**Written evidence submitted by Migrant Voice and Amnesty International UK (joint submission) (BSIAB06)**

# Border Security, Asylum and Immigration Bill
# Submission to Public Bill Committee

## Introduction

1. The Border Security, Asylum and Immigration Bill is an opportunity for the Government and Parliament to set a new approach and tone as regards immigration policy – particularly as this relates to refugees and victims of modern slavery. Regrettably, if the Bill is passed in its present form that opportunity will be missed. The bad consequences of that are further explained below.

2. This submission begins with an overview of the overarching policy that relates to the Bill. Specific matters of concern are then raised under discrete subheadings in order of relevant provisions of the Bill, with suggested amendments where available.

3. Particular attention is given to:

    (i) the Border Security Commander (Part 1, Chapter 1) – see pages 2-4;
    (ii) the offence of endangering another (Clause 18) – see pages 5-7; and
    (iii) legislative repeal (Clauses 37 to 39) – see pages 7-15.

4. Also more briefly addressed are matters concerning:

    (i) safe routes – see pages 15-16;
    (ii) deportation (Clause 41) – see page 17;
    (iii) prevention of crime (Part 3) – see page 17; and
    (iv) fees (Clause 51) – see pages 17-18.

## Overview of the Bill and the policy it underpins

5. The Home Secretary summarised the purpose of the Bill at Second Reading:

> "*The Bill is about restoring order to the immigration and asylum system and rebuilding our border security. Immigration has always been important to the UK, but that is why it should be controlled and managed so that the system is fair. Our country will always do our bit to help those who have fled persecution and conflict, but the system needs to grip and control, not gimmicks and false promise. Unlike our predecessors, we will not claim that there is a single fantasy gimmick that will solve the serious challenges. The gangs have been allowed to take hold for six years, so it will take time to loosen that grip and smash the networks, which have been getting away with this for far too long. Nor is there an alternative to working with international partners on this international crime, building new alliances against organised criminals – not just standing on the shoreline shouting at the sea.*"[1]

[1] *Hansard* HC, Second Reading, 10 February 2025 : Col 66

6. Although she was asked on more than one occasion about safe alternatives for people who are compelled to rely on people smuggling or controlled by human trafficking gangs,[2] her response offered no alternatives. The Government has abandoned some discrete measures pursued by its predecessor, and by this Bill intends to remove some of the legislation underpinning those measures. However, its overarching policy remains that of its predecessor. Its response to people who must cross borders to seek asylum from persecution is to attempt to deter and prevent their journeys to the UK and target the gangs who largely control those journeys. Equally, its response to people who cross borders controlled by human traffickers is also to attempt to prevent their journeys to the UK and target those who exploit them. Thus far, the Government is largely at one with its predecessor on what it is aiming at. It differs, to some degree, on how to attempt to achieve that. The emphasis on "*smashing gangs*" and "*stopping boats*" remains,[3] just as it was under the previous administration, all without any alternative for the people controlled by those gangs and put on those boats because they are without any safe means to seek asylum or escape human traffickers.

7. As we and many others have long warned, this is a strategy that is bound to fail.[4] The reason it is bound to fail is that it takes no real account of the people making the journeys the Government wishes to stop and cruelly exploited by the criminal gangs the Government wishes to shut down. It offers nothing to the people other than more hardship, punishment, and alienation than they already suffer. In doing so, it worsens conditions that make people vulnerable to the exploitation they suffer and the traumas they endure – both on journeys to the UK (or elsewhere) and in the country. Equally, it exacerbates lack of trust in authority that is needed for effective engagement in asylum and other procedures and in investigation and prosecution of exploitative crime.

**Part 1 (Border Security) – Chapter 1 (The Border Security Commander)**

8. From the start of its term, the Government has rightly identified several aspects of its predecessor's asylum policy to be bad and abandoned them. The Home Secretary has referred to many of these as "*gimmicks*" and, in their place, has prioritised the creation of a Border Security Command to deliver the deterrence and prevention, which her predecessors promised but could not deliver.[5]

9. We have no principled objection to the ambition of organising a response to people smuggling and human trafficking gangs around a Border Security Commander as distinct, for example, to a Clandestine Channel Threat Commander. Our concerns are with what any such body is instructed to do, how and for what purpose. These concerns are ones of principle and practicality. It matters whether any such body is designed and acts in ways that respect human life, dignity and rights. That it should do so is a matter of principle. The consequences of failing to do so are practical matters.

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[2] *Hansard* HC, Second Reading, 10 February 2025 : Col 59 (*per* Jeremy Corbyn) and Col 63 (*per* Kim Johnson)

[3] The present administration tends to favour the language of smashing gangs rather than stopping boats, though for an example of the latter, see *Hansard* HC, 22 July 2024 : Col 391 *per* the Home Secretary.

[4] For example, see our joint briefing for Second Reading of the Nationality and Borders Bill 2021-2022. See also our extended joint submission to the Public Bill Committee on that Act, which addressed in detail the various claims advanced in justification of this strategy and which in large part continue to be advanced in support of it – including various claims that it will 'break the business model' of smuggling and trafficking gangs (cf. 'smash gangs'), save lives, improve protection for refugees and victims of modern slavery, save public funds, fulfil international human rights obligations, and deter unauthorised entry to the UK.

[5] For example, see the Home Office announcement on 7 July 2024.

10. Chapter 1 of Part 1 provides a statutory foundation for a Border Security Commander. Although Clause 3 is entitled "*Functions of the Commander*" it does not identify what these functions are. A review of Part 1 identifies very little about these functions:

    10.1. Some provisions speak about functions without identifying them. Clause 1(2) states that the functions are carried out on behalf of the Crown. Clause 3(1) states objectives to which the Commander must have regard in carrying out functions. Clause 4(2)(a) requires that an annual report must state how the functions have been carried out. Clause 5(1) requires others to cooperate with the Commander in carrying out the functions and Clause 5(3) requires arrangements to support the functions. Clause 6(1) provides that a board is to assist in the exercise of the functions. Clause 7(1) provides that the functions may be delegated to another civil servant; and the remainder of the Clause makes further provisions concerning this delegation of functions. Clause 8 permits the Secretary of State to designate a civil servant to perform the functions on an interim basis. Clause 9 requires the Commander to comply with directions from the Secretary of State in exercising the functions. None of these provisions identifies what the relevant functions are.

    10.2. As regards provisions that specify anything the Commander is to do or may do there is only the carrying out of functions [Clause 1(2)], the issuing of a strategic priority document identifying threats and priorities for others in carrying out their functions [Clause 3(2)], preparing annual reports and sending these to the Secretary of State [Clause 4(1) and (3)], putting in place the arrangements for cooperation in support of the functions [Clause 5(3)], establishing and maintaining a board to assist with the functions [Clause 6(1)], inviting other public authorities to be represented at board meetings [Clause 6(5)], holding meetings of the board [Clause 6(6)], and complying with directions about the exercise of the functions [Clause 9(2)]. There is little here beyond administration.

11. It is difficult, to say the least, to assess anything of substance about the Commander given the absence of anything of substance concerning the Commander's functions. The only matter on which real assessment can be made concerns what are stated by Clause 3(1) to be the objectives to which the Commander must have regard:

    > "*(a) maximising the effectiveness of the activities of partner authorities relating to threats to border security for the purpose of minimising such threats, and*
    > *(b) maximising the coordination of those activities for that purpose*."

12. What is to be regarded as a 'threat to border security' is not wholly defined. Clause 3(7) to (9) provide some indication of what it is to include. From this, it can be seen that people smuggling and human trafficking to the UK are to be regarded as such threats. This reflects the continued rhetoric of "*smashing gangs*" and "*stopping boats*."[6] As with that rhetoric, the people who board those boats and who are controlled or reliant on those gangs are ignored. Their realities – their need and right to seek safety, to reunite with family, to escape situations of extreme deprivation and exploitation – are ignored. Maximising the effectiveness of activities for minimising the movement of people to the UK, without any clear recognition of the people who are moved and any moral or legal obligation to them, mirrors the attitude of the gangs who control their movement. Mere rhetorical outrage at the suffering and exploitation of

[6] See fn. 3 (above)

people provides nothing of substance for fulfilling any such moral or legal obligation to people. It did not do so under the last administration and will not do so under this one.

13. As a matter of principle, therefore, it is vital that the Bill should be amended to ensure the Border Security Commander must have regard to objectives concerned with respecting human life and dignity, including specific shared obligations to provide asylum to people fleeing persecution and to enable victims of human trafficking to secure safety from their enslavement.[7] Continuing to ignore such vital considerations can only encourage more "*gimmicks and false promise*."[8] It will do so for two related reasons. On the one hand, it licenses attempts to deter or prevent people's movement to the UK by means that perpetuate, prolong or exacerbate the dangers to them (a moral failure). On the other, ignoring people's real needs and rights perpetuates the conditions for their continued exploitation and the failure of attempts at deterrence and prevention (a practical failure). The last administration was driven by its refusal to ever more harmful and costly 'gimmicks' in pursuit of the false promise of deterrence and prevention by precisely these means.

14. Accordingly, the Bill must be amended to ensure the Border Security Commander has regard to human rights and human dignity. The following amendment is proposed for that purpose.

Clause 3, page 2, line 28, at end, insert –

"*,*
*(c) respecting the rights of people seeking asylum and of victims of human trafficking, and*
*(d) ensuring the United Kingdom plays its full part in sharing responsibility for respecting those rights.*"

Clause 3, page 3, line 5, at end, insert –

"*"rights of people seeking asylum and of victims of human trafficking" means the rights of people seeking asylum and of victims of human trafficking set out in international human rights law including Articles 4 and 14 of the 1948 Universal Declaration of Human Rights, the 1951 UN Convention relating to the Status of Refugees, and the 2005 Council of Europe Convention on Action against Trafficking in Human Beings.*"

**Part 1 (Border Security) – Chapter 2 (Other Border Security Provision)**

15. Chapter 2 contains a range of new and extended immigration powers and offences. For well over two decades, successive administrations have presented Parliament with immigration legislation that invariably seeks more power for the Home Office, often removes or restricts oversight of that department and use of its powers, and provides more scope for prosecuting and imprisoning people, often the very people most in need and most exploited in crossing borders. Among the new offences to be created by Chapter 2 of Part 1 is that of "*endangering another during a sea crossing to the United Kingdom*", which is done by Clause 18. This offence merits particular consideration.

[7] On shared asylum responsibilities, see Amnesty UK's briefing: *Responsibility-sharing and the right to asylum*, November 2024.
[8] The Home Secretary has frequently referred to gimmicks. She did so repeatedly at Second Reading: see *Hansard* HC, 10 February 2025 : Cols 65-66.

***Clause 18 – endangering another during a sea crossing to the United Kingdom***

16. In summary, this is an offence specifically targeted at people who arrive to the UK by the dangerous boat journeys. It is to be inserted into section 24 of the Immigration Act 1971. Smuggling gangs who control these journeys are exempt from the offence, which can only be committed by a person who makes and completes the journey. To understand the offence it is, first, necessary to consider the circumstances that are required for the offence to arise. Second, the offence itself must be considered. Third, consideration must be given to the potential sentence.

Clause 18: circumstances required for the offence to arise:

17. The offence only applies to a person who also commits an offence under existing provisions of section 24 (illegal entry and similar offences) that are specified.[9] In this way, the offence to be introduced by Clause 18 is dependent on the commission of one of those existing immigration offences.

18. The new offence also only applies if the person commits the offence on a sea journey that begins in France, Belgium or the Netherlands.[10] To the extent that endangering someone at sea (or on any other journey) should occasion criminal culpability, it seems clear that endangering someone does not depend on the journey commencing in one of these locations or resulting in the offender committing an immigration offence. This raises the question why there should be any need for an offence in these limited circumstances – if endangering someone in a way that should occasion criminal culpability is not already sufficiently addressed on the statute book, why the limitation; and if it is already addressed, why the need for another offence in this Bill?

Clause 18: the offence:

19. The offence itself is in the following terms:[11]

> "*A person commits an offence… if… (c) at any time during the relevant period, the person did an act that caused, or created a risk of, the death of, or serious personal injury to, another person.*"

20. Personal injury is expressly stated to mean "*physical or psychological injury*";[12] and the relevant period is identified as the period of the sea crossing from France, Belgium or the Netherlands to the UK.[13] This is an extremely wide offence. It may, for example, be committed without any injury being sustained by anyone if, in the opinion of a prosecutor and court, a risk of serious injury was created. It may be committed out of panic. It may be committed in attempting to safeguard someone else or indeed to safeguard the person who is injured or put at risk of injury.

[9] The relevant offences are those under section 24(A1), (B1), (D1) and (E1), Immigration Act 1971, each of which introduced by section 40, Nationality and Borders Act 2022.
[10] See subsection (E1A)(b) of the new offence to be inserted into section 24, Immigration Act 1971.
[11] See subsection (E1A)(c) of the new offence, *ibid*.
[12] See subsection (E1B)(a) of the new offence, *ibid*.
[13] See subsection (E1B)(b) of the new offence, *ibid*.

21. At Second Reading, the Home Secretary had much to say about the circumstances of these journeys:[14]

> "*…There are huge supply chains of flimsy boats, weak engines and fake lifejackets that would not keep anyone afloat… Gangs have become increasingly violent in their determination to make as much money as possible. They are crowding more and more people into flimsy boats with women and children in the middle, so that if the boats fold or sink, they are the first to drown or be crushed. They provide the fuel in flimsy containers that leak, so that when it mixes with saltwater, it inflicts the most horrific burns. The gangs' latest tactic is to make people wait in freezing cold water – even in January – until a boat arrives from further along the shore to pick them up.*"

22. This frightening description of the circumstances of people on the journeys to which the new offence is restricted must be compared to the offence itself. It must be remembered that some of the people on a boat may have little or no experience of being at sea; and others will only have the experience from a potentially even more traumatising sea journey across the Mediterranean. The traumas that people can be expected to take with them onto a boat are far from limited to the possibility of a previous journey such as that, nor to the violence of the gangs to which the Home Secretary referred. If the fear concerning these boat journeys is palpable even in what the Home Secretary can say from the comfort of the ballot box, how much more terrifying must it be for people on a boat? In those circumstances, the potential for panic, mistake, or just bad luck on the part of one person risking, let alone causing, injury to another is obvious.

23. The more dangerous the journeys are made, the more such risk. Details such as the Home Secretary gives about the flimsy containers of fuel that if spilled can cause "*horrific burns*" – clearly serious physical or psychological harm in itself – emphasise the risk. In these circumstances, it is extremely hard to imagine how any act of panic could not create such a risk; and it is readily understandable how many other entirely innocent acts, including ones motivated by concerns for someone's welfare, could all too easily create such a risk.

24. How then has the Government concluded that people – whose treatment it claims to abhor – should be made at such inevitable risk of prosecution and conviction by being put in the situation the Home Secretary describes? An explanation is called for. On the face of the matter, the creation of this offence shows how far an overarching policy aim that is so narrowly focused on deterrence and prevention tends to go in overlooking the people most affected by the policies that are then pursued in service of that aim. It is a lesson in dehumanisation. Human beings and their real circumstances are lost sight of even in the very moment of describing those circumstances in visceral detail. People's suffering is not being attended to here – indeed it is being met with punishment and more pain – because those responsible have allowed themselves to lose sight of their own humanity in their urgency to present themselves as strong and in control, and to find justification for their policies and policy aim of deterrence and prevention. Committee stage offers an opportunity to help ministers take a step back and properly reflect on where their human responsibilities – moral and legal – truly lie; who are the people really in need here and what are their needs and rights; and what in these circumstances is required beyond and above mere enforcement of the domestic rules that ministers make?

[14] *Hansard* HC, 10 February 2025 : Col 61

Clause 18: possible sentence:

25. The offence is subject to a maximum sentence of imprisonment for six or five years depending on the immigration offence to which it is linked.[15] The construction of Clause 18 indicates that the new offence is to be regarded as an alternative to the immigration offence on which it is dependent.[16] If correct, this indicates that the new offence is to be regarded as an aggravating feature of that immigration offence so that a further year's imprisonment may be imposed. This does not, however, remove any of the concern about the purpose of this new offence and its punitive attitude to the desperate and traumatic circumstances of the people against whom it may be prosecuted. It may be useful if ministers are pressed to confirm that nobody is to be convicted of both the Clause 18 offence and the immigration offence on which its commission is dependent.

Clause 18: conclusion and amendment:

26. Clause 18 provides stark example of where dogmatically aiming to deter and prevent leads. Even the most visceral description of the suffering of people that is given in support of this Bill is met with nothing that offers alleviation of that suffering. Instead, by Clause 18, that suffering is responded to with additional punishment and pain for those who must endure it. The following amendment would provide opportunity for probing ministers on these matters.

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| Clause 18, page 11, line 26, at end, insert – <br><br> "*, and* <br> *(d) the act to which subsection (E1A)(c) refers was intentional and done for, or done in a connection with another act done for, the person's financial gain.*" |

**Part 2 (Asylum and Immigration)**

27. The provisions of this part are dominated by repeal of legislation,[17] passed in the last Parliament, that is plainly incompatible with the UK's international human rights obligations – and which contains various provisions designed to exclude or severely constrain human rights law, including the UK's Human Rights Act 1998, and to permit the Government of the day to act in breach of the UK's international obligations and free from any real or effective judicial oversight.

28. Every repeal to be found in this Bill is to be welcomed for reversing measures that are antithetical to respect for human dignity and respect for the rule of law. These repeals are consistent with policy decisions this Government has already taken over its short time in office

[15] Clause 18(3)
[16] Clause 18(8), though the relevant provision merely enables conviction for the immigration offence if the offence of endangering is not proven, whereas it does not exclude conviction of the immigration offence in addition to conviction for the endangering offence.
[17] See more in Amnesty UK's briefing: *Asylum legislation in need of repeal*, October 2024.

(such as abandoning its predecessor's inadmissibility policy;[18] Rwanda plan;[19] use of the Bibby Stockholm barge to house people seeking asylum;[20] and plans to develop defunct prison and military bases to house the same people[21]). Regrettably, however, ministers' stated reasons for these decisions rest on assessments of cost-effectiveness and/or cost-efficiency. We do not doubt the conclusions drawn. Nor do we question the general necessity of considering costs in setting and implementing policy. However, legitimate policy must pursue a legitimate purpose beyond the matter of whether it is, in its own terms, effective or efficient.[22]

29. As regards legitimacy, that requires any policy to be consistent with the international human rights laws to which the UK is a party. This requirement is not just about compliance with law. It is also about having proper regard to human dignity – most particularly that of the people directly affected by the policy. For example, any proper policy concerned with asylum and/or modern slavery must promote the right to asylum and to be free from slavery that are the right of every person. It is the UK's shared obligation to act in ways that enable everyone to enjoy these rights the world over rather than in ways in that enable abusers to deprive people of these rights.

30. Moreover, as is repeatedly affirmed in such miserable fashion by asylum policy, failing to have proper regard to the people most affected by policy has bad consequences. Either the policy is entirely ineffective or it prompts responses that are almost always unintended and undesirable. For example, the consequence of years of investment in deterring and preventing journeys to the UK by other means without any alternative – even for refugees with family in the UK or with other strong connection to the UK – led directly to small boat crossings. The past few years of merely seeking to deter and prevent these journeys has enabled smuggling gangs to develop their control, capacity and profits in this. It has also led to ever more dangerous ways by which those crossings are attempted.[23]

31. What follows, therefore, is mostly concerned with legislative repeal. What is to be repealed certainly needs repeal. But that is far from sufficient. It is insufficient for both the purpose of removing clear human rights incompatibility from the statute book and delivering an asylum system, and wider immigration policy, that is practical, moral and lawful (each of which depend upon proper regard for the realities of human beings, particularly those most affected by the policy). There is also consideration of safe routes.

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[18] The Home Secretary announced this in making a statement on border security and asylum to the House in July 2024, see *Hansard* HC, 22 July 2024 : Col 384ff (particularly what she said at Cols 385-386 on the Illegal Migration Act 2023). The Illegal Migration Act 2023 (Amendment) Regulations 2024, SI 2024/815, announced in that statement, were made for this purpose.

[19] The Prime Minister announced this at his first press conference after taking office, see *Starmer confirms the Rwanda deportation plan 'dead'*, BBC News, 6 July 2024

[20] In July 2024, the Home Office announced that the Border Security and Asylum Minister had taken the decision not to renew the contract for use of the barge after its expiry in January 2025, see *Contract for Bibby Stockholm not renewed past January 2025*, Home Office news story, 23 July 2024.

[21] In September 2024, the Home Office announced it was axing plans to develop RAF Scampton for housing people seeking asylum, see *Home Office will not use RAF Scampton for asylum accommodation*, Home Office news story, 5 September 2024. In December 2024, the Border Security and Asylum Minister wrote to Kieran Mullan MP for Bexhill and Battle informing him that plans to develop Northeye to house people seeking asylum would not proceed, see *Council leader welcomes scrapping of Northeye plans*, Rother District Council news item, 9 December 2024.

[22] On proposals for a fair and efficient asylum system, see Amnesty UK's briefing: *A fair and efficient process for making asylum decisions*, October 2024.

[23] The Home Secretary made express reference to an example of this at Second Reading, see *Hansard* HC, 10 February 2025 : Col 61 (referring to "*crowding more and more people into flimsy boats*").

***Clause 37 (Repeal of the Safety of Rwanda (Asylum and Immigration) Act 2024)***

32. We welcome the repeal of the Safety of Rwanda (Asylum and Immigration) Act 2024 ("the 2024 Act"). The 2024 Act was introduced to each House with a section 19(1)(b), Human Rights Act 1998 ("the 1998 Act") statement to the effect that the Secretary of State was unable to affirm the Act's compliance with human rights. That was unsurprising given section 3 of this Act expressly disqualify provisions of the 1998 Act and the nature and content of the 2024 Act more generally.

33. It is a matter of considerable regret and alarm that there is any continued support for it. The damage that has already been done – the individual harm to many people by the threat of this Act and the ruinous inadmissibility policy that it was intended to support;[24] the dysfunction it and that policy has created at the Home Office including the enormous backlog of asylum claims;[25] the staggering waste of public funds (far from limited to the money directly paid to Rwanda and in connection with the agreement made with that country);[26] and reputational cost to the UK in terms of respect for law (domestic and international) together with the abysmal attitudes to law, human dignity and human rights to which it has given licence across the world.[27] None of this has or could ever have achieved anything of good. The sooner this is all clearly demonstrated to be firmly in the past, the better.

***Clause 38 (Repeal of certain provisions of the Illegal Migration Act 2023)***

34. Every repeal of provision of the Illegal Migration Act 2023 ("the 2023 Act") is welcome. The Act was introduced to each House with a section 19(1)(b), Human Rights Act 1998 ("the 1998") statement to the effect that the Secretary of State was unable to affirm the Act's compliance with human rights. That was unsurprising given section 1(5) of this Act expressly disqualified section 3 of the 1998 Act and the nature and content of the 2023 Act more generally.

35. As with the 2024 Act it is alarming that there remains any support for the 2023 Act. The Act not only rode roughshod over the UK's international human rights obligations. In seeking to make ministers and their inadmissibility policy immune from any judicial constraint, the Act made the policy and its implementation a requirement of statute law that was to be impossible for ministers to ever reverse, revise, or mitigate – unless securing further legislation to undo what was to be done by the passing of the Act.[28]

36. We are, nonetheless, deeply concerned at the decision to retain some of the 2023 Act's provisions. The Bill should be amended in accordance with the following amendment.

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[24] See e.g., *Gambling with lives: How a bad policy wrecked the UK asylum system*, Amnesty UK, February 2024, pp4-5

[25] See e.g., *Gambling with lives*, *ibid*, pp6-7

[26] See e.g., *Gambling with lives*, *ibid*, pp3-4

[27] Consider e.g. UNHCR's condemnation of legislation passed over successive parliamentary sessions was remarkable; and the silence from the previous administration on Rwandan involvement in a long and devastating regional conflict from the moment that administration identified the Rwandan Government as a potential partner to enable the UK to disown its asylum responsibilities.

[28] This is explained in Amnesty UK's analysis of the structure, purpose and key working parts of the Illegal Migration Act 2023.

For Clause 38(1), substitute –

"***38 Repeal of the Illegal Migration Act 2023***
*(1) The Illegal Migration Act is hereby repealed.*"

37. This is especially important for at least six reasons.

    37.1. It is generally alarming that the Government is minded to retain any part of legislation that was designed for a single and all-encompassing purpose, spelled out in its very first provision, that was and remains clearly incompatible with the UK's international human rights obligations and the UK's own human rights legislation. The 2023 Act is not like other legislation. It is not a collection of discrete measures loosely related by their connection to the legislation's long title. It is a single piece of design that failed what should have been its first test, being that of human rights compliance. It must all go.

    37.2. Section 12 of the 2023 Act is for extending powers of detention. These had already been made excessively extensive long before the 2023 Act was introduced. The extension provided by section 12 is expressly to permit detention in circumstances where "*there is anything that for the time being prevents*" the purpose for which detention is said to be necessary being fulfilled.[29] This is an extraordinary and improper licence of arbitrary detention.

    37.3. Section 29 of the 2023 Act is for tightening provisions that permit the exclusion of victims of modern slavery or human trafficking from safeguards intended to ensure their safety and recovery. The original provision that is tightened is section 63 of the Nationality and Borders Act 2022. That provision is already objectionable for excluding victims. It does so by providing an open discretion to exclude the victim on grounds that the victim is said to be a threat to public order. Section 29 extends that provision by removing the discretion ("*may*") and making it a duty ("*must*") unless it is decided there are "*compelling circumstances*" against this.[30] As the House of Commons Library Research Briefing identifies, the victims most immediately at risk from this are those convicted of a criminal offence.[31] It may be said by ministers that section 45 of the Modern Slavery Act 2015 provides defences to victims against conviction. However, section 45 defences are excluded from the long list of offences in Schedule 4 of that Act.[32] In short, the Government should be repealing section 63 of the Nationality and Borders Act 2022 (and much else in that Act) not retaining the provision of the 2023 Act that further tightens its grip.

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[29] See each of the following, as introduced by section 12 of the Illegal Migration Act 2023: paragraph 17A(2) of Schedule 2, Immigration Act 1971; paragraph 2(3B) of Schedule 3, Immigration Act 1971; section 62(2O), Nationality, Immigration and Asylum Act 2002; section 36(1B), UK Borders Act 2007; and regulation 32(1)(3), Immigration (European Economic Area) Regulations 2016, SI 2016/1052.

[30] See section 29(1)(a) and (2), Illegal Migration Act 2023.

[31] House of Commons Library Research Briefing, *Border Security, Asylum and Immigration Bill 2024-25*, 31 January 2025, p39.

[32] Section 45(7) makes express that the defences provided by section 45 do not apply to offences listed in Schedule 4 of the Modern Slavery Act 2015. Accordingly, being compelled by a trafficker or enslaver to commit an offence, or being a child in slavery or being trafficked who commits an offence by reason of being enslaved or trafficked, is not a defence if the offence is listed. Section 45(8) permits the Secretary of State to add offences to that list by making regulations.

37.4. Section 59 of the 2023 Act is for extending the scope of an inadmissibility regime that was introduced by the Nationality and Borders Act 2022. The regime created by the 2022 Act was for two purposes. First, to bar any asylum claim by a national of an EU Member State and enable their return to their country of nationality.[33] Second, to bar an asylum claim by a national of other countries on the basis that there is a third country to which they may instead be expelled.[34] The extension affects the first of these purposes. It extends that purpose in two ways. It permits the barring of any human rights claim in addition to any asylum claim.[35] That extends to claims that are not about protection from persecution, torture or other human rights abuses in a person's own country but, for example, claims that expelling someone from the UK would disproportionately interfere with their family life, including with partners and children, in the UK. It also does so in respect of specified countries that include countries that are not EU Member States.[36] It is important – when considering the impact of this provision (and others) – that notwithstanding the heightened anxiety around boat journeys and smuggling gangs, the people affected can and do include people who arrive by other means, with no smuggling involved, which may involve breaches of immigration rules including by simple error as to what may be permitted under the rules.[37]

37.5. Section 60 of the 2023 Act is concerned with annually specifying a quota for the number of people who may be permitted to come to the UK by a "*safe and legal route*" during each year.[38] The legislation does not specify what is to be regarded as such a route, leaving it to the Secretary of State to define what is meant in regulations – presumably, though not necessarily, the regulations by which she is to specify the annual quota.[39] There is simply no good purpose to this provision. The Secretary of State may perfectly well be asked by Parliament to explain any decision she may make for allowing or enabling people to come to the UK under the rules – those rules are laid before Parliament[40] – or about any policy she may introduce outside those rules for establishing a means, such as resettlement, by which people may come to the UK (including where a fixed quota is to be included). Recent examples show this.[41]

[33] Section 80A of the Nationality, Immigration and Asylum Act 2002 (as inserted by section 15 of the Nationality and Borders Act 2022).
[34] Sections 80B and 80C of the Nationality, Immigration and Asylum Act 2002 (as inserted by section 16 of the Nationality and Borders Act 2022).
[35] Section 59(2) of the Illegal Migration Act 2023 did this by adding the words "or a human rights claim" into relevant parts of section 80A of the Nationality, Immigration and Asylum Act 2002.
[36] This is done by section 59(3) of the Illegal Migration Act 2023, and related amendments, which inserted section 80AA of the Nationality, Immigration and Asylum Act 2002. Non-EU Member States included on the list in section 80AA(1) are Albania, Georgia and India. The Secretary of State is empowered to add countries to that list by regulations made under section 80AA(2); she may also remove them.
[37] Those are the rules made by the Secretary of State under sections 1(4) and 3(2), Immigration Act 1971 - generally known as the Immigration Rules.
[38] Section 60(1), Illegal Migration Act 2023
[39] Section 60(7), Illegal Migration Act 2023 merely states that safe and legal routes are to be whatever the Secretary of State may specify in regulations and section 60(1) provides for the making of regulations for the purpose of specifying the quota.
[40] See section 3(2), Immigration Act 1971 on laying before Parliament a statement of the rules or any changes to the rules; and on the possibility of a resolution of disapproval and its consequences.
[41] For example, in March 2022, then Home Secretary, Priti Patel, announced a scheme for Ukrainian refugees and within a week made a statement to the House in response to an urgent question on that scheme, see *Hansard* HC, 10 March 2022 : Col 467. In August 2021, the then Prime Minister made a statement to the House on Afghanistan including on relocation and resettlement, see *Hansard* HC, 18 August 2021 : Cols 1257 & 1259; during which he announced a resettlement scheme, see Col 1260.

Moreover, since the legislation does not define what 'routes' are to be subject to any quota, the provision is in practical terms toothless. It is especially curious, therefore, that a Government that emphasises a concern to avoid gimmickry, should elect to retain this provision – more so, given its continued unwillingness to consider safe alternatives for people to seek asylum in the UK, particularly those with family and other strong connection here.[42]

37.6. Section 62 is for the purpose of enlarging earlier legislation that arbitrarily interferes with the capacity of a decision-maker – whether at the Home Office or of the judiciary – to determine the reliability of an account given by someone seeking asylum on the basis of all the evidence made available to that decision-maker. It does so by amending section 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004, a provision that has already wasted considerable judicial time and resources in seeking to preserve effective decision-making in individual cases that does justice to the individuals involved.[43]

38. None of the 2023 Act should be retained and the Government's stated commitment to human rights – and to being clearly concerned with what is practical – will be gravely undermined if it chooses not to repeal the Act in its entirety.

***Failure to repeal human rights incompatible provisions of the Nationality and Borders Act 2022***

39. We are gravely concerned at the decision not to repeal any of this Act. While there are some nationality provisions that we supported at their first introduction and continue to support,[44] its provisions that relate to asylum, immigration and modern slavery are each harmful to people seeking asylum and victims of human trafficking and, in various ways, incompatible with international human rights law. We are disappointed, to say the least, that the Government, when in Opposition, appeared to clearly recognise that incompatibility, yet now seeks to retain all these provisions.[45] We are also unable to square the decision to retain these provisions with any real commitment to focus on what can be said to 'work' or be practical and to avoid what can properly be regarded as gimmickry – albeit gimmickry that is seriously harmful to refugees and victims of human trafficking; to any ambition for operating a functional and effective asylum or modern slavery system; to any effective control over expenditure of public funds; to any effective strategy to reduce the power of smuggling gangs and human traffickers; and to respect more generally for the rule of law in the UK and elsewhere.

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[42] See e.g., the responses of the Home Secretary at Second Reading (referred to at fn. 2, above); and the responses of the Prime Minister to the Liaison Committee in December 2024, see *Oral Evidence: Evidence from the Prime Minister*, HC 530, 19 December 2024, Q78ff (in response to questions from Dame Karen Bradley and the Chair).

[43] See e.g., the decisions on appeal of the Asylum and Immigration Tribunal in *SM (Iran)* [2005] UKAIT 00016; and the Court of Appeal in granting permission in *ST (Libya)* [2007] EWCA Civ 24 and *NT (Togo)* [2007] EWCA Civ 1431, and in determining the appeal in *JT (Cameroon)* [2008] EWCA Civ 878.

[44] We made this clear in our joint briefing for Second Reading of the Nationality and Borders Act 2022 in July 2021.

[45] In the House of Commons, the Opposition moved a motion to not give the Act its Second Reading: *Hansard* HC, 19 July 2021 : Col 719; and at its final consideration in the House of Lords following a protracted Ping Pong, the Opposition described the Act as "*wrong and unethical*": *Hansard* HL, Consideration of Commons Amendments, 27 April 2022 : Col 306.

40. In this submission, we focus on Part 2 (Asylum) of the Nationality and Borders Act 2022 ("the 2022 Act"). For reasons discussed below, we propose the following two amendments to the Bill concerning the 2022 Act.

After Clause 38, insert –

"***( ) Repeal of certain provisions of the Nationality and Borders Act 2022***

*(1) The Nationality and Borders Act 2022 is amended as follows.*

*(2) The following provisions are hereby repealed –*
*(a) 12 to 23 and Schedule 3;*
*(b) sections 24 to 29 and Schedule 4; and*
*(c) sections 30 to 39.*

41. The above amendment would repeal the provisions of the 2022 Act that most affect the UK's asylum system. The Committee will recall that on 27 April 2022 the UN High Commissioner for Refugees responded to the passing of that Act stating that:[46]

> "*UNHCR, the UN Refugee Agency, regrets that the British government's proposals for a new approach to asylum that undermines established international refugee protection law and practices has been approved.*"

42. UNHCR had before then published detailed observations during the passage of the Act making clear the incompatibility of many of its provisions with the UK's international human rights obligations to refugees. At the time, the response of UNHCR to government legislation in the UK was startling for the intensity of opposition being expressed; and for the Commissioner to personally involve himself by a public statement on the Act's passing was extraordinary. Government legislation in the parliamentary sessions that immediately followed may have overshadowed what was an exceptional moment that confirms the opinion of the current Government when in Opposition that the Act was "*wrong and unethical*".[47] What has changed? If ministers believe they have discovered on taking office some legitimate and useful purpose to legislation they roundly condemned in Opposition, they are yet to reveal it. The reality is that the Act – save for certain of its provisions on British nationality law – remains as it ever was. A shameful denial of the UK's international obligations, a punitive and unjust response to the dreadful plight of refugees and victims of human trafficking, and a collection of impractical attempts to avoid responsibilities and ignore people's true circumstances that should be consigned to the same dustbin as is proposed for the 2024 Act and most of the 2023 Act.

43. As regards the 2022 Act's asylum measures which the above amendment would repeal, they include:

43.1. Section 12, which permits the Secretary of State to operate a wholly illegitimate two-tier system of refugee protection, whereby people granted asylum may be divided into two categories. In one such category would be refugees whose right to asylum was to be upheld in full. In the other would also be refugees – no less at risk of persecution and no less entitled to asylum – but who were to be provided a

[46] See statement of Filippo Grandi, UNHCR on 27 April 2022.
[47] *Hansard* HL, Consideration of Commons Amendments, 27 April 2022 : Col 306

significantly reduced level of protection. The refugees to suffer this discrimination would face prolonged periods of short-term permission to stay, other barriers to becoming settled in the UK, exclusion from public funds, and exclusion from rules designed to enable reunion with family members.[48] None of this discrimination is permissible under international law.[49] Moreover, it is purely punitive and for no useful purpose. It would obstruct integration and exacerbate the impact and cost of alienating people. It would require the Home Office to continue processing the repeated claims of people rather than permitting them to get on with their lives, unnecessarily and harmfully adding to the workload of the asylum system. It would deny a safe route for close family members (partners and children) thereby creating incentive or necessity for more people to rely on smuggling gangs and dangerous journeys.

43.2. Sections 15 to 17, which provided the first statutory basis for the inadmissibility regime introduced in the last Parliament that led directly to the asylum backlog,[50] which ministers have rightly condemned. It was only when that regime had created this backlog that the previous administration sought, by introducing the Illegal Migration Act 2023, to double-down on the policy by making the regime mandatory. If ministers are now satisfied – as they surely should be – that the regime was wrong, harmful and dysfunctional, there is no rational basis for keeping its legislative foundations.

43.3. Sections 18 to 26 introduced unnecessary bureaucracy into the asylum decision-making and appeals system; and created arbitrary penalties for the purpose of enforcing compliance with that bureaucracy. Ultimately, these provisions permit or require decision-makers to ignore evidence or treat a claimant as untruthful for no other reason than being caught out by bureaucratic demands. The asylum system cannot function either fairly or efficiently if decision-makers fail or are barred from making decisions based on the facts and evidence in each individual case. This legislative basis for harmful and unnecessary bureaucracy should therefore be abandoned.

43.4. Section 27 is for reintroducing a detained fast track appeals system that previous administrations have operated, with dreadful results and which was finally condemned by the UK's judiciary as unlawful.[51] The prospects, if this provision is retained, is another period of excessive, harmful and costly asylum detention that undermines any ambition of fairness or efficiency in the asylum system.

43.5. Sections 28 and 29 sought to revise existing legislation to enable the Rwanda plan that the Government has rightly abandoned. A proper focus on fairness and efficiency would prompt further review of the original legislation, not retention of these revisions to it.

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[48] Section 12(5) and (6), Nationality and Borders Act 2022

[49] As is more fully explained in several statements and analyses provided by UNHCR during the passage of that Act, which remain available here: https://www.unhcr.org/uk/nationality-and-borders-bill

[50] The regime was introduced by immigration rules that took effect on the UK's completion of its transition to exit the EU. Amnesty UK wrote to ministers at the time giving warning of the consequences that could be expected to come from this regime: see letter to the Immigration Minister of 17 December 2020.

[51] *Detention Action v First-tier and Upper Tribunals, the Lord Chancellor and the Secretary of State for the Home Department* [2015] EWHC 1689 (Admin); [2015] EWCA Civ 840.

43.6. Sections 30 to 38 illegitimately reduce the true meaning of the Refugee Convention for the purpose of avoiding the UK's obligations to refugees in full. These provisions both enable penalisation of refugees in circumstances that the Convention prohibits[52] and exclude refugees by requiring their claims meet standards that are significantly more restricted than the Convention applies.[53] This is wholly improper, sends a dreadful signal inviting other countries to adopt their own bespoke and unlawfully restrictive asylum laws, and risks the refusal of asylum to someone who is at risk of persecution but cannot meet the more restrictive provisions. Refusing asylum in those circumstances is both unfair and inefficient, creating more work for the Home Office in seeking to hound out of the country people who quite legitimately cannot go because of the real risks they face but the system refuses to recognise.

44. The provisions outlined above are no less 'gimmicks' – in the sense of being impractical or unworkable attempts to portray control rather than deliver on moral and legal obligations – than any of the matters the Government is choosing to repeal. They are also all provisions this Government criticised and rejected when in Opposition.[54] If ministers believe there to be any purpose to any of these provisions that they clearly did not see before taking office, they should be required to clearly identify and explain this – and how it provides answer to, amongst other criticism, the analysis of UNHCR that so comprehensively identified the illegitimacy of this legislation.[55]

***Safe routes for seeking asylum***

45. Section 14 of the Nationality and Borders Act 2022 created a legislative basis for the longstanding policy that requires any person who seeks asylum in the UK to be present in the UK at the time of making their claim for asylum.[56] Immigration rules, as set and operated by successive administrations, have long required people from countries from which there is any significant number of people seeking asylum to obtain a visa for travel to the UK and provided no visa to permit anyone to travel for that purpose.[57] Together, these provisions create a 'near-perfect' system for ensuring that the great majority of refugees who may ever seek asylum in the UK – including people with family or other strong connection here – must rely on smuggling gangs and dangerous journeys, not only to immediately get out of the country or countries in which they face persecution and conflict; but on every stage of a journey that is necessary to secure asylum in the UK.

46. The amendment below would require the Secretary of State to attempt to make arrangements with other countries to provide some safe alternative for at least some refugees. It would make refugees with family connection (potentially other connection) to the UK a priority of focus. It would enable the Secretary of State to develop means for sharing responsibility with other countries to encourage and enable their own compliance with international asylum obligations. It would also prohibit the Secretary of State entering arrangements for merely offloading responsibilities from the UK – such as the previous administration sought by its agreement with Rwanda – rather than truly sharing by also

[52] As e.g., expressed more fully in the positions of UNHCR referred to at fn. 49 (above).
[53] *ibid*
[54] See, e.g., references at fn. 45 (above).
[55] *op cit*, fn. 49 (above)
[56] The section requires a claim to be made in person at a designated place: section 14(1). Subsection (2) identifies designated places, expressly identified as "*in the United Kingdom*".
[57] Immigration rules include provision to refuse entry for purposes other than that for which any visa is granted; and to cancel a visa granted for purposes other than those for which a person wishes to use it.

receiving people to its territory and into its asylum system. The amendment does not seek to restrict the Secretary of State to any particular scheme for these purposes. Rather, it would leave her free to negotiate arrangements that international partners were able and willing to deliver.

After Clause 38, insert –

"***( ) Asylum claims made outside the UK***

*(1) The Nationality and Borders Act 2022 is amended as follows.*

*(2) In section 14, after subsection (2) insert –*

*(2A) The Secretary of State shall aim to make regulations under subsection (2)(f) within twelve months of the passing of the Border Security, Asylum and Immigration Act 2025 to designate one or more places outside the United Kingdom for the purposes of subsection (1).*
*(2B) The Secretary of State shall seek to make arrangements with other countries for the purpose of fulfilling the aim to which subsection (2A) refers.*
*(2C) Regulations and arrangements made in pursuance of this section may restrict the persons who may make an asylum claim for the purposes of this section to persons with a specified connection to the United Kingdom.*
*2D) A specified connection for the purposes of subsection (2C) shall be specified in the regulations and arrangements made in pursuance of this section and –*
*(a) shall include having a specified family relationship with a person lawfully resident in the United Kingdom; and*
*(b) may include any other connection to the United Kingdom.*
*(2E) A specified family relationship for the purposes of subsection (2D) shall be specified in the regulations and arrangements made in pursuance of this section; and shall include being the grandchild, child, parent, partner or sibling of a person.*
*(2F) Where the Secretary of State enters any agreement with another country for a purpose that includes any provision for sending a person who has made an asylum claim in the UK to that country, the Secretary must ensure that the agreement includes arrangements for the purpose of fulfilling the aim to which subsection (2A) refers.*
*(2G) In subsection (2F) "another country" does not include the country of the nationality of the person or persons to whom the provision for sending relates.*

***Clause 41 (Detention and exercise of functions pending deportation)***

47. We have grave concerns regarding the wide extent of detention powers and their use; and about the deportation powers to which Clause 41 relates. These powers and their use have been expanded very greatly over the past two decades while constraints upon, including judicial oversight of, their exercise have been reduced. It is a matter of record that none of this has brought any satisfaction to those who have demanded, and continue to demand, more and more use of these powers. This ought to prompt further reflection on the inadequacy of approaches to immigration, including as concerns asylum or modern slavery, that are narrowly focused on deterrence and prevention.

48. As regards deportation, Amnesty International has joined with the Project for the Registration of Children as British Citizens (PRCBC) in a separate submission concerning how this Bill affects the rights of people connected to the UK to citizenship of this, their country (British citizenship). That submission, in part, relates to the same deportation provisions to which Clause 41 relates.

**Part 3 (Prevention of Serious Crime)**

49. Part 3 is concerned with policing powers that are, generally, not of particular relevance to immigration and immigration policy, but to crime and policing more widely. In this respect, we can only caution the Committee to be aware that what is before Parliament in Part 3 of the Bill are police and crime matters of wide application rather than immigration matters *per se*.

50. However, insofar as some of these powers may have an immigration policy application, we again draw attention to the near constant expansion of powers in this area over a period of more than two decades that has clearly failed to satisfy any of its proponents. What is needed instead, is a greater focus on supervising and constraining the use of powers that are strictly necessary for the performance of Home Office functions, while requiring that department to act fairly and efficiently to recognise and enable the right or eligibility to enter or stay of people where human rights, legitimate rules and proper consideration of their true circumstances would or does provide for.

**Clause 51 and Fees charged by the Home Office for nationality and immigration functions**

51. Clause 51 is remarkable for being retrospective legislation. It is intended to cure what was unlawful conduct in charging immigration-related fees without legal authority.[58] It would make retrospectively lawful what was unlawful when it was done, as if no violation of law had ever been perpetrated. Whether this would be regarded as permissible in any or most other policy areas – or in respect of any other group of persons who may be required to pay fees imposed by the State for functions to be carried out for or to those persons – is at least open to doubt.

52. However, the motivations and effect of Clause 51 should not be viewed in isolation. Over two decades, the charging of nationality and immigration fees has been developed under successive administrations in ways that do serious harm to many people, and which encourage or licence inefficiency and dysfunction at the Home Office. Migrant Voice and Amnesty have each separately identified harms, injustice and gross inefficiency that results from this.[59] Notionally, the wider public are protected because the costs – or a very disproportionate share of those costs – are simply transferred to the victims of that injustice and inefficiency by ever more and ever-increasing fees. However, the public is not truly shielded from the impact of this, including costs that result from it; while the people required to pay these fees – many of which set far in excess of the administrative cost to the Home Office of the function for which any fee is set – are heavily penalised. That includes being forced into situations of irregular immigration status for no reason other than the imposition

[58] The Immigration Minister's letter to the Chair of the Lords' Secondary Legislation Scrutiny Committee of 15 October 2024 confirms the unlawfulness of the fees that have been charged over many years. It is available as Appendix 2 to the Committee's 4th Report of Session 2024-25, HL Paper 28, October 2025.
[59] See e.g., *Destroying Hopes, Dreams and Lives: how the UK visa costs and process impact migrant's lives*, Migrant Voice, April 2022; and Amnesty UK's briefing: *Immigration Fees: unfair and inefficient*, January 2025.

of a fee, which they cannot possibly pay, that effectively bars them from continuing the lawful residence permitted to them by reason of their meeting the relevant rules.[60] Many of the people affected are children, who have no influence or control over their immigration status. Some of the people affected are people connected to the UK by birth, schooling, etc. who have statutory rights to British citizenship which are made inaccessible to them.[61]

**Conclusion:**

53. We are deeply disappointed by this Bill. It indicates a continuation of wretched policy on asylum and modern slavery rather than a real departure from what has gone before. For reasons of economy, we have not sought to address each and every provision. While we have given particular attention to several provisions of the Bill – and to various matters connected to it – it should not be assumed that provisions or matters on which this submission is silent are, therefore, ones on which we have no concerns or are supportive. Generally, we would encourage Committee Members to require ministers to answer why they are persisting with the deterrence and prevention approach of previous administrations; and to impress upon ministers the need for a departure from this narrow approach. Unless and until immigration systems – including those relating to asylum or modern slavery – are properly designed to recognise, address, and respect the experiences, needs, and rights of the people to whom these systems are applied, these systems will fall short. They will not protect people entitled to safety. They will not comply with international obligations. They will not be fair or efficient. And they will not satisfy any of the various and sometimes opposing concerns from members of the public. They will, however, aid abuse and exploitation of the people whose safety is so recklessly compromised by a continued failure to understand and respond to their true circumstances in truly human fashion.

*25 February 2025*

[60] *ibid*

[61] See more on nationality fees in the joint PRCBC and Amnesty UK briefing to an amendment tabled by Baroness Lister of Burtersett to the Nationality and Borders Bill 2021-22 at Lords Report in March 2022; and, following the later introduction of a fee waiver for children, our joint letter to the Minister of 28 June 2022.