

## UNHCR Analysis of the Legality and Appropriateness of the Transfer of Asylum-Seekers under the UK-Rwanda arrangement: an update

### Introduction

1. On 14 April 2022, the Government of the United Kingdom (UK) and the Government of the Republic of Rwanda published a new Migration and Economic Development Partnership (MEDP) under which certain asylum-seekers in the UK would be transferred to Rwanda to have their claims determined there, and would be provided with protection in Rwanda if successful in those claims.<sup>1</sup>

2. On 8 June 2022, UNHCR published its *Analysis of the Legality and Appropriateness of the Transfer of Asylum-Seekers under the UK-Rwanda arrangement*.<sup>2</sup> This analysis concluded that the arrangement failed to meet the required standards relating to the legality and appropriateness of transfer of asylum-seekers and was incompatible with well-established and binding norms of international refugee law.<sup>3</sup>

3. This present note provides an update to the 2022 analysis in view of relevant developments. These include the UK *Illegal Migration Act*, enacted in July 2023;<sup>4</sup> the judgment of the UK Supreme Court in *R (AAA & others) v Secretary of State for the Home Department*, of 15 November 2023;<sup>5</sup> the *UK-Rwanda Asylum Partnership Treaty* signed on 5 December 2023<sup>6</sup> (currently awaiting ratification by both Parties); and the publication of the Safety of Rwanda (Asylum and Immigration) Bill on 6 December 2023. This note complements, and should be read together with, the 2022 analysis.<sup>7</sup>

4. This updated analysis is provided pursuant to the responsibility granted to UNHCR by the United Nations General Assembly to ensure the promotion and supervision of compliance with international refugee law.<sup>8</sup> UNHCR's supervisory responsibility is reiterated under the 1951 *Convention Relating to the Status of Refugees* and its 1967 *Protocol Relating to the Status of Refugees*, which require all States parties to "co-operate with [UNHCR] in the exercise of its functions," and to "facilitate [UNHCR's] duty of supervising the application" of refugee law.<sup>9</sup> This update is limited to observations pertinent to the exercise of UNHCR's specific mandate and expertise and does not address broader constitutional considerations relating to the Bill, nor provide a detailed analysis of its compatibility with international human rights standards.

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<sup>1</sup> The MEDP was updated and retitled on 6 April 2023: [Memorandum of Understanding between the government of the United Kingdom of Great Britain and Northern Ireland and the government of the Republic of Rwanda for the provision of an asylum partnership arrangement, updated 6 April 2023](#).

<sup>2</sup> [UNHCR Analysis of the Legality and Appropriateness of the Transfer of Asylum- Seekers under the UK-Rwanda arrangement, 8 June 2022](#).

<sup>3</sup> The analysis drew in particular on [UNHCR's Guidance Note on bilateral and/or multilateral transfer arrangements of asylum-seekers, May 2013](#) and UNHCR's [Note on the 'Externalisation' of International Protection, May 2021](#).

<sup>4</sup> [Illegal Migration Act 2023](#).

<sup>5</sup> [R \(AAA & others\) v Secretary of State for the Home Department](#) [2023] UKSC 42.

<sup>6</sup> [Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of Rwanda for the provision of an asylum partnership to strengthen shared international commitments on the protection of refugees and migrants](#), December 2023 See [link](#)

<sup>7</sup> See also [UNHCR's legal observations on the Illegal Migration Bill, 2 May 2023](#), and its [written evidence and submissions](#) in the case of *R (AAA & others) v Secretary of State for the Home Department*.

<sup>8</sup> Statute of the Office of the UNHCR, U.N. Doc. A/RES/428(V) ¶¶ 1, 8(a) (Dec. 14, 1950).

<sup>9</sup> Art. 35 of the 1951 Convention Relating to the Status of Refugees (189 UNTS 137); Art. 2 of the 1967 Protocol Relating to the Status of Refugees (606 UNTS 267).

## I – Summary of applicable principles and standards

5. UNHCR’s 2022 analysis noted, *inter alia*, that asylum-seekers and refugees should ordinarily be processed in the territory of the State where they arrive, or which otherwise has jurisdiction over them. As a general principle, transfer arrangements for asylum-seekers may be permissible, on condition that they, among others, advance international cooperation to uphold refugee protection, enhance responsibility-sharing, and ensure that the rights of those transferred are respected and their protection needs met in practice. Bilateral transfer arrangements should incorporate protection against *refoulement* and ensure access to fair and efficient asylum procedures for the determination of refugee status and/or other forms of international protection. Transferring States retain responsibilities under international refugee law and human rights law towards transferred asylum-seekers, and asylum seekers should be individually assessed as to the lawfulness and appropriateness of any proposed transfer. Transfer arrangements would not be appropriate where they represent an attempt, in whole or part, by a 1951 Convention State party to divest itself of responsibility; or where they are used as an excuse to deny or limit jurisdiction and responsibility under international refugee and human rights law.

## II – UNHCR’s assessment of recent developments relating to the UK-Rwanda asylum partnership

### Responsibility-shifting and externalization

6. UNHCR considers that the UK-Rwanda asylum partnership runs counter to the fundamental principles of global solidarity and responsibility-sharing that underpin the international refugee protection system. It shifts responsibility for identifying and meeting international protection needs from the UK to Rwanda, and is an example of “externalization” of international protection. By entrenching responsibility-shifting, the treaty remains at variance with the spirit and letter of the Refugee Convention. UNHCR notes that past externalization attempts and arrangements have not represented sustainable, effective responses to refugee movements.<sup>10</sup>

7. As before, the treaty foresees that refugee status determination will be carried out by the Rwanda authorities,<sup>11</sup> and that those transferred, even if granted refugee or humanitarian status, will remain in Rwanda.<sup>12</sup>

8. Refugees are already disproportionately hosted in the developing world, in countries that continue to welcome and protect refugees despite very pressing challenges. Low- and middle-income countries, including in Africa, host 75% of the world’s refugees. The definitive transfer of asylum-seekers from the UK to Rwanda will increase, rather than address, this imbalance. It undermines the wider global protection regime, sending a damaging signal to large refugee-hosting countries that the solidarity of international partners can no longer be relied on.

9. The enactment of the UK *Illegal Migration Act* in July 2023 has reinforced UNHCR’s conclusion that the UK-Rwanda arrangement amounts to burden-shifting. Once brought into force, the Act will close down access to asylum in the UK for the vast majority of asylum-seekers

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<sup>10</sup> See, for example: Committee against Torture, Concluding Observations on the sixth periodic report of Australia, 5 December 2022 (CAT/C/AUS/CO/6), available [here](#); ‘UNHCR concerned over Israel’s refugee relocation proposals’, 17 November 2017, available [here](#).

<sup>11</sup> See the [Safety of Rwanda \(Asylum and Immigration Bill\): policy statement](#) issued by the UK Home Secretary on 12 December 2023 and updated on 11 January 2024, which states at para 20 that a new Rwandan asylum law will be enacted. The Treaty envisages (*inter alia*) that the appeals body will be co-chaired by a Commonwealth judge, and seconded experts will be consulted. However, the UK will play no formal part in the decision-making process.

<sup>12</sup> The UK may nonetheless request the return of a relocated individual under Article 11 of the Treaty.

arriving there, requiring their removal to a third country such as Rwanda, no matter how well-founded and compelling the refugee claim.<sup>13</sup>

10. Safe, legal routes to the UK also remain inaccessible to the overwhelming majority of the world's refugees, unable to benefit from bespoke schemes for Ukrainians and British nationals from Hong Kong, or smaller programmes for certain Afghan nationals. In 2023, the number of refugees arriving in the UK through UNHCR-facilitated resettlement programmes averaged 60-70 per month. Even were such routes to be expanded, these cannot replace protection for asylum-seekers arriving independently, to whom the UK owes obligations under international law.

11. Rwanda itself is a generous host to 135,593 refugees (as at 31 December 2023), the majority consisting of refugees from neighbouring countries who were granted protection on a *prima facie* basis. However, since August 2020, Rwanda has made no further grants of *prima facie* status and determinations of refugee status are for the time being conducted only on an individual basis, which has been limited and faces several challenges. Even with the injection of additional resources, and sustained capacity development efforts, the transfer of an unspecified number of asylum-seekers from the UK to Rwanda will inevitably place additional pressure on a nascent and already overstretched system for receiving and adjudicating individual asylum claims.<sup>14</sup> The UK asylum system, on the other hand, despite facing challenging backlogs, is well-capacitated to consider asylum claims, and recent experience with differentiated processing for a range of profiles has yielded significant progress in 2023.

### **Fair and efficient asylum procedures**

12. In its 2022 analysis, UNHCR noted its serious concerns that asylum-seekers transferred from the UK to Rwanda would not have access to fair and efficient procedures for the determination of refugee status, with consequent risks of *refoulement*. These concerns have not yet been overcome.

13. The detailed basis for UNHCR's concerns was set out in the course of its intervention as a "friend of the court" in *R (AAA & others) v Secretary of State for the Home Department*, through written evidence and submissions.<sup>15</sup> UNHCR's submissions focused on access to international protection in Rwanda and the functioning of the Rwandan asylum system.

14. The Supreme Court found in a unanimous judgment that the UK Home Secretary's Rwanda policy was unlawful as there were substantial grounds for believing that asylum-seekers would be at risk of *refoulement* to their countries of origin if removed there, owing to "deficiencies of the Rwandan system" for adjudication of individual asylum claims.<sup>16</sup>

15. The five judges attached significant weight to UNHCR's evidence, noting *inter alia* that the case dealt with matters clearly within UNHCR's remit and expertise, and that UNHCR's evidence

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<sup>13</sup> See UNHCR's observations on the *Illegal Migration Act* [footnote 7].

<sup>14</sup> Conversely, under the Emergency Transit Mechanism, operated by UNHCR under an Memorandum of Understanding with the Government of Rwanda and the African Union, refugees are evacuated on an emergency, temporary basis from life-threatening situations in Libya. Their claims are processed by UNHCR, not the Government of Rwanda, and solutions then secured outside Rwanda, as noted by the Supreme Court in *R (AAA & others) v Secretary of State for the Home Department* at paragraph 77.

<sup>15</sup> See footnote 7.

<sup>16</sup> See *R (AAA & others) v Secretary of State for the Home Department* at para 102 in which the Court notes that "central issue in the present case is therefore [...] the present deficiencies of the Rwandan asylum system [emphasis added]". The Supreme Court thus found in para 105: "As matters stand, the evidence establishes substantial grounds for believing that there is a real risk that asylum claims will not be determined properly, and that asylum seekers will in consequence be at risk of being returned directly or indirectly to their country of origin."

and submissions were “presented with moderation and did not appear to reflect a partisan assessment.”

16. In a policy statement laid before the House of Commons on 12 December 2023 in support of the *Safety of Rwanda (Immigration and Asylum) Bill*<sup>17</sup> the Home Secretary set out a range of considerations in support of his conclusion that despite the Supreme Court judgment, Rwanda should now be considered a “safe third country” for the purposes of relocations under the MEDP.<sup>18</sup> These include matters that were before the Supreme Court (and considered in the course of reaching the judgment), but the statement also relies on elements such as training, new standard operating procedures, and a successful appeal by an asylum applicant to the Rwandan High Court that were not included in the evidence considered by the Supreme Court, as they post-dated the High Court hearing in September 2022.

17. The policy statement also relies on the conclusion of the *UK-Rwanda Asylum Partnership Treaty* on 5 December 2023, which enshrines the partnership in legally binding form, and sets out a number of substantial changes foreseen to the Rwandan refugee status adjudication process for those cases relocated from the UK. These are set out in detail in Annex B to the treaty and include significant proposed changes to both first instance and appeal decision-making bodies, including measures aimed at enhancing the independence and expertise of those bodies and intensive, robust monitoring. According to the policy statement, the changes are to be implemented through a new Rwandan asylum law (not yet published) to be enacted in the coming months.<sup>19</sup>

18. As of January 2024, UNHCR has not observed changes in the practice of asylum adjudication that would overcome the concerns set out in its 2022 analysis and in the detailed evidence presented to the Supreme Court. UNHCR has continued to engage bilaterally with the Government of Rwanda on specific incidents of concern, and will continue to offer technical advice and support to the Government of Rwanda to strengthen its asylum system and the protection of all refugees, as part of its mandated responsibilities.

19. UNHCR notes the detailed, legally-binding commitments now set out in the treaty, which if enacted in law and fully implemented in practice, would address certain key deficiencies in the Rwandan asylum system identified by the Supreme Court. This would however require sustained, long term efforts, the results of which may only be assessed over time. The Supreme Court judges did not question Rwanda’s good faith, nor did they rule out the possibility that the necessary structural changes and capacity development needed to eliminate the risk of *refoulement* could be built in the future, but they concluded that “significant” changes to asylum procedures as they operate in practice would be required, noting that “the necessary changes may not be straightforward, as they require an appreciation that the current approach is inadequate, a change of attitudes, and effective training and monitoring.”<sup>20</sup>

20. This conclusion accords with UNHCR’s own extensive experience in capacity development of national asylum systems, which emphasizes ‘systems thinking’, and notes that training as the principal route to capacity development has significant limitations.<sup>21</sup> In short, the treaty lays out an important basis for an improved asylum system, but until the necessary legal framework and implementation capacity is established, the conclusion of the treaty in itself does not overcome continued procedural fairness and other protection gaps. Long-term and

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<sup>17</sup> [Safety of Rwanda \(Asylum and Immigration\) Bill](#) (as introduced on 7 December 2023).

<sup>18</sup> See ‘Overview’ paragraph of the UK Home Secretary’s policy statement (footnote 11).

<sup>19</sup> [Safety of Rwanda \(Asylum and Immigration\) Bill: Policy Statement](#), para 113.

<sup>20</sup> *R (AAA & others) v Secretary of State for the Home Department* (footnote 5) at para 104.

<sup>21</sup> See for example [UNHCR Asylum Capacity Development \(ACD\) Evaluation: An Independent Evaluation of UNHCR’s Support for Strengthening National Asylum Systems](#) (February 2022).

fundamental engagement and changes in institutional culture are required to develop national asylum eligibility structures with sustainable capacity to efficiently adjudicate individual asylum claims through fair and consistently accessible procedures.

### **Residency rights**

21. Another significant new element introduced in the treaty provides that those relocated who do not apply for asylum in Rwanda, or whose asylum or protection claims are rejected, will nonetheless not be removed from Rwanda. They will instead be entitled to permanent residence there and accorded the same rights and material entitlements as are provided to those recognized as refugees. This is presumably intended to address concerns of *refoulement* related to deficiencies in Rwanda's current refugee adjudication system as identified by the UK Supreme Court. UNHCR remains concerned that the introduction of this provision may not in practice overcome *refoulement* risks, in the absence of the wider changes in structures, procedures, attitudes and understanding identified as being required by the Supreme Court.

22. Furthermore, UNHCR's position is that the formal determination of an individual's refugee status is a key element of ensuring effective and durable protection in line with international standards. The recognition that a fair, efficient asylum process remains fundamental to ensuring refugee protection is evident in the commitments in the new treaty to make detailed improvements to asylum systems and procedures. The need for these is not obviated by a 'back-up' option that is intended to protect against removal in any event. In addition, the integrity of the global asylum system requires processes that differentiate between refugees and those not in need of international protection. This is essential to public confidence, and to ensuring that effective international protection and local integration opportunities will be accorded to those in need.

### **Individual assessment prior to transfer and challenges to removal**

23. In the 2022 analysis, UNHCR set out its concerns that the initial asylum screening interview, which would take place prior to deciding on transfer to Rwanda, is not sufficient to ensure adequate consideration of the lawfulness and appropriateness of removal. These concerns are amplified in relation to the 'Duty to Remove' interview currently being developed for use in the context of removals under the *Illegal Migration Act*. It is UNHCR's firm view that the scheme that would be established under the new 'Safety of Rwanda' Bill, which by Clauses 2 and 4(2) will preclude consideration by decision-makers of any risk of onward *refoulement* from Rwanda, whether on general or individual-specific grounds, and removes the prospect of any challenge to removal on that basis, is deeply worrying and is not in line with the Refugee Convention. UNHCR is similarly deeply concerned about the proposal to legislate to exclude a specific category of individuals – asylum-seekers – from certain protections enshrined by the *Human Rights Act*, including the right to challenge their removal based on European Convention on Human Rights (ECHR) grounds. This undermines the universality of human rights, has implications for the rule of law both domestically and internationally, and sets an acutely troubling precedent.

24. Other concerns set out in the 2022 analysis regarding (*inter alia*) breaches of Article 31 of the Refugee Convention, and obstacles to local integration in Rwanda remain valid and will not be repeated here.

### III – Alternatives to externalization

25. UNHCR recognizes the complex challenges presented by irregular and mixed movements of refugees and migrants across and beyond their regions of origin, including irregular arrivals to the UK across the Channel. The Refugee Convention remains the cornerstone of the international refugee protection regime, establishing an indispensable framework for addressing those challenges, through international cooperation and responsibility-sharing, providing protection for people fleeing war, violence and persecution. UNHCR continues therefore to urge the UK to strengthen cooperation with international partners and neighbours in the spirit of the Convention.

26. Greater multilateral cooperation with and support to countries of origin and those on the key routes along which refugees and migrants are moving will help to address the root causes of displacement and onward movement through strengthened protection, opportunities and solutions. Such a route-based approach requires enhanced prevention, governance, peacebuilding, humanitarian and development efforts, financing and other forms of assistance, and engagement with a diverse range of actors, especially in low to middle income countries that shoulder the largest share of global responsibility for receiving people on the move.<sup>22</sup> The UK's contribution at the 2023 Global Refugee Forum showed a clear and innovative commitment to partnership and support to refugees around the world, including through education, climate initiatives and programmes to address gender-based violence.

27. However, support abroad does not absolve states from sharing responsibility and upholding asylum at home. Ensuring access to and expanding safe and legal pathways to protection in the UK would be another tangible demonstration of responsibility sharing, consistent with the Global Compact on Refugees and providing real and managed alternatives to dangerous, irregular journeys – as well as a basis more effectively to tackle smuggling and trafficking. For those who do arrive at the UK's shores seeking protection, fair and fast procedures are an essential tool for managing arrivals. Those who require international protection can be granted it and move quickly towards self-sufficiency, while those without a legal basis to stay should be swiftly returned. In the last year, the Home Office has proven itself able to adjudicate over 100,000 cases, and these efforts should now be consolidated and sustained.

### IV – Conclusion

28. UNHCR has reviewed the updated UK-Rwanda scheme in light of the principles and standards set out in its 2022 analysis and summarised in Part I above. It maintains its position that the arrangement, as now articulated in the UK-Rwanda Partnership Treaty and accompanying legislative scheme<sup>23</sup> does not meet the required standards relating to the legality and appropriateness of the transfer of asylum seekers and is not compatible with international refugee law.

UNHCR  
15 January 2024

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<sup>22</sup> For more information on the route-based approach see High Commissioner Grandi's [remarks](#) at the University of Melbourne "Displacement and Protection: Global Challenges" conference, 21 April 2023, and High Commissioner Grandi's [opening statement](#) to the Executive Committee of the UNHCR Programme, 9 October 2023, pp 9-10.

<sup>23</sup> Set out in the *UK Illegal Migration Act 2023* and *Safety of Rwanda (Asylum and Immigration) Bill*.