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UK-Rwanda Asylum Agreement: Evidence Prepared for the International Agreements Committee

Introduction

1. This written evidence examines the effectiveness of the UK-Rwanda Agreement that was published on 12 December 2023. In doing so, it addresses questions one, two, three and six.

2. This evidence was prepared by academic staff researching and teaching in the field of immigration and asylum law at Queen Mary University of London and the University of Greenwich. The author previously worked in the field of immigration and asylum law for a substantial number of years, therefore the last part of the response to this call for evidence considers some of the more practical matters that have arisen in the UK-Rwanda Agreement. This evidence highlights the problematic nature of the UK-Rwanda Agreement and argues that it fails to deal with the concerns that were raised by the Supreme Court in its judgment dated 15 November 2023, and thus argues that those that may be relocated to Rwanda will not be offered adequate protection.

Summary of Evidence

3. This evidence considers the significance of assurances, and how they should be evaluated. It argues that assurances should be evaluated first in light of the past record of Rwanda; second, in light of Rwanda's history of failing to comply with the principle of non-refoulment as stipulated in the 1951 Refugee Convention, especially evident through its dealings with Israel (where similar assurances were given by the Rwandan government), and third it notes the significance that the UNHCR's evidence plays in assessing assurances.

4. It also considers Rwanda's (poor) human rights record at safeguarding the interests of asylum seekers/refugees.

5. The evidence also highlights the inadequacies of Rwanda's asylum system, and their officials' limited experience of dealing with asylum

applicants that emanate from certain countries (that regularly claim asylum in the UK).

6. It then considers the lack of understanding that Rwandan decision makers possess about the principle of non-refoulement and the 1951 Refugee Convention.

7. It argues that there was just one instance when an asylum decision was appealed successfully to the High Court and that too in February 2023 (at a time when questions were raised about the impartiality of their judiciary).

8. This evidence also states (in response to question three) that according to the Supreme Court, any monitoring committee will not be in a position to detect failures in the asylum system.

9. This response then considers some other practical issues that this Agreement gives rise to in the last part (in response to question six). It notes that Rwanda has (just) 38 lawyers that deal with asylum and refugee law (initial asylum stage). This is a cause for concern because notwithstanding the very limited availability of legal representation in the UK, there are around 47 providers that undertake publicly funded legal aid immigration and asylum work. Some of these providers have many offices/solicitors/caseworkers that do this work. Therefore, this part argues that 38 lawyers will probably lack capacity to assist asylum seekers/refugees (initial asylum stage) that are relocated to Rwanda.

10. In response to question six, this evidence also argues that vulnerable asylum seekers/refugees may receive poor treatment in Rwanda, due to the lack of availability of appropriate medical facilities.

Assessment of the UK-Rwanda Agreement (hereinafter reference to as the 'Agreement')

Question 1: What is your overall assessment of whether the changes to the asylum partnership arrangements made by the new Agreement, including its legal form, are likely to meet the concerns raised by the Supreme Court?

Question 2: How strong and effective are the protections for persons relocated to Rwanda set out in the Agreement?

11. The first part of this response addresses questions one and two. As such, it assesses whether the changes to the asylum partnership arrangements by the new Agreement are likely to meet the concerns raised by the Supreme Court. It also considers the effectiveness of the protections for persons that may be relocated to Rwanda in the Agreement.

12. As part of this section, consideration will first be given to Rwanda's track record of working with the UNHCR. This section will then consider whether the assurances provided for within the Agreement can be relied upon. In doing so, it will consider how the assurances should be examined, the need to consult that UNHCR's evidence (to examine assurances) and the Israel-Rwanda deal where the Rwandan authorities failed to abide by similar assurances. It then considers Rwanda's record on safeguarding human rights, the adequacy of their asylum system and how appeal rights are exercised there.

Preliminary Matters and Rwanda's Track Record of Working with the UNHCR

13. The Supreme Court held that asylum seekers would indeed face ill-treatment by reason of refoulment if they were removed to Rwanda.[1]

14. The Supreme Court discussed the case of *Soering v United Kingdom* (1989) 11 EHRR 439, where it was held that the duty of the contracting parties under Article 3 of the European Convention on Human Rights (hereinafter referred to as ECHR) is to refrain from subjecting persons to countries where they may face torture or to inhuman or degrading treatment; and that also imports an obligation not to remove persons to other states where there are substantial grounds for believing that they may be at real risk of such ill-treatment.[2]

15. The Supreme Court noted that the Secretary of State for the Home Department (hereinafter referred to the SSHD) conceded that the problems with the Rwandan asylum system were rectified by the future partnership between the UK and Rwanda as stipulated within the Migration and Economic Development

[1] *R (on the application of AAA (Syria) and others) v SSHD* [2023] UKSC 42, para 73.
[2] ibid, para 23.

Partnership (hereinafter referred to as MEDP) given that it provided adequate safeguards against refoulment.[3]According to paragraph 6 of the Agreement, Rwanda has a long history of supporting and integrating asylum seekers and refugees, which is evident through its work with the UNHCR to host the Emergency Transit Mechanism.[4] However, the Supreme Court in its judgment dated November 2023 repeatedly raised concerns about the way Rwanda dealt with asylum seekers/refugees, using evidence provided by the UNHCR (which is discussed in more detail below).

16. According to the case of *Ilias v Hungary*,[5] (a case that the Supreme Court relied upon), it was held that a State cannot remove an asylum seeker to a third intermediary country, unless it is established that there are adequate procedures within that country to ensure that the asylum seeker will have access to an adequate asylum procedure and will not be refouled, otherwise there could be a breach of Article 3 of the European Convention on Human Rights (hereinafter referred to as the ECHR).[6]

17. The Court in *Ilias* went onto state that general deficiencies that were well documented in authoritative reports including the UNHCR 'are considered to have been known'.[7] The Court emphasised that the expelling State cannot assume that the asylum seeker will be treated in accordance with Convention standards and thus it must verify how the authorities of that country practically apply their legislation on asylum.[8]

Can the Assurances (within the Agreement) be Relied Upon?

i) <u>The Importance of Examining Assurances Properly</u>

18. Paragraph 18 of the Agreement states that the UK and Rwanda have agreed a new treaty that addresses the conclusions of the Supreme Court decision, in particular regarding the risk of refoulement.[9] It further states that under the treaty, individuals that are not granted asylum or humanitarian protection will get

[3] ibid, para 46.
[4] UK Government, 'Safety of Rwanda (Asylum and Immigration) Bill: Policy Statement' (12 December 2023), Available at: assets.publishing.service.gov.uk/media/657850ff254aaa000d050b07/Policy_Statement_-_Safety_of_Rwanda__Asylum_and_Immigration__Bill.pdf.
[5] Application no 47287/15, Grand Chamber.
[6] ibid, para 134-Article 3 of the ECHR protects individuals from being tortured or facing inhuman and degrading treatment.
[7] ibid, para 141.
[8] ibid.
[9] UK Government (n 4).

permanent residence and have access to the employment market and social security.[10] This will ensure that no individual is refouled from Rwanda.[11]

19. According to paragraph 13 of the Agreement, the UK Government and the Government of Rwanda, 'have agreed and begun to implement assurances and commitments to strengthen Rwanda's asylum system. These assurances and commitments provide clear evidence of GoR's [Government of Rwanda] ability to fulfil its obligations generally and specifically to ensure that Relocated Individuals face no risk of refoulement. These assurances and commitments, together with the treaty and conclusions from Foreign, Commonwealth and Development Office experts which are reflected throughout this Statement, allow HMG [Her Majesty's Government] to state, with confidence, that the Supreme Court's concerns have been addressed and that Rwanda is safe'.[12]

20. The Supreme Court noted that it is *not* required to accept the government's evaluation of assurances unless there is compelling evidence to the contrary,[13] which seems to be the case here given the Rwandan authorities record on failing to abide by the principle of non-refoulment, and its general human rights record (discussed in more detail below). According to the Supreme Court, weight is given to assurances (that are given from the government) that reflect the advice of officials with relevant expertise and experience.[14]

21. The Supreme Court emphasised that there was a need to carry out a fact-sensitive examination of how the assurances would operate in practice.[15] This meant checking the terms of the assurances, the general human rights situation in the receiving State (for which Rwanda has been criticised by the UNHCR), its laws (which appear workable) and practices (which are questionable as discussed below) in abiding by similar assurances, the existence of monitoring mechanisms, and the examination of the reliability of the assurances by the domestic courts of the sending State.[16]

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[10] ibid.
[11] ibid.
[12] ibid.
[13] *R (on the application of AAA (Syria) and others) v SSHD [2023] UKSC 42*, para 52.
[14] ibid.
[15] ibid, para 48.
[16] ibid.

22. The Supreme Court was highly critical of the High Court, as the latter concluded that Rwanda would act in accordance with the terms stipulated within the Memorandum of Understanding/Notes Verbales, and placed emphasises on the fact that Rwanda and the UK have shared bilateral relations for almost 25 years.[17] The Supreme Court criticised the High Court as the latter believed that the agreement between Rwanda and the UK 'will rest on a recognition of the expertise that resides in the executive to evaluate the worth of promises made by a friendly foreign state'.[18]

23. According to the Supreme Court, the High Court was provided with a table that contained at least 100 allegations of refoulment and threatened refoulment (enclosed within the UNHCR's evidence and within the minutes of meetings with the Home Office officials).[19] The Supreme Court noted that the High Court had failed to properly consider the evidence that was placed before it that detailed the serious and systemic defects in Rwanda's procedures and institution for processing asylum claims, its history of breaching the principle of non-refoulment which continued during the negotiation of the MEDP and after its execution and its failure to abide by similar assurances which it had given to another foreign government.[20] Therefore, the Supreme Court noted that according to the evidence that the UNHCR had presented to the High Court, the Rwandan authorities had failed to comply with their obligations under the 1951 Refugee Convention in regards to its history on refoulement and its asylum practice(s).[21]

24. The Supreme Court considered it necessary to refer to precedents on the approach that needed to be adopted where the safety of the third country depended on the *assurances* that were given by its government.[22]

25. The Supreme Court noted that the seminal case of *Othman v UK*,[23] concerned the sufficiency of assurances that were given by Jordan to the UK, as Othman was being deported there (from

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[17] *AAA v SSHD* [2022] EWHC 3230 Admin, para 71; *R (on the application of AAA (Syria) and others) v SSHD* [2023] UKSC 42, para 62-also see paras 48-49 of the Agreement.
[18] *AAA v SSHD* [2022] EWHC 3230 Admin, para 71; *R (on the application of AAA (Syria) and others) v SSHD* [2023] UKSC 42, para 51.
[19] *R (on the application of AAA (Syria) and others) v SSHD* [2023] UKSC 42, para 89.
[20] ibid, para 50.
[21] ibid, para 62.
[22] ibid, para 46.
[23] (2012) EHRR 1.

the UK). In that case, the Court noted that assurances are not in themselves sufficient to ensure adequate protection against the risk of ill-treatment.[24]

26. The Supreme Court further outlined the approach in the case of *Zabolotnyi v Mateszalka District Court, Hungary*,[25] where diplomatic approaches were relied upon. The Court here considered the sufficiency of assurances that the Hungarian government gave to the UK government regarding Mr Zabolotnyi who may have been subjected to ill-treatment. It was held that the Court was required to examine all the relevant evidence.[26] *Past breaches* of similar assurances by the requesting State (Hungary) were relevant to the question of whether the requesting State could be relied upon to comply with its assurances in the present case.[27] Lord-Lloyd Jones stated the following:

'in deciding whether an assurance can be relied upon, evidence of past compliance or non-compliance with an earlier assurance will obviously be relevant. A state's failure to fulfil assurances in the past may be a powerful reason to disbelieve that they will be fulfilled in the future'.[28]

27. According to the Supreme Court, the Lord Chief Justice pointed out that if the 'Court is not institutionally as well equipped as the government to carry out an evaluation of a diplomatic assurance, the position is different where the assessment of future conduct engages practical considerations which arise from past conduct'.[29] He observed that there were deficiencies about the way the Rwanda asylum system operated before the summer of 2022.[30]

28. Therefore, from the above-mentioned information, it seems doubtful whether Rwanda will comply with the assurances within the Agreement, as well as the principle of non-refoulment. As Rwanda has failed to comply such assurances in the past, there is indeed reason to disbelieve that the assurances stipulated within the Agreement will be fulfilled in the future regarding non-refoulment. Concerns can also be raised about the treatment that asylum seekers would receive, the way their claims would be handled, the appeal rights, amongst other factors.

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[24] ibid, para 187.
[25] [2021] UKSC 14.
[26] ibid para 50; *R (on the application of AAA (Syria) and others) v SSHD [2023] UKSC 42*, para 49.
[27] ibid.
[28] ibid, para 46.
[29] *R (on the application of AAA (Syria) and others) v SSHD* [2023] UKSC 42, para 58.
[30] ibid.

ii) The Need to Consult with the UNHCR

29. According to the Supreme Court, the Divisional Court had erroneously failed to engage with the UNHCR's evidence stating that it carried 'no weight'.[31]

30. In addition to the above-mentioned information, the Supreme Court noted that the UNHCR criticised Rwanda for failing to abide by the assurances that it had given to Israel under an agreement for the removal of asylum seekers from Israel to Rwanda.[32]

31. The Supreme Court emphasised the importance and the role of the UNHCR in paragraphs 65 to 71. It noted that the UNHCR is entrusted by the United Nations General Assembly to interpret and apply the Refugee Convention, and that State parties should cooperate with it to facilitate its duties of supervising the application of the provisions of the Refugee Convention.[33] The UNHCR's interpretation and guidance of the Refugee Convention is to be accorded considerable weight *Al-Sirri v Secretary of State for the Home Department* [2012] UKSC 54; [2013] 1 AC 745, para 36; *IA (Iran) v Secretary of State for the Home Department* [2014] UKSC 6; [2014] 1 WLR 384.[34]

32. The Supreme Court noted that the UNHCR possessed unique and unrivalled expertise of asylum and refugee law.[35] The UNHCR has been operating in Rwanda since 1993, and 332 of its staff members worked there at the time this case was heard.[36]

33. Although, it did not play an official role in the Rwandan asylum system, it was (at times) sent copies of asylum decisions and received information from asylum seekers and other non-governmental organisations.[37]

34. It possessed information about the practical realities of the Rwandan asylum system, something that the UK Home Office had

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[31] *AAA v SSHD* [2022] EWHC 3230 Admin, para 71; *R (on the application of AAA (Syria) and others) v SSHD* [2023] UKSC 42, paras 62, 64.
[32] *R (on the application of AAA (Syria) and others) v SSHD* [2023] UKSC 42, para 60.
[33] ibid, para 65.
[34] ibid, para 66.
[35] ibid.
[36] ibid, para 68.
[37] ibid.

acknowledged.[38] Thus, the Supreme Court acknowledged that importance needed to be attached to the evidence of the UNHCR.[39]

35. The Supreme Court noted that Rwanda had a history of refoulment and an inadequate asylum system.[40] This was a relevant factor in assessing whether persons removed to Rwanda (in order for their claims to asylum to be decided by the Rwandan authorities) were at risk of refoulement.[41] The government had failed to hold talks with the UNHCR and other non-governmental organisations to establish this.[42]

36. It is also doubtful if the UK Government drafted this Agreement (dated 12 December 2023) in collaboration with the UNHCR. If not, then it is likely that the UNHCR may criticise it, in addition to the UK Supreme Court.

iii) <u>Israel/Rwanda Arrangements</u>

37. In paragraph 58 of the Agreement, the UK Government noted some of the concerns that the Supreme Court raised regarding Rwanda's inability to uphold its obligations in accordance with its arrangement with Israel.[43]

38. It was noted (by the Supreme Court) that from 2013 to 2018, Israel and Rwanda had an agreement in place to process asylum claims made in Israel, by nationals of Eritrea and Sudan in Rwanda.[44]

39. This agreement included an explicit undertaking by the Rwandan authorities that ensured that the principle of non-refoulment would be complied with.[45] Those that were transferred to Rwanda were not given the right to settle and were at risk of refoulment.[46]

40. There was evidence to suggest that the Rwandan authorities were breaching their obligations under the Refugee Convention

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[38] ibid.
[39] ibid.
[40] ibid, para 63.
[41] ibid.
[42] ibid.
[43] UK Government (n 4).
[44] *R (on the application of AAA (Syria) and others) v SSHD* [2023] UKSC 42, para 95.
[45] ibid.
[46] ibid, para 97.

because 100 nationals from Eritrea and Sudan were moved clandestinely to Uganda during 2015 and 2016.[47]

41. The SSHD submitted that as this arrangement was entered into some years ago, it was different from the MEDP and could thus not shed any light on whether the Rwandan government could be relied upon to comply with its assurances under the MEDP.[48]

42. For the Supreme Court to assess whether an agreement (including one that is entered into good faith at a political level) is achievable in practice, one needs to be conscious of the fact that inspirations and aspirations do not necessarily correspond to reality.[49] The Court considered the history of Rwanda's agreement with Israel (an agreement which was entered into good faith), and that the government of Israel believed that it would be fulfilled.[50] The main issue for the Supreme Court was not the good faith of the government of Rwanda (politically), 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'.[51]

43. The Court further noted that the past and present practices cannot be ignored or sidelined as suggested by the SSHD.[52] The case of *Soering* involves a consideration of the risk and thus it requires prediction which is judged in light of what has occurred in the past, and in the light of the situation that currently exists and in the light of what may be promised in the future.[53]

44. Therefore, given the way the agreement between Israel and Rwanda has functioned, it seems doubtful if Rwanda would comply with its obligations under the treaty with the UK, and with the principle of non-refoulment.

Rwanda's record on human rights

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[47] ibid, para 96.
[48] ibid, para 99.
[49] ibid, para 102.
[50] ibid.
[51] ibid.
[52] ibid, para 103.
[53] ibid.

45. The Supreme Court noted that Rwanda had progressed economically and socially following the genocide of 1994, however, it possessed a negative record on the protection of human rights.[54]

46. The Agreement details how seriously Rwanda upholds its human rights obligations in paragraphs 23 and 33 to 45. It would be appropriate to examine the Supreme Court's views on this point.

47. According to the Supreme Court (in proceedings to which the SSHD was a party in 2017), the Divisional Court found that 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': *Government of Rwanda v Nteziryayo* [2017] EWHC 1912 (Admin), para 370.[55]

48. The UK government criticised Rwanda for the killings, deaths in custody, enforced disappearances and torture.[56]

49. In 2021, officials provided advice to UK ministers during the process of selecting a partner country for the removal of asylum seekers and advised Ministers of Rwanda's poor record on safeguarding human rights.[57]

50. Although, most human rights violations did indeed concern criticism of the Rwandan government, in 2018, the Rwandan police fired ammunition towards refugees who were protesting against cuts to food rations that resulted in the killing of 12 refugees.[58] The Lord Chief Justice noted that this raised 'profound human rights concerns.[59]

51. Paragraph 43 of the Agreement confirms that the British Government was aware that these protests resulted in refugee fatalities.[60] It further explains that this was an isolated case, and that there was no information on similar incidents since 2018. This incident was isolated because asylum seekers do not

[54] ibid, para 75.
[55] ibid, para 76.
[56] ibid.
[57] ibid.
[58] ibid.
[59] ibid.
[60] UK Government (n 4).

regularly hold protests the State. This incident indicates the Rwandan government's perceived perception towards asylum seekers. It also shows how the Rwandan government reacts to protests that are held by asylum seekers. One wonders how asylum seekers/refugees would be treated by the Rwandan authorities should they hold further protests in the future?

52. According to the Supreme Court, 'since Rwanda has ratified many international human rights conventions, including UNCAT and the ICCPR, this raises serious questions as to its compliance with its international obligations'.[61] Even paragraph 46 of the Agreement lists the several international human rights conventions that Rwanda has ratified.[62] It goes without saying that Rwanda tends to deviate away from its obligations as shown by the evidence above. Thus, there is no guarantee that it will abide by the new treaty (and the principle of non-refoulement).

53. Paragraph 41 of the Agreement confirms that relocated individuals will be supported (study, integration, healthcare and training) for five years.[63] However, what will happen to them after these five years? I could not find anything on this point within the Agreement.

Adequacy of Rwanda's Asylum System

54. This part considers the lack of understanding that the Rwandan decision-makers possess about asylum/refugee law and their lack of experience of dealing with asylum seekers that emanate from certain countries that regularly claim asylum in the UK. Concerns were raised about the Rwandan government's understanding of refugee law.[64] The UNHCR's evidence showed that the Rwandan officials that made decisions in asylum cases misunderstood the meaning of the term 'refoulment' and the Refugee Convention.[65] The UNHCR raised concerns about how Rwanda applies its legislation concerning refugees (Law No 13/2014 relating to Refugees).[66]

55. According to the UNHCR, the Rwandan officials who had participated in the training exercise that it [the UNHCR] had

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[61] *R (on the application of AAA (Syria) and others) v SSHD* [2023] UKSC 42, para 76.
[62] UK Government (n 4).
[63] ibid.
[64] ibid, para 91.
[65] ibid.
[66] ibid, para 78.

organised had very limited understanding of how to conduct an assessment of whether an asylum seeker could be granted refugee status.[67] The Rwandan officials had informed the UK Home Office that its officials had received training from the International Organisation for Migration, however, the UNHCR produced written evidence from that organisation that denied providing such training.[68] This is a cause for deep concern. Even though paragraph 19 of the Agreement states that a training course (on refugee law) will be provided to Rwanda decision-makers to deal with the concerns that the UNHCR raised.[69] It is uncertain how rigorous this training course will be and whether the decision-makers will be truthful about attending the training course.

56. Even the Supreme Court was concerned that as a result of the Rwandan government's misunderstanding of the Rwandan asylum system, there was a risk that the asylum practices will not change in short term at least.[70]

57. The Supreme Court noted that between 2019 and June 2022, the Rwandan authorities dealt with just 152 asylum claims that emanated predominantly from their neighbouring countries.[71] They have little or no experience of dealing with asylum claims from most of the countries from which asylum claimants in the United Kingdom commonly come from, such as Albania, Iran, Iraq, Pakistan, Syria and Vietnam.[72]

58. The UNHCR produced evidence that showed that some nationals from non-African countries were denied access to the Rwandan asylum system, raising concerns about how Rwanda complied with the Refugee Convention and its foreign relations.[73] The UNHCR advised nationals of Afghanistan and the Middle East to claim asylum in countries within their own region instead.[74]

59. Concerns were also raised about the outcome of the asylum process, because according to the UNHCR's evidence, there was a 100 per cent rejection rate by the Refugee Status Determination Committee from 2020 until 2022 for nationals of Afghanistan, Syria and Yemen (from which asylum seekers removed from the

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[67] ibid.
[68] ibid.
[69] UK Government (n 4).
[70] *R (on the application of AAA (Syria) and others) v SSHD* [2023] UKSC 42, para 93.
[71] ibid, para 77.
[72] ibid.
[73] ibid, para 86.
[74] ibid, para 85.

United Kingdom may well emanate).[75] The Supreme Court pointed out that, according to the Home Office's statistics for the same period, asylum claims in the United Kingdom were granted in 74 per cent of cases from Afghanistan, 98 per cent of cases from Syria, and 40 per cent of cases from Yemen.[76] Thus, this begs the question of how they will deal with individuals that are fleeing persecution from these countries.

60. According to paragraph 128 of the Agreement, students from Afghanistan and Sudan were relocated to Rwanda to complete their studies, but what about asylum seekers (an issue that the Supreme Court raised concerns about)?

Problems Exercising a Right of Appeal

61. The Supreme Court noted that although a right of appeal to the High Court has existed since 2018, there has never been an appeal in practice, which indicated that the system was largely untested.[77] However, paragraph 31 (and indeed 92) of the Agreement lists one example from 23 February 2023, where the Rwandan High Court (ruled against a decision of the Rwandan decision-maker) granted the asylum seeker 'refugee status'.[78] This is just one example, and that too at a time when the impartiality of the Rwandan judiciary was doubted. No other examples have been cited in the Agreement (especially before 2022). Thus, it is fair to assert that the right of appeal to the High Court does indeed remain largely untested.

62. There were concerns that for some of the appeal processes, there was no right to legal representation, and that during the process of negotiation of the MEDP, representatives from the Rwandan government indicated that the contemplated arrangements may not be straightforward to implement in practice.[79] The Supreme Court agreed with this view, stating that, 'the introduction of such a significant change of practice is liable to raise a number of issues, for example as to the role of the claimant's lawyer at each stage of the process, which may require time to resolve'.[80]

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[75] ibid, para 85.
[76] ibid.
[77] ibid, para 82.
[78] UK Government (n 4).
[79] *R (on the application of AAA (Syria) and others) v SSHD* [2023] UKSC 42, para 84.
[80] ibid.

Question 3: What is your view of the enforcement mechanisms in the Agreement including the dispute settlement procedure, the enhances independent Monitoring Committee, and the provision for lodging individual complaints? Do you consider that there are any essential supplementary conditions for this to be an effective process?

63. This section partially answers question three of the call for evidence as it considers the effectiveness of the Monitoring Committee.

64. According to paragraph 103 of the Agreement, the Monitoring Committee will have discretion to set its own priority areas for monitoring, have unfettered access for the purposes of completing assessments and reports, and publish these reports. They will monitor the entire relocation process from the beginning (including initial screening) to relocation and settlement in Rwanda. Crucially, the Monitoring Committee will undertake daily monitoring of the partnership for at least the first three months to ensure rapid identification of and response to any shortcomings. Absurd that they will just undertake daily monitoring for just the first three months?

65. According to the Supreme Court, 'the detection of failures in the asylum system by means of monitoring, however effective it may be, will not prevent those failures from occurring in the first place'.[81] The SSHD stated that the monitoring arrangements under the MEDP provided a safeguard.[82] However, according to the Supreme Court, such arrangements can detect failures within the asylum system, and may result in improvements over time, 'but that will come too late to eliminate the risk of refoulement currently faced by asylum seekers removed to Rwanda'.[83] The Supreme Court further stated:

'it is also unclear whether the monitoring arrangements could provide a solution to problems emanating from the Rwandan government's interpretation of its obligations under the Refugee Convention, or from a lack of independence in the legal system in politically sensitive cases'.[84]

[81] ibid, para 105.
[82] ibid, para 93.
[83] ibid.
[84] ibid.

Question 6: The last part answers question six of the call for evidence: are there any other aspects of the Agreement which you would like to draw to the attention of the International Agreements Committee?

Lack of legal aid available in the UK and Rwanda

66. According to paragraph 44 of the Agreement, those that may be relocated to Rwanda will be provided with legal advice in the UK.[85] Most detainees have access to free legal advice through the Detention Duty Advice Service (hereinafter referred to as DDAS) which has been operating since 2010.[86]

67. There have been ongoing problems with availability of legal advice through the DDAS.[87] Prior to 2018, approximately eight legal aid firms had contracts to undertake DDAS work.[88] However, from September 2018, the Legal Aid Agency (the body that administers legal aid under the Ministry of Justice) awarded these contracts to 75-77 firms many of whom lacked experience of doing DDAS or legal aid work altogether.[89]

68. Despite the expansion of the DDAS, there have been grave concerns regarding the availability of legal advice in detention. From Bail for Immigration Detainee's (hereinafter referred to as BID) research dated December 2022, 43 per cent of the detainees had access to legal advice.[90] Thus, it appears that many asylum seekers that may be subjected to being relocated to Rwanda may not have access to legal advice in the UK. Without access to legal advice, many asylum seekers may be wrongly relocated to Rwanda.

69. It is also noteworthy that by 2022, there were 47 providers of legal aid (publicly funded) that were conducting DDAS surgeries.[91]

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[85] UK Government (n 4).
[86] Anna Lidley, 'The Detention Duty Advice Scheme: Research Summary' (19 October 2020), 1, Available at: Microsoft Word - 2020 Future of Legal Aid Submission on immigration detention.docx (soas.ac.uk)
[87] ibid 1-2.
[88] Anna Lidley, 'Hit and Miss'? Access to Justice Legal Assistance in Immigration Detention', Journal of Human Rights Practice, 2021, 636.
[89] ibid 637.
[90] BID, 'Serious Concerns About the Quality of Legal Advice Available in Detention Centres' (15 December 2022) Available at: https://www.biduk.org/articles/serious-concerns-about-the-quality-of-legal-advice-available-in-detention-centres?mc_cid=23ff0791be&mc_eid=0df7675f11.
[91] *The Queen (on the application of Detention Action) v Lord Chancellor* [2022] EWHC 18 (Admin) 1, para. 19.

According to paragraph 86 of the UK-Rwanda Agreement however, the Rwandan Bar Association has '38 lawyers who provide legal assistance on matters relating to asylum process and migration law'.[92]

70. Further, paragraph 86 of the Agreement further stipulates that 'on 1 March 2023 MINIJUST signed an agreement with the Rwanda Bar Association to provide legal assistance to asylum seekers relocated under the MEDP at all appeal stages of their asylum claims'.[93] According to paragraph 88 of the Agreement, 'Rwanda shall take all reasonable steps to ensure that there is sufficient capacity of appropriately trained legal advisors available to provide free legal advice and that the Parties will cooperate in order to ensure that such capacity is available in all cases'.[94]

71. It goes without saying that if the existing providers (includes firms, non-governmental organisations, charities, etc) of legal aid (there were 47 of them in 2022) in the UK are struggling to provide legal advice and assistance to immigration detainees, then just 38 lawyers that undertake this work in Rwanda will undoubtedly face capacity issues to provide legal advice and assistance at the initial asylum stage.

72. Home Office data obtained under a freedom of information request shows that, between January 2021 and March 2023, 24,083 asylum seekers were issued with letters warning them that they were being considered for forcible removal.[95] In September 2023, there were 75,340 asylum applications lodged in the UK.[96] Thus, a substantial number of asylum seekers will be relocated to Rwanda under this Agreement, and only 38 lawyers will be able to provide them with legal advice and assistance. There is no doubt that just 38 lawyers will lack capacity to assist most of these asylum seekers. Thus, many asylum seekers will not have access to legal advice and assistance in Rwanda. There are also reports of corruption within the Rwandan Bar Association.[97]

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[92] UK Government (n 4).
[93] ibid.
[94] ibid.
[95] Diane Taylor, 'Over 24,000 UK Asylum Seekers Could be Sent to Rwanda Despite Court Ruling' (The Guardian, 30 June 2023), Available at: https://www.theguardian.com/uk-news/2023/jun/30/over-24000-uk-asylum-seekers-could-be-sent-to-rwanda-despite-court-ruling.
[96] UK Government, 'National Statistics: Immigration System Statistics Year Ending September 2023' (23 November 2023), Available at: https://www.gov.uk/government/statistics/immigration-system-statistics-year-ending-september-2023.
[97] Aurore Teta Ufitiwabo, 'Over 50 Discharged from Judiciary Over Corruption Related Offenses in 18 Years' (2 September 2023, Africa Press), Available at:

Medical Assessments

73. According to paragraph 134 of the Agreement, 'Rwanda will carry out an initial medical assessment of each Relocated Individual to establish their medical needs. This assessment will take place as soon as possible following the Relocated Individual's arrival in Rwanda'.[98] The protection team may refer vulnerable individuals for medical or psychosocial support, according to paragraphs 16, 132, 136 of the Agreement.

74. There is no information on the kind of medical assessment that will take place and, on the seniority, or level of experience of those that will undertake these medical examinations.

75. Importantly, it is worth stating that in the UK, organisations such as Freedom from Torture, Helen Bamber Foundation and Medical Justice amongst others provide excellent specialist psychological and trauma-focused therapy to assist asylum seekers and refugees who have survived torture. They also draft detailed medico-legal reports on behalf of such individuals. These reports are drafted by highly trained doctors who provide independent evidence of torture for survivors seeking asylum in the UK. These reports forensically evidence details of torture using international standards, as set out in the Istanbul Protocol.[99]

76. There is nothing in the Agreement that details the work of similar organisations in Rwanda. Thus, torture survivors that are wrongly relocated to Rwanda may not have access to such organisations, in breach of the Istanbul Protocol. The Istanbul Protocol and the "Istanbul Principles" serve as a global standard against which the delivery of expert legal and medical evidence can be benchmarked in the investigation and prevention of torture.[100] 'The Istanbul Protocol should appeal to a wide variety of stakeholders, including States, civil society, doctors, psychologists, social workers, lawyers, forensic specialists, asylum officers, human rights officers and many others'.[101]

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https://www.africa-press.net/rwanda/policy/over-50-discharged-from-judiciary-over-corruption-related-offenses-in-18-years.

[98] UK Government (n 4).

[99] Freedom from Torture, 'Medico-Legal Reports', Available at: https://www.freedomfromtorture.org/help-for-survivors/medico-legal-reports.

[100] United Nations, 'Istanbul Protocol: Manual of the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment of Punishment (2022 Edition)' (29 June 2022), Available at: https://www.ohchr.org/en/publications/policy-and-methodological-publications/istanbul-protocol-manual-effective-0.

[101] ibid.

77. According to research conducted in 2022, the mental health resources in Rwanda were extremely limited with only 12 psychiatrists working in the country (0.10 per 100,000 people) and there just two psychiatric hospitals.[102]

78. There are also report that many Rwandans experience high levels of mental health problems including post-traumatic stress disorder following the mass genocide that occurred there in 1994.[103] Therefore, sending asylum seekers to Rwanda may further reduce the availability of already scarce specialist services to the people of Rwanda.

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[102] World Health Organisation. Mental Health Atlas 2020 Member State Profile [Rwanda] 2020, Available at: https://cdn.who.int/media/docs/default-source/mental-health/mental-health-atlas-2020-country-profiles/rwa.pdf?sfvrsn=a04a018a_5&download=true

[103] Drzewiecki H. 5 Facts about Mental Health in Rwanda: The Borgen Project; 2021, Available at: https://borgenproject.org/mental-health-in-rwanda/