Public Law Project evidence for the International Agreements Committee Inquiry into the UK-Rwanda Asylum Agreement:[1]

December 2023

1. Public Law Project (PLP) is a national legal charity committed to promoting access to justice, better public sector decision-making, the rule of law, and government accountability. PLP consists of a casework team of specialist public law practitioners; a research team of public law and constitutional experts; a policy team committed to parliamentary advocacy on political proposals relevant to our work; and an events team which holds sector-leading training events for legal professionals, government departments and civil society.

2. We respond to the Committee's Inquiry because of our casework and research expertise in immigration, international legal instruments, and human rights. We welcome the opportunity to submit evidence to this Inquiry and we thank the Committee for holding this call for evidence at such short notice due to the Government's decision to expedite the Safety of Rwanda (Asylum and Immigration) Bill through Parliament. Our focus will be on Questions 1 and 2-3 as this is where our institutional expertise lies. The LGBTQI+ refugee and asylum advocacy charity, Rainbow Migration, also supports this evidence and we are grateful for their assistance highlighting evidence related to LGBTQI+ asylum seekers.

3. In summary, PLP's evidence is that the Government's revised UK-Rwanda Agreement does not address the Supreme Court's concerns. There remains a substantial risk that Rwanda will violate the agreement through misunderstanding, neglect or wilful disregard of its obligations. Therefore, transfers to Rwanda continue to be unlawful. The Supreme Court made clear that the problems in Rwanda's asylum system are endemic, cultural and entrenched and would take considerable time and effort to reform. It is not possible to have made such fundamental changes in such a short time and the Government has not done so. In addition, the Rwandan Government's commitment to human rights is sufficiently questionable to raise doubts about their obedience to this treaty in practice. Moreover, we are not satisfied that the mechanisms available to individuals either in general international law nor in this treaty provide effective protection commensurate with the human rights at stake. Litigation before the International Court of Justice, arbitration and complaints give the

[1] This evidence was drafted by Lee Marsons, Senior Researcher at the Public Law Project, with research assistance from Saba Shakil, Research Fellow at the Public Law Project. My thanks to Zehrah Hasan of Rainbow Migration for the material related to LGBTQI+ asylum seekers.

individual no ability to secure emergency relief from an independent authority preventing his or her removal from Rwanda should Rwanda violate this agreement through misunderstanding, neglect or wilful disobedience.

Question one: 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?

4. Overall, PLP's assessment is that the Government's treaty does not satisfy the Supreme Court's concerns in relation to Rwanda, as expressed in its judgment in *The King (on the application of AAA) v Secretary of State for the Home Department*.[2] Therefore, there remains a real risk that asylum seekers could be refouled – that is, removed to countries where they face inhuman or degrading treatment – if transferred to Rwanda. This would place the UK in breach of several statutes passed by Parliament as well as several international treaties to which the UK is a signatory. Ultimately, the changes made by the Government to its agreement with Rwanda are untested and unproved in practice. They rest on the assumption that Rwanda will be willing and able to implement the new treaty effectively, yet the evidence suggests that this is not a reliable assumption.

5. At [74] in its judgment, the Supreme Court summarised its three principal concerns with Rwanda as being: (a) the general poor human rights situation in Rwanda, including assassinations by the Rwandan Government of its domestic critics and the killing of twelve refugees in a camp during protests about cuts to food rations; (b) the poor quality of Rwanda's asylum system from initial decisions to appeals; and (c) Rwanda's non-compliance with assurances given to Israel under a similar arrangement agreed with that country. For the Supreme Court, these three concerns created a real risk that the Rwandan Government would and – more importantly – *could* not comply with its obligations not to refoul people because of systemic deficiencies that would take considerable time to resolve. Contrary to the assertions in the Government's latest policy statement,[3] these concerns are not adequately addressed for reasons we shall explain.

6. On the general poor human rights situation in Rwanda, the Government provides no evidence that this has changed since the Supreme Court's decision. This is not a surprise. That a country could change so fundamentally in such a short space of time would be miraculous. Instead of demonstrating firm changes in Rwanda's human rights record since the Supreme Court's decision, at [43]-[45] of its policy statement the Government dismisses the Supreme Court's evidence as being based on isolated incidents or insists that harm will not occur to asylum seekers removed under this agreement because the Rwandan Government largely targets its domestic critics only.

7. In our view, this is beside the point. That any of the events recognised by the Supreme Court occurred at all shows the potential for very serious human rights violations by the Rwandan

[2] [2023] UKSC 42.
[3] Home Office. Safety of Rwanda (Asylum and Immigration) Bill: Policy Statement. 12 December 2023. Available at https://assets.publishing.service.gov.uk/media/657850ff254aaa000d050b07/Policy_Statement_-_Safety_of_Rwanda__Asylum_and_Immigration__Bill.pdf (accessed 20 December 2023).

Government. This potential remains alive at the present time. Rwanda's human rights record in practice – as opposed to legal theory – remains poor. Indeed, Rwanda withdrew the ability of individuals and NGOs to bring cases to the African Court on Human and Peoples' Rights in 2016.[4] This was only three years after it made the declaration under Article 34(6) of the Protocol to the African Charter on Human and Peoples' Rights allowing non-State parties to institute proceedings in the Court. This stemmed from the Rwandan Government's discontent with a series of cases filed by political opponents. This shows a concerning lack of commitment to human rights ideals.

8. A concrete example of this is the Rwandan Government's treatment of LGBTQI+ people. Charities such as Rainbow Migration have repeatedly highlighted that Rwanda is patently unsafe for LGBTQI+ people seeking asylum and that they are likely to face extensive human rights abuses if removed to Rwanda, especially if they live openly, are visible as LGBTQI+ people, and/or the Rwandan authorities perceive them to be LGBTQI+.[5] For example, Human Rights Watch reported in 2021 that Rwandan authorities arbitrarily arrested and detained over a dozen gay and trans people, and that guards and other detainees violently assaulted them up because of their clothes and identity.[6] A gay man who grew up in Rwanda, who experienced homophobic abuse there, also shared his experiences publicly and expressed that: *"Having experienced the discrimination faced by LGBTQ+ people – or those perceived to be sexual minorities in Rwanda – I am shocked that the UK would deport people from our community there."*[7]

9. Moreover, the UK Government shows no appreciation of critical facts which raise risks in this context. These are that, given the internationally contentious nature of this treaty, the amount of money paid to Rwanda, and Rwanda's insistence that the Supreme Court merely adopted the "lies" of the UN High Commissioner for Refugees,[8] asylum seekers removed under the UK's arrangement may well be politically exposed, with the Rwandan Government wishing to hide evidence of inadequate practice and even malpractice. The Government does not recognise this in its policy statement. For these reasons, we are of the view that the Government has failed to adequately address the concerns raised by the Supreme Court about the general human rights situation in Rwanda.

10. On the Supreme Court's second concern about Rwanda's poor asylum system, Lord Reed, the President of the Court, identified several issues including: discriminatory decision-

[4] Mihreteab Tsighe Taye. *Backlash against individual access to the African Court of Human and Peoples' Rights*. Open Global Rights. (18 February 2023). Available at https://www.openglobalrights.org/backlash-against-individual-access-african-court-human-peoples-rights/ (accessed 20 December 2023).
[5] Rainbow Migration. *Proposals to offshort asylum claims to Rwanda will be harmful to LGBTQI+ people.* Available at: https://www.rainbowmigration.org.uk/news/proposals-to-offshore-asylum-claims-to-rwanda-will-be-harmful-to-lgbtqi-people/ (accessed 20 December 2023).
[6] Human Rights Watch. *Rwanda: Round Ups-Linked to Commonwealth Meeting*. (27 September 2021) Available at: https://www.hrw.org/news/2021/09/27/rwanda-round-ups-linked-commonwealth-meeting (accessed 20 December 2023).
[7] Rainbow Migration. *"I fled Rwanda due to homophobia – I fear for gay refugees being sent there"*.Available at: https://www.rainbowmigration.org.uk/news/i-fled-rwanda-due-to-homophobia-i-fear-for-gay-refugees-being-sent-there/ (accessed 20 December 2023).

[8] GB News. 15 November 2023. Available at https://www.youtube.com/watch?v=BLMFJxLve3Q (accessed 20 December 2023).

making in respect of asylum seekers from the Middle East; a history of practicing refoulement; lack of Rwandan judicial independence; lack of detailed consideration of applications and poor quality or no reasoning; and lack of understanding of international refugee law.

11. In response, the Government argues at [13] in its policy statement that it has provided training to Rwandan officials that address some, though not all, of these concerns:

> In respect of training, for example, from 20 to 24 November 2023, Home Office technical experts, working in collaboration with the Institute for Legal Practice and Development (ILPD), delivered training for 76 trainees which included GoR [Government of Rwanda] officials (MINEMA, MEDP-CU, DGIE, MINIJUST,NCHR), members of the judiciary (High Court) and the Rwandan Bar Association, focusing on consolidating understanding of refugee law and how to apply this in conducting interviews and making effective asylum decisions.[9]

12. A four-day training programme does not begin to address the endemic problems identified by the Supreme Court. Indeed, at [93] in its judgment, the Supreme Court expressly noted that these problems were unlikely to be resolved in the short term:

> Having regard also to the Rwandan government's misunderstanding of its obligations under the Refugee Convention, there is reason to apprehend that there is a real risk that the practices described above will not change, at least in the short term. The Secretary of State points out that resources are provided under the MEDP [Migration and Economic Development Partnership with Rwanda]. However, the provision of resources does not mean that the problems which we have described can be resolved in the short term. The Secretary of State points to the monitoring arrangements under the MEDP as a safeguard. Such arrangements may be capable of detecting failures in the asylum system, and over time may result in the introduction of improvements, but that will come too late to eliminate the risk of refoulement currently faced by asylum seekers removed to Rwanda.

13. These problems will be especially acute in Rwanda's consideration of claims by people seeking asylum with complex needs and who are particularly vulnerable and traumatised. Rainbow Migration has, for instance, highlighted the sensitivities and complexities surrounding asylum claims made on the basis of a person's sexual orientation, gender identity or expression, or sex characteristics (SOGIESC).[10] In such cases, there are often issues around delayed disclosure of a person's SOGIESC, evidential barriers relating to credibility, and particular care and attention needed throughout the asylum process. Consequently, along with less complex asylum applications, there remains a clear risk that

[9] Home Office. Safety of Rwanda (Asylum and Immigration) Bill: Policy Statement. 12 December 2023. Available at https://assets.publishing.service.gov.uk/media/657850ff254aaa000d050b07/Policy_Statement_-_Safety_of_Rwanda__Asylum_and_Immigration__Bill.pdf

[10] Rainbow Migration. *Submission to the Independent Chief Inspector of Borders and Immigration's Inspection of Asylum Casework*. (1 June 2023). Available at: https://www.rainbowmigration.org.uk/publications/rainbow-migrations-submission-to-the-independent-chief-inspector-of-borders-and-immigrations-inspection-of-asylum-casework/ (accessed on 20 December 2023).

LGBTQI+ cases and cases which engage similarly complex issues, would not be considered properly.

14. Therefore, the Supreme Court's conclusion at [105] remains sound: "The structural changes and capacity-building needed to eliminate that risk may be delivered in the future, but they were not shown to be in place at the time when the lawfulness of the policy had to be considered in these proceedings." These structural, longer-term changes have yet to occur and, therefore, the Government has failed to address the Supreme Court's concern in this regard.

15. Ultimately, even if the general human rights concerns did not exist, with the best will in the world Rwanda cannot have changed its asylum system to the extent needed in the short space of time since the Supreme Court's judgment. As Lord Reed said at [102]:

> There is no dispute that the government of Rwanda entered into the MEDP in good faith. We accept that Rwanda has a strong reputational incentive to ensure that the MEDP is adhered to. The financial arrangement may provide a further incentive. In addition, the monitoring arrangements, and the degree of attention which would be likely to be paid to the operation of the MEDP by organisations such as UNHCR, provide further incentives and safeguards. Nevertheless, intentions and aspirations do not necessarily correspond to reality: the question is whether they are achievable in practice…The central issue in the present case is…[Rwanda's] 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…and the scale of the changes in procedure, understanding and culture which are required.

16. That remains the question now and just as the answer was no when the Supreme Court considered the question only a matter of weeks ago, the answer remains no now.

17. On the specific changes in the treaty designed to prevent discrimination and refoulement – namely, that Rwanda has agreed not to discriminate (Article 3), or to remove any asylum seekers who are transferred to Rwanda to any country apart from the UK (Article 10(3))[11] – these safeguards rest on the assumption that Rwanda can be relied upon to fulfil these commitments in practice. In reality, the evidence indicates that Rwanda's reliability is patchy at best. Agreeing with Underhill LJ in the Court of Appeal, at [88] of its judgment the Supreme Court highlighted that Rwanda had "a culture of, at best, insufficient appreciation by DGIE officials of Rwanda's obligations under the Refugee Convention, and at worst a deliberate disregard for those obligations".

18. Moreover at [74] of its judgment, the Supreme Court made clear that "the concerns...in these proceedings relate not to the text of the legislation but to how the system operates in practice." At [91], the Court added that its "concern is [with] the apparent inadequacy of the Rwandan government's understanding of the requirements of refugee law." The

[11] Agreement between the Government 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. 5 December 2023. Available at https://assets.publishing.service.gov.uk/media/656f51d30f12ef07a53e0295/UK-Rwanda_MEDP_-_English_-_Formatted__5_Dec_23__-_UK_VERSION.pdf (accessed 20 December 2023).

agreement's changes of wording and content do not address whether Rwanda could be relied on to understand and uphold its obligations in practice. The Supreme Court decided after looking impartially at the evidence that it could not. With inadequate evidence of structural and cultural changes in Rwanda which the Supreme Court itself recognised would take considerable time, there remains a real risk that asylum seekers will be unlawfully refouled and discriminated against in violation of this agreement.

19. On the Supreme Court's third concern relating to Rwanda's violation of its agreement with Israel, at [62] of its policy statement the Government insists that its own agreement with Rwanda is different: "The lack of monitoring combined with the confidential nature of the agreement, which limited transparency and independent scrutiny, means HMG does not consider the agreement Israel had with Rwanda to be comparable to the MEDP."

20. Unfortunately, this is not an answer that addresses the fundamental problem outlined above about whether Rwanda can be relied on to adhere to this agreement – either due to misunderstanding, neglect or wilful disregard. But what this does demonstrate is that Rwanda has a patchy history of adhering to its international human rights and asylum obligations – as confirmed by the Supreme Court – and that despite these risks that Government wishes to subject asylum seekers to the potential for serious harm.

21. Finally, it was no part of the Supreme Court's conclusion that the Government's agreement taking the form of a Memorandum of Understanding rather than a treaty was a reason for it to be considered unlawful. The Supreme Court's findings related to Rwanda being an unsafe country with endemic problems in its asylum system with a history of violating international agreements. Therefore, the change in legal form from a Memorandum of Understanding to a treaty does not in itself (nor indeed, with the addition of different words) address the factual and legal conclusions of the Supreme Court. If Rwanda is unsafe in practice with a Memorandum of Understanding, it is also unsafe with a treaty. If Rwanda cannot be relied on to adhere to a Memorandum of Understanding, its reliability will also be a concern with a treaty. As we have explained above, the Government has not addressed these concerns – and, as we explain below in our answer for Questions 2-3, the ability to enforce this agreement in international law as a treaty does not provide adequate protection for people at risk of serious harm in any event.

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

Question three: What is your view of the enforcement mechanisms in the Agreement including the dispute settlement procedure, the enhanced 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?

22. PLP's view is that the enforcement mechanisms – both in international law generally and specifically in this treaty – do not provide effective protection for individuals at risk of serious harm. Given the findings of the Supreme Court that Rwanda has enabled refoulement up to the present day, the key question is: does an individual who is currently or in the near future exposed to the risk of being refouled have a right to prevent this harm or secure their return through an independent and effective mechanism? In both international law generally and this treaty specifically, the answer is no. The mechanisms are, therefore, not adequate to protect the fundamental human rights at stake.

23. On the enforcement of this treaty in general international law, the critical point is that individuals lack legal personality under general international law and that international dispute settlement is based almost entirely on the consent of the States party to a dispute. This is particularly true of cases brought to the International Court of Justice, which has no jurisdiction to hear cases brought by non-State actors, including individuals or NGOs. Individuals who wish to have their complaints heard by the International Court of Justice (ICJ) must rely on the will of their State to take up their claim. While the ICJ can order relief, including preliminary measures, such as cessation, reparations and compensation, ICJ litigation can also be an extremely lengthy process, taking up to several years.

24. Moreover, there is the fact that Rwanda has not deposited a declaration recognising the jurisdiction of the ICJ as compulsory. Therefore, it does not in general undertake to appear before the Court should another State institute proceedings against it. In fact, Rwanda has only appeared before the ICJ twice, most recently in 2002, and only to dispute the ICJ's jurisdiction over the claims brought by the Democratic Republic of Congo in relation to purported breaches of international human rights and humanitarian law.[12]

25. As such, individual asylum seekers at risk of serious harm will be subject to the goodwill of the UK Government enforcing this treaty effectively – and, even if the UK Government enforces it assiduously to its letter and spirit, it is still unlikely to offer an effective, immediate mechanism to prevent refoulement in progress given the length of time taken to enforce international law in practice and given the concerns with Rwanda's adherence to international human rights and asylum law.

[12] *Armed Activities on the Territory of the Congo (Democratic Republic of Congo v. Rwanda); Armed Activities on the Territory of the Congo (New Application; 2002). Available at https://www.icj-cij.org/case/126 (accessed 20 December 2023).*

26. Turning to the specific mechanisms in the treaty rather than general international law, Article 22 of the agreement provides that where there is a dispute about the interpretation or implementation of treaty, a Joint Committee comprised of representatives from the UK and Rwandan Governments will seek to settle the dispute. If this fails, then the UK and Rwanda will attempt to resolve the issue at the political level. If this does not succeed, then the two States will undergo arbitration. Like litigation before the ICJ, it is difficult to see how this is an effective protection for individuals at immediate or short-term risk of refoulement.

27. First, the Joint Committee only has an obligation to meet within 14 days after being notified of a dispute. If a refoulement is in progress or has already happened, this will not prevent it or guarantee the return of individuals who have been refouled. Second, individual asylum seekers have no ability to require the Joint Committee to sit or examine a dispute. Third, the Joint Committee has no compulsory powers to require the UK or Rwanda to do anything. Fourth, arbitration is almost entirely confidential and States are entitled to appoint the members of the tribunal, dictate its procedure, and to select the substantive law that will be applied to the agreement. Therefore, the arbitration mechanism is fundamentally inadequate to the rights at stake. It does not provide effective, immediate protection to individuals at risk of – or who are in fact being – refouled.

28. In addition, for the UK and Rwanda even to seek to resolve a dispute assumes that those responsible for monitoring compliance and resolving disputes – either the Joint Committee or Monitoring Committee – will in practice become aware of violations of the agreement. This is a questionable assumption. Lord Anderson of Ipswich, the former Independent Reviewer of Terrorism Legislation, appeared before the International Agreements Committee on 18 December 2023 to give oral evidence related to his experience of deportation with assurances for terrorist suspects. These assurances were designed to ensure that suspects would not be ill-treated and that evidence obtained via torture would not be used in any legal proceedings against the suspects. Lord Anderson noted that ensuring compliance with these assurances took immense work and effort on the part of British officials, even though only a handful of individuals had to be monitored.[13]

29. This is important because, for a court to determine that assurances as to ill-treatment are satisfactory, the ability to reliably verify adherence to them is a necessity. At [23] in the case of *RB (Algeria) v Secretary of State for the Home Department*, for example – which related to assurances as to ill-treatment in Algeria and in which Public Law Project advised – the Court said that: 'Effective verification was…an essential requirement. An assurance the fulfilment of which was incapable of being verified would be of little worth.'[14] In the context of the UK's arrangement with Rwanda, we are considering the need to monitor the treatment of potentially hundreds or even thousands of people. The Government has not been able to reliably prove that its agreement is capable of providing the degree of monitoring to satisfy this requirement.

[13] International Agreements Committee, House of Lords. 18 December 2023, Oral evidence on the UK and Rwanda Asylum Partnership: Lord Anderson of Ipswich. Available at https://parliamentlive.tv/event/index/92176eeb-0105-4c89-b980-2570dd26e2f4 (accessed 20 December 2023).

[14] [2009] UKHL 10.

30. Furthermore, on the individual complaints mechanisms established, Article 15(9) of the treaty permits the Monitoring Committee to establish a process whereby complaints can be lodged directly with the Committee rather than with a representative of the Rwandan Government. In addition, Annex A Paragraph 8 establishes a complaints procedure about the processing of claims (though only with a representative of the Rwandan Government) and Annex A Paragraph 15 establishes a complaints procedure related to accommodation and support delivery, albeit again only with a representative of the Rwandan Government.

31. Like Article 22 and arbitration, these provisions are not fit for purpose. A complaint does not prevent an individual being unlawfully removed or require a person's return after it has happened. A complaint is not commensurate with the risks and rights at stake. The individual has no ability at all to secure emergency relief from an independent judicial authority preventing his or her removal from Rwanda should Rwanda violate this agreement.

32. For all these reasons, PLP's conclusion is that the Government has not addressed the Supreme Court's concerns and that, therefore, Rwanda remains an unsafe country where there is a real risk of refoulement. Moreover, we are not satisfied that the mechanisms available to individuals either in general international law nor in this treaty provide effective protection given the nature of the human rights at stake.