WRITTEN EVIDENCE FROM THE PUBLIC LAW PROJECT (PLP) (RWA0001)

1. PLP is a national legal charity committed to promoting access to justice, better public decision-making, and the rule of law. We respond to this inquiry because of our casework and research expertise in immigration, asylum, and human rights. We respond to Questions 1, 3, 4 and 6, while also raising issues relevant to other questions.

Question 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?

2. In PLP's assessment, the requirement to conclusively treat Rwanda as a safe country in Clause 2(1) of the Bill clearly breaches the prohibition of refoulement and human rights under Article 2-3 ECHR. This is due to a combination of provisions in the Bill which prevent courts from considering the risks of refoulement and the facts on the ground in Rwanda, which indicate a real risk that individuals will be refouled through misunderstanding, neglect or wilful disregard by Rwanda of its treaty with the UK.

3. Provisions in this Bill expressly enable violations of international law, particularly rules against refoulement:

- Clause 1(4)(b) states that the validity of an Act is unaffected by international law;
- Clause 2(4)(a) is an ouster clause which expressly prevents courts from considering an argument that a person will be refouled if removed to Rwanda;
- Clause 2(5) states that this ouster applies irrespective of any interpretation of international law;
- Clause 3 disapplies much of the Human Rights Act 1998, a key mechanism for domestically enforcing ECHR rights; and
- Clause 4(2) states that the prohibition of courts considering refoulement applies even in the context of individual circumstances challenges, which we explain in our response to Question 3.

4. In summary, the Bill goes out of its way to enable violations of international law; disable individuals from raising argument based on refoulement; and prohibit courts from considering the requirements of international law. Consequently, it is difficult to see how this Bill complies with the UK's human rights obligations – on the contrary, it actively seeks to neuter them at multiple levels.

5. This is concerning because in its judgment in *R (AAA) v Secretary of State for the Home Department* [2023] UKSC 42, the Supreme Court concluded there was a real risk of refoulement in Rwanda due to a combination of:

- Rwanda's recent history of refoulement, including during negotiations with the UK;

- Rwanda's history of misunderstanding international refugee law;
- Rwanda's violation of its asylum agreement with Israel;
- Rwanda's generally poor commitment to international human rights law; and
- Rwanda's endemically poor practice in asylum from initial decisions to appeals.

6. Of course, the Government has changed the content and legal form of its agreement with Rwanda. Clause 1(3)(a) of the Bill recognises this by highlighting Rwanda's commitment not to remove people from its territory, except to the UK.

7. But the safeguards contained in the new treaty and identified in Clause 1 assume that Rwanda can be relied upon to satisfy these commitments. After looking impartially at the evidence, the Supreme Court decided that Rwanda's reliability is patchy at best due to a history of misunderstanding international obligations, neglecting them, or outright violating them at will.

8. Therefore, due to a combination of the real risk of refoulement in Rwanda and the significant steps taken by the Bill to disable legal challenges based on refoulement, PLP is of the firm view that this Bill violates the UK's human rights obligations.

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

9. In PLP's assessment, the possibility of challenges based on compelling evidence related to particular individual circumstances in Clause 4 of the Bill does not meaningfully alter the Bill's non-compliance with human rights. This is for three reasons which we set out below.

10. First, Clause 4(1) permits challenges on the very restricted basis that "Rwanda is not a safe country for the person...based on compelling evidence relating specifically to the person's particular individual circumstances (rather than on the grounds that the Republic of Rwanda is not a safe country in general)". Clause 4(2) makes clear that this "does not permit a decision-maker to consider...whether the Republic of Rwanda will or may remove or send the person in question to another State in contravention of any of its international obligations (including in particular its obligations under the Refugee Convention)." Put simply, a court still cannot consider the risk of refoulement in Rwanda under Clause 4.

11. Second, we are concerned by the requirement to provide *compelling evidence* that a person faces a particular individual "real, imminent and foreseeable risk of serious and irreversible harm" to succeed under Clause 4. This is an extremely high threshold. Where people have been forced to flee their homes due to ongoing or imminent persecution, they physically may not have been able to collect any evidence prior to their departure. This is a special concern for groups with protected characteristics who may struggle to disclose the compelling grounds not to remove them to Rwanda. As charities such as Rainbow Migration have consistently demonstrated, this is a live risk

for LGBT+ people, where shame, trauma, fear and social stigma may prevent full disclosure to officials.[1]

12. Third, to effectively gather and present evidence to the Home Office, many people may need access to legal advice to help them understand what they need to do, why, and when. However, it is widely accepted that asylum and immigration law are so-called "legal aid deserts" where individuals face significant difficulty obtaining legal advice, either speedily or at all.[2] The likely result is that many people will not be able to access legal advice to pursue effective challenges, with the consequence that some may be removed in violation of even the thin Clause 4(1) safeguards.

13. For these reasons, PLP believes that the right of challenge based on compelling evidence related to individual circumstances is not an adequate safeguard that allays the Bill's human rights incompatibility.

Question 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?

14. Clauses 4(3)-(4) of the Bill seek to severely restrict the remedial discretion of domestic judges to grant interim remedies. Interim remedies, including injunctions, serve to prevent harm and injustice prior to the conclusion of a case, such as by preventing the removal of individuals to a country where their Article 2-3 ECHR rights are at risk.

15. The Bill confines these interim remedies to cases that fall within the 'individual circumstances' exception, and even then, only where the court is satisfied that the individual faces a "real, imminent and foreseeable risk of serious and irreversible harm" if removed to Rwanda. This is a very high threshold, difficult to surmount in practice, especially when many individuals will struggle to access legal advice for reasons identified in Question 3.

16. While interim relief – Rule 39 measures – can still be sought from the European Court of Human Rights during a challenge to the legislation in Strasbourg, Clause 5(3) of the Bill prohibits a domestic court from having regard to a Strasbourg interim measure. Moreover, given that Clause 3 of the Bill disapplies most of the Human Rights Act 1998, even if this legislation is successfully challenged under section 4 – one of the few provisions preserved – individuals can only secure a declaration of incompatibility, which has no effect on the validity of the legislation or any decision taken using it. Therefore, when Clause 4 is taken together with Clauses 3 and 5, the

[1] Rainbow Migration, 'Submission to the Independent Chief Inspector of Borders and Immigration Inspection of Casework, 1 June 2023). Available at https://www.rainbowmigration.org.uk/publications/rainbow-migrations-submission-to-the-independent-chief-inspector-of-borders-and-immigrations-inspection-of-asylum-casework/

[2] Refugee Council, 'No access to justice: How legal advice deserts fail refugees, migrants and our communities' (9 June 2022). Available at https://www.refugee-action.org.uk/no-access-to-justice-how-legal-advice-deserts-fail-refugees-migrants-and-our-communities/

Bill radically weakens the protection of fundamental human rights in respect of its approach to interim remedies.

17. In addition to Article 2-3 ECHR, the restrictions on interim remedies are likely to be incompatible with Article 13 ECHR. Not only is Article 13 breached by the near-total exclusion of judicial challenges in Clause 2, but in expulsion cases where there is a real risk of treatment contrary to Article 2-3, an effective remedy under Article 13 must allow for the removal to be suspended and stopped – otherwise the harm could well take place. The severely restricted access to domestic interim relief is likely to exclude many individuals at real risk of harm, given that in the Government's 'legal position' on the Bill, the Government envisions individual challenges to be reserved for individuals such as those unfit to fly due to late-stage pregnancy or very rare medical conditions.[3]

18. Thus, the restriction on the ability to grant domestic interim remedies is not consistent with human rights under Articles 2-3 and 13 ECHR.

Question 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?

19. In PLP's assessment, the Bill represents an extreme departure from the core constitutional principles of parliamentary sovereignty, the separation of powers, the rule of law, and the protection of human rights.

20. Parliament is being asked to fast-track legislation in response to a non-existent emergency, giving MPs inadequate opportunity to consider the arguments, and to implement an agreement that it was unable to debate before it was negotiated and signed. It further undermines Parliament's incorporation of its international obligations through the Human Rights Act 1998, by almost entirely excluding domestic challenges on ECHR grounds through Clause 3, and by permitting Ministers to disregard interim measures of the ECtHR under Clause 5.

21. The Bill's near total exclusion of judicial scrutiny seeks to undermine the constitutional role of domestic courts in holding the executive to account. Clause 2 demands that decision makers, including judges, must treat Rwanda as a safe country. The Clause further proceeds to oust the courts' ability to consider claims on the basis that Rwanda is an unsafe country. This is a constitutionally inappropriate clause, one that seeks to undermine the fact-determining function of the courts and their authority to determine the legality of executive action. The result is an attempt to replace fact

[3] Home Office, 'Safety of Rwanda (Asylum and Immigration Bill): legal position' (11 December 2023). Available at https://www.gov.uk/government/publications/safety-of-rwanda-asylum-and-immigration-bill-2023-legal-position/safety-of-rwanda-asylum-and-immigration-act-2023-legal-position-accessible

with a legally binding fiction, risking both the lives and safety of innocent people, and setting a dangerous precedent for future legislation.

22. Moreover, the human rights of individuals subject to this regime remain at risk of severe and potentially irreversible violation, the most serious consequences being torture or death for those refouled in breach of the agreement. The narrow exception in Clause 4 to the excluded rights of challenge does little to mitigate these risks. Neither the Bill nor the treaty alter the reality that Rwanda is not a safe country for individuals subject to removal. While the concerns about discriminatory treatment, the risk of refoulement, and judicial independence are addressed on the surface of the agreement, the evidence on Rwanda's unreliability in upholding these rights, and lack of regard for its international obligations, has not changed.

23. By legislating for the fiction of Rwanda's safety, and excluding legal challenges on this ground, the Bill is requiring Parliament to run contrary to the UK's human rights obligations and contrary to the expertise and careful determination of the Supreme Court. The Bill undermines the rule of law by excluding domestic scrutiny and contravening international obligations and preventing both Parliament and the courts from fulfilling their rights-upholding functions.

(4 January 2024)