1] *R (AAA & Ors) v Secretary of State for the Home Department* [2023] UKSC 42
[2] Bill 38, 2023-24 as introduced on 7 December 2023, which received its Second Reading in the Commons on 12 December 2023

is that the assurances of the Rwandan Government are unreliable. Simply securing more of these (or spelling them out in more detail) is not a sound basis for addressing the problem of the unreliability of assurances given by that government. The failure of either government to acknowledge this problem and its source – including the scale of not merely procedural deficiencies, but also deficiencies of understanding and culture – serves to emphasise the inadequacy of securing more, or more specific, assurances as response to the judgment. The UK Government has, moreover, compounded all of this by its reckless haste to overcome the judgment, including by the Bill that seeks to secure implementation of the Treaty against any proper and judicial consideration of the evidence and facts. The strong implication now is that neither of the two governments can be relied upon in relation to an agreement that one has been emphatically shown to lack capacity to deliver and the other has now equally emphatically shown itself to be determined to implement come what may. These concerns are most fully elaborated in response to the Committee's first question.

2.2. There are wider concerns relating to the Treaty, which arise from the policy it is intended to support. Since the policy is itself an abrogation of international responsibilities under the Refugee Convention, a Treaty that seeks to give effect to that policy is itself tarred by the policy's illegitimacy. Moreover, given the Treaty is, on its face, designed to provide some assurance about respect for, understanding of and compliance with international law, this underlying illegitimacy is itself damaging to the quality of any assurance that the Treaty can possibly provide.[3] These matters are briefly discussed in response to the Committee's final question.

**Overall assessment of whether the changes to the asylum partnership arrangements made by the Treaty, including its legal form, are likely to meet the concerns raised by the Supreme Court:**

3. The judgment concluded that:

> "*105. …the evidence establishes substantial grounds for believing that there is a real risk that asylum claims will not be determined properly, and the asylum seekers will in consequence be at risk of being returned directly or indirectly to their country of origin. In that event, genuine refugees will face a real risk of ill-treatment in circumstances where they should not have been returned at all.*"

4. There are broadly two features of the Treaty that seek to address this conclusion:[4]

[3] In this submission, we do not provide an assessment of the legal consequences of these concerns for the Treaty. However, the practical and moral consequences are severe – particularly given the formal presentation of the Treaty as being expressly to fulfil and promote relevant obligations under international law.

[4] We have since drafting this submission seen the Home Secretary's oral evidence session with the Committee concerning this Treaty on 19 December 2023. His answers reflect our understanding of what the UK Government intends by the two features addressed at paragraphs 4.1 and 4.2 respectively of this submission.

4.1. The Treaty establishes two obligations that appear intended to do so directly. Article 10(3) obliges the Rwandan Government to never remove to any other country anyone who is ever transported to Rwanda under the Treaty, whether or not the person ever claims or is ever refused asylum. Paragraph 9 of Annex A obliges Rwanda to guarantee various rights of refugees under the Refugee Convention to people transported there under the Treaty, whether or not the person is determined to be a refugee. This first aspect of the Treaty, therefore, is intended to provide the Rwandan Government's guarantee against the risks identified by the Supreme Court (and the majority of the Court of Appeal).[5]

4.2. The Treaty – most especially by Annex B – obliges Rwanda to establish and operate a mechanism by which asylum claims are to be determined. This second aspect of the Treaty, therefore, is intended to guarantee against the continuation of a critical condition ("*a real risk that asylum claims will not be determined properly*") that led to the conclusion that Rwanda was, in short, unsafe.

5. Neither these more specific assurances, nor the Treaty more generally, can provide sufficient answer to the judgment. In this regard, it is necessary to consider what the Supreme Court was considering. That was whether the previous MoU was sufficient to avoid any substantial grounds for the real risk identified by the court. As now, the answer to that question depends on an assessment of current and past facts, as shown by the evidence, and an assessment of the reliability of assurances that any deficiencies shown by the assessment of those facts will not continue into the future. In this regard, the Supreme Court said:

> "*102. …The central issue in the present case is therefore not the good faith of the government of Rwanda at the political level, but its practical ability to fulfil its assurances, at least in the short term, in the light of the present deficiencies of the Rwandan asylum system, the past and continuing practice of refoulement (including in the context of an analogous arrangement with Israel), and the scale of the changes in procedure, understanding and culture which are required*."

6. As a matter of fact, the Supreme Court concluded that the Rwandan Government was incapable of delivering on the assurances it had given in the MoU. The seriousness of the impact of that incapacity was shown by deficiencies that were current and had, both before and since the MoU, resulted in *refoulement*.[6] That is especially significant given the centrality of avoiding that particular violation to any proper and effective implementation of the MoU (and the assurances or obligations relating to exactly the same matter in relation to the analogous arrangement). In principle, simply securing further assurances is insufficient answer to such a profound gap between the assurances that were given and the capacity to deliver upon them.

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[5] *R (AAA & Ors) v Secretary of State for the Home Department* [2023] UKSC 42; [2023] EWCA Civ 745 (Vos & Underhill LLJ)

[6] [2023] UKSC 42, paragraphs 74, 86-91

7. The inadequacy of this is emphasised by the drawing of specific attention to the scale of the changes of procedure, understanding and culture, all of which required to address the concerns raised by the judgment.

8. The UK Supreme Court can be expected to have exercised considerable caution in expressing itself in any way critical of a foreign government, especially one with whom the UK Government has and clearly wishes to maintain relations. Having due regard to the judgment (and those of the majority in the court below), it is extremely concerning that the UK Government has rushed so quickly into simply attempting to pursue precisely the same ambition that it had by entering the MoU, and done so by little more than securing further assurances about the delivery of something that the court has found cannot currently be delivered for multiple and sizeable reasons relating to procedural capacity, understanding and culture. All this notwithstanding the absence of any evidence to suggest that the Rwandan Government understands or accepts each of these deficiencies on its part.[7]

9. In this evidence to the Committee, the Home Secretary laid emphasis on the attitude of the Rwandan Government, its relevant "*experience over quite an extended period of time*" and the reputational incentive of being under scrutiny.[8] The difficulty with that is that the experience over an extended period of recent time was expressly assessed by the Supreme Court. The judgment's identification of problems of understanding and culture go directly to each of the matters on which the Home Secretary relies – attitude, experience and reputational incentive. If neither government truly recognises the deficiencies raised by the judgment, let alone their scale, it is difficult to see how any Treaty could provide a basis on which to address them.[9]

10. The UK Government has exacerbated the concern that assurances cannot be relied upon by what it has done alongside securing this Treaty. Rather than demonstrating to the Rwandan Government the importance of abiding by international agreements and the rule of law, the UK Government has immediately introduced the Bill for the explicit purpose of effectively overturning the judgment, and preventing the courts revisiting the question the judgment had resolved, on the basis of any new evidence the UK Government, or anyone else, may present.[10] For good measure, this is presented

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[7] Indeed, the Home Secretary made emphatic that the UK Government does not accept the Supreme Court's judgment either. He did so in addressing the House of Commons on the day following the publication of the Treaty. He said, "*…We* [the UK Government] *do not agree with that assessment* [that of the court]*… Rwanda is and will remain a safe country for the purposes of asylum and resettlement… Rwanda is a safe… country… But, given the Supreme Court judgment we cannot be confident that the courts will respect a new treaty on its own. So today the Government has published emergency legislation* [the Bill] *to make it unequivocally clear that Rwanda is a safe country and to prevent the courts from second-guessing Parliament's will.*" (*Hansard*, 6 December 2023 : Cols 433-434). The Home Secretary's evidence to the Committee was in essence no different. He emphasised his confidence in the Rwandan Government, both before and after the judgment.

[8] Reputational incentive was expressly relied upon by the UK Government in the litigation resolved by the Supreme Court, see [2023] UKSC 42, paragraph 101-102.

[9] Indeed, the Supreme Court expressly made this point: see [2023] UKSC 42, paragraph 104: "*…The necessary changes may not be straightforward, as <u>they require an appreciation that the current approach is inadequate</u>, a change of attitudes,…*" (emphasis added).

[10] The UK Government has published what it calls a legal position on the Bill, which states among other things: "*The bill reflects that Parliament is sovereign and can change domestic law as it sees fit including… requiring a*

within the Bill as if compliant – even necessarily compliant – with international law.[11] The message which is surely being sent to the Rwandan Government is that compliance with international law is optional, at least to the extent that it is 'legitimate' to exercise political authority for the purpose of simply claiming compliance and requiring adherence to that view.

11. In the circumstances, even making the arrangement between the two governments legally binding is robbed of any real substance. The UK Government has by its own actions, firstly, signalled its determination to proceed with the arrangement come what may, regardless of the evidence and any judicial consideration of it; and, secondly, encouraged the Rwandan Government to consider its obligations, now given greater particularity in the Treaty, to be as malleable or insubstantial as it may prefer. The latter government certainly has been given no encouragement to consider that it has any serious job to do to make substantial changes of not only procedure, but also understanding and culture.

12. In relation to the above concerns, we take this opportunity to remind the Committee that the Supreme Court, while exercising great care to avoid impugning bad faith to any political actor on the part of the Rwandan Government in making the MoU, briefly summarised the longstanding and profound concerns regarding that government's compliance with its international law obligations. The judgment includes:

> "*76. In 2017, in proceedings to which the Secretary of State was party, the Divisional Court found Rwanda was "a state which, in very recent times, has instigated political killings, and has led British police to warn Rwandan nationals living in Britain of credible plans to kill them on the part of that state."… At the United Nationals Human Rights Council's Universal Periodic Review of Rwanda in Geneva in January 2021, the United Kingdom government criticised Rwanda for "extrajudicial killings, deaths in custody, enforced disappearances and torture". Advice provided by officials to ministers later in 2021, during the process of selecting a partner country for the removal of asylum seekers, advised that Rwanda has a poor human rights record. Most human rights violations were said to be linked to criticism of the Rwandan government. There were also said to be constraints on media freedom and political activities…*"

13. AIUK's assessment of Rwanda reflects much the same concerns.[12] Harassment, intimidation and persecution of journalists and others critical of President Kagame and his government remain particular concerns. Although the Supreme Court does not refer to it, there are also significant concerns regarding Rwandan military incursions into the Democratic Republic of Congo and its association with and support for the

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*state of affairs or facts to be recognised. This is the central feature of the bill and many of its provisions are designed to ensure that Parliament's conclusion on the safety of Rwanda is accepted by the domestic courts."*

[11] Clause 1(5) of the Bill defines what is meant by Rwanda's safety; and that is enlarged upon by clause 1(6) to make explicit that safety is to mean in compliance with international law (all the specific sources of that law that are listed and "*any other international law, or convention or rule of international law, whatsoever…*").

[12] Our general assessment of Rwanda and particular research and focus on that country is to be found at: https://www.amnesty.org/en/

M23, an armed Congolese rebel group.[13] [14] The most recent UNHCR data on Rwanda identifies there to be a population of just under 135,000 refugees in the country in November 2023.[15] UNHCR's online data finder identifies, for 2023, 9,116 people seeking asylum (a significant rise on previous years; the figures between 2018 and 2022 range between 393 and 493).[16]

**How strong and effective are the protections for persons relocated to Rwanda set out in the Treaty?**

14. The evidence, including its assessment by the Supreme Court, shows that protections set out in the Treaty are weak and ineffective because:

    14.1. The protections depend, almost solely, on the willingness and capacity of the Rwandan Government to deliver these as safeguard against its own deficiencies of practice, procedure, understanding and culture. Anyone reliant upon such protections will be in Rwanda. The mechanisms by which any protections are to be delivered are either ones to be established and operated by the Rwandan Government, or with significant participation and/or control of that government.

    14.2. The position of people in Rwanda facing any human rights violation by the Rwandan Government must be assessed against the record of that government in the face of any criticism of it or attempts to expose it. The brief summary (cited above) in the judgment of Rwanda's poor human rights record and the intimate connection between violations and criticism of its government strongly indicates that anyone suffering from human rights violation (and/or failure to fulfil the obligations under the Treaty) on their transportation to Rwanda would have good reason to be fearful of raising a complaint or taking other steps to draw attention to their suffering. It equally indicates that they could expect considerable obstacles – whether from within or outside the government[17] – to securing any attention to any human rights violation whether or not they made a complaint.

    14.3. Whereas the Treaty provides an obligation to facilitate a person's return to the UK on the request of the UK Government,[18] there are no grounds for concluding that this could prove to be a reliable safeguard against human rights violations – including *refoulement* – given that the UK Government would have to both

[13] For example, the recent discussion at the UN Security Council in October 2023 on conflict in the Great Lakes region included significant concern regarding both the actions of M23 and the role of Rwanda in support of that group, including from the representative of the US in repeating that country's call on Rwanda to end its support of that group. See: https://press.un.org/en/2023/sc15447.doc.htm

[14] We note the Home Secretary's emphasis to the Committee on Rwanda's problem-solving credentials. With respect, Rwandan association with the M23 is the very opposite that.

[15] See https://reporting.unhcr.org/rwanda-operational-update-6592

[16] See https://www.unhcr.org/refugee-statistics/download/?url=sH5pnE

[17] The aggressive attitude by the Rwandan Government to criticism of it is a threat to those outside the government who might otherwise be expected to act to expose or remedy any plausible or valid complaint.

[18] Article 11(2)

know of the imminency of such a violation and act upon it in good time for this ever to provide the necessary safeguard.[19] The nature and content of the Bill tends to reinforce this conclusion because the Bill sets out to seriously and improperly impede or exclude judicial consideration of evidence and issues that would be relevant to whether any such request ought to be made.[20]

**View of the enforcement mechanisms in the Treaty including the dispute settlement procedure, the enhanced independent Monitoring Committee, and the provision for lodging individual complaints; and whether there are any essential supplementary conditions for this to be an effective process:**

15. Our overall assessment (above) set outs general reservations regarding the Treaty and the assurances given under it. These apply as much to provisions for enforcement mechanisms as anything else. Nonetheless, we offer the following brief observations concerning enforcement mechanisms:

    15.1. As regards reception and accommodation (Annex A to the Treaty) and the claims process (Annex B to the Treaty), individual complaints are to be made to a representative of the Rwandan Government. This is provided by paragraphs 15 and 8 to the respective Annexes. No further information is given other than that the representative is to record the complaint and update that record with any resolution of the complaint. The Monitoring Committee is also to develop a system and process for it to receive individual complaints in confidence (including as to matters falling within the provision for complaints to be made to the Rwandan Government's representative). There is no further information in the Treaty regarding what is to be done with complaints made to the Monitoring Committee. As noted at paragraph 13.2 (above), there are profound reasons to fear that people will be unable to make complaints or do so effectively. These concerns are compounded by the circumstances and characteristics of these people, including the traumas they are likely to have experienced (both in their home countries and on journeys to the UK) and the impact of the UK Government's response that their claims are simply to be ignored by the State in whose territory they have claimed asylum (having endured those previous traumas) and they are simply to be expelled to a place thousands of miles away (even despite the conclusion of that State's highest court that the place in question is not safe).[21]

    15.2. The Treaty's provision for individual complaints is opaque; and there is a lack of detail provided to assess how any of the other enforcement mechanisms can

[19] The previous considerations regarding the position of both governments seriously undermines any real prospect of this.

[20] The Bill precludes, for example, any consideration by a domestic court of the risk of *refoulement*, whether on a general or individual basis: see clauses 2(1), (4)(a) and 4(2).

[21] The issues here are both the general vulnerability of the people ever likely to be transported to Rwanda under this Treaty, by reason of traumatic experience and the impact of these upon them; and the experience of such people of authority in their home country, in countries on the journeys they have made to seek asylum, in the UK (including by its government's determination to simply expel them) and, potentially, in Rwanda (having regard to the human rights situation there and the assessment of the Supreme Court).

be expected to be effective in identifying any individual inadequacies or violations concerning the implementation of the various assurances given by, and obligations relating to, the Treaty. These concerns are compounded by the silence (as with the MoU) on all matters of finance. Article 15 merely states, "*The Parties shall make financial arrangements in support of the relocation of individuals under this Agreement.*" It is, accordingly, unclear what level of funding will be available to support any of the relevant mechanisms and from where it will come.

**View on the design of the new asylum appeal body and how it might function:**

16. Our overall assessment (above) sets out general reservations regarding the Treaty and the assurances given under it. These apply as much to provisions for an appeal body as anything else. Nonetheless, we offer the following brief observations concerning the appeal body:

    16.1. Annex B to the Treaty makes provision for judicial appointments of a mix of nationalities (paragraph 4.2.2), for an independent expert role within the functions of the appeal body (paragraph 4.2.4), and for training to be provided to this body's judges (paragraph 4.4). Nonetheless, the selection and appointment process for the delivery of these roles and this training remains opaque; as does any system for monitoring any of this (save that the Monitoring Committee is to monitor hearings and appeals), let alone enforcing any relevant standards.

    16.2. These concerns are compounded by the silence (as with the MoU) on all matters of finance. Article 15 merely states, "*The Parties shall make financial arrangements in support of the relocation of individuals under this Agreement.*" It is, accordingly, unclear what level of funding will be available to support the appeal body, its functions and the related matters of selection, training and monitoring and from where any money will come.

**Regarding offshore processing and precedents for requiring that claims must be for asylum in a third country:**

17. Australia introduced an offshore asylum processing scheme in 2012, under which people arriving to Australia by boat were sent to Nauru or Manus Island for their claims to be determined. In 2013, it revised the scheme to add a bar on anyone sent to either island from ever being resettled in Australia. The Australian scheme, unlike what is intended under the Treaty, is a form of offshore processing in that the Australian Government remains the responsible party for processing and determining the claims of people subjected to this scheme. Nonetheless, the Australian scheme, like that intended by the UK Government, is to bar people from ever receiving asylum (or otherwise being permitted to stay) in Australia, whatever the determination made on their claim to asylum.[22]

[22] In 2013, Amnesty International published a detailed assessment of the Australian scheme as operated on Manus Island: *This is Breaking People*; and in 2016, we published a similar assessment of the scheme as

18. There is currently discussion and interest among various political actors within the EU and its Member States concerning offshore processing. The Italian Government is, for example, seeking to advance an agreement with its Albanian counterpart to process offshore, in Albania, the claims of people seeking asylum in Italy who are intercepted at sea. This differs from the Australian scheme in that a determination that a claimant is a refugee will enable that person's resettlement in Italy; and the detention of the person in Albania pending consideration by the Italian Government is in any event time limited.[23] The Italian Government's scheme is currently pending while the Albanian Constitutional Court considers a complaint that the agreement with Italy is unconstitutional.

19. AIUK has many profound concerns regarding these and other offshore schemes and the human rights violations that arise by or under them. Some of these concerns apply equally to the arrangement with the Rwandan Government, which the UK Government seeks to implement by this Treaty. However, it is additionally significant that the UK Government's scheme is not for offshore processing. It is seeking to cast off all responsibility for people seeking asylum in the UK, not merely to process their claims outside (offshore) UK territory.

**Other matters relating to the Treaty:**

20. There are three key matters relating to the Treaty that are vital to consider:

    20.1. First, there is the policy that it seeks to implement. That policy is to refuse to take responsibility arising under international law (by admitting, considering, deciding and acting upon the claims of people seeking asylum in the UK). It was first introduced by immigration rules on the UK's completion of its transitional exit from the EU at 11pm on 31 December 2020.[24] At the time the policy was discretionary. The Home Secretary was free to not apply it, or to cease its application, to any particular claimant.[25] In 2022, the Nationality and Borders Act 2022 put that policy into primary legislation.[26] Nonetheless, the discretion remained.[27] The Illegal Migration Act 2023, however, will, if

operated on Nauru: *An Island of Despair*. The scheme and its terrible impact on the people subjected to it remains a profound human rights concern to which we continue to give significant attention.

[23] See https://www.lavoro.gov.it/temi-e-priorita/immigrazione/focus-on/accordi-bilaterali/Documents/Accordo-02122008-Albania.pdf

[24] The relevant rules were introduced by paragraph 11.5 of Statement of Changes in Immigration Rules (HC 1043).

[25] Paragraph 345A of the relevant rules made clear that the policy "*may*" be applied by the Home Secretary; and paragraph 345D made clear that the policy could be disapplied if the Home Secretary concluded either that expulsion from the UK was not likely within a reasonable period or, on consideration of the individual's circumstances, such expulsion was "*inappropriate*".

[26] Section 16 introduced sections 80B and 80C to the Nationality, Immigration and Asylum Act 2002 ("the 2002 Act").

[27] Section 80B(1) of the 2002 Act makes express that the policy as enacted "*may*" be applied by the Home Secretary; and section 80B(7) makes express that the policy as enacted may be disapplied if either the Home Secretary considers there to be "*exceptional circumstances*" or in accordance with any other circumstances that may be set out in immigration rules.

commenced, remove the discretion.[28] It will require the Home Secretary to refuse to take responsibility and, thereby, create a permanent limbo in the UK for any person caught by the policy unless and until that person leaves or is removed from the UK.[29] The Treaty is the only means to secure some appearance that this policy can be anything other than ruinously impracticable[30] because Rwanda remains the only destination in respect of which there is any arrangement to transport any number of the many tens of thousands of people caught by this policy.[31] However, there is no suggestion that Rwanda could or would ever receive any but a fraction of the population caught by the policy – even leaving aside the moral and legal questions arising in relation to the Treaty.[32] It is striking that the UK Government has simply refused to reconsider the policy that has led it to secure this Treaty and introduce the Bill relating to it.[33] The determination of the UK Government to proceed with its Rwanda scheme is itself highly indicative that the UK Government cannot be relied upon to monitor the proper implementation of the Treaty. It has already committed itself to a 'come what may' strategy notwithstanding the ruinous consequences to date, the hopelessness of the Treaty as a real means to give effect to the policy and the judgment upon Rwanda's safety.

20.2. Second, there is the international law that the policy and the Treaty ride roughshod over. That international law concerns the shared responsibility to provide asylum. That responsibility extends to both receiving people seeking asylum and providing asylum to those entitled to it; and, if a State is to operate the latter on the basis of individual determination, then to determine the claims of the people seeking asylum on its territory. Whereas the Refugee Convention does not bar arrangements that are made for the purpose of real responsibility-sharing, it cannot sustain arrangements that are made for the purpose of simply refusing that responsibility.[34] There is no proper sense in which the Treaty (or the MoU that preceded it) establishes any real responsibility-sharing on the part

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[28] Section 5, where it applies, creates an inflexible and permanent bar on consideration of the person's claim.

[29] The key effect and provisions of the Act are explained in the analysis here: https://www.amnesty.org.uk/resources/illegal-migration-act-2023-analysis-acts-structure-purpose-and-key-working-parts

[30] As regards the ruinous impact of the policy to date, this is to some degree explained in our submission to the Public Accounts Committee for its inquiry on *The Asylum Transformation Programme* earlier this year. That submission is available here: https://committees.parliament.uk/writtenevidence/122172/pdf/

[31] The last assessment of the number of people awaiting an initial asylum decision in the UK is provided by the December update of the immigration statistics. This puts that number at 165,411 people. Not all of these people may be subjected to the policy, though if the Illegal Migration Act 2023 is fully commenced each of them who arrived to the UK on or after 20 June 2023 will be required to be subjected to it.

[32] We do not elaborate on these further in this submission. We have briefly indicated the way in which the policy abrogates responsibilities of the UK to share asylum responsibilities. We have previously given further explanation of this in response to the Committee's previous inquiry on the MoU, see here: https://committees.parliament.uk/writtenevidence/109753/pdf/

[33] See e.g. the Home Office Economic Note HOEN 0036 on the Safety of Rwanda (Asylum and Immigration) Bill 2023, 11 December 2023

[34] We do not elaborate here, but notwithstanding our reservations about the EU Dublin Regulations (which the UK ceased to be part of at 11pm on 31 December 2020), the arrangements governed by those regulations for allocation of responsibility among Member States according to a minimum set of shared standards (generally referred to as the Asylum Acquis) are materially different in nature to the Treaty and what is intended by it.

of the UK; and its aim of enabling a policy of simply refusing to take responsibility is anathema to this basic principle that underpins the Convention. The Treaty not only constitutes a divesting of responsibilities on the part of the UK in furtherance of a general policy to refuse these in blanket fashion, it transfers responsibility to a far less resourced country, which is already host to a relatively large refugee population of its own and whose asylum capacities are found to be wanting. Moreover, in pursuit of the ambition of this Treaty, the UK Government has effectively misrepresented and undermined the Office of the UN High Commissioner for Refugees,[35] something which is itself undermining of obligations under the Convention.[36]

20.3. Third, there is the Bill. The Bill sets out to render implementation of the Treaty largely immune from the judgment and from any further consideration of the evidence and facts, and their application to any question of legality, by domestic courts or the European Court of Human Rights. There are various ways by which this is to be done by the Bill.[37] It not only seeks to remove the most critical individual safeguard against human rights violation resulting from the Treaty and its implementation,[38] it sends a strong signal that human rights obligations – including to provide effective individual and judicial remedies – may be legitimately excluded even while claiming compliance with international law. Moreover, this approach is not merely in direct conflict with international law,[39] it is profoundly undermining of more basic notions of the rule of law and legality. Proper functioning legal systems decide the facts by honest and careful consideration of the evidence so as to apply the law to the true facts. There is no such thing as sovereignty over fact. Facts are simply as they are, to be determined according to what the evidence shows at the relevant time. That the UK Government is inviting Parliament to pass this Bill to determine the facts contrary to the court's consideration of the evidence and to the exclusion of any future judicial consideration of the evidence is a profound rejection of any respect or understanding of the judicial function, the legislative function and the rule of law.

21. At the oral evidence session with the Home Secretary, further matters arose on which we make the following brief observations:

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[35] This has, for example, been done recently at the despatch box by the Home Secretary in effectively impugning UNHCR for the evidence and submissions it made to the Supreme Court, and in effect the court's assessment of that evidence and submissions, by claiming to judge UNHCR "*…by its actions, not necessarily by its words*" (*Hansard*, 6 December 2023 : Col 440). The Home Secretary effectively repeated this before the Committee. This was notwithstanding that the Supreme Court had expressly considered the matter of UNHCR's arrangement with Rwanda (which the UK Government had expressly raised in the litigation) in reaching its judgment. A critical distinction, which the UK Government continues either to not understand or to not accept, is that the UNHCR arrangement is solely for Rwanda to temporarily host people evacuated from Libya, whose asylum claims UNHCR retains responsibility for, while relocation to a third country is secured.

[36] Article 35 of the Refugee Convention requires cooperation with, and facilitation of, UNHCR and its functions.

[37] Analysis of the Bill is available here: https://www.amnesty.org.uk/resources/amnesty-international-uk-analysis-safety-rwanda-asylum-and-immigration-bill-introduced-2

[38] Protection against non-refoulement

[39] As discussed here and in our briefings on the Bill: https://www.amnesty.org.uk/resources/safety-rwanda-asylum-and-immigration-bill-0

21.1. The Home Secretary very candidly confirmed the limited reference to resettling refugees in the UK was concerned solely with people with particularly acute needs as currently envisaged by the UK's longstanding and very limited general resettlement scheme. The Home Secretary referred expressly to "*tiny numbers… single digits*". Any notion of responsibility sharing that might be otherwise have been implied by Article 19 of the Treaty may, therefore, be dismissed. Moreover, it emphasises the starkness of the policy that this Treaty seeks to make effective, particularly if and when the Illegal Migration Act 2023 is fully commenced. That is so because the Act, by its inflexible and permanent directive for the Home Secretary to apply the policy in all cases, precludes any consideration of any particularly acute needs of a refugee who may be in the UK but within the scope of the Act.

21.2. The Committee repeatedly invited the Home Secretary to consider waiting to see if the Rwandan Government successfully made changes of practice, procedure, understanding and culture before ratifying the Treaty and seeking to implement it. As indicated above, the number of people in Rwanda seeking asylum is identified by UNHCR in 2023 as standing at nearly 10,000 people (having in previous years been below 500). There appears to be both ample need and opportunity to test Rwanda's willingness and capacity to institute a functioning asylum system without the UK transporting anyone to that country. Indeed, if responsibility sharing were a true purpose behind the Treaty, it is difficult to understand why the UK would seek to transport its population of people seeking asylum to Rwanda rather than reducing the share of responsibility currently falling on Rwanda and assisting that country to fulfil its obligations to those refugees who already seek safety there.

21.3. Ultimately, as we understood his evidence, the Home Secretary's emphasis is that the urgency of deterring people from seeking asylum in the UK demands the UK Government proceed on its current course. This is all notwithstanding the absence of any evidence that the Rwanda scheme will deter anyone, the fears that many (including AIUK) have repeatedly expressed that it may simply further empower criminal gangs and other abusers (on routes to the UK and in the UK) if people who come are or feel compelled to avoid the Home Office, and the emphatic conclusion of AIUK, UNHCR and others that this deterrence of people seeking asylum in the UK is, in any event, straightforwardly contrary to this country's international obligations.

**Conclusion:**

22. For all the reasons elaborated in this submission, AIUK invites the Committee to make clear the many improprieties of, and connected with, this Treaty and recommend that Parliament does not ratify it.