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"How can the UK Government's Rwanda Policy be legal under International Asylum Law?"

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''*On my honour as a student of the Diplomatische Akademie Wien, I submit this work in good faith and pledge that I have neither given nor received unauthorized assistance on it.*"

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Acronyms

Art. – Article

AU – African Union

VCLT – Vienna Convention on the Law of Treaties

MOU – Memorandum of Understanding

MEDP – Migration and Economic Development Partnership

CRAG – Constitutional Reform and Governance Act of 2010

UDHR – Universal Declaration of Human Rights

EU – European Union

ECtHR – European Court of Human Rights

UNHCR – United Nations Human Commission for Human Rights

ETM – Emergency Transit Mechanism

CRPD – Convention on the Rights of Persons with Disabilities

MINEMA – Ministry in Charge of Emergency Management

RSD – Refugee Status Determination

MINAFFET – Ministry of Foreign Affairs and International Cooperation

DGIE – Directorate of Immigration/Emigration

NIDA – National Identification Agency

NHCR – Rwandan National Commission for Human Rights

OPCAT – Optional Protocol to the UN Convention against Torture and other Cruel, Inhuman or degrading treatment or Punishment

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Abstract

English

It is not a new phenomenon for a country bound by the Geneva Convention to outsource (parts of) its asylum procedures to a safe third country. The publication of the conclusion of a Memorandum of Understanding for the provision of an asylum partnership agreement between the Governments of the United Kingdom and Rwanda by the UK government on April 14, 2022, prompted claims that such an agreement would violate international law. This thesis examines three main legal issues: the concept of individual rights under the MOU, the principle of non-refoulement / safe third country, and the question of whether an MOU can serve as a mechanism for implementing such an agreement. All available legal arguments presented by UNHCR, and other relevant parties are examined. None of the arguments raised against the validity of the MOU can withstand legal examination. Rwanda appears to have less corruption and a more developed system of the rule of law than a number of European countries. No legal arguments or facts have surfaced that would justify excluding the Rwandan government's correct application of international legal norms.

***Key words**: Refugees, asylum, externalization, international cooperation, Safe Third Country, First Country of Asylum, UK, Rwanda, memorandums of understanding, the UK-Rwanda MOU*

Deutsch

Asylverfahren (oder Teile hiervon) an Drittstatten auszulagern – zu externalisieren – ist kein neues Phänomen. Die Veröffentlichung des Abschlusses eines Memorandum of Understanding die Vereinbarung einer Asyl- Partnerschaft zwischen den Regierungen des Vereinigten Königreichs auf der einen und Ruandas auf der anderen Seite betreffend am 14. April 2022 resultierte in Behauptungen, dass eine solche Vereinbarung internationales Recht verletzen würde.

Diese Arbeit prüft drei wesentliche Fragen: das Konzept individueller Rechte im Rahmen des MOU, das Prinzip des Non-Refoulements bzw. des Sicheren Drittstaates sowie die Frage, ob eine MOU als Instrument für die Umsetzung einer solchen Vereinbarung dienen kann.

Sämtliche verfügbaren Argumente, die UNHCR aber auch andere relevante Player vorgebracht haben, werden geprüft. Keines der Argumente gegen die Gültigkeit des MOU hält einer rechtlichen Prüfung stand. Ruanda erscheint weniger korrupt zu sein und ein besser entwickeltes Rechtssystem zu haben als eine Reihe europäischer Staaten. Es sind keine

rechtlichen oder faktischen Argumente zum Vorschein gekommen, die es rechtfertigten würden, Ruandas Regierung die korrekte Anwendung internationalen Rechts abzusprechen.

***Schlüsselwörter**: Flüchtlinge, Asyl, Externalisierung, internationale Zusammenarbeit, sicheres Drittland, erstes Asylland, Großbritannien, Ruanda, Absichtserklärungen, die Vereinbarung zwischen Großbritannien und Ruanda*

Chapter One

Introduction

The Memorandum of Understanding (MOU) between the administrations of the United Kingdom of Great Britain and Northern Ireland and the Republic of Rwanda for the provision of an asylum partnership agreement[1] was published by the UK government and announced by the UK Prime Minister, the Rt. Hon Boris Johnson MP, on April 14, 2022. The MOU was signed in Kigali, Rwanda on April 13, 2022, by the United Kingdom's Secretary of State for the Home Department, Priti Patel, and the Rwandan Minister of Foreign Affairs and International Co-operation, Vincent Biruta.[2] For any asylum claim made on or before 27 June 2022, the power to make these inadmissibility and relocation decisions is in paragraph 345A to 345D of the Immigration Rules.[3] Before making an asylum claim in the United Kingdom, did the asylum claimant have the opportunity to make a claim in a secure third country but did not? If the Home Secretary determines that an asylum claim is inadmissible, she may remove the asylum claimant to the safe third country where the opportunity to make the claim arose, or to any other safe third country that accepts the asylum seeker, in this case Rwanda.

The partnership agreement is part of a broader set of changes to the asylum system, under the overarching New Plan for Immigration policy agenda.[4] According to the lengthy title of the MOU, it will establish "an asylum partnership to strengthen shared international commitments on the protection of refugees and migrants." The preamble goes on to describe its other objectives, primarily of the United Kingdom, which include preventing and combating "illegally facilitated and unlawful border migration" by removing certain asylum seekers from the United Kingdom to Rwanda for the processing of their protection claims.

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[1] Home Office, "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," GOV.UK (Home Office, April 13, 2022), https://www.gov.uk/government/publications/memorandum-of-understanding-mou-between-the-uk-and-rwanda/memorandum-of-understanding-between-the-government-of-the-united-kingdom-of-great-britain-and-northern-ireland-and-the-government-of-the-republic-of-r.

[2] Ibid.

[3] The source of authority for all decisions made on or after 28 June 2022 has shifted to sections 80B and 80C of the Nationality, Immigration, and Asylum Act 2022. Section 16 of the Nationality and Borders Act of 2022 added sections 80B and 80C to the 2002 Act. According to the Nationality and Borders Act 2022 (Commencement No. 1, Transitional and Saving Provisions) Regulations 2022, SI/2022/590, asylum claims made prior to 28 June 2022 (i.e., the Judicial Review of *SAA (Sudan) & Others versus the Secretary of State for the Home Department* proceedings) remain subject to paragraphs 345A through D of the Immigration Rules.

[4] The Plan's central objectives are to increase the fairness and efficacy of the asylum system, deter illegal entry to the UK, and remove more easily people without the right to remain in the UK.

In contrast to other international agreements, this is not a treaty. Instead, it is a non-binding political agreement between the United Kingdom and Rwanda. The Constitutional Reform and Governance Act of 2010 (CRAG 2010) exempts such agreements (MOUs), from traditional legislative examination procedures.[5] In addition, the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 [as amended] gives ministers the authority to designate "safe third countries" and relocate asylum seekers elsewhere rather than handling their applications for refuge in the UK.[6] The Nationality and Borders Act of 2022, implemented by the United Kingdom, establishes a hierarchical structure for the provision of refugee protection and asylum. This strategy involves extending complete rights under the Refugee Convention and other related entitlements to refugees who enter a country through established channels, undertake screening processes, and acquire a visa through government programmes. On the contrary, individuals who enter in an unconventional method, such as through boats, trucks, or aircraft, would be subjected to a treatment of lesser status.

The preamble of the Memorandum of Understanding (MOU) acknowledges that individuals are still leaving their countries in pursuit of both safety and economic prospects. However, it highlights that this organised and extensive migration is placing a significant burden on the existing international refugee system. The Memorandum of Understanding (MOU) stipulates that the involved parties express their intention to develop innovative approaches to tackle the issue of migration.[7] Furthermore, the UK and Rwanda express their dedication to enhancing global safeguarding measures by guaranteeing that refugees are not penalised for unauthorised entry and that their claims for protection are promptly assessed in accordance with relevant international laws and standards. These include the 1951 Convention/1967 Protocol, the 1984 UN Convention Against Torture, and the 1966 International Covenant on Civil and Political Rights.

The Memorandum of Understanding (MOU) generated significant controversy and elicited extensive criticism from proponents, civil society, politicians, and inside the UK Parliament,[8] in addition to facing many legal challenges.[9] The constitutionality, practicality, morality,

[5] Constitutional Reform and Governance Act of 2010, (2010), § 20 et seq.
[6] Asylum and Immigration (Treatment of Claimants, Etc.) Act of 2004," §§ 33-35 et seq.
[7] Preamble *UK-Rwanda MOU*.
[8] UK Parliament, "Global Migration Challenge," TheyWorkForYou (UK Parliament, April 19, 2022), https://www.theyworkforyou.com/debates/?id=2022-04-19a.25.0.
[9] Melanie Gower and Patrick Butchard, *UK–Rwanda Migration and Economic Development Partnership*, House of Commons Library, Research Briefing (July 12, 2022), 5, https://commonslibrary.parliament.uk/research-briefings/cbp-9568/.

efficacy, and expense of the policy have been subject to questioning.[10] The United Nations High Commissioner for Refugees (UNHCR) has consistently expressed criticism towards the Memorandum of Understanding (MOU) between the United Kingdom and Rwanda, as well as the Borders and Nationality Act of 2022. On June 8, 2022, the study regarding the legality and sufficiency of the transfer arrangements under the Memorandum of Understanding (MOU)[11] was issued by the agency. The United Nations High Commissioner for Refugees (UNHCR) has consistently expressed criticism towards the Memorandum of Understanding (MOU) between the United Kingdom and Rwanda, as well as the Borders and Nationality Act of 2022. This thesis aims to address three relevant issues posed by the agency, drawing on its significant experience in collaborating with Rwanda and the United Kingdom on asylum matters. In this analysis, we will examine three issues that have been made by the United Nations High Commissioner for Refugees (UNHCR). These concerns include the matter of individual rights and the concept of non-refoulement, the principle of safe third country, and the Memorandum of Understanding (MOU) as the mechanism by which the compatibility of the MOU with international refugee and human rights law can be demonstrated. According to the United Nations High Commissioner for Refugees (UNHCR), it is acknowledged that the United Kingdom (UK) holds the primary duty for ensuring the provision of protection. According to this perspective, the bilateral transfer structure fails to facilitate the equitable distribution of burdens and obligations, and does not effectively foster international collaboration.[12] Furthermore, it can be observed that Rwanda's asylum system is somewhat less developed and equipped in comparison to the highly advanced and well-established asylum system of the United Kingdom.[13]

The Memorandum of Understanding comprises twenty-four "substantive" paragraphs plus an annexe addressing data management and security.[14] The international non-binding nature of the MOU has the advantage that it cannot alter the international obligations of the participating states under the Refugee Convention and the UDHR. In accordance with its designation as a memorandum of understanding, the MOU explicitly states that it lacks legal

[10] Andrew Mitchell, "The Government's Rwanda Plan Will Be Impractical, Ineffective - and Expensive," Conservative Home (Conservative Home, April 19, 2022), https://www.conservativehome.com/platform/2022/04/andrew-mitchell-the-governments-rwanda-plan-will-be-impractical-ineffective-and-expensive.html.

[11] UN High Commissioner for Refugees (UNHCR), UNHCR Analysis of the Legality and Appropriateness of the Transfer of Asylum-Seekers under the UK-Rwanda arrangement, June 8, 2022, accessed 24 December 2023, https://www.refworld.org/docid/62a31cc24.html.

[12] UNHCR, *UNHCR Analysis of the Legality and Appropriateness of the UK-Rwanda MOU*, 1-2.

[13] Ibid, 11-12.

[14] Para. 25-31 *UK-Rwanda MOU*.

enforceability in the realm of international law. Furthermore, the parties' obligations, as outlined in the MOU, do not establish or provide any entitlements to individuals, and any potential non-compliance cannot be subject to legal adjudication.[15] The United Kingdom's continued obligation for the transportation of individuals, including screening, travel arrangements, and the legal requirement for their return, is widely recognised. The courts should not be precluded from taking into account the Memorandum of Understanding in order to gain a comprehensive understanding of the implications for individuals who are being transferred from the United Kingdom to Rwanda.

A Short History of the Proceedings

During the late May and early June of 2022, the Home Secretary issued a total of 47 determinations deeming asylum requests lodged within the United Kingdom as inadmissible, thereby mandating their transfer to Rwanda.[16] The concept of inadmissibility can be defined as the situation where asylum claims are deemed ineligible for substantive consideration in the United Kingdom. This occurs when the claimant has a prior presence in or connection to a safe third country, where they have sought or could reasonably be expected to seek protection, and there exists a reasonable likelihood of removing them to a safe third country within a reasonable period of time.[17]

This implies that the British government will not assess the asylum claim of individuals who have travelled via a nation where they had the opportunity to seek asylum and can be easily returned to Rwanda, as per the existing agreement between the British government and Rwanda.[18] The existing issue arises from the United Kingdom's incapacity, particularly within the Home Office, which holds responsibility for asylum and protection determinations, to effectively address individuals who enter the country "illegally," predominantly over the English Channel. Following its departure from the European Union, the United Kingdom has had challenges in adhering to the established accords governing the regulation of movement with France. Specifically, the UK has faced difficulties in relying on the Dublin system, which formerly facilitated the repatriation of asylum seekers to other EU member states they

[15] Para. 2.2 *UK-Rwanda MOU*.
[16] Lord Justice Lewis and Mr Justice Swift, *AAA & Others V SSHD & Others* (In the High Court of Justice King's Bench Division Divisional Court December 19, 2022).
[17] Home Office, "Inadmissibility: Safe Third Country Cases (Accessible)," GOV.UK (Home Office, June 28, 2022), https://www.gov.uk/government/publications/inadmissibility-third-country-cases/inadmissibility-safe-third-country-cases-accessible.
[18] Ibid. Provides guidance for the new decision framework established by the Nationality and Borders Act 2022, which on June 28, 2022, made appropriate asylum petitions inadmissible on third country grounds by inserting Sections 80B and 80C into the Nationality, Immigration, and Asylum Act 2002.

had transited through.[19] The UK government's decision to reject the idea of free movement and embrace a strong sovereigntist position has posed significant challenges in its efforts to negotiate readmission agreements with its former European Union counterparts. Consequently, it has been compelled to explore alternative solutions, such as the Rwanda approach.

Between 8 and 14 June 2022, over twenty claims were filed in response to the decisions.[20] On 10 June 2022, the Administrative Court denied a request for a temporary restraining order to prohibit the removal of the individual Claimants from the charter flight.[21] The Court of Appeals rejected an appeal against this decision on 13 June 2022.[22] The Supreme Court denied a request for permission to appeal the decision of the Court of Appeal on 14 June 2022.[23] The Administrative Court denied additional applications for interim relief in other claims on 13 and 14 June 2022.[24] On 14 June 2022, three Claimants filed applications for interim measures with the European Court of Human Rights (ECtHR), which the court granted in *N.S.K v. United Kingdom.*[25] The measures halted the deportation of an Iraqi asylum seeker in a dramatic 11th-hour action preventing relocation to Rwanda "until 3 weeks after delivery of the final domestic decision in the ongoing judicial review proceedings".[26]

As a result of the implementation of interim measures, no removals to Rwanda have occurred since June 14, 2022. While the ECtHR's judgement may seem like a reversal of Britain's policy, it is actually just a stay of relocation pending a judicial review appeal of the policy in the *AAA & Others V SSHD & Others* [2022] EWHC 3230 (Admin) case.[27] In claims for judicial review, the court decides questions of law.[28] The purpose is to ensure that public bodies act within the scope of their legal authority and in accordance with the legal principles that regulate the exercise of their decision-making functions.[29] In addition, Parliament requires that public bodies act in accordance with the rights and freedoms guaranteed by the

[19] Melanie Gower and Patrick Butchard, *UK–Rwanda Migration and Economic Development Partnership.*
[20] Ibid.
[21] Ibid.
[22] Ibid.
[23] Ibid.
[24] Ibid.
[25] ECtHR, *N.S.K. v. the United Kingdom* (2022).
[26] Ibid.
[27] *AAA v SSHD.* CO/2032/2022 (2022).
[28] The Civil Procedure Rules 1998," Legislation.gov.uk (The National Archives, 2023), order 53. https://www.legislation.gov.uk/uksi/1998/3132/schedule/1/part/17/made; Article 13 of the European Convention on Human Rights.
[29] The Civil Procedure Rules 1998.

ECHR.[30] In accordance with the High Court's judgement[31] that the UK-Rwanda Memorandum of Understanding is lawful under international law, this thesis also draws conclusions concerning the MOU's compatibility with international obligations and domestic law.

Research Question

This thesis focuses on the following research question: How can the UK-Rwanda MOU be legal under International Asylum Law?

This thesis will not debate political, social, or economic options as those concerns do not pertain to the legal aspect. The sole purpose of the arguments presented in this thesis is to ensure that the law is understood and followed correctly, and that the rights guaranteed by Parliament and international law are respected.

The UNHCR raised many issues in connection with the UK-Rwanda MOU that showed that it was not compatible with the spirit of the 1951 convention in its report and during the Judicial Review at the High Court in the case of *N.S.K. v. the United Kingdom*[32]. This thesis will limit itself to three relevant questions, that it, the concept of individual rights under the MOU, the principle of non-refoulement/safe third country and the MOU as a vehicle for the implementation of the agreement.

The second chapter addresses the claim that the MOU's assurances are inadequate. The MOU provides assurances that both parties are required by international law to observe. The protection against refoulement is stipulated by international law and cannot be waived. Thus, the MOU does not pledge protection, but rather guarantees to uphold the protection required by the Refugee Convention and other human rights conventions.

In addition, the chapter defines a secure third country. For the purposes of paragraph 345B of the United Kingdom Immigration Rules and the Refugee Convention, Rwanda is a secure third country. Rwanda is also considered a safe third country if it "consistently observes" international and regional human rights standards for the protection of asylum seekers and certain non-derogable international human rights standards, has a fair asylum procedure, and provides effective and adequate protection.

[30] Human Rights Act 1998, section 6.
[31] *AAA & Others V SSHD & Others* (2022).
[32] Judicial Review *N.S.K. v. the United Kingdom*.

Chapter three examines the MOU as a partnership agreement for asylum. It explains the estoppel and negotiation principles. It also provides examples of MOUs for the "externalisation" of asylum, such as Denmark's "zero" refugee policy and the MoU between Rwanda, the African Union (AU), and UNHCR under the so-called Emergency Transit Mechanism (ETM).

Research Design, Data, and Delimitations

The purpose of this study is to show that the UK-Rwanda MOU is compatible with international law. Thus, it seeks to answer how it is legal under International human rights and asylum law? The literature stems from the Refugee Convention, the UDHR, and ICCPR among other regional treaties. Court cases from the ECtHR and the ICJ that lay out legal principles pertinent to this study are also reviewed. The overall research is case-based and focuses mainly on the procedures and practises of the administrations of the United Kingdom and Rwanda. The thesis contends that, in terms of international law and the preservation of human rights, the decision to outsource UK asylum procedures to Rwanda is consistent with the 1951 Refugee Convention and human rights. Examining relevant UK Home Office documents and UNHCR pronouncements, as well as ECtHR and UK domestic court rulings, allowed us to track the evolution of asylum procedures. These materials consist of the goals and result plans of the UK-Rwanda MOU, as well as press announcements, reports, and other similar documents. To limit the quantity of this material, only material focusing explicitly on asylum procedures, protections, and relocation is included.

The purpose of the legal analyses is to derive what legal obligations are created by existing international agreements. Some of the requirements international law places on the United Kingdom regarding the relocation of asylum claimants to Rwanda are crystal clear, while others are less so. In offering potential interpretations, we have generally relied on the text, evidence of the drafters' intentions, human rights law analogies, and other interpretive aides. Due to the malleability of the relevant conventions' language, UNHCR has considerable discretion in determining the stringency of the criteria it should promote. This flexibility must necessarily reflect a combination of legal and pragmatic considerations.

Alternatively, if the principle of effective protection is to be considered seriously, meaningful, concrete criteria for the return of asylum seekers to third countries are essential. In addition, among UNHCR's international protection duties is encouraging states to follow the requirements of international law pertaining to refugees. However, a definition of effective

protection that is excessively severe may be impossible in a country like Rwanda, which is normally less developed than the rest of the world.

To get the arguments of the UNHCR, an interview with the UNHCR Senior Legal Officer in the UK, Mr. Larry Bottinick, was conducted on 12th May 2023 via zoom.

Theoretical Framework

Prof. H.L.A. Hart asserts that the international society has social norms. These include rules governing morality, activities, commerce, human rights, etc., as well as rules imposing duties or obligations.[33] Because of the way the international system is formed, there is a need for obligation rules in the relationship between nations and between states and individuals: the 'natural law minimum content'.[34] And as the complexity of international system increased, it became necessary to identify which norms constitute actual obligations. This identification is necessary in order for refugee legal system to exist and for states to comply with valid obligation standards.[35]

On that note, this confirms that international refugee law has *social* rules – the rules of customary international law. It is Prof. Hart's submission that among the sources of law that are valid within an international legal system one source must be supreme and trump law from any other source. These are what he defined as the rule of recognition (peremptory norms; *jus cogens*) which are hierarchically superior to all others, that is, they are the ultimate rule of the international refugee law. In Prof. Hart's *Concept of Law*, it is the ultimate social rule of recognition and supreme criterion of legal validity that unites international law; the heart of the legal system and provides authoritarian criteria for identifying primary rules (treaties).[36]

While it provides criteria for the legal validity of other rules and every other rule's legal validity can be traced back to the rule of recognition, there is no rule that provides criteria for the rule of recognition's legal validity. Therefore, the rule of recognition cannot be valid or illegitimate; it can only serve as a benchmark for determining the validity of other rules as it merely exists as a social reality. Thus, a rule of customary international law does not come into existence if it conflicts with an existing peremptory norm (rule of recognition),[37] and it

[33] H. L. A. Hart, *The Concept of Law*, 3rd ed. (Oxford, United Kingdom: Oxford University Press, 1961).
[34] When Hart talks about the "minimal content" of natural law, he's acknowledging the necessity of rules for a global society to function.
[35] Ibid., 101.
[36] Ibid., 100-101.
[37] Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (*Libyan Arab Jamahiriya v. United States of America*) (Preliminary Objections) I.C.J. Reports 1998,

ceases to exist if a new peremptory norm conflicts with it. The rule of recognition identifies primary rules (treaties) conclusively and authoritatively. The Refugee Convention is an aggregate of (primary) rules that the UK and Rwanda have contracted.[38] It binds the UK and Rwanda and is reasonably effective despite a decentralised and non-coercive enforcement because the law of treaties empower states to deliberately change their own legal rights and obligations.[39]

Though Hart, rejects the assumption that the existence of a rule of recognition is necessary for international law, in 2019, the International Law Commission adopted a set of 23 draught conclusions with accompanying commentaries on *jus cogens*.[40] Hart believed that the rules of international law needed only to be recognised as standards of conduct and supported by appropriate forms of social pressure in order to be regarded as obligatory, legally binding rules.[41] But since international has changed its character since the writing by Hart, the ILC came up with a category of norms that are so fundamental that derogation from them can never be allowed.[42] Initially, peremptory norms were primarily the subject of scholarly debate;[43] thus, the inclusion of Draft Article 50 in the Commission's 1966 Articles on the law of treaties, which became Article 53 of the Vienna Convention, had the effect of mainstreaming it.[44]

Article 53 of the Vienna Convention on the Law of Treaties (VCLT) defines "*a peremptory norm of general international law as a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character*". In both doctrine and practise, Article 53 of the Vienna Convention is accepted as the definition of mandatory norms, and not just for the objectives of the Vienna Convention.[45]

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8. In his separate opinion, Judge Lauterpacht stated, "The principle of jus cogens functions as a concept superior to both customary international law and treaty."

[38] Hart, *Concept of Laws,* 208-231.

[39] Hart, *Concept of Laws.*

[40] ILC, 'Draft conclusions on Peremptory Norms of General International Law (*Jus Cogens*), with commentaries' (2019) UN Doc A/74/10, 141, para. 57.

[41] Ibid., para. 234

[42] Sir Ian Sinclair, *The Vienna Convention on the Law of Treaties* (1984; repr., Manchester Greater Manchester; Dover, N.H.: Manchester University Press, 1973), 110.

[43] *The Oscar Chinn case (Britain v Belgium)* [1934] PCIJ Series A/B, No 63, 65 (Judgment of 12 December, Separate Opinion of Judge Schücking), 148; Verdross, Alfred Von. "Forbidden Treaties in International Law: Comments on Professor Garner's Report on "The Law of Treaties"." *American Journal of International Law* 31, no. 4 (1937): 571-77. https://doi.org/10.2307/2190670.

[44] Draft Article 50 of the ILC, 'Draft Articles on the Law of Treaties' in Yearbook of the International Law Commission, 1966, Vol II, UN Doc A/CN.4/SER.A/1966/ Add.1, 177.

[45] Ibid., note 47, Draft conclusion 2, para. 2 of the commentary.

The 23 Draught findings of the ILC are separated into four sections. Draft conclusion 2 of the first part offers a definition of peremptory rules, adopted verbatim from Article 53 of the Vienna Convention with minor revisions.[46] Draft conclusion 3, states that: *Peremptory norms of general international law (jus cogens) reflect and protect the fundamental values of the international community of States, hierarchically superior to other rules of international law and are universally applicable.* In none of its provisions does the Vienna Convention contain any of these characteristics. Nonetheless, both state practise and doctrine strongly support these qualities.[47] Professor Robert Kolb, who takes a more technical approach to *jus cogens*, acknowledges that the elements of *jus cogens* outlined in Draft conclusion 3 reflect "the totally predominant theory today."[48]

Based on Draft conclusion 2, two criteria comprise the identification of *jus cogens* standards under international law.[49] The first requirement is that that rule in question be a general international law norm, with customary international law acting as the most common foundation.[50] This is the criterion for admission and recognition. The remaining conclusions of the Draft document detail a variety of criteria for what constitutes acceptability and recognition. For instance, Draft conclusion 7 explains who is responsible for acceptance and recognition, which is the international community of nations as a whole. On the other hand, Draft conclusions 8 and 9 outline the many materials that can be utilised for acceptance and recognition.

In its Commentary to the Draft Articles on State Responsibility in 2001 the ILC gave as examples of *jus cogens*[51] the prohibition of aggression, slavery and slave trade, torture (as defined in the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, adopted 10 December 1984), etc. Harts theory on the rule of recognition form the basis of the theory for this thesis. The language of the MOU borrows form customary law

[46] ILC, 'Draft conclusions on Peremptory Norms of General International Law, Draft conclusion 2.
[47] Ibid, Draft conclusion 3, paras. 3-7 (fundamental values), 9-11 (hierarchical superiority), 13-15 (universal applicability).
[48] Robert Kolb, *Peremptory International Law-Jus Cogens: A General Inventory* (Oxford: Hart Publishing, Cop, 2015), 32.
[49] Dire Tladi, "Codification, Progressive Development, New Law, Doctrine, and the Work of the International Law Commission on Peremptory Norms of General International Law (Jus Cogens): Personal Reflections of the Special Rapporteur," *FIU Law Review* 13, no. 6 (2019), 1143-1144. https://doi.org/10.25148/lawrev.13.6.13.
[50] Ibid., note 53, Draft Conclusion 5.
[51] Article 53 defines jus cogens as what is "accepted and recognised by the entire international community of States." In 1966, the ILC "considered it appropriate to provide in general terms that a treaty is null and invalid if it conflicts with a rule of jus cogens and to leave the precise content of this rule to be worked out in State practise and the jurisprudence of international tribunals."

and the law of treaties; hence it does not create other rights parallel to what customary law and treaties have already stated. The international non-binding nature of the MOU means that it does not alter the international obligations of the UK and Rwanda. Rather the UK and Rwanda have borrowed from the language of the Refugee Convention and the human rights Convention which are the primary rules to set out an agreement for externalisation of asylum procedures. Thus, the MOU neither creates new rights or obligation.

Methodology and Analytical Approach

The above analysis led to the following main research questions already mentioned above: How can the UK-Rwanda MOU be legal under International Asylum Law?

In order to answer this question, case law, state practice and doctrine of both general international refugee law and international human rights law shall be analysed. The methodology will be guided by a comparative approach. Such a comparative analysis, however, needs to take into account the structural differences between these "two" fields of law and the context in which the distinct normative foundations evolved. In the course of this comparative analysis the following legal material will be examined: submissions by the UNHCR and other NGOs in the Judicial review case of *AAA & Others V SSHD & Others* (In the High Court of Justice King's Bench Division Divisional Court December 19, 2022), state-to-state practice involving externalization of asylum procedures and judicial decisions by international courts and arbitral tribunals; available expert opinions on memorandum of understanding; scholarly literature.

The methodology utilized encompasses a mixture of legal research, comparative analysis, and examining relevant international treaties, conventions, case law, and scholarly opinions. By employing a multi-faceted methodology; a combination of legal analysis, comparative assessment, and rigorous research, this study aims to provide a deep analysis of the UK-Rwanda MOU within the scope of international asylum law. The research findings will contribute to an understanding of whether the MOU is firstly legal and secondly, whether it complies with relevant legal obligations.

Analytical approach

- Apply a legal framework to evaluate the compatibility of the UK-Rwanda MOU with international asylum law dictates.

- Identifying and analyzing specific provisions, obligations, and principles within the various legal instruments to determine whether they are in fact applicable.
- Assessing whether the MOU conforms with the principle of non-refoulement, fair asylum procedures, and respect for human rights (such as access to protection).
- Determining the MOU's rationale, objectives, and ultimately, the potential impacts it can have on individuals seeking asylum.

Literature Review

The main perspectives in previous legal analysis of the UK-Rwanda MOU form legal scholars and academics is that the MOU is not compatible with the refugee convention and international human rights law.

In his critique, Guy S. Goodwin-Gill raises concerns regarding the arrangement outlined in the introductory note of the memorandum of understanding between the government of the United Kingdom of Great Britain and Northern Ireland and the government of the Republic of Rwanda. Goodwin-Gill argues that the asylum claimants involved in this agreement lack any previous engagement or connection with Rwanda.[52] The MOU was subject to criticism by Felipe González Morales, the UN Special Rapporteur on the human rights of migrants, in his report released in April 2022. The primary concern raised by Morales was the potential adverse effects of the MOU on the human rights of individuals seeking asylum.[53] In order to adhere to the principles of non-refoulement and the prohibition on group deportation, it is recommended that the United Kingdom refrain from transferring asylum seekers to Rwanda without first doing a comprehensive evaluation of the circumstances and protection requirements of each individual.[54]

The United Nations High Commissioner for Refugees (UNHCR), in its publication on June 8, 2022, conducted a study of the legality and suitability of the transfer arrangements outlined in the Memorandum of Understanding (MOU) between the United Kingdom and Rwanda. The

[52] Guy S. Goodwin-Gill, "Memorandum of Understanding between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of Rwanda," *International Legal Materials* 1, no. 1 (September 12, 2022): 1–16, https://doi.org/10.1017/ilm.2022.36.
[53] Special Rapporteur on the human rights of migrants, "OHCHR | Report on Human Rights Violations at International Borders: Trends, Prevention and Accountability," *OHCHR* (OHCHR, April 26, 2022), 30-31, https://www.ohchr.org/en/calls-for-input/2022/report-human-rights-violations-international-borders-trends-prevention-and.
[54] Ibid.

UNHCR has consistently expressed criticism towards this MOU.[55] Due to its longstanding history of cooperation with Rwanda and the United Kingdom in the realm of refugee affairs, this necessitates careful deliberation for the study of the thesis.[56] The UNHCR noted that the United Kingdom is primarily responsible for providing protection.[57] According to its perspective, the bilateral transfer arrangement fails to facilitate the equitable distribution of burdens and obligations, and it does not effectively promote international cooperation or improve the protective space within any given state. Moreover, it can be observed that Rwanda's asylum system is rather nascent when juxtaposed with the highly advanced and well-established asylum system of the United Kingdom.[58]

The UNHCR has called attention to the United Kingdom's responsibility to guarantee that conditions in Rwanda are up to pace with international norms, to conduct individual assessments for protection against refoulement, and to provide access to a fair and effective system for deciding refugee status. The United Kingdom's own initial screening mechanism was insufficient in this regard, and the UNHCR had grave concerns that transferred asylum seekers would not have access to a fair and efficient procedure in Rwanda, which had previously primarily offered protection to refugees from neighbouring countries.[59] Among many other issues, it highlighted the lack of legal representation, the absence of explanations for negative decisions, the inadequacy of access to interpreters, and the arbitrary denial of access to the procedure (likely affecting LGBTIQ+ applicants).[60]

In addition, the UNHCR was unable to systemically monitor the quality of decision-making and adherence to procedural standards, was not permitted to observe the RSD Committee, and was not routinely provided with information on asylum cases.[61] After careful consideration, the UNHCR has concluded that the arrangement cannot be made to conform with international commitments through only cosmetic changes, and hence cannot be considered a valid and/or appropriate bilateral transfers arrangement.[62]

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[55] UNHCR, *Analysis of the Legality and Appropriateness of the Transfer of Asylum-Seekers under the UK-Rwanda arrangement* (June 8, 2022), https://www.refworld.org/docid/62a31cc24.html.
[56] Ibid., 1-2.
[57] Ibid., 11-12.
[58] Ibid., 15.
[59] UNHCR, *Analysis of the Legality and Appropriateness of the Transfer of Asylum-Seekers under the UK-Rwanda arrangement*, 17.
[60] Ibid., 18.
[61] Ibid., 23, 27.
[62] Ibid.

The most important components of this research are the Memorandum of Understanding, non-refoulement, and the safe third country principle. In his book Modern Treaty Law and Practise, Anthony Aust describes the function of the MOU and its application in international agreements between governments. Non-refoulement and state obligations are defined in the Refugee Convention, the UDHR, and various regional accords. These are the major texts that support the thesis and are important to our investigation.

Chapter Two

The Concept of Rights in Asylum and Human Rights Law

The non-refoulement provisions of Article 33, which prohibit states from sending persons to countries where they may face persecution, must serve as the last line of defence for those seeking international protection. It includes persecution, torture, cruel, inhuman, or degrading treatment or punishment, or where their life or freedom would be at risk. The background, nature and effects of *jus cogens* with the aspect of non-refoulement were summarized by the International Criminal Tribunal for the former Yugoslavia (ICTY):

Because of the importance of the values it [the prohibition of torture] protects, this principle has evolved into a peremptory norm or jus cogens, that is, a norm that enjoys a higher rank in the international hierarchy than treaty law and even "ordinary" customary rules. The most conspicuous consequence of this higher rank is that the principle at issue cannot be derogated from by States through international treaties or local or special customs or even general customary rules not endowed with the same normative force.[63]

In the *Furundžija* case, the International Criminal Tribunal for the former Yugoslavia defined torture, which falls within the principle of non-refoulement, as both a peremptory norm and an obligation *erga omnes*. Thus, even without any conventional obligation, the principle of non- refoulement is recognized by civilized nations as binding on States.[64] Rwanda and the United Kingdom have implemented an asylum policy that the UNHCR claims violates the provisions of Article 33 of the Refugee Convention. This chapter demonstrates that the two parties to the MOU have complied with the principle of non-refoulement, which has attained the status of *jus cogens*, but will first begin by laying out the roots of asylum.

The Roots of Asylum

The responsibility of states is the foundation of international human rights law, which has given human rights a distinctively state-centric perspective. Furthermore, it is distinguished by a focus on common interests that represent the core values of the international legal order. The notions of *jus cogens*, or unchangeable norm, and *erga omnes*, or obligations owed to the entire international community, exemplify this value-based approach. Asylum defined as "the

[63] *Prosecutor v. Anton Furundžija*, Case No. IT-95-17/1, Trial Chamber II (1998).
[64] Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide, Advisory Opinion, I.C.J. Reports 1951, 24.

protection that a state grants on its territory or in another location under the control of certain of its organs to a person who seeks it," is a well-known institution with deep historical origins in state practise.[65] The United Nations' 1951 Refugee Convention is the most significant international treaty pertaining to asylum. An asylum seeker is characterised as an individual who is situated outside their country of origin and is either incapable or unwilling to return owing to a substantiated apprehension of being subjected to persecution based on factors such as race, religion, nationality, affiliation with a specific social group, or political convictions.[66]

Following WWII, the 1951 Convention was a response to the failure to safeguard Jewish asylum seekers. The document delineated the responsibilities of nations to afford asylum seekers with the utmost opportunity to exercise their fundamental rights and freedoms. One of the first recorded instances of a king granting sanctuary to a political refugee may be traced back to Ancient Egypt, dating back more than 3,000 years.[67] The duration of a person's right to protection varied from society to society, but one element remained constant: the need to flee from grave danger.[68] Protection within temples of worship and other sacrosanct locations was available to defeated warriors, escaped captives, and social and political outcasts,[69] with their safety contingent upon their physical presence. The historical context of refugee shelters in Europe can be traced back to instances of displacement caused by religious, ethnic, and political persecution as well as conflicts.[70]

Political asylum was typically granted by the sovereign or state to significant allies (such as Mursili III, king of the Hittite Empire in the thirteenth century BCE).[71] During the transitional period from the Middle Ages to the Early Modern Era, the concept of seeking escape and refuge from religious persecution gained significant prominence within the asylum narrative. This narrative subsequently evolved and solidified as an accepted foundation for the provision

[65] L. C. Green, "Territorial Asylum. By Atle Grahl-Madsen. (Published under the Auspices of the Swedish Institute of International Law.) Stockholm: Almqvist & Wiksell; London, Rome, New York: Oceana Publications, Inc., 1980. Pp. Xvi, 231. Index. $28.," *American Journal of International Law* 75, no. 1 (January 1981): 189–91, https://doi.org/10.2307/2201436.
[66] Article 33 Refugee Convention.
[67] UNHCR, *People Forced to Flee: History, Change and Challenge*, *ReliefWeb* (2022), 50. https://www.unhcr.org/people-forced-to-flee-book/.
[68] Ibid., 53.
[69] Linda Rabben, *Sanctuary and Asylum: A Social and Political History* (WA: University of Washington Press, 2016), 32.
[70] Ibid.
[71] UNHCR, *People Forced to Flee.*

of asylum, as outlined in the 1951 Convention.[72] The Peace of Westphalia in 1648 effectively resolved religious conflicts in Europe. However, the subsequent Age of Revolutions witnessed the emergence of a distinct category of individuals known as "political" refugees.[73] This development prompted the implementation of initial regulations governing entry, the establishment of treaties prohibiting the forced return of political exiles, and the creation of state bureaucracies responsible for managing the arrival of refugees.[74] This was the beginnings of an international protection regime.[75]

In the early months of 1946, the General Assembly acknowledged the urgent necessity of differentiating between authentic refugees and displaced individuals, and individuals deemed as "war criminals, quislings, and traitors." Consequently, the topic was subsequently assigned to the Economic and Social Council (ECOSOC) for more deliberation.[76] This led to a four-year undertaking that culminated in the establishment of the 1951 Convention. During the intervening period, two noteworthy advancements emerged that enhanced the safeguarding of refugees.[77] The formulation of the Universal Declaration of Human Rights (UDHR) marked the primary stage in the process of its growth. The second significant development entailed the founding of the Office of the United Nations High Commissioner for Refugees, which possessed a considerably broader scope compared to any preceding agency dedicated to addressing refugee-related matters.

The Universal Declaration of Human Rights was adopted in 1949 with the support of 48 out of the 58 member states of the United Nations.[78] The provision encompassed the entitlement "to actively pursue and experience refuge from persecution in foreign nations;" nonetheless, it did not incorporate a distinct, reciprocal duty for States to furnish such refuge.[79] Nevertheless, it should be noted that the Refugee Convention does not confer a right to enter and reside in a particular area. The explicit reference of asylum rights is made in the 2015 Rwandan Constitution. During the transitional period, the United Nations established the Office of the

[72] UNHCR, *People Forced to Flee.*
[73] Ibid.
[74] Ibid., 60.
[75] Ibid., 66.
[76] UNGA, 'Question of refugees' (1946), UN Doc A/RES/8(I); UNGA, Constitution of the International Refugee Organization, and Agreement on Interim Measures to be taken in respect of refugees and displaced persons, (1946), UN Doc A/RES/62(I).
[77] UNHCR, *People Forced to Flee*, 88.
[78] UNGA. The UDHR. New York: United Nations General Assembly, 1948, art. 14.
[79] Ibid., art. 14(1); Hans Gammeltoft-Hansen and Thomas Gammeltoft-Hansen, "The Right to Seek – Revisited. On the UN Human Rights Declaration Article 14 and Access to Asylum Procedures in the EU," *European Journal of Migration and Law* 10, no. 4 (2008): 439, https://doi.org/10.1163/157181608x380219.

High Commissioner for Refugees, which was not restricted to a certain group of individuals seeking asylum or confined to a particular geographical area. In accordance with the UNHCR Statute, the activities of the organisation are characterised by a humanitarian approach that is devoid of any political agenda. The primary objective is to extend international protection to refugees and to actively pursue durable solutions by collaborating with governments to enable the voluntary repatriation of refugees or their successful integration into new host nations.[80]

The Principle of Non-Refoulement

The norm prohibiting refoulement[81] fulfils the dual requirements of its acceptance, that is, it's acknowledged "by the international community of States as a whole" and "is a norm from which no derogation is permitted".[82] In other words, the practise of States not to forcibly repatriate asylum seekers is founded on the belief (*opinio juris*) that they themselves are constrained by a legal obligation not to do so, and that such an obligation is of *jus cogens*. The principle of non-refoulement is significant because of its position in the international collective memory of the failure of states to grant asylum to refugees fleeing certain genocide at the hands of Nazi Germany during World War II. The Executive Committee made the first tentative reference to the principle of non-refoulement as *jus cogens* in Conclusion No. 25 of 1982, in which the States members determined that the principle of non-refoulement "was gradually acquiring the character of an absolute rule of international law."[83] And in 1996, the Executive Committee determined that non-refoulement had attained the status of a *jus cogens* norm when it held that the "principle of non-refoulement is not subject to derogation."[84]

Consequently, the member states of the Executive Committee reached a consensus that the norm of non-refoulement was a *jus cogens* norm from which "no derogation is permitted."[85]

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[80] UNGA, Statute of the Office of the United Nations High Commissioner for Refugees (UNHCR Statute) (14 December 1950), UN Doc A/RES/428(V), ch. 1, art. 1.

[81] 'General Conclusion on International Protection', Conclusion No. 81, 1997. (i)(q) "... refoulement in all its forms, including through summary removals, occasionally en masse, and reiterates in this regard the need to admit refugees to the territory of States, which includes no *rejection at frontiers without access to fair and effective procedures* for determining their status and protection needs."

[82] UNHCR, '*Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol*', (2007).

[83] Executive Committee Conclusion No. 25, *'General Conclusion on International Protection'*, 1982: (b) "Reaffirmed the importance of the basic principles of international protection and in particular the principle of non-refoulement which was progressively acquiring the character of a peremptory rule of international law."

[84] Executive Committee Conclusion 79, *'General Conclusion on International Protection'*, 1996: '(i) "…. recalls that the principle of non-refoulement is not subject to derogation."

[85] Other non-derogable Articles in the Convention are those pertaining to the definition, non-discrimination, freedom of religion and access to the courts. 1951 Convention, arts. 1, 3, 4 and 16(1) respectively.

The principle is now further stated in Article 33(1) of the Geneva Convention,[86] the Kampala Convention[87] and Article 3 of the European Convention on Human Rights. In Rwanda, the definition of and protection against refoulement as outlined in "Law N° 13ter/2014 of 21 May 2014 Relating to Refugees" are identical to the 1951 Convention.[88]

Thus, beyond the fact that Rwanda and the UK have ratified the 1951 Convention, they also are bound to respect the obligation not to refoule asylum seekers, either unilaterally or in cooperation with each other, bilaterally. In light of the *jus cogens* nature of the norm of non-refoulement, the UNHCR's position that the protections afforded by the MOU are inadequate to protect individual rights is therefore invalid. This is because the MOU neither creates nor removes individual rights, but instead derives from the Refugee Convention and human rights law both nationally (Rwanda and UK domestic laws) and internationally (UDHR). Thus, any violation of the rights of asylum seekers by Rwanda or the United Kingdom will be litigated in accordance with the UDHR and the Refugee Convention.

By playing this "trump" card, which positions the individual right of non-refoulement above all other considerations not meeting the threshold of *jus cogens*, individuals are able to challenge and hold Rwanda and the United Kingdom accountable for not complying. Rwanda and the United Kingdom are obligated under the 1951 Convention's implicit refugee determination process to make decisions that are subject to municipal review. Article 16(1) of the Refugee Convention states that "refugees shall have access to the courts of law on the same basis as nationals," which can be interpreted as allowing refugees to seek legal remedies or challenge decisions related to their asylum claims.[89] Here, advocates can point to the *jus cogens* nature of non-refoulement and insist that, regardless of the policy's source, it should not be administered in a way that sends asylum seekers back to a state where they face the risk of persecution.

The language of paragraph 12.1, which states that legal claims may be presented in a United Kingdom court in relation to a transfer or proposed transfer, indicates that a person is not

[86] Article 33 (1) states, "No Contracting State shall expel or return ('refouler') a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion."
[87] According to the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention) Rwanda as a member states of the African Union is expected to adhere to the principle of non-refoulement as part of its obligations under international law and human rights norms.
[88] Government of Rwanda, 'Official Gazette 26 of 30/06/2014' (Article 21, 88), 30 June 2014.
[89] Access to the courts is a non-derogable right.

prohibited from going to court to enforce their rights.[90] In this case Rwanda is required to provide the United Kingdom with any information it possesses, at the United Kingdom's request, for the purpose of defending a legal claim presented before a United Kingdom court in relation to a transfer or proposed transfer. In the *Note Verbale* (accessible), para. 3.1.2., a relocated asylum seeker will "*be informed of the procedure for making an asylum claim, for appealing a decision on their asylum claim and what the relocated individual will be required to do throughout the procedure, in a language that they understand*".[91]

According to the language of the MOU, different paragraphs touches on the protection of asylum seekers from refoulement. The MOU preamble states that both parties (Rwanda and the UK) promise that asylum claims will be dealt with in accordance with international standards. These standards as laid out in the refugee convention are outlined in paragraph 1.1(g) of the MOU which defines the *"Refugee Convention" as the 1951 Convention in Relation to the Status of Refugees and the 1967 Protocol Relating to the Status of Refugees*.[92] The requirement to process asylum requests in conformity with the Refugee Convention can be deduced from the Convention's overarching framework and purpose, which are to preserve refugees' rights and well-being and to provide them with access to international protection. As a result, both Rwanda and the UK must follow the terms of the Convention while processing asylum requests and determining refugee status.

The objectives of the arrangement set out in paragraph 2.1 states that asylum claims made in Rwanda, will be processed in accordance with Rwanda domestic law, the Refugee Convention, current international standards, including in accordance with international human rights law and including the assurances given under this Arrangement.[93] Article 33(2) of the 1951 Refugee Convention outlines the obligation of states to process asylum claims in accordance with the domestic law of the host state. Despite the fact that Article 33(2) is preoccupied with the non-refoulement principle, it implicitly acknowledges that asylum

[90] Para. 12.1 *UK-Rwanda MOU* states that "Rwanda will provide the United Kingdom with any Information that it holds, upon request of the United Kingdom and without undue delay, for the purpose of defending a legal claim brought in a United Kingdom court in connection with a transfer or proposed transfer of one or more person under this Arrangement."

[91] Home Office, "Note Verbale on Assurances in Paragraph 9 of the MOU between the United Kingdom and Rwanda for the Provision of an Asylum Partnership Arrangement (Accessible)," GOV.UK (Home Office, November 28, 2022), https://www.gov.uk/government/publications/migration-and-economic-development-partnership-asylum-process/note-verbale-on-assurances-in-paragraph-9-of-the-mou-between-the-united-kingdom-and-rwanda-for-the-provision-of-an-asylum-partnership-arrangement-acc.

[92] Para. 1.1(g) *UK-Rwanda MOU*.

[93] Ibid para. 2.1.

requests must be processed in conformity with the local law of the host state. The host state has the last say on whether or not a person is eligible for non-refoulement protections due to security concerns or criminal convictions. As a result of this acknowledgment, asylum applications must be handled in line with the local laws and procedures.

The broader paradigm of the UDHR impacts the interpretation and application of the 1951 Convention. The preamble of the 1951 Refugee Convention affirms the significance of respecting human rights and fundamental freedoms, which apply to all people regardless of nationality or status. This implies that the signatories to the MOU must handle asylum claims in accordance with international human rights standards as rightly laid out in paragraph 2.1 of the MOU. Furthermore, article 14 of the UDHR is closely aligned with the principle of non-refoulement articulated in Article 33 of the Convention, which prohibits the expulsion or return of refugees to a territory where their life or freedom would be at risk. Since non-refoulement is a fundamental principle of asylum law, so is it also a component of the UDHR.

The European Court of Human Rights' ruling in *Ilias and Ahmed v Hungary* (2020) 71 EHRR 6 held that a state cannot remove an individual asylum-seeker without determining his asylum claim unless it has established that *adequate procedures* are in place in the country to which he is to be removed to ensure that the individual's asylum claim is properly determined, and he does not face a risk of refoulement. The only exception is national security or public order concerns.[94] Paragraph 5.1 of the MOU states that "the United Kingdom will carry out initial screening *(adequate procedures)* of asylum seekers, before relocation to Rwanda occurs". In addition, paragraph 11.1 permits the return to the United Kingdom of a Rwandan asylum applicant at the United Kingdom's request.[95] The Home Office also stated, that "Decisions will be made on a case-by-case basis, and no one will be expelled if it is hazardous or unsuitable for them." According to the Executive Committee's 1997 "General Conclusion on International Protection" (Conclusion No. 81), refoulement encompasses rejection at the border without access to equitable and effective procedures to determine their status and protection requirements. Looking at the language of the MOU, the UK is not rejecting asylum

[94] The only exception is for a person for whom there are reasonable grounds "for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country". The Refugee Convention (1951), art. 33. Other non-derogable Articles in the Convention are those pertaining to the definition, non-discrimination, freedom of religion and access to the courts. 1951 Convention, arts. 1, 3, 4 and 16(1) respectively.

[95] Para. 11.1. *UK-Rwanda MOU*.

seekers at the boarder but rather relocating them after determining each individual claim (*carry out initial screening*). Paragraph 5.1 thus allows the UK to point out special people who need special protection. In addition, paragraph 16.1 ensures for the resettlement of vulnerable refugees and states that both parties to the MOU "*will make arrangements for the United Kingdom to resettle a portion of Rwanda's most vulnerable refugees in the United Kingdom, recognising both parties' commitment towards providing better international protection for refugees."*

Anyone of any age can be relocated, with the exception of Rwandan nationals and unaccompanied children[96] seeking asylum (known as UASC). The Home Office published its Equality Impact Assessment of the Rwanda policy[97] on May 9, 2022, detailing who can be sent to Rwanda. According to the Equality Impact Assessment, "people of all ages are theoretically eligible for relocation, with the exception of UASC." Families with children will be relocated voluntarily, at least initially, as part of family groups. As a result, children will not be sent to Rwanda on their own for the time being, and families will not be divided by sending certain family members to Rwanda but not others.

In addition, relocated individuals who are not recognised as refugees still are protected against non-refoulement. Paragraph 10.2 of the MOU states that "for those who are not recognised as refugees Rwanda will consider whether the Relocated Individual has another humanitarian protection need, such that return to their country of origin would result in a real risk of their being subject to inhuman, degrading treatment or torture or a real risk to their life. Where such a protection need exists, Rwanda will provide treatment consistent with that offered to those recognised as refugees (as per paragraph 10.1) and permission to remain in Rwanda. Such persons will be afforded equivalent rights and treatment to those recognised as refugees and will be treated in accordance with international and Rwandan standards."[98]

For those Relocated Individuals who are neither recognised as refugees nor to have protection need in accordance with paragraph 10.2,[99] Rwanda commits to provide opportunity for them

[96] "The age of a child has been frequently misrepresented. The issue is precisely what age is appropriate? In most legal systems, the age of majority is 18 years old. Extremely numerous individuals have claimed to be younger than 18. In light of the absurdity of 18 years, the "in dubio" principle should not apply. If a person is "fully grown" and "considered an adult," he or she should be able to fly, accompanied by administrative personnel and police.

[97] Home Office, "Migration and Economic Development Partnership with Rwanda," GOV.UK (Home Office, May 9, 2022), https://www.gov.uk/government/publications/migration-and-economic-development-partnership-with-rwanda.

[98] Para. 10.2 *UK-Rwanda MOU*.

[99] Para. 10.3 *UK-Rwanda MOU*.

to apply for permission to remain in Rwanda on any other basis in accordance with its domestic immigration laws and ensure they are provided with the relevant information needed to make such an application.[100] Rwanda further commits to provide adequate support and accommodation for their health and security until such a time as their status is regularised or they leave or are removed from Rwanda. These individuals will only be taken to a country in which they have a right to reside. If there is no prospect of such removal occurring for any reason Rwanda will regularise that person's immigration status in Rwanda.[101]

Furthermore, relocated individuals who have been refused asylum and do not have a humanitarian protection need will have the same rights as other individuals making an application under Rwandan immigration laws.[102] Just like the National Prevention Mechanism under the OPCAT, the Joint Committee and the Monitoring Committee ensures Rwanda and the UK implement the assurances in the MOU.[103] Article 15 and 17 of the Convention on the Rights of Persons with Disabilities (CRPD) provides for the freedom and Integrity of the Person. The former states that an asylum seeker has the right to be protected from torture, cruel, inhuman, or degrading treatment or punishment and the later provides protection of the integrity of the person. From the onset, the policy looks like it contains no exceptions for individuals with disabilities, pregnancy, sexual orientation, or gender reassignment. However, the document states that "An individual appraisal of relocation suitability will be conducted for each individual" and that disability, maternity or pregnancy, sexuality, and gender-reassignment will be "considered" in any relocation decision.[104] Paragraph 20.2 requires the parties to the MOU to evaluate the category of persons eligible for relocation and make any modifications deemed necessary by both parties to ensure that the arrangements continue to support the agreement's objectives.[105]

Even though the arrangement is intended to last for 5 years,[106] Rwanda is still expected to adhere to its obligations under Rwandan law, international law, and the MOU.[107] This is because Rwanda does not cease to be obligated under the 1951 Refugee Convention or the UDHR.

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[100] Para. 10.3.1 *UK-Rwanda MOU*.
[101] Para. 10.4 *UK-Rwanda MOU*.
[102] Ibid para. 10.5.
[103] Ibid para. 10.6.
[104] These "loopholes" are implemented so as not to anger the LGBTIQ+ community. In Rwanda, homosexuality is not a legal issue: https://en.wikipedia.org/wiki/LGBT_rights_in_Rwanda.
[105] Para. 20.2 *UK-Rwanda MOU*.
[106] Ibid para. 23.1.
[107] Ibid para. 17.1.

Concept of "a Safe Third Country" and the Principle of Effective Protection

As already mentioned above, the MEDP is detailed in an MOU and two *Notes Verbales*. The first *Note Verbale* is "on guarantees of the Government of Rwanda regarding the asylum process of transferred individuals" (the Asylum Process NV); the second is "on guarantees of the Government of Rwanda regarding the reception and accommodation of transferred individuals" (the Support NV). As far as the Home Secretary is concerned, the Memorandum of Understanding and the *Notes Verbales* provide crucial support for the conclusion that Rwanda is a safe third country for the purposes of paragraph 345B of the United Kingdom Immigration Rules and the Refugee Convention on relocation to safe third country.

The Home Secretary issued four documents on Rwanda as part of her "Review of Asylum Processing" on May 9, 2022. The document "Rwanda: assessment" contained the Home Secretary's general assessment of the situation. The conclusions in this report were supported by information in the following documents: "Rwanda: Country Information on the Asylum System" and "Rwanda: Country Information on Human Rights in General in Rwanda". The fourth document, "Rwanda: Interview Notes," comprised notes taken by Home Office officers during two visits to Rwanda in January and March 2022. The Home Secretary used these documents to determine whether Rwanda is a safe third country, as specified in paragraph 345B of the UK Immigration Rules.

Rwanda is also considered as a safe third country if it 'consistently observes' international and regional human rights standards for the protection of asylum seekers and certain non-derogable international human rights standards, its 'explicit or implicit consent 'accepting relocated individuals', has a fair asylum procedure, 'and provide effective and adequate protection'.[108] Under the Refugee Convention and human rights treaties, non-derogable rights are those rights that are considered essential and inherent to all individuals, regardless of their nationality, race, religion, or other characteristics.

If the principle of effective protection[109] is to be taken seriously, it is essential that meaningful and concrete criteria be established for the relocation of asylum claimants to Rwanda. In addition, UNHCR's international protection responsibilities include, at a minimum, promoting compliance with the requirements of international refugee and human rights law.

[108] Art. 33 Refugee Convention; UNHCR, Considerations on the '*Safe Third Country' Concept, EU Seminar on the Associated States as Safe Third Countries in Asylum Legislation*,' Vienna (8-11) July 1996), 2.
[109] *UK-Rwanda MOU* Preamble states that the arrangement is meant to enhance and "strengthen shared international commitments on the protection of refugees and migrants".

On the other hand, an overly stringent definition of effective protection may be impractical for the typically less developed Rwanda. Similar stringent relocation prerequisites increase the cost for the United Kingdom to accurately apply prerequisites. This chapter will examine the criteria for determining a country's safety in order to determine if Rwanda satisfies the safe third country principle. Included are the bare minimum mandated by international law, a statement of principles from which the UNHCR and the rest of the international community should retreat.

The Elements of Effective Protection

The foundation of international and regional refugee protection frameworks is predicated upon a fundamental dedication to collaborative efforts. The 1951 Convention, which serves as the basis for refugee protection, acknowledges the potential strain that the arrival of a significant number of refugees might have on host countries. It further emphasises the crucial role of international cooperation in effectively addressing and resolving the issue of refugee displacement.[110] The Memorandum of Understanding (MOU) between the United Kingdom and Rwanda signifies a promising indication of progress, highlighting an enhanced acknowledgment of the significance of a more extensive foundation for collaboration. The presence of political will from all parties involved in the Memorandum of Understanding (MOU) was vital in order to maintain and support any endeavours aimed at achieving beneficial transformations. The underlying premise is that it is imperative to conduct a thorough assessment[111] of an asylum applicant's claim before considering their return to Rwanda from the United Kingdom, unless it can be ensured that the individual will be adequately protected in Rwanda. However, what precisely does effective protection encompass?

Prior consent from Rwanda to admit and provide a reasonable determination of refugee status

In order to facilitate the migration of an individual seeking asylum, the United Nations High Commissioner for Refugees (UNHCR) mandates that Rwanda must grant prior consent for admission and ensure a just determination of refugee status.[112] The aforementioned arrangement is clearly outlined in the preamble of the Memorandum of Understanding (MOU) between the United Kingdom and Rwanda. According to the MOU, Rwanda has made a commitment to accept asylum seekers from the United Kingdom and to duly assess

[110] Article 35 of the 1951 Convention; para. 8 UNHCR Statute (1950).
[111] Paragraph 5.1 of the *UK-Rwanda MOU* states that "the United Kingdom will carry out initial screening of asylum seekers, before relocation to Rwanda occurs".
[112] UN High Commissioner for Refugees (UNHCR), *Global Consultations on International Protection/Third Track: Asylum Processes (Fair and Efficient Asylum Procedures)*, 31 May 2001, EC/GC/01/12.

their asylum claims. This commitment ensures that the rights of these individuals, as stipulated by international law, are upheld through Rwanda's domestic asylum system. Furthermore, Rwanda will facilitate the resettlement of those individuals who are recognised as refugees or are in need of other forms of protection.[113] The purpose of this measure is to prevent the practise of chain refoulement. The essence of successful refugee regimes is predicated upon the fundamental principle of consent, which serves as the bedrock for fostering international collaboration.[114] The crucial factor for ensuring comprehensive protection lies on Rwanda's[115] agreement to grant admission. Due to this rationale, the United Nations High Commissioner for Refugees (UNHCR) has officially expressed a preference for accords that establish the allocation of duty in determining asylum cases.[116]

Certain rights outlined in the 1951 Convention are afforded to individuals at an equivalent degree as those enjoyed by nationalities. The aforementioned rights encompass several aspects such as the right to judicial access, public assistance, rationing, primary education, artistic rights, industrial property, fiscal charges, labour standards, and social security.[117] Refugees are entitled to receive preferential treatment comparable to that granted to non-nationals in other domains, including opportunities for wage-earning employment and the freedom to associate.[118] Refugees should be afforded equitable treatment, comparable to that provided to other non-citizen individuals, with respect to self-employment opportunities, housing options, as well as access to secondary and university education. [119]

The memorandum of understanding (MOU) used to allocate responsibility for deciding asylum claims contains paragraphs that resolve the obligations of the United Kingdom and Rwanda with reasonable certainty. Before relocating an asylum applicant to Rwanda, the United Kingdom obtained explicit confirmation from Rwanda that it will admit the individual and conduct a fair determination of their refugee status.[120]

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[113] UK-Rwanda MOU.
[114] UN High Commissioner for Refugees (UNHCR), *UNHCR's Observations on the European Commission's Proposal for a Council Directive on Minimum Standards on Procedures for Granting and Withdrawing Refugee Status*, July 2001, para. 38.
[115] Para. 7.1 *UK-Rwanda MOU* "Rwanda will give access to its territory to the Relocated Individuals, in accordance with its international commitments and Rwandan asylum and immigration laws."
[116] UNHCR, Considerations on the 'Safe Third Country' Concept, EU Seminar on the Associated States as Safe Third Countries in Asylum Legislation, Vienna (8-11) July 1996), 2.
[117] 1951 Convention, arts. 17 and 15.
[118] 1951 Convention, arts. 18, 21 and 22.
[119] 1951 Convention, arts. 18, 21 and 22.
[120] Preamble and para. 7.1 UK-Rwanda MOU.

Assurances that Rwanda will respect 1951 Convention rights

The complicity principle[121] states that the United Kingdom may not send the asylum applicant to Rwanda if Rwanda will violate Article 33 of the Convention by refouling the individual to a territory where their life will be threatened on the basis of the Convention.[122] The same complicity principle prohibits the UK from relocating asylum seekers to Rwanda if Rwanda will violate any of the Convention rights.[123] These results flow from the application of the complicity principle to the Convention provisions that specifically recognize various refugees rights, that is, education, health, employment (Economic Inclusion and Integration), the issuance of identification papers, freedom of movement, a right not to be expelled other than on national security grounds, and legal personality (access to courts) discussed below. These recognised civil liberties are also stated in the UDHR.

Education

Everyone has the right to education, states Article 26 of the 1948 Universal Declaration of Human Rights.[124] It goes further, recognising the intrinsic value of education, by mandating free and compulsory elementary education.[125] For asylum seekers, school helps to overcome trauma and loss.[126] Humanitarian and development financing for educating relocated asylum seekers to Rwanda will done by both parties to the MOU. Paragraph 19.1 states that "*the Participants will make financial arrangements in support of the relocation of individuals under this Memorandum of Understanding*."[127] This obligation stated in the MOU stems from the treaty obligation that both Rwanda and the UK ratified to uphold. Furthermore, since most education for refugees has come from humanitarian funding and development funding,[128] these should complement the funding provided in the MOU. This can be done through the

[121] The primary argument for the complicity principle is that its premise is uncontestable. It follows inexorably from cases like *Soering*, international law sources, and the Articles on State Responsibility of the International Law Commission.

[122] Preamble *UK-Rwanda MOU*, Rwanda commits to "uphold fundamental human rights and freedoms without discrimination, as guaranteed by its national legislation, the 1951 Convention Relating to the Status of Refugees and the 1967 Protocol Relating to the Status of Refugees and other respective international legal obligations;" Para. 2.1 UK-Rwanda MOU, "Rwanda, commits to decide asylum claims in accordance with Rwanda domestic law, the Refugee Convention, current international standards, including in accordance with international human rights law."

[123] Para. 8.1 *UK-Rwanda MOU* states that "Upon arrival, Rwanda will provide each Relocated Individual with accommodation that is adequate to ensure the health, security and wellbeing of the Relocated Individual and support that is adequate to ensure the health, security and wellbeing of the Relocated Individual."

[124] UDHR (1948), art. 26. ICESCR (1966), also recognizes "the right of everyone to education" and that "primary education shall be compulsory and available free to all".

[125] UDHR (1948).

[126] Samuel Otieno and Catherine Wachiaya, "A New Approach to Refugee Integration Bears Fruit in Rwanda," UNHCR (2021), https://www.unhcr.org/news/stories/new-approach-refugee-integration-bears-fruit-rwanda.

[127] Para. 19.1 *UK-Rwanda MOU*.

[128] UNHCR, '*People Forced to Flee'*, 240.

World Bank's International Development Association (IDA) special mechanisms for host communities and refugees, and the International Finance Facility for Education.[129]

Since we have already demonstrated that education for all is globally recognised as essential to the well-being of asylum seekers and the economic development of the host country, the MOU has outlined mechanisms for including relocated asylum seekers in public education systems. Paragraph 10 of the *Note Verbale on assurances in paragraphs 8 and 10 of the Memorandum of Understanding* describes how relocated asylum seekers who have been determined to be refugees will receive a quality education. Paragraph 10 of the *Note Verbale* reiterates Article 22 of the Refugee Convention which requires states to accord to relocated individuals "the same treatment as is accorded to nationals with respect to elementary education". Paragraph 10.1 states that "to support successful integration "each relocated individual will have access to quality education and training in secondary and tertiary schools including vocational training.[130] In addition, "each relocated individual will be provided with the scholastic materials necessary to complete their education or training, including, for example, stationery and exercise books."[131]

The UNHCR observed that the Rwandan government has pledged to integrate refugee children into the national education system. In schools near to the refugee camps, refugee children attend classes with children from the host community. Refugee children follow the same curriculum and graduate with the same credentials as the host population.[132]

Health

Health promotes learning, and poor health seriously compromises it. The UDHR recognises health as a fundamental human right. It does not expressly mention the right to health, but it does contain provisions that support and affirm the right to the highest achievable standard of physical and mental health. The main articles of the UDHR pertaining to the right to health are:

- Everyone has the right to life, liberty, and security of person, according to Article 3.

[129] Ibid.
[130] Home Office, "Note Verbale on Assurances in Paragraphs 8 and 10 of the MOU between the United Kingdom and Rwanda for the Provision of an Asylum Partnership Arrangement (Accessible)," GOV.UK (Home Office, November 28, 2022), https://www.gov.uk/government/publications/migration-and-economic-development-partnership-reception-and-accommodation/note-verbale-on-assurances-in-paragraphs-8-and-10-of-the-mou-between-the-united-kingdom-and-rwanda-for-the-provision-of-an-asylum-partnership-arrangem.
[131] Home Office, "*Note Verbale*" (Accessible).
[132] Home Office, "Review of Asylum Processing Rwanda: Country Information on the Asylum System," *GOV.UK* (London: Home Office, May 2022), https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1073959/RWA_CPIN_Review_of_asylum_processing_-_asylum_system_information.pdf.

- Article 25(1) states, “Everyone has the right to an adequate standard of living for his or her own health and well-being and that of his or her family, including food, clothing, shelter, medical care, and necessary social services.”
- Article 25(2): “Motherhood and childhood have the right to special care and assistance. All children, regardless of whether they were born in or outside of matrimony, shall receive the same social protection.”

The ICESCR contains more specific language regarding the right to health than the UDHR. By establishing states’ responsibilities to ensure access to healthcare, disease prevention and treatment, and the creation of positive physical and mental health conditions, the ICESCR strengthens the right to health. It recognises that progressive efforts and international cooperation may be required to fully realise the right to health. The essential components of the right to health under the ICESCR are as follows:

- Article 12(1): “The States Parties to this Covenant recognise the right of everyone to enjoy the utmost attainable standard of physical and mental health.” This article expressly recognises relocated individuals right to the utmost attainable standard of physical and mental health.
- Article 12(2) outlines the measures to be taken by States Parties to the Covenant in order to ensure the full realisation of this right. These include enhancing child health, ensuring clean and healthy environments, preventing and treating diseases, and establishing conditions that ensure access to medical services in times of illness.
- Article 12(3) highlights the obligation of states to gradually realise the right to health. It recognises that resource constraints may impede the immediate realisation of this right and requires states to take measures to the greatest extent possible, including through international cooperation and assistance.

Ensuring healthy lives and promoting well-being is laid out in the *Note Verbale on assurances in paragraphs 8 and 10 of the Memorandum of Understanding* paragraph 6.[133] Providing adequate health care to relocated individuals is well met in the MEDP. Paragraph 6.1. states that “Rwanda will carry out an initial medical assessment of each relocated individual in order to establish their medical needs”.[134] The assessment will occur as quickly as possible after the relocated person’s arrival in Rwanda.[135] Paragraph 6.2. states that “each relocated individual

[133] Home Office, “Review of Asylum Processing Rwanda: Country Information on the Asylum System,” para. 6.
[134] Ibid, para 6.1.
[135] Ibid.

will have access to quality preventative and curative primary and secondary healthcare services that are at least of the standard available to Rwandan nationals, including, inpatient services, including major surgery, outpatient services, vaccinations, as appropriate, minor surgery, mental health services, dental care, family planning services and maternity services, and Human Immunodeficiency Virus prevention programmes.

Each relocated individual will have access to mental health support services, including experience-sharing and therapeutic sessions, according to paragraph 6.3. Over the past two decades, there has been a substantial increase in the focus on mental health assistance for displaced people. Relocated individuals have suffered tremendous losses, including their residences, assets, communities, and means of subsistence. Many have endured severe violence or torment, witnessed the murder or disappearance of family members, and witnessed the destruction of their homes and communities by explosions.[136]

Specialized care in the MOU. Each relocated individual will receive personal assistive devices, such as a hearing aid or a walking staff, based on their unique physical and medical requirements.[137] No fee will be levied to relocated individuals for access to necessary health services. Rwanda will pay for the healthcare services utilised by each relocated individual:[138]

- expenses for diagnostic procedures
- physiotherapists' fees
- expenses arising from hospitalisation, including physician, surgeon, operating fees and expenses for the use of operating theatres, Intensive Care Units and High Dependency Units
- dressings and surgical appliances expenses
- prescribed drugs expenses
- the relocated individual's expenses and fees for mental health services; and
- expenses and fees for the personal assistive devices mentioned in paragraph

The UNHCR observed that the Rwandan government has pledged to integrate refugee children into the national education system.[139] In schools near to the refugee camps, refugee

[136] Zachary Steel et al., 'Association of Torture and Other Potentially Traumatic Events with Mental Health Outcomes Among Populations Exposed to Mass Conflict and Displacement: A Systematic Review and Meta-Analysis', *Journal of the American Medical Association* 302, no. 5 (2009): 547–548.
[137] Para. 6.4 *UK-Rwanda MOU.*
[138] Ibid para. 6.5.
[139] UNHCR Rwanda, "Community-Based Health Insurance for Urban Refugees and Refugee Students in Rwanda," The Global Compact on Refugees | Digital Platform (UNHCR Global Compact on Refugees, June

children attend classes with children from the host community.[140] Refugee children follow the same curriculum and graduate with the same credentials as the host population.[141]

Economic Inclusion and Integration

The right to labour is protected by the Universal Declaration of Human Rights, the Convention of 1951, and the International Covenant on Economic, Social, and Cultural Rights. Work is necessary for survival, the restoration of a sense of dignity, and the acquisition of skills that can enhance life prospects. Paragraph 15.1 of the *Note Verbale on assurances in paragraphs 8 and 10 of the Memorandum of Understanding* states that "Rwanda will ensure that each relocated individual will benefit from the rights set out in, and will be treated in accordance with, the Refugee Convention, such as in relation to employment and self-employment; public relief; labour legislation and social security; and administrative assistance."[142]

In terms of integration,[143] the 1951 Convention exhibits a higher degree of ambiguity. Refugees possess the legal right to avail themselves of judicial processes[144] and are obligated to adhere to the established legal framework. However, although individuals of non-national status are granted certain socioeconomic rights on equal terms as citizens,[145] they do not possess complete parity in this aspect.[146] According to the provisions outlined in the 1951 Convention, it is incumbent upon States to undertake measures to the fullest extent feasible in order to facilitate the assimilation and naturalisation of refugees.[147] The OAU Convention demonstrated a cautious approach by states in granting powers for regional integration at the municipal level. The provision stipulates that States are required to make their utmost efforts, in accordance with their individual legislations, to ensure the resettlement of refugees.[148] The document does not explicitly address the economic and social rights that should be granted,

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2020), https://globalcompactrefugees.org/article/community-based-health-insurance-urban-refugees-and-refugee-students-rwanda.

[140] Ibid.

[141] Ibid.

[142] Home Office, "*Note Verbale*" (Accessible).

[143] Para. 10.1 *UK-Rwanda MOU* "For those recognised as refugees by Rwanda, Rwanda will support for integration into society and freedom of movement in accordance with the Refugee Convention and international and Rwandan standards."

[144] Para. 7 UK-Rwanda MOU; Para. 5.4, 6, 7 and 8 Home Office, 'Note Verbale' (Accessible).
Article 2(2) of the ICESCR.

[145] Article 2(2) of the ICESCR.

[146] In certain circumstances, states may implement measures and policies that differentiate between nationals and non-nationals, but such differentiation must be based on reasonable and objective criteria that are consistent with international human rights standards.

[147] Refugee Convention art. 34.

[148] OAU, *Charter of the Organization of African Unity*, (1963), Article II, III, IV, V, and VII.

despite its explicit recognition of the 1951 Convention and the 1967 Protocol as the fundamental and comprehensive instruments pertaining to the situation of refugees.[149] Furthermore, the inclusion of the *Note Verbale regarding assurances outlined in paragraphs 8 and 10 of the Memorandum of Understanding*, specifically in paragraph 14, stipulates the provision of integration programmes for relocated individuals.[150] These programmes encompass recreational centres that facilitate engagement in sports and leisure activities.

In 2019, a scholarly publication investigated the impact of Congolese refugees on the labour market participation and household well-being of host communities in Rwanda. The research examined the data obtained from household surveys conducted in three Congolese refugee camps and their adjacent regions.[151] It was noticed that refugees were provided with access to fundamental healthcare services, as well as provisions for clean water and sanitation. Refugee children have the opportunity to receive education either within local communities or, in certain cases, through schools established within refugee camps that adhere to the national curriculum.[152] Refugees possess the entitlement to both mobility and employment. In the context of education, it was observed that the proximity of children living near the camps positively influenced their school attendance and educational achievements compared to children residing in other areas. The residents residing in close proximity to the camp had a favourable perception of the impact of refugees on the educational landscape and expressed gratitude towards the Government's substantial allocations towards educational initiatives within these regions.[153]

Respect for international and Regional Human Rights Standards

No longer is the 1951 Convention the only significant international source of rights for asylum applicants. A variety of universal and regional human rights instruments confer further rights. The United Kingdom can contravene human rights principles by violating the rights of individuals as well as by sending individuals to Rwanda if Rwanda will also violate those rights. The principle of complicity has been acknowledged and implemented in diverse settings by several international bodies, including the European Court of Human Rights, the

[149] Ibid., art. II.
[150] Para. 14 *Note Verbale regarding assurances outlined in paragraphs 8 and 10 of the UK-Rwanda MOU.*
[151] Jennifer Alix-Garcia and Anne Bartlett, "Occupations under Fire: The Labour Market in a Complex Emergency," *Oxford Economic Papers* 67, no. 3 (February 27, 2015): 711, https://doi.org/10.1093/oep/gpv006.
[152] Paolo Verme and Kirsten Schuettler, "The Impact of Forced Displacement on Host Communities: A Review of the Empirical Literature in Economics," *Journal of Development Economics* 150, no. 3 (2021): 11-12, https://doi.org/10.1016/j.jdeveco.2020.102606.
[153] Özge Bilgili et al., "Is the Education of Local Children Influenced by Living near a Refugee Camp? Evidence from Host Communities in Rwanda," *International Migration* 57, no. 4 (January 2, 2019): 305-306, https://doi.org/10.1111/imig.12541.

African Court of Human and Peoples' Rights, the United Nations Human Rights Committee, the Convention Against Torture, the United Nations General Assembly, and the International Law Commission's Articles on State responsibility.

UNHCR[154] in 2021 stated that asylum seekers should not be relocated to Rwanda unless they will be 'treated in accordance with recognized basic human standards', 'accepted international standards', or 'recognised human rights standards'. In order to ensure the efficacy of Rwanda's protective measures, it is imperative that the country upholds asylum-related human rights as outlined in both universal and regional instruments.[155] It has ratified the 1969 OAU Convention which expressly recognises the 1951 Convention as the "universal" instrument for refugee protection.[156] Rwanda has made a commitment to refrain from refusing or repatriating a refugee to a region where their life, liberty, or personal safety is at risk. Additionally, Rwanda has pledged to demonstrate solidarity by alleviating the burdens faced by other nations and actively pursue solutions by making every effort to facilitate the settlement of refugees and provide assistance for their voluntary, secure, and sustainable return.[157] The OAU Convention offers a more expansive interpretation of the concept of asylum, encompassing individuals who have been compelled to depart from their residences due to circumstances such as external aggression, occupation, foreign domination, or events that pose a significant threat to public stability. The formulation of Article 1 of the OAU Convention can be understood as a reflection of the prevailing sentiments during its age. This provision underscores the endorsement of governments for the continuous struggles for freedom, by placing significant emphasis on the principle of non-refoulement. The 2009 AU Kampala Convention for the protection of internally displaced persons in Africa has drawn from OAU Convention provisions.[158] Rwanda also ratified the African Charter on Human and Peoples' Rights as its a member of the African Union. Despite not defining asylum explicitly, the charter recognises the right of individuals to seek asylum from persecution in other

[154] UNHCR, "RWANDA Country Refugee Response Plan (CRP) 2021," 10, https://reporting.unhcr.org/sites/default/files/2021%20Rwanda%20Country%20Refugee%20Response%20Plan.pdf.
[155] UNHCR, '*Safe Third Country'* Concept, (1996), 2.
[156] OAU Convention preamble states "Bearing in mind that the Charter of the United Nations and the Universal Declaration of Human Rights have affirmed the principle that human beings shall enjoy fundamental rights and freedoms without discrimination"; "Recognizing that the United Nations Convention of 28 July 1951, as modified by the Protocol of 31 January 1967, constitutes the basic and universal instrument relating to the status of refugees and reflects the deep concern of States for refugees and their desire to establish common standards for their treatment".
[157] OAU Convention preamble.
[158] African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention)

countries.[159] Article 12 prohibits the expulsion or return of individuals whose life or liberty would be at risk in their home country.[160]

Assurance that Rwanda will Provide a fair Refugee Status Determination

The 1951 Refugee Convention now *expressly* mandates a fair determination of refugee status. The Article 33 restriction on refoulement relies on a fair determination of refugee status. The possibility of an unfair determination leading to an incorrect refouling of the individual is there. To ensure an equitable determination of refugee status, the United Kingdom will inform applicants how to apply for refugee status in Rwanda and by providing Rwanda with a letter stating that the United Kingdom has not made a substantive determination on their asylum application.[161] Paragraph 5.2 of the UK-Rwanda MOU stipulates that "the United Kingdom shall provide Rwanda with the individual's name, sex, date of birth, nationality, and a copy of their travel document, if they possess one."

The UNHCR's 2021 report states that Rwanda "has adhered to all key international treaties and human rights instruments[162] and "since the 1990s, it has allowed unrestricted refugee entry from its neighbours. Refugee-related conventions signed by Rwanda are:[163]

- 1951 Convention relating to the Status of Refugees (and its 1967 Protocol) (ratified 1980),
- The Organisation of African Unity Convention Governing the Specific Aspects to the Problems of the Refugees in Africa (ratified 1979),
- African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (the "Kampala Convention") (ratified 2012), and
- 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness (ratified 2006).

Rwanda's National asylum/refugee law include:

- Constitution of the Republic of Rwanda (2003, amended 2015). Article 28 Recognises the right of refugees to seek asylum.
- Law No. 13 ter/2014 of 21/05/2014 relating to refugees. Sets out: Refugee status determination (RSD) procedures and timelines. Refugees' rights and obligations.

[159] OAU, *African Charter on Human and Peoples' Rights ("Banjul Charter")*, 27 June 1981.
[160] Ibid.
[161] Para. 5.2 *UK-Rwanda MOU*.
[162] UNHCR, 'Rwanda country refugee response plan Jan to Dec 2021', 10.
[163] UNHCR, *Rwanda: UNHCR Submission for the Universal Periodic Review - Rwanda - UPR 37th Session (2021)* , July 2020, 1, https://www.refworld.org/docid/607763c64.html.

- No. 112/03 of 19/06/2015 Prime Minister's Order determining the organisation and functioning of the National Refugee Status Determination Committee (NRSDC) and benefits granted to its members. Sets out: Composition and duties of the NRSDC
- Ministerial Instructions No. 02/2016 Determining the Management of Refugees and Refugee Camps. Sets outs: Rules for living in camps. Responsibilities of government and stakeholders.
- No. 30/2018 of 02/06/2018 Law determining the jurisdiction of courts. Sets out: Right of Appeal to High Court.[164]

Agencies responsible for refugees and asylum seekers include:

Government agencies: The Ministry in Charge of Emergency Management (MINEMA) ensures the Rwandan government's commitment to receiving and safeguarding refugees and asylum seekers;[165] the Ministry of Foreign Affairs and International Cooperation (MINAFFET), Directorate of Immigration/Emigration (DGIE), the National Identification Agency (NIDA), and the National Refugee Committee.[166] MINEMA is in charge of the refugee response, although the UNHCR and other organisations help out financially and with guidance.[167]

Rwanda's Refugee Status Determination (RSD)

In its review of access to the Rwandan asylum system, UNHCR stated: "The 2014 Law relating to Refugees, is fully compliant with international standards and sufficiently details the [Refugee Status Determination] RSD procedures."[168] The key stages of the RSD process are as follows:

i. The newly relocated individual arrives at the port of entry or the airport. Asylum seekers are required to check in with the local government at this point before being taken to an immigration and emigration office for the registration process.[169]

ii. The relocated individual must then file a claim. The DGIE examines the case and grants a temporary residence permit (valid for three months) (preliminary interview

[164] Para. 9.1.2 *UK-Rwanda MOU* "each Relocated Individual will have access to an interpreter and to procedural or legal assistance, at every stage of their asylum claim, including if they wish to appeal a decision made on their case."

[165] Government of the Republic of Rwanda, "Refugees Management," Minema.gov.rw (2014), https://www.minema.gov.rw/refugees-management.

[166] UNHCR Rwanda, "UNHCR Rwanda - Operational FactSheet March 2021," UNHCR Operational Data Portal (ODP) (UNHCR Rwanda, March 2021), 2, https://data2.unhcr.org/en/documents/details/85742.

[167] Ibid.

[168] UNHCR Rwanda, "UNHCR Rwanda - Operational FactSheet March 2021," UNHCR Operational Data Portal (ODP), 4.

[169] Para. 7 '*UK-Rwanda MOU*.'

conducted, interim identification issued).[170] The DGIE submits application materials within fifteen days.

iii. The file of the relocated individual is forwarded to the RSD Committee. Within fifteen days, the DGIE forwards the applicant's file to the Refugee Status Determination Committee (RSDC).[171]

iv. The RSD Committee decides on asylum claims (can request additional information or determine on papers, decisions taken at a senior level, decisions taken by consensus, or by vote if consensus is not possible (which is rare)). The RSDC makes a determination within 45 calendar days (sometimes 5 or 10 days earlier).

v. The decision is communicated to relocated individual. The RSDC is required to notify the applicant of its decision to grant or deny refugee status in writing within 10 days of the date of the decision.[172] The letter is written in one of the three official languages of Rwanda, which are English, French, or Kinyarwanda.[173]

vi. If granted refugee status, a refugee ID is issued. There are three types of documents issued to asylum seekers and refugees, each with accompanying privileges:[174]

- Permit for temporary residency. It allows for legitimate residency and access to UNHCR assistance. It is valid for three months, the same duration as the resolution of the case. If the decision is delayed, it can be postponed for an additional three months. The applicant has the right to remain in the country while his appeal is pending. This is mandated by law, even if it extends beyond the initial three-month period. The law [concerning the extend of the permit] applies automatically.
- The refugee ID (name, date of birth, photo, expiration date, and location) resembles a national ID card and confers the following privileges: Employer registration, health insurance registration, a telephone card, a bank, marriage, insurance, a business licence, and a driver's licence applications. MINEMA receives a submitted application for a refugee identification card and a registration document. NIDA notifies applicants to schedule biometrics collection.[175]

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[170] Para. 4 '*Note Verbale on assurances in paragraph 9 of the MOU.'*
[171] Government of Rwanda, 'Official Gazette number 26 of 30/06/2014' (page 82), 30 June 2014.
[172] UNHCR Rwanda - Operational FactSheet March 2021.
[173] Para. 4.9 '*Note Verbale on assurances in paragraph 9 of the MOU.'*
[174] Home Office, "Rwanda: Country Policy and Information Notes," *GOV.UK*, May 9, 2022, https://www.gov.uk/government/publications/rwanda-country-policy-and-information-notes.
[175] UNHCR, 'Help: Rwanda documentation', https://help.unhcr.org/rwanda/services/documentation/.

- The refugee travel document (which resembles a passport) is valid for international travel.

The refugee identification card is free, but there is a fee for the travel document.

vii. Within thirty days of notification of the decision, the applicant may file an appeal[176] (no formal means needed, enough to simply disagree, minister assigns a special team to assess the RSDC's decision). The Minister of MINEMA decides appeal cases (first review) within one month, during which the applicant has the right to remain in Rwanda.[177] The appeal procedure:

- If rejected, the applicant asylum seeker may appeal (request a review) to the Minister in charge of Emergency Management. They submit a letter appealing the decision of the RSDC. In this instance, the Minister assigns a special team to evaluate whether or not to validate or revoke the RSDC's decision. This is from the Ministry of Foreign Affairs or the legal department of the Prime Minister's Ministry, not the RSDC. The team is not fixed; it is case-dependent. The minister assembles a team with the expertise and capacity to examine and evaluate the case.
- The composition of the appeal committee that evaluates the RSDC's decision is contingent on the number of appeals and the scope of the re-evaluation. It may consist of nine distinct government ministries. RSDC members are selected based on their knowledge/capabilities and their ability to consider/challenge RSDC decisions. The minister may appoint a member of the RSDC to provide information regarding the decision. This team makes the decision (recommendation), and the minister then makes the ultimate determination.[178]

viii. The appeal decision is given within 30 days.[179] If first appeal is unsuccessful, the relocated individual can appeal to court (no cases as yet, legal advice/support now available).[180] The law provides the asylum applicant with a second level of appeal [the first court appeal after ministerial review] to submit the case to the High Court.[181]

[176] Para. 9.1.3 and 9.1.4 *UK-Rwanda MOU*; Para. 5 *Note Verbale on assurances in paragraph 9 of the MOU.'*
[177] UNHCR, 'Help: Rwanda documentation', 83.
[178] Home Office, "Rwanda: Country Policy and Information Notes," *GOV.UK*, May 9, 2022, https://www.gov.uk/government/publications/rwanda-country-policy-and-information-notes.
[179] Para. 5, 6, 7, and 8, '*Note Verbale on assurances in paragraph 9 of the MOU.'*
[180] Para. 5.3 '*Note Verbale on assurances in paragraph 9 of the MOU.'*
[181] Home Office, "Rwanda: Country Policy and Information Notes."

ix. If the court appeal is unsuccessful, the relocated individual can seek to stay under different route(s).[182] The appeal court's consideration/decision is independent of the RSDC. There is no connection between the RSD proceedings and the proceedings before the high court. A representative from the Ministry of Justice presents before the court.[183] Asylum applicants have the legal right to appeal and are not required to provide any justification for doing so. Unhappiness with the decision is sufficient.[184]

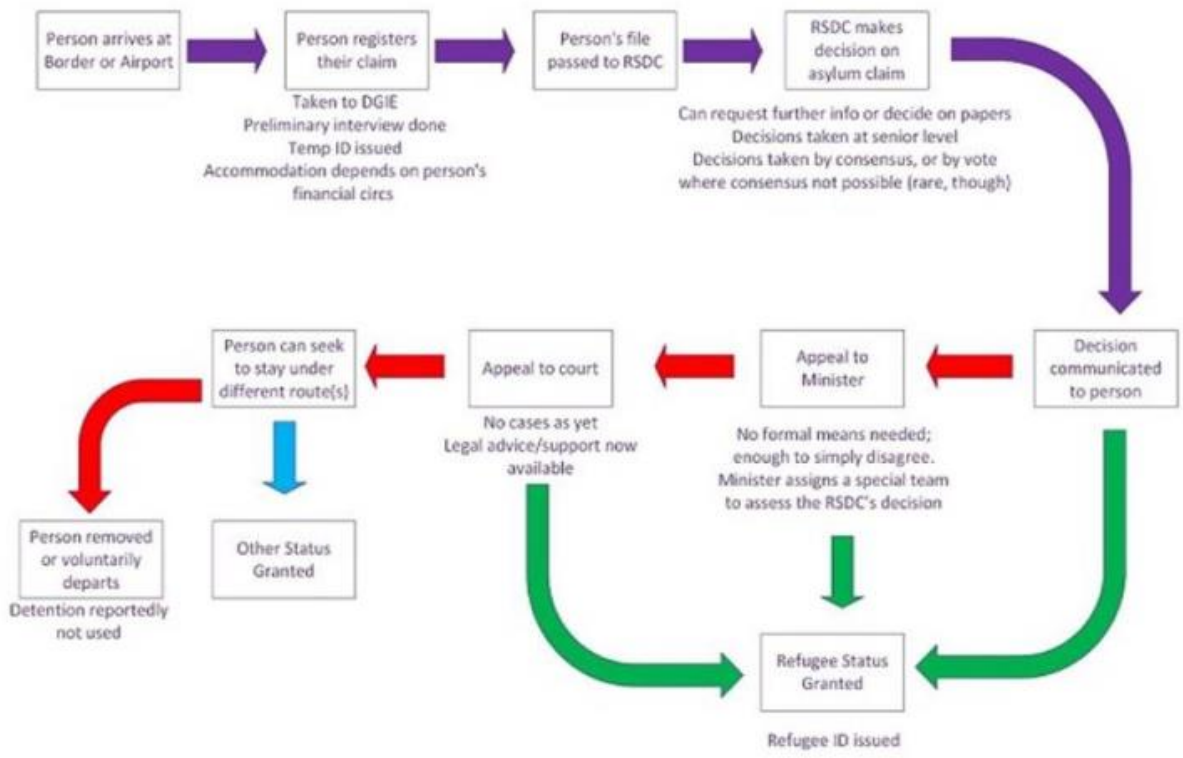
x. If no other status is granted the person is removed or voluntarily departs (detention reportedly not used).[185]

Failed asylum seekers are provided with other alternative routes to remain in Rwanda.[186] Rwanda, according to paragraph 10.3.1 of the MOU, will offer an opportunity for the Relocated Individual to apply for permission to remain in Rwanda on any other basis in accordance with its domestic immigration laws and ensure the Relocated Individual is provided with the relevant information needed to make such an application. They can either decide to remain in Rwanda and acquire the appropriate type of residence permit for their intended stay. Rwanda is obligated under paragraph 10.3.2 to "provide adequate support and accommodation for the Relocated Individual's health and security until such a time as their status is regularised or they leave or are removed from Rwanda". They may submit an application to remain in the country by transferring their status.

Others return home or relocate to a third country voluntarily.[187] Paragraph 10.4 of the MOU states that "for those Relocated Individuals who are neither recognised as refugees nor to have a protection need or other basis upon which to remain in Rwanda, Rwanda will only remove such a person to a country in which they have a right to reside. If there is no prospect of such removal occurring for any reason Rwanda will regularise that person's immigration status in Rwanda." Thus, relocated individuals who have been denied asylum and who have no need for humanitarian protection will have the same rights as other applicants under Rwandan

[182] Para. 8, '*Note Verbale on assurances in paragraph 9 of the MOU.'*
[183] Home Office, "Rwanda: Country Policy and Information Notes."
[184] Home Office, "Rwanda: Country Policy and Information Notes."
[185] Ibid. The law that allows High Court adjudication for cases relating to applications for asylum is contained in the Official Gazette n° Special of 02/06/2018, Article 47, 49-50; Para 10.3 *'UK-Rwanda MOU'*.
[186] Para. 10.3 *UK-Rwanda MOU*.
[187] UNHCR, "UNHCR Rwanda Operational Update - May 2021," UNHCR Operational Data Portal (ODP) (Operational Data Portal, May 2021), https://data2.unhcr.org/en/documents/details/87473.

immigration law.[188] The RSDC may revoke the refugee status of a person who was granted it on a prima facie premise for reasons of territorial integrity and national security.[189]



Source: UNHCR

The timelines limit the monitoring of the objectives or the RSD procedure. It takes two to three weeks to coordinate the meeting and make a decision after receiving the application from DGIE.[190] Applicants typically file their appeals promptly rather than waiting 30 days. Together with the Joint and Monitoring Committee, the chair of the NCHR ensures that the monitoring of these objectives is completed within the specified timeframes.[191] If the RSDC is unable to meet its deadline, this provides a solid foundation for appealing to the second level. For instance, if it took six months, that is a compelling reason for the court to reverse RSDC's decision.[192]

[188] Para. 10.5 *UK-Rwanda MOU*.
[189] Government of Rwanda, '[Official Gazette 26 of 30/06/2014]' (Article 16, page 86), 30 June 2014.
[190] Home Office, "Rwanda: Country Policy and Information Notes," *GOV.UK*, May 9, 2022, https://www.gov.uk/government/publications/rwanda-country-policy-and-information-notes.
[191] Home Office, "Rwanda: Country Policy and Information Notes."
[192] Ibid.

Monitoring Detention

Committees

Paragraph 25.5.1 of the MOU creates an obligation on both parties to the MOU to share information among themselves on relocated individuals who fall under the protection of the Refugee Convention,[193] against torture in accordance with the 1984 Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (the "1984 Convention Against Torture"),[194] under the implied non-refoulement obligations in the 1966 International Covenant on Civil or Political Rights (the '1966 ICCPR') and its second optional protocol aiming at the abolition of the death penalty,[195] or under either Participant's laws implementing the relevant Conventions or Protocol[196] with the National Preventive Mechanism (NPM).

The Rwandan National Commission for Human Rights (NCHR)

To ensure that Rwandan government complies with its legal obligations under the UDHR, the Refugee Convention, and the MOU, different committees were formed. Because Rwanda has ratified the Optional Protocol to the UN Convention against Torture and other Cruel, Inhuman or degrading treatment or Punishment (OPCAT) it has an obligation to set up a National Preventive Mechanism (NPM) to combat the practise of torture and other cruel, inhuman, or degrading treatment or punishment.[197] The OPCAT is an operational treaty whose purpose is to assist states in carrying out their obligations to prevent torture and ill-treatment.[198] It accomplishes this by instituting a system of regular visits to all sites of detention under the jurisdiction and control of Rwanda.[199] The UN Subcommittee on the Prevention of Torture (SPT) and National Preventive Mechanisms (NPMs) carry out these visits at the international and national levels, respectively.

NPMs are largely in charge of detecting human rights violations and finding practical solutions to systemic issues in legislation, policy, and detention practise. They advocate for reform through recommendations and ongoing, constructive communication with authorities based on visits to all detention institutions and interviews with people detained.[200] Rwanda has a Commission for human

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[193] Para. 25.5.1.1 *UK-Rwanda MOU*.
[194] Ibid para. 25.5.1.2.
[195] Ibid para. 25.5.1.3.
[196] Ibid para. 25.5.1.4.
[197] Ben Buckland and Audrey Olivier-Muralt, "OPCAT in Federal States: Towards a Better Understanding of NPM Models and Challenges," *Australian Journal of Human Rights* 25, no. 1 (2019): 23–43, https://doi.org/10.1080/1323238x.2019.1588061.
[198] Ibid.
[199] Ibid.
[200] Ben Buckland and Audrey Olivier-Muralt, "OPCAT in Federal States: Towards a Better Understanding of NPM Models and Challenges."

rights constituted under the Rwanda: Law No. 04/99 of 1999 establishing the National Human Rights Commission. The Rwandan National Commission for Human Rights (NCHR) is mandated to act as a National Preventive Mechanism (NPM).[201] The National Commission for Human Rights of Rwanda (NCHR) is Permanent, autonomous, impartial and efficient, and has branches throughout Rwanda, ensuring that international and regional human rights mechanisms receive timely reports. Its primary objective is to promote and defend human rights. Regarding the preservation of human rights, the commission is responsible for monitoring compliance with human rights, especially asylum-seeker rights. Article 5 of the Act stipulates that the commission must safeguard asylum seekers from torture and other cruel, inhuman, or degrading treatment or punishment.[202]

In carrying out its mission, the Commission has administrative and financial independence and is not subordinate to any other organ. This responsibility for protecting alien victims of ill-treatment is a well-established quasi-judicial mechanism utilising a complaints procedure well entrenched in the law.[203] It is also mandated to conduct regular visits, with or without prior notice, to all places where asylum seekers (aliens) may be deprived of their liberty, and to make recommendations to relevant authorities in an effort to improve detention conditions and prevent torture and other ill-treatment.[204] Furthermore, to avoid ill-treatment or a violation of any other human right, the NCHR receives complaints from victims, examines the facts, and determines if human rights violations have occurred. When ill-treatment violations are confirmed, the NCHR requests that the institutions in question restore the complainants' rights. In cases where human rights violations have led to the commission of crimes, the NCHR can request that the appropriate authorities prosecute the perpetrators.[205]

In accordance with Article 4 of OPCAT,[206] NPMs are authorised to visit a variety of locations, including all places where asylum seekers may be deprived of their liberty. This includes not only prisons and police stations, but also less common detention facilities like immigration detention centres. Moreover, NPMs are able to develop a nuanced understanding of risk factors and root causes because they include staff and experts from a wide range of fields (including lawyers, doctors, social workers, and psychiatrists, among others) and spend considerable time in the locations they visit.[207] This type of study is frequently unique from

[201] Government of Rwanda, "*Official Gazette N° 38*", Law N° 61/2018, Article 2 & 3.
[202] Law No. 04/99 of 1999 establishing the National Human Rights Commission.
[203] Government of Rwanda, "*Official Gazette N° 38*", Law N° 61/2018, Article 1.
[204] Ibid.
[205] Ibid.
[206] UN General Assembly, *OPCAT*, (2003) A/RES/57/199.
[207] UN General Assembly, *OPCAT*, (2003) A/RES/57/199.

that undertaken by existing oversight agencies, and it can be a valuable compliment to their efforts. Article 22 of OPCAT imposes on the authorities a positive obligation to cooperate with the NPM.[208] This necessitates engagement with the NPM and its recommendations, as well as participation in a dialogue regarding implementation. Article 16 and 23 of the OPCAT addresses the publication of the NPM annual report and the obligation of governments regarding publication and dissemination.[209]

MOU's Joint Committee and Monitoring Committee

The OPCAT empowers the NPMs to promote change through recommendations based on visits to places where relocated asylum seekers are detained, and interview relocated individuals. These visits may occur at any time and without prior notification. During their visits, NPMs have the authority to access relevant records and documents, such as medical records and detention registers, and to converse privately with any relocated individual of their choosing. Paragraph 13.2 of the Memorandum of Understanding stipulates that the Monitoring Committee will have immediate access whenever they wish to conduct an inspection. The Monitoring Committee will not be required to provide advance notice of their visit.

This is the same as what the Committees in the MOU are empowered to do. Paragraph 15.1 of the MOU provides for the formation of a Monitoring Committee. Just like the NPMs they will be independent.[210] The Monitoring Committee mandate includes monitoring the entire relocation process,[211] report on conditions in Rwanda by making unannounced visits to accommodation, asylum processing centres and any other locations where documents relating to Relocated Individuals or their claims and appeals is held,[212] and make a report.[213]

Paragraph 21.1 of the MOU allows the creation of a Joint Committee composed of the representatives from Rwanda and the UK.[214] The role of the Joint Committee is to monitor and review the application and implementation of the MOU and to make non-binding recommendations.[215] Just like under OPCAT for NPMs where authorities are required to consult NPM, paragraph 21.2.2 of the MOU states that the Joint Committee will "provide a

[208] Ibid.
[209] Ibid.
[210] Para. 15.2 *UK-Rwanda MOU*.
[211] Ibid para. 15.3.2.
[212] Ibid para. 15.3.3.
[213] Ibid para. 15.3.4.
[214] Para. 21.1 *UK-Rwanda MOU*.
[215] Ibid para. 21.2.1.

forum for the authorities in the UK and Rwanda to exchange information, discuss best practice including relevant guidance from external stakeholders, and resolve issues of a technical or administrative character."

The implementation of the assurances in both *Note Verbales* are to be monitored by the joint committee and the monitoring committee established under paragraph 30 of the Memorandum of Understanding.[216] When it comes to mechanism and monitoring of the whole asylum process, the treaties are still the guiding principles. The MOU borrows the language of the OPCAT in relation to creation of NPMs to guide the creation of the committees under the MOU. Despite the fact that the MOU specifies that the recommendations of these committees are non-binding, the collaboration between these committees and the NPMs, i.e., the NCHR in Rwanda, already makes these recommendations binding, as the OPCAT empowers the NPMs to collaborate with states and other actors.[217] This is because refoulement is a non-derogable right of which states cannot derogate from as held in the International Criminal Tribunal for the former Yugoslavia (ICTY). Thus, recommendations made by the committees in relation to refoulement will be binding as the norm against refoulement is a customary law with the status of *jus cogens*.

Chapter Three

[216] Para. 11 *UK-Rwanda MOU*; Para. 18 "Note Verbale on Assurances in Paragraphs 8 and 10 of the MOU (Accessible).
[217] OAU Convention preamble.

The Selection of a Memorandum of Understanding as the Implementation Vehicle

One of the primary concerns raised by the UNHCR is that the Protections provided by an MOU are inadequate. Because, by definition, MOUs are not legally binding,[218] and this is reinforced in the text of the UK-Rwanda arrangement, which states that "commitments... do not create or confer any right on any individual, nor shall compliance with this Arrangement be justiciable in any court of law by third-parties or individuals."[219] The UNHCR commented that:

- It is unclear why the assurances at issue in the asylum partnership agreement are non-justiciable and non-binding;
- The MOU is silent as to what happens if the parties are unable to resolve a relevant dispute through reasonable efforts.

Britain has opted for a 'responsibility sharing' agreement at a time when the burdens and responsibilities resulting from the enormous displacement of people have been distributed so unevenly among the world's regions and nations. This agreement contains commitments from both parties to contribute to the solution. The UK-Rwanda Memorandum of Understanding is an agreement in which the Rwandan government accepts responsibility for deciding asylum claims and receives funds to support asylum populations.

Although the European Convention on Human Rights imposes no obligation on states to accept asylum claims for permanent resettlement,[220] UNHCR and others strongly encourage agreements to share the responsibility for doing so.[221] Consequently, the ECHR provides express regional recognition of the majority of the rights enumerated in the UDHR, but it does not contain a provision reflecting Article 14 of the UDHR, which guaranteed the right to seek and enjoy asylum from persecutors. The main advantages are state equity, humanitarian solutions for asylum seekers, and the orderly predictability that informal (MOU) agreements enable. Responsibility-sharing agreements can take various forms, such as ad hoc or

[218] Para 1.6, *UK-Rwanda MOU.*
[219] Para 22.1. and paragraph 25 of the *UK-Rwanda MOU* stipulates the formation of a Joint Committee to "monitor and review the application and implementation of this Arrangement and make non-binding recommendations in this regard," whereas Paragraph 15 of the Memorandum of Understanding states that the parties will make arrangements for the formation of an independent Monitoring Committee. Despite the absence of a dispute resolution clause, and contrary to the beliefs of the vast majority of non-governmental organisations and the evidence presented above, these bodies have formal authority. International law permits negotiation as a means of resolving disputes.
[220] *Vilvarajah and Others v. the United Kingdom* (ECtHR October 30, 1991), paragraph 102.
[221] The UNHCR Executive Committee made responsibility-sharing its annual theme for 1998.

permanent.[222] The parties may or may not be from the same region due to the proliferation of innovative diplomatic strategies in recent years.[223] Even if the subject matter is legitimate and authorised, not all international agreements can be codified in treaties, and diplomats are aware of this fact.[224] A documented record of the agreement is required, though. Therefore, although not being a legally enforceable instrument, the memorandum of understanding (or political commitment) has seen a meteoric rise in popularity.[225]

These *non*-binding MOUs are also known as political agreements, gentlemen's agreements, non-binding agreements, de facto agreements, non-legal agreements, etc.[226] The International Law Commission (ILC) distinguishes memorandums of understanding from treaties as agreements not governed by international law. Thus, the MOU is a recognised document used in international practice. Lord McNair, in his classic work on the law of treaties, defined it as "an informal, non-binding agreement" between two or more parties.[227] Former Deputy Legal Adviser to the Foreign and Commonwealth Office Anthony Aust wrote in his third edition of Modern Treaty Law and Practise, that "the use of MOUs is now so widespread, that the member states of the Council of Europe see it as the norm, with a treaty being used only when it cannot be avoided"[228].

Because this widespread use is now so pervasive, the UNHCR[229] has expressed unfounded concern that the Council of Europe member states may use MOUs as the norm, even for asylum procedures that affect the fundamental rights of individuals. In general, however, unless there is a specific benefit to having an MOU, there should be no reason not to have a treaty. On the other hand, in principle, there is no reason to prefer a treaty over a memorandum of understanding unless there is a need to create legally binding rights and obligations in international law or there are real constitutional or other domestic legal requirements for a treaty.[230] The primary distinction between MOUs and treaties[231] is that

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[222] Anthony Aust, *Modern Treaty Law and Practice*, 3rd ed. (Cambridge University Press, 2013), 24-58.
[223] Ibid.
[224] Ibid.
[225] Ibid.
[226] Ibid.
[227] Lord McNair, *The Law of Treaties*, (Oxford University Press, 1986).
[228] Anthony Aust, *Modern Treaty Law and Practice*, 29.
[229] UNGA, *Statute of the Office of the United Nations High Commissioner for Refugees*, 14 December 1950, A/RES/428(V), https://www.refworld.org/docid/3ae6b3628.html.
[230] Ilhami Alkan Olsson, "Four Competing Approaches to International Soft Law," *Scandinavian Studies in Law* 58, no. 58 (2013): 177–196, https://doi.org/ISSN%200085-5944.
[231] A treaty is defined as "an international agreement concluded between States in written form and governed by international law" under Article 2(1)(a) of the Vienna Convention on the Law of Treaties. UN, *VCLT*, 23 May 1969, United Nations, Treaty Series, vol. 1155, p. 331; Section 25 of the UK CRAG Act 2010 defines a treaty in similar terms as a written agreement between States or between States and international organisations and

MOUs are political arrangements between states and are not intended to be legally binding[232]. The UK Government acknowledges the use of MOU in its own guidance on treaties and MOUs.[233]

Following the Second World War, the practise of Memorandum of Understandings began, with three being signed in the 1950s in connection with the Treaty of Peace with Italy.[234] It's worth noting though that MOUs and the extent to which they are a significant tool for conducting business between states were not widely known outside of government circles until recent years.[235] In fact, a large number of bilateral and multilateral agreements covering a wide spectrum of topics are concluded each year.[236] Since an MOU is not a treaty, many are never published[237]. This luck of central repository for signed MOUs is what concerns the UK International Agreements Committee. According to the committee, "the absence of a comprehensive MOU database raises significant transparency concerns: the public's awareness of the existence of any given MOU depends on whether the UK government decides to make a statement in Parliament, issue a press release, or publish it online".[238] Furthermore, they added, "even when the UK government discloses the existence of a memorandum of understanding, publication of the agreement's text is ad hoc and cannot be guaranteed". Contrary to the International Agreements Committee's concerns, Article 102 of the UN Charter does not require an MOU to be registered with the organisation because it is neither a treaty nor an international agreement.[239]

The reason the UK and Rwandan government chose an MOU in place of a treaty was mainly for political reasons and lack of formality. It contains no elaborate final clauses or formalities (international or national) associated with treaty formulation. It took effect upon signature.

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binding under international law. Treaties are referred to in article 38 of the ICJ Statute as one of the recognised sources of international law.

[232] Article 26 of the VCLT provides that legal treaties are always binding; Section 25 of the CRAG Act of 2010 defines a treaty as a legally binding written agreement between states or between states and international organisations.

[233] Home Office, "Treaties and MOUs: Guidance on Practice and Procedures," GOV.UK (Foreign, Commonwealth & Development Office, March 15, 2022), https://www.gov.uk/government/publications/treaties-and-mous-guidance-on-practice-and-procedures.

[234] Anthony Aust, *Modern Treaty Law and Practice.*

[235] H Hillgenberg, "A Fresh Look at Soft Law," *European Journal of International Law* 10, no. 3 (1999): 499–515, https://doi.org/10.1093/ejil/10.3.499.

[236] For Canadian Practice, Payam Akhavan et al., *Kindred's International Law, chiefly as Interpreted and Applied in Canada*, 9th ed. (Toronto: Emond Publishing, 2019), 119-120.

[237] Anthony Aust, *Modern Treaty Law and Practice*, 28.

[238] House of Lords, "Memorandum of Understanding between the UK and Rwanda for the Provision of an Asylum Partnership Arrangement," 2022, *Https://Publications.parliament.uk/Pa/Ld5803/Ldselect/Ldintagr/71/71.Pdf*

[239] United Nations Charter (1945).

This came at a time when the UK government needed a solution for the increasing number of asylum seekers and the huge backlogs as a result.[240] Thus, by concluding the asylum partnership arrangement as a memorandum of understanding, the UK government avoided the constitutional requirement that it submit treaties to each legislature for approval prior to ratification thus saving time.[241] The UK-Rwanda MOU was therefore not scrutinised by the UK Parliament or the International Agreements Committee.

The original Ponsonby Rule of 1924 included a commitment that the United Kingdom would disclose agreements, commitments, and undertakings that "involve international obligations of a serious character" regardless of whether they constituted a formal treaty.[242] Notably, this agreement was not mentioned in CRAG 2010, which sought to formalise portions of the Ponsonby Rule, and the UK Government is not required to routinely disclose MOUs to the UK Parliament.[243] Consequently, under the Constitutional Reform and Governance Act of 2010 (CRAG 2010), Memoranda of Understanding are not subject to formal parliamentary scrutiny provisions. Constitution

The fact that the UK-Rwanda Memorandum of Understanding is a political agreement rather than a legally binding treaty does not prevent its safeguards from being enforceable under international or national law. In order to fully protect the rights of those whose rights are profoundly affected, international law does not require that such agreements be formalised through a treaty.[244] This is because, as already argued in the chapter two, these rights are already protected under customary law, the refugee Convention and the UDHR. The Law Society of England and Wales succinctly addressed the procedural challenges presented by the Memorandum of Understanding (MOU) in its response. It highlighted that by entering into an agreement that lacks binding force under international law, there is a lack of available

[240] Sam Fleming and Guy Chazan , "The System Is Overwhelmed: Europe Confronts Fresh Migrant Influx," *Financial Times*, November 22, 2022, https://www.ft.com/content/2e56acf5-1039-4b49-93b7-83bc960c0329?emailId=edb1da9b-89b4-47b1-8b60-e81155ce118e&segmentId=22011ee7-896a-8c4c-22a0-7603348b7f22.
[241] CRAG (2010).
[242] For US Practice, Duncan B. Hollis and Joshua J. Newcomer, "Political Commitments and the Constitution," *Virginia Journal of International Law* 49, no. 3 (September 26, 2008), https://ssrn.com/abstract=1274463.
[243] House of Lords, "Working Practices: One Year On," *UK Parliament* (London: House of Lords, September 17, 2021), https://committees.parliament.uk/publications/7364/documents/77738/default/.
[244] In international human rights law, it is generally recognised that the protection of human rights extends beyond treaties to other sources of international law, such as customary international law, general principles of law, and soft law instruments. Several international and regional human rights instruments reflect this, including the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social, and Cultural Rights, and the European Convention on Human Rights. The widespread recognition of the principle that human rights can be protected through various sources of international law reflects the adaptable character of the international human rights framework.

means to enforce the obligations outlined in the MOU. The Law Society asserts that the utilisation of a memorandum of understanding (MOU) to govern an issue of substantial consequence to the rule of law is inappropriate. This is due to the non-binding nature of an MOU, which fails to ensure the safeguarding of the rights of individuals impacted by the agreement.[245] Legal arguments laid out in chapter two and also as will be shown below, demonstrate that this is not wholly accurate. Individual rights as to non-refoulement and their rights under the Refugee Convention and the UDHCR have been exhaustedly explained in chapter two. This chapter discusses negotiation as a form of dispute resolution mechanism in international law, followed by the doctrine of estoppel/preclusion.

The Potential Legal Consequences of MOUs: Estoppel

Can a non-binding memorandum of understanding result in legal consequences? At first glimpse, an MOU may appear to have only political repercussions. The sanction is political if a state does not fulfil its obligations, which may explain why MOUs are frequently described as "politically binding". To ascertain the legal consequences outlined in the UK-Rwanda Memorandum of Understanding, it is necessary to review the agreement's actual text. In spite of the clause in the MOU and the fact that Article 102(2) of the UN Charter states that unregistered instruments cannot be invoked before UN organs, including the ICJ, in practise they can be.[246] Consequently, a memorandum of understanding (MOU) could also be invoked, although whether this would aid the legal argument depends on whether the MOU has legal consequences in the specific circumstances. The UK-Rwanda Memorandum of Understanding specifies the obligations of both parties under the agreement, which may result in legal consequences that can be invoked in court or before a dispute body.

Unilateral acts, when undertaken in the form of declarations, possess the potential to generate legal duties through influencing both legal and factual circumstances. First, the statement that gives rise to the estoppel presumption must be explicit and unambiguous. Second, this expression must also be voluntary, unrestricted, and permitted. Third, both parties to the MOU must have a benign trust in the expression of the party giving that expression, causing no damage to the other party or benefiting the expressive side.

The judgement rendered by the Court in the Nuclear Tests case underscored the principle that when states issue declarations that impose limitations on their freedom of action, a narrow and

[245] *SAA (Sudan) & Others versus the Secretary of State for the Home Department* (In the High Court of Justice King's Bench Division Divisional Court December 19, 2022).
[246] ICJ, *Qatar versus Bahrain*, (1994).

restrictive interpretation should be applied.[247] Accordingly, it was held in the Case concerning the Frontier Dispute (*Burkina Faso v. Republic of Mali*) that a written or oral statement (unilateral declaration) has 'the character of a legal undertaking' under international law if given 'with an intent to be bound'.[248] Furthermore, the court in the Case concerning Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Rwanda) determined that the aforementioned intention must be established through the interpretation of the relevant act, considering not only the explicit content of the unilateral declaration but also the entirety of the factual circumstances surrounding its occurrence.[249] Prior to its incorporation into international law, the doctrine of estoppel originated from English law.[250] Article 38(1)(c) of the ICJ Statute provides the legal basis for this by allowing the rules of municipal law, i.e., the general principles of municipal law, to be received into international law.

Paragraphs 11.1 of the MOU is very specific and can give rise to estoppel. It concerns the return of relocated individuals to the UK following UK government request. According to international human rights standards, Rwanda has a responsibility to ensure that an individual who has been moved is made accessible for return to the United Kingdom, if the United Kingdom is legally bound to support their return. This paragraph contains a declaration with a legal effect, thus creates a legal obligation under the principle of non-refoulement. Because the UK has a legal obligation under international law to protect individuals against refoulement, then it can use estoppel against Rwanda, as the UK relied on Rwanda's promise to return an individual who might face ill-treatment in Rwanda.

Paragraph 11.1 of the MOU provides protection for asylum seekers who might face ill-treatment through torture etc. Thus, unilateral declarations concerning non-derogable international law rights can have the effect of creating legal obligations via estoppel. The doctrine of estoppel will prevent Rwanda from asserting a position contrary to what it has previously declared in paragraph 11.1, if doing so would be unfair or unjust in view of the United Kingdom's reliance on that declaration. In the context of non-derogable rights, which

[247] Nuclear Tests, para 47, 473.
[248] Nuclear Tests, para. 43; Case concerning the Frontier Dispute (*Burkina Faso v. Republic of Mali*) (Merits) [1986] ICJ Rep 554, para. 39 ('Thus it all depends on the intention of the State in question, […].').
[249] Frontier Dispute, para 40; Nuclear Tests fn (14), para. 51; Case concerning Armed Activities on the Territory of the Congo (*Democratic Republic of the Congo v. Rwanda*) (Jurisdiction and Admissibility) [2006] ICJ Rep 6, para. 49.
[250] In mediaeval England, the Court of Chancery, an equity court, began to formulate principles and rules to supplement the rigid and frequently inflexible common law. Estoppel was one of these equitable doctrines to emerge.

are fundamental human rights that neither Rwanda nor the United Kingdom can suspend or relinquish, Rwanda's unilateral declaration or statement recognising and affirming such rights may create legal obligations under estoppel. If the United Kingdom acts in accordance with this declaration, Rwanda may be precluded from subsequently asserting an opposing position that would undermine the rights recognised in its declaration.

Because the United Kingdom and Rwanda chose to record the settlement of a dispute between them in an MOU rather than a treaty – for reasons of formalities – each is clearly precluded from denying that the terms of the settlement are binding, though it is the *agreement to* (as expressed in the MOU) that is binding in international law, and not the MOU itself – a distinction that may be subtle but is nonetheless significant.[251] Does it make sense, however, not to consider a memorandum of understanding to be a treaty if there are circumstances in which the conclusion and implementation of a memorandum may have legal consequences? The distinction between a treaty, which creates legal rights and obligations, and a memorandum of understanding, which does not but may have legal consequences in exceptional circumstances, may seem nuanced, but in diplomacy, subtlety is frequently essential.

Negotiation

Paragraph 22.1 of the MOU states as follows: *"The Participants will make all reasonable efforts to resolve between them all disputes concerning this Arrangement. Neither Participant will have recourse to a dispute resolution body outside of this."* This means that disputes would be settled by negotiation which is acceptable under international agreements.[252] The Permanent Court of International Justice (PCIJ) in the 1924 case Mavrommatis Palestine Concessions (Mavrommatis) provided a definition of a dispute as a "difference on a point of law or fact, a conflict of legal views or of interests between two parties."[253] The main question in this case was whether Britain had violated its international legal obligation. Article 33 of the Charter of the United Nations (Charter) recognizes negotiation as among the various means of dispute settlement.[254]

[251] Bin Cheng, *General Principles of Law as Applied by International Courts and Tribunals*, 1st ed. (Cambridge; New York: Cambridge University Press, 2006), 137 *et seq*., in particular, the discussion of the ***Portendic*** case.
[252] UK-Rwanda MOU para. 22.1
[253] Mavrommatis Palestine Concessions (*Greece v. Great Britain*), Judgment of 30 August 1924, 1924, PCIJ (Ser. A) No. 2, 11.
[254] Chapter VI of the UN Charter, with particular reference to Article 33.

In 1930, Sir Hersch Lauterpacht succinctly delineated the distinction between diplomatic and legal avenues for resolving disputes by asserting that parties who choose diplomatic means effectively replace a definitive settlement with a sequence of attempted settlements.[255] The subsequent argument, though, illustrates the fallacy of claiming that the law has no influence on the resolution of diplomatic disputes or that political factors do not shape the resolution of legal disputes.

This section demonstrates that negotiation as a form of dispute resolution is effective. Although there exists a wide range of forms for diplomatic dispute resolution, it is crucial to note that negotiation is fundamentally integrated within a legal framework. Consequently, if a party fails to fulfil its obligations, it may be considered an internationally wrongful act. In such cases, the victim party may respond with countermeasures or other appropriate actions.

Undoubtedly the earliest method of resolving disputes is negotiation. Judges Moore and Pessoa characterised it as the "legally regulated and systematic administrative procedure through which governments, in the exercise of their indisputable authorities, engage in their interactions with one another, deliberating, reconciling, and resolving their disputes."[256] Furthermore, under the dissenting perspectives expressed in the *Mavrommatis* case, negotiation is characterised as a form of discourse or dialogue between representatives of opposing interests. This dialogue involves the presentation of reasons by each party and the subsequent challenge of their opponent's claims.[257] In a manner akin to the process of consultation employed within the dispute settlement system of the World Trade Organisation, negotiation enables the United Kingdom and Rwanda to engage in the exchange of information, analyse their individual situations, and endeavour to achieve a mutually satisfactory agreement.[258] The purpose of negotiation is to bring disagreements into focus and make them more "concrete" in order to reach a resolution.[259]

In its most fundamental manifestation, negotiation does not include the involvement of an intermediary and is predominantly characterised by its informal nature.[260] As a diplomatic mechanism for dispute resolution, it possesses the benefit of informing the United Kingdom

[255] Sir Hersch Lauterpacht, *The Absence of an International Legislature and the Compulsory Jurisdiction of International Tribunals*, 1st ed., (Cambridge University Press, 1930), 134, 138.
[256] Mavrommatis Palestine Concessions (Greece v. U.K.), 1924, 62-63, (Moore J., dissenting).
[257] Ibid., 91 (Pessoa, J., dissenting).
[258] Mexico — Corn Syrup (2001).
[259] J.G. Merrills, "The Mosaic of International Dispute Settlement Procedures: Complementary or Contradictory?," *Netherlands International Law Review* 54, no. 02 (August 2007): 361, https://doi.org/10.1017/s0165070x07003610.
[260] James Crawford et al., *The Law of International Responsibility* (New York: Oxford University Press, 2010).

and Rwanda about the presence and extent of a conflict, so enabling them to seek a peaceful resolution.[261]

The express language of Article 33 of the Charter does not prescribe a specific requirement for the parties involved in a dispute to resolve it exclusively through diplomatic or legal channels. Furthermore, the article does not suggest any hierarchical arrangement that would prioritise certain methods of dispute settlement over others within the realm of international law. This phenomenon can be attributed to the common tendency of not doing so. The primary objective of Article 33 is to promote the peaceful resolution of conflicts, allowing parties involved to utilise various methods either individually or in conjunction with one another. Rwanda and the UK thus have the ability to determine the selection of measures on an ad hoc basis, namely when a specific conflict occurs.[262]

In the case of a disagreement arising from the Memorandum of Understanding (MOU) between the United Kingdom and Rwanda, the resolution process would require one of the disputing parties to make a genuine attempt to initiate conversations with the other party, with the objective of reaching a resolution for the matter. It is imperative that the negotiations between Rwanda and the United Kingdom are conducted with utmost sincerity and integrity.[263] The legal concept of good faith is a fundamental principle that governs the establishment and fulfilment of legal duties, irrespective of their origin. International law has consistently emphasised the vital role of good faith in the realm of negotiation. The major legal requirement pertains to process concerns, although it is not limited only to them.

The United Kingdom and Rwanda were within their legal rights to freely exercise their right to choose; by making the decision to negotiate, they are making a substantial contribution to the amicable resolution of disputes. This ought to be worthy of praise. In order to make this process easier, international law has to define certain mechanisms that will control the circumstances under which it is permissible to assert, as a matter of law, that a negotiation has been successful. The fact-specific nature of the law of negotiation, when applied in this particular context, is unsurprising and involves the examination of both procedural and substantive legal aspects.

[261] Application of the International Convention on the Elimination of All Forms of Racial Discrimination (*Georgia v. Russian Federation*), Preliminary Objections, Judgment, I.C.J. Reports 2011, 70.
[262] UNHCR, "Convention on the Law of the Sea," (UNGA, December 10, 1982).
[263] Reference re Secession of Quebec, [1998] 2 S.C.R. 217, para. 104 (Can.) (articulating an analogous notion of "principled negotiations").

Examples of MOU as Precedents for 'externalisation' of asylum

Because MOUs are used to sidestep international law, they do not have a clear place in the framework of international law. States typically make it apparent by their choice of terminology when they do not intend to enter into a legally binding instrument. In case of the UK-Rwanda it is not actually the "name" (the term MOU) that makes the difference, it's the will of the parties, expressed by their words! The fundamental concept is that a state is free to use or not use its treaty making power as it sees fit. It is possible for states to form agreements that are only legally binding within their own borders. In addition, no rule or principle in treaty law or general international law mandates that all dealings between nations be made in the form of a treaty or any other legally enforceable instrument. Extensive state practice contradicts the hypothesis.

To begin, it should be recognised that the United Kingdom is not alone among industrialised countries in wanting to externalise asylum proceedings. Few countries have adopted policies along these lines. Insofar as they strive to delegate responsibility for asylum seekers to other nation states, the African Union and the UNHCR, and Denmark have established or sought policies that are analogous.

Denmark's 'zero' refugees Rwanda policy

When (then) Danish Prime Minister Lars Løkke Rasmussen delivered his New Year's Address on January 1, 2016, he emphasised on the large number of asylum seekers who arrived in Europe and Denmark in 2015.[264] On 3 June 2021, the Danish parliament approved L226, a legislative amendment inserting a new paragraph 29 into the Aliens Act permitting the transfer of asylum applicants to a third country outside the EU for both asylum processing and refugee protection in the third country.[265] According to the provisions outlined in Paragraph 29 of the Aliens Act, the transfer of individuals should be carried out in adherence to an established international agreement between Denmark and the respective third country. It is also specified that asylum seekers should be moved, unless such action would result in a breach of Denmark's duties under international law. Despite the Danish government's acknowledgement of discussions with Rwanda, a definitive agreement has not yet been achieved.

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[264] Jon Henley, "Danish PM Counts on Popular Support in Tackling Refugees," *The Guardian*, January 28, 2016, sec. World news, https://www.theguardian.com/world/2016/jan/28/lars-lokke-rasmussen-danish-pm-popular-support-tackling-refugees.

[265] Minister for Immigration and Integration Mattias Tesfaye (S), "L 226 Proposal for a Law Amending the Aliens Act and the Return Act," (2021) § 1191, https://www.ft.dk/samling/20201/lovforslag/l226/index.htm.

The enactment of L226 represents a turning point in the development of Danish government policy and law regarding extraterritorial asylum, which dates back to 2018. Danish authorities have been considering extraterritorial asylum for some time; in 1986, they even proposed a resolution to the UN General Assembly calling for the creation of "regional United Nations processing centres". Nevertheless, the inclusion of L226 in the legislation demonstrates the earnestness with which the present administration is actively pursuing the concept. The Danish idea represents a significant shift from the current practise of territorial asylum, which assigns the responsibility of assessing an asylum seeker's claim and ensuring their protection to the state in which they first enter. The 1951 Refugee Convention does not explicitly provide an affirmative entitlement to seek asylum, nor does it provide explicit guidelines regarding the circumstances in which states can distribute the responsibility for refugees.[266] Since the onset of the European migrant and refugee crisis in 2015, a multitude of propositions aiming to externalise the procedures pertaining to asylum or the safeguarding of refugees have been put up. Nevertheless, the Danish policy stands out among the Nordic countries due to its distinctive feature of implementing a legal framework for the relocation of asylum seekers beyond the European continent.[267] One prominent example of extant European extraterritorial asylum practises is the EU-Turkey Statement. This agreement establishes a framework for the repatriation of Syrian asylum seekers from the Greek Aegean islands, operating under the principle of a "safe third country."

The Danish Social Democrats presented their immigration platform in February 2018 under the title "Fair and Realistic: An immigration policy that unites Denmark."[268] This platform calls for the transfer of all asylum seekers arriving on Danish soil to a third country for the processing of their asylum claims. The platform outlined four tenets of this original vision for a Danish extraterritorial asylum system: the end of spontaneous asylum in Denmark; the establishment of a Danish "reception centre" outside of Europe, preferably in partnership with other EU states; the transfer of asylum seekers determined to be refugees to the United Nations High Commissioner for Refugees (UNHCR) for international protection, either in a UN-run facility or a third country; and the return of refugees to their home countries.[269] In

[266] Refugee Convention.
[267] Nikolas Feith Tan, "The Manus Island Regional Processing Centre: A Legal Taxonomy," *European Journal of Migration and Law* 20, no. 4 (November 29, 2018): 427–51, https://doi.org/10.1163/15718166-12340037.
[268] Socialdemokratiet, "Retfaerdig Og Reelistisk Helhedsplan for Dansk Udlaendingepolitik," *Socialdemokratiet.dk* (Denmark: Socialdemokratiet, February 2018), https://www.socialdemokratiet.dk/media/wozlqnux/retfaerdig-og-realistisk-ny.pdf.
[269] Socialdemokratiet, "Retfaerdig Og Reelistisk Helhedsplan for Dansk Udlaendingepolitik," 12-13.

other words, the platform outlined a comprehensive reform of the Danish protection system, with the stated goal of "ensuring an equitable asylum system."[270]

When the Social Democrats won the June 2019 election and took over the government, they immediately set to work to make this goal a reality. Meetings between Danish ministers and their French and German counterparts in November 2019 resulted in the rejection of the Danish model by both leaders.[271] Ylva Johanssen, EU Commissioner for Home Affairs, deemed the approach "unrealistic" in December 2019.[272] The Danish model has fallen to the wayside in EU deliberations because the September 2020 release of the New Pact on Migration and Asylum prioritises speedy border procedures above extraterritorial processing in order to streamline the asylum and return processes.[273] The Danish government, undeterred, concentrated on the legal aspects of its proposal under national, EU, and international law. A government legal paper dated January 2021 revealed significant changes from the 2018 platform. The note stated, for instance, that a number of international responsibilities limit the number of asylum seekers who can be relocated after arriving in Denmark, thus the practise of spontaneous asylum would have to be curtailed rather than eliminated entirely. Particularly, the principle of *non-refoulement*, which prohibits the transfer of any individual to a country where they face a real risk of torture, inhuman or degrading treatment, or punishment, restricts the class of asylum applicants who can be transferred.[274]

Furthermore, the legal notice delineated two prospective frameworks for the processing of asylum applications within the designated "reception centre" located in the third country. According to Model 1, Denmark would assume responsibility for the administration and exertion of effective control over the centre located in the third country, so subjecting it to Danish jurisdiction in accordance with the principles of international human rights law.[275]

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[270] Ibid., 13.
[271] Fie Dandanell, "Tesfaye Har Ikke Mødt Nogen, Der Ønsker Samme Europæiske Asylsystem Som Regeringen," Berlingske.dk (Berlingske, December 17, 2019), https://www.berlingske.dk/politik/tesfaye-har-ikke-moedt-nogen-der-oensker-samme-europaeiske-asylsystem-som.
[272] Michael Alsen, "EUs Flygtningekommissær Afviser Dansk Asylforslag:»Det Er Ikke Realistisk«," Berlingske.dk (Berlingske, December 15, 2019), http://www.berlingske.dk/internationalt/eus-flygtningekommissaer-afviser-dansk-asylforslag-det-er-ikke.
[273] European Commission, "Migration and Asylum Package: New Pact on Migration and Asylum Documents Adopted on 23 September 2020," commission.europa.eu (European Commission, September 23, 2020), https://commission.europa.eu/publications/migration-and-asylum-package-new-pact-migration-and-asylum-documents-adopted-23-september-2020_en.
[274] Danish Ministry of Immigration and Integration, Juridisk analyse af mulighederne for overførsel af asylansøgere til asylsagsbehandling i et tredjeland inden for rammerne af international ret, January 2021, 3 (Danish Ministry); Refugee Convention.
[275] Danish Ministry of Immigration and Integration, Juridisk analyse af mulighederne for overførsel af asylansøgere til asylsagsbehandling i et tredjeland inden for rammerne af international ret.

According to Model 2, the operational responsibility for the centre will be assumed by the third country.[276] Consequently, the enactment of L226 in February 2021, accompanied by the inclusion of a supplementary paragraph 29 within the Aliens Act, necessitated the transfer of an asylum-seeking individual of foreign origin to a third nation for the purpose of processing their asylum claim and ultimately securing their protection under an international accord, unless such action would contravene Denmark's obligations on the global stage.[277] The explanatory memorandum of the law proposal restated the government's dedication to achieving a fairer and more compassionate society, while upholding Denmark's international duties.[278]

The proposed legislation not only seeks to establish a legal foundation in Danish law for the transfer of individuals seeking asylum to a third country, but also outlines the legal framework for the implementation of the Danish model, as concisely elucidated in the following manner. As delineated in L226, the Danish extraterritorial mechanism encompasses three distinct phases: an initial "screening" procedure conducted within Denmark, followed by the asylum process taking place in the third country, and ultimately, the provision of protection in the third country for those asylum seekers who are deemed to be refugees. The legislative proposal to L226 incorporates a pre-transfer phase that establishes a tailored procedure consisting of two instances. This procedure aims to assess the lawfulness of transferring an asylum seeker to a third nation. Therefore, the Danish Immigration Service will conduct a thorough background check on each asylum seeker, and they will have the right to appeal their case to the Refugee Appeals Board.[279]

Although the proposed rule did not specify who would be excused from transfer, it did give a variety of instances, such as nationals of the third state itself, asylum applicants with family members already in Denmark, and extremely ill individuals.[280] As a result, paragraph 29(2) stipulates that the Danish Immigration Service shall establish additional rules regarding those asylum applicants exempt from transfer. Second, the proposed law stipulated that the entirety of the asylum process take place in a third country that has ratified and actually respects the 1951 Refugee Convention and where a reliable asylum process is available.[281] L226 was

[276] Ibid.
[277] The Ministry of Immigration and Integration, "Retsinformation," (April 30, 2021), https://www.retsinformation.dk/eli/ft/202012L00226..
[278] Ibid., 4.
[279] Ibid., 29.
[280] The Ministry of Immigration and Integration, "Retsinformation," 4.
[281] The Ministry of Immigration and Integration, "Retsinformation," 9.

enacted as an amendment to the Aliens Act on June 3, 2021, with minor technical amendments, establishing the legal stage for the next phase of the Danish government's ambition. As L226 contemplates the conclusion of an international agreement between Denmark and Rwanda, the Danish parliament must approve any concrete instrument prior to its implementation.

The development and immigration ministers of Denmark recently visited Kigali, Rwanda, to sign an MOU in the sphere of asylum and migration, despite the harsh home responses to the legislative proposal. The bilateral Memorandum of Understanding (MOU) lacks legal enforceability and it entails the resettlement of refugees from Denmark to Rwanda, i.e., the foundation for a future transfer agreement. Moreover, it has been extensively publicised as a significant milestone towards the implementation of the Danish government's proposition. International reactions from the UNHCR and some EU representatives in the days and weeks after the passing of L226 were overwhelmingly hostile and contemptuous. The European Commission has highlighted that the outsourcing of asylum claims to external entities raises significant concerns pertaining to the accessibility of asylum procedures and the effectiveness of accessing protection. The current regulations and principles outlined in the new migration and asylum accord render it unfeasible.[282] The UNHCR reaffirmed that the Danish proposal "risks eroding the foundation of the international refugee protection system."[283]

The Austrian government, on the other hand, expressed enthusiasm for the idea, calling it "a persuasive approach."[284] The Nationality and Borders Act establishes a legal framework for the extraterritorial handling of asylum applications and eases the restrictions on safe third country regulations, enabling the relocation of asylum seekers to Rwanda. In contrast, the United Kingdom's New Plan on Migration briefly mentions third country policies, resembling the approach taken by Denmark. The African Union released a press statement in August 2021, strongly denouncing L226 as entirely unacceptable and a failure to fulfil international obligations. This condemnation holds particular significance for potential future

[282] Megan Specia, "Denmark Would Push Asylum Seekers Outside Europe for Processing," *The New York Times*, June 3, 2021, sec. World, https://www.nytimes.com/2021/06/03/world/europe/denmark-asylum-process.html; Niamh Kennedy and Tara John, "Denmark Passes Law to Move Asylum Centres Outside the EU. It Still Needs Another Country to Agree," CNN (Cable News Network, June 3, 2021), https://www.cnn.com/2021/06/03/europe/denmark-asylum-seeker-offshore-intl/index.html.
[283] Ibid.
[284] Oliver Noyan, "Austria Sides with Denmark on Controversial Asylum Law," www.euractiv.com (EURACTIV, June 9, 2021), http://www.euractiv.com/section/politics/short_news/austria-sides-with-denmark-on-controversial-asylum-law/.

collaborations between nations. [285] However, one should not rule out the chance that one or more African governments will sign on to the Danish vision, as the statement indicates that none of the African Union's 55 member states (which includes Rwanda) are currently willing to enter into the partnership L226 foresees.

The Danish government may encounter challenges in convincing a non-European state to engage in a bilateral cooperation agreement. However, recent observations in the Pacific and Central America suggest that certain governments in the Global South are open to participating in such arrangements, provided they receive development aid and other incentives.[286] Similar to the Memorandum of Understanding (MOU) between the United Kingdom and Rwanda, the L226 agreement likewise carries significant ramifications for Denmark's international commitments. If L226 were to be put into effect, it is probable that a significant amount of legal disputes would arise from the transfer rulings made by the Danish Refugee Appeals Board. These disputes would involve the examination, by both the United Nations treaty bodies and the European Court of Human Rights, of the legal parameters regarding the individuals who can be lawfully transferred to the third country in question. The subsequent emphasis would likely shift towards the examination of reception conditions and the asylum process in the third country. Unresolved matters encompass the determination of whether the centre will be subject to Danish legislation, the extent of involvement of monitoring entities such as the UNHCR and the Danish Institute of Human Rights, and the potential for repatriation to Denmark in accordance with humanitarian concerns. [287]

Another significant issue that needs to be addressed is whether L226 can be considered as the initial catalyst for Europe's externalisation of asylum. Both legal and policy factors suggest that the response to this inquiry should be affirmative, particularly in the foreseeable future. From a legal perspective, Denmark's decision to opt out of significant elements of the European Union's asylum acquis would seemingly render L226 legally applicable in Denmark, but not being applicable in other member states of the European Union. The Asylum Procedures Directive is particularly important since it guarantees asylum seekers the

[285] African Union, "Press Statement on Denmark's Alien Act Provision to Externalize Asylum Procedures to Third Countries | African Union," au.int (African Union, August 2, 2021), http://www.au.int/en/pressreleases/20210802/press-statement-denmarks-alien-act-provision-externalize-asylum-procedures.
[286] Madeline Gleeson and Natasha Yacoub, "Policy Brief 11 - Cruel, Costly and Ineffective: The Failure of Offshore Processing in Australia | Kaldor Centre," www.kaldorcentre.unsw.edu.au (UNSW Kaldor Centre, August 12, 2021), https://www.kaldorcentre.unsw.edu.au/publication/policy-brief-11-cruel-costly-and-ineffective-failure-offshore-processing-australia.
[287] Ibid.

ability to remain in a member state until a determination is made on their protection status.[288] Furthermore, under pre-existing conceptions of safe third countries, there must be a link between the applicant and the third country in question, such that travel to the country would be sensible.[289] The United Kingdom Act telegraphs the interest of other European states in externalising, to varying degrees, asylum procedures.[290] One thing seems certain: the vision of externalising asylum among Global North states is not going away anytime soon.[291]

The MOU between Rwanda, the African Union (AU) and UNHCR

Rwanda inked an MOU with the UNHCR and the African Union in September 2019 to accept refugees and asylum seekers evacuated from Libya. Under the so-called Emergency Transit Mechanism (ETM), the UNHCR conducts refugee status determination processes and issues documentation that allows refugees and asylum applicants to access services pending a determination. Possible outcomes include resettlement in a third country, return to the country of origin, return to the country where asylum was granted, or local integration in Rwanda, pending agreement with the government.[292]

Since 2019, the centre has housed Libyans as part of the Emergency Transit Mechanism (ETM). 824 individuals have been accepted into the programme, and 462 have been resettled abroad.[293] Excluding the legal/processing side, the centre:

- Deals with trauma concerns with partner organisations
- Supports mental health and psychosocial well-being. Medical, for example, vaccinations and prescriptions. All individuals transiting the ETM are provided with counselling or referrals to mental health services.
- habitation (small dwellings)
- Food (three meals daily)

In accordance with the ETM agreement, the UNHCR upgraded the Gashora Transit Centre's health facilities, sanitation systems, and housing units. Additionally, the Centre offers employment training and opportunities to refugees.[294]

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[288] Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection, Art. 3.
[289] Ibid., Art. 35.
[290] Nikolas Feith Tan, "Visions of the Realistic? Denmark's Legal Basis for Extraterritorial Asylum," Social Science Research Network (Rochester, NY: Danish Institute for Human Rights, October 26, 2021), p. 8, https://ssrn.com/abstract=3950696.
[291] Ibid.
[292] MINEMA, "Fourth Group of Refugees and Asylum Seekers from Libya Safely Arrived in Rwanda," Minema.gov.rw (Government of the Republic of Rwanda, 2019), https://www.minema.gov.rw/news-detail/fourth-group-of-refugees-and-asylum-seekers-from-libya-safely-arrived-in-rwanda-1;
[293] Home Office, "Rwanda: Country Policy and Information Notes," *GOV.UK*, May 9, 2022, https://www.gov.uk/government/publications/rwanda-country-policy-and-information-notes.

Asylum seekers driving and language (in Kinyarwanda, English and French) classes, and are also training in domestic electrical. They also assist the local community in promoting cultural integration and interaction. For instance, they collaborate with the local community to scrub the streets with Rwandans (a practise known as Umuganda).

Adoption of international agreements that implement the "safe third country" concept is one of the manifestations of international cooperation among states in the field of refugee protection. The Preamble to the Refugee Convention recognises that "the grant of asylum may impose undue burdens on certain countries, and [that] a satisfactory solution to a problem whose international scope and nature has been recognised by the United Nations cannot be achieved without international cooperation." The United Kingdom can no longer participate in the Dublin III Regulation; thus, she cannot use the first country principle. The inadmissibility rules are intended to supplant the Dublin Regulation while the MEDP is intended to provide for the safe third country principle.

As a result, the UK-Rwanda Memorandum of Understanding is not an Offshore Processing Agreement like the Australian one, as it does not intend to determine asylum applications outside the UK through interdiction measures. Neither is it comparable to the 2016 EU-Turkey agreement in which Turkey was compelled to stem the flow of unprotected asylum seekers from Turkey to Greece. Rather, the MOU is a partnership between two states that share the same Refugee and asylum law values and principles. Asylum applicants are not prevented from submitting an asylum application to British authorities, nor are they prevented from entering British territory. Instead, they are permitted to submit an application that, if deemed inadmissible, will result in their relocation to Rwanda.

[294] Ibid

Conclusion

This thesis was inspired by claims from UNHCR and other relevant stakeholders that the Memorandum of Understanding for the Provision of an Asylum Partnership Agreement between the Governments of the United Kingdom and Rwanda, published by the UK government on 14 April 2022, violated international law. In the past, UNHCR has argued against the externalisation of (certain portions of) asylum procedures from a country obligated by the Geneva Convention to other countries. However, a straightforward assertion that "something is illegal" is insufficient; it must be well-argued and well-considered, or else it can be considered a purely political statement using legal terminology.

The memorandum of understanding (MOU) possesses the advantageous characteristic of being non-binding on an international level, so ensuring that it does not modify the existing international commitments of the governments involved. The United Kingdom's continued need to manage the process of transporting individuals, including screening, travel arrangements, and the legal requirement to facilitate their return, seems to be widely recognised. Both Rwanda and the United Kingdom are obligated under international law to uphold, protect, and ensure the realisation of the fundamental human rights of all individuals within their jurisdiction or subject to their authority or influence. This means, both in theory and in practise, that because asylum is requested in the United Kingdom, it has the right to determine the merits of the claim and, by extension, the right to determine whether asylum claims are inadmissible under its laws.

During the transitional period, the United Kingdom will maintain its accountability for the activities carried out by its representative, Rwanda. This includes coordinating the provision of accommodation and reception facilities, managing asylum and protection claims, and addressing the needs of both acknowledged and unacknowledged refugees. Our findings indicate that the Memorandum of Understanding (MOU) exhibits transparency in terms of outlining the criteria employed by Rwanda to ascertain refugee status and various forms of protection. Individuals are "assured" of their access to an interpreter, housing, food, and medical facilities, as well as their integration into society, employment, education, and so forth. Similar to the role played by British courts in promoting the expansion of the refugee definition to encompass individuals and groups facing threats from non-state actors or due to their gender or gender identity, Rwanda's commitment to these issues is beyond doubt as it has ratified relevant treaties mandating such actions.

After requesting a clear legal argument from UNHCR legal staff and receiving no satisfactory response, we conclude that no argument could withstand legal scrutiny. Regarding the RW-UK Memorandum of Understanding, there are no better-founded arguments. Yes, the United Kingdom provides temporary protection to asylum claimants. No, the United Kingdom does not refuse to provide a legal procedure that determines the refugee status of asylum seekers. The United Kingdom Government requests that Rwanda determine the status in accordance with an international legal framework that has not been condemned by any international tribunal.

Is it conceivable that, in the future, an international tribunal will determine that the Rwandan administration is biased or otherwise unfit to administer asylum cases? Theoretically, this is possible, but there is no reason to assume that it will occur, given that Rwanda is viewed as a country with less corruption than a number of European nations and a functioning legal system – again, better than a number of European nations.

Why should we therefore be suspicious of Rwandan lawyers, justices, and government officials? The United Nations High Commissioner for Refugees (UNHCR) and the African Union reached an agreement in September 2019 on the so-called Emergency Transit Mechanism (ETM), whereby Rwanda accepts asylum seekers on her territory pending a status determination. Unanswered to this day is the issue of why UNHCR would send asylum seekers to Rwanda in 2019 but criticise Rwanda's participation in asylum procedures in 2022. In 2019, UNHCR utilised a Memorandum of Understanding. Despite the fact that a memorandum of understanding has no legal effect, i.e., it does not create new rights or obligations, it clarifies which laws the parties agree to abide by, which are primarily the Geneva Conventions and international human rights standards enshrined in the relevant international legal instruments. Any of the parties would be precluded from alleging that they intended otherwise, which would suffice as an argument before an international tribunal.

In conclusion, no legal arguments or facts have surfaced that would justify excluding the Rwandan government's correct application of international legal norms. Therefore, the content of the MOU is consistent with international law because it corresponds to already existing rights and obligations under international law.

Glossary of Terms

Jus Cogens: *Jus cogens* (from Latin: compelling law; from English: peremptory norm) refers to certain fundamental, overriding principles of international law.

Erga omnes: In international law, it has been used as a legal term describing obligations owed by states towards the community of states as a whole. An *erga omnes* obligation exists because of the universal and undeniable interest in the perpetuation of critical rights and the prevention of their breach.

Peremptory Norm: Under article 53 of the Vienna Convention on the Law of Treaties, a peremptory norm (also called jus cogens) is a norm of general international law that the international community of states of the United Nations has accepted and recognized as such. A peremptory norm is of mandatory application and can be modified only by a subsequent norm with the same legal status. An international treaty shall be void if it conflicts with a peremptory norm.

Annexes

Annex 1: Sample Semi-Structured Interview

Semi-structured Interview for the Research (Thesis)

My name is Miss Vicky Akinyi, a postgraduate student at Vienna School of International Studies and I am currently conducting a research entitled "How can the UK Government's Rwanda Policy be legal under International Asylum Law?" I must bolster my findings with the opinions of experts from both nations in order to pursue scientific body of knowledge and arrive at an objective analysis.

Consequently, thank you for consenting to participate in this semi-structured interview and for taking the time to provide such insightful feedback. As you may be aware, Rwanda and the United Kingdom have a partnership regarding asylum. Consequently, your responses and perspectives will help me better comprehend the UNHCR's reasoning. Please take your time and strive to be as specific as possible in your response. You may skip the inquiries that do not pertain to your background or career.

Q: 1: What is your name and the most appropriate profession? (e.g., Researcher, Political Analyst, Diplomat, Policy Advisor, Lawyer, Journalist, think thank group, etc). Please provide.

Q. 2: Based on your answer to the above question, what is your analysis in relation to the UK-Rwanda MOU? Please describe it briefly.

Q.3: How do you think the state cooperation on asylum can be carried out?

Q.4: Which international law rule(s) or doctrine(s) do you think ought to govern asylum partnerships?

Q.6: Do you think asylum should be considered as a crisis?

Q.7: In your view, what is the main factor that makes cooperation between the UK and Rwanda undesirable?

Q.8: In your opinion, how do you think that the asylum issue in the UK should be resolved?

Once again, thank you very much for your help!

Annex 2: The MOU

Policy paper

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

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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 to strengthen shared international commitments on the protection of refugees and migrants

The Government of the United Kingdom of Great Britain and Northern Ireland (the "United Kingdom") and the Government of the Republic of Rwanda ("Rwanda"), together the Participants and in singular the Participant,

WISHING to continue the excellent bilateral relations between both countries,

APPRECIATING the deep economic, social and historical ties between the Participants,

Desiring to facilitate co-operation between the Participants in order to contribute to the prevention and combating of illegally facilitated and unlawful cross border migration by establishing a bilateral asylum partnership in which Rwanda commits to receive asylum seekers from the United Kingdom, to consider their claims for asylum, giving effect to their rights under international law through the Rwanda domestic asylum system and arranging for the settlement in Rwanda of those recognised as refugees or otherwise requiring protection,

CONSIDERING that for many years, Rwanda has willingly been hosting and giving shelter to hundreds of thousands of refugees, offering adequate systems of refugee protection, consistent with the principles of international solidarity that underpin the international refugee protection system, and committed to the notion that cooperation and burden-sharing with respect to refugee status claimants can be enhanced. Rwanda has made significant commitments to the protection and assistance of refugees including by signing the MoU with the African Union (AU) and UNHCR establishing the Emergency Transit Mechanism (ETM) aiming to provide life-saving protection, assistance and long-term solutions to extremely vulnerable refugees trapped in detention in Libya, through temporary evacuation to Rwanda,

CONSIDERING that the United Kingdom has a long proud history of providing protection to those who need it, in accordance with international obligations. The United Kingdom has resettled 25,000 vulnerable people from the Syrian conflict since 2015 and has committed to resettle 20,000 people from Afghanistan in addition to those who were employed by the United Kingdom. Furthermore, the UK opened safe and legal pathways for British National

(Overseas) passports in Hong Kong, former Government and military employees in Afghanistan and uncapped humanitarian schemes in response to conflict in Ukraine. As like-minded partners, the United Kingdom and Rwanda will work together to promote a new fair and humane asylum system, deter illegal migration and create safe and legal routes for those fleeing persecution,

CONSIDERING that migrants and refugees make perilous journeys across borders and even oceans in search of safety and economic opportunity, running away from armed conflicts, famine, climate change and other hardships they have encountered in their home countries and that mass movement of irregular migrants organised by people smugglers is overwhelming the existing international asylum system,

ACKNOWLEDGING the need to provide better international protection for refugees and underlying the importance of effective and functioning systems which provide protection and a durable solution to those in need whilst preventing abuse,

WISHING to develop new ways of addressing the irregular migration challenge, including bridging gaps in human capital, in order to counter the business model of the human smugglers, protect the most vulnerable, manage flows of asylum seekers and refugees and promote durable solutions,

REAFFIRMING the commitment to strengthen and deepen bilateral cooperation to enhance the international protection of refugees by promoting responsibility sharing by ensuring that refugees are not subject to penalties on account of their illegal entry or presence, and ensuring the expeditious determination of claims to refugee status and asylum, and that the relevant criteria are interpreted reflecting the applicable international law and standards,

Having regard to the Participants' commitment to upholding fundamental human rights and freedoms without discrimination, as guaranteed by the Participants' national legislation, by their strong histories of implementing the 1951 Convention Relating to the Status of Refugees and the 1967 Protocol Relating to the Status of Refugees and by their other respective international legal obligations,

DESIRING to facilitate the transfer of asylum seekers and to provide assurance that their claims will be dealt with in accordance with international standards

HAVE DECIDED as follows:

1 Introduction, Definitions and Interpretations

1.1 In this Arrangement:

a. The “Arrangement” means this Memorandum of Understanding.

b. “Asylum seeker” means a person seeking to be recognised as a refugee in accordance with the Refugee Convention or otherwise claiming protection on humanitarian or human rights grounds.

c. “Record” means all recorded information held including oral, visual, electronic, or documentary form.

d. “Information” means data collected for the purposes of administering or enforcing the Participants respective border, customs, immigration and citizenship laws; or to aid collaborative efforts in the interest of public protection and includes but is not limited to Personal Information. Information may be in oral, visual, electronic or documentary form.

e. “Joint Committee” means the committee formed under [Paragraph 25] of this Arrangement.

f. “Month” means a calendar month.

g. “Refugee Convention” means the 1951 Convention in Relation to the Status of Refugees and the 1967 Protocol Relating to the Status of Refugees.

h. “Relocate” means the removal of an asylum seeker from the United Kingdom to Rwanda under this Arrangement.

i. “Travel document” means the Relocated Person’s passport, if they physically hold one, or the document issued to each individual by the United Kingdom and approved by Rwanda for the purpose of travel to Rwanda in accordance with this Arrangement.

j. “Relocated Individual” means an asylum seeker who is being or has been removed from the United Kingdom and that the Participants have agreed is to be relocated to Rwanda.

k. “Year” means a full calendar year.

1.2 References to the singular include the plural, and vice versa.

1.3 References in this Arrangement to Paragraphs are references to the clauses and sub-clauses of this Arrangement.

1.4 The headings in this Arrangement are for ease of reference only and will not affect the interpretation or construction of the Arrangement.

1.5 Any references to policy bulletins, enactments, orders, statutes, rules, regulations or other similar instruments will be construed as a reference to the policy bulletin, enactment, order, statute, rules, regulation or instrument as amended or replaced by any subsequent policy bulletin, enactment, order, statute, rules, regulation, or instrument.

1.6 This Arrangement will not be binding in International law.

2 Objectives

2.1 The objective of this Arrangement is to create a mechanism for the relocation of asylum seekers whose claims are not being considered by the United Kingdom, to Rwanda, which will process their claims and settle or remove (as appropriate) individuals after their claim is decided, in accordance with Rwanda domestic law, the Refugee Convention, current international standards, including in accordance with international human rights law and including the assurances given under this Arrangement.

2.2 For the avoidance of doubt, the commitments set out in this Memorandum are made by the United Kingdom to Rwanda and vice versa and do not create or confer any right on any individual, nor shall compliance with this Arrangement be justiciable in any court of law by third-parties or individuals.

PART 1 – TRANSFER ARRANGMENTS

3 Details of relocation arrangements

3.1 The United Kingdom will determine the timing of a request for relocation of individuals under these arrangements and the number of requests for relocation to be made during the term of this Arrangement. The United Kingdom will not be obliged to make any request for relocation under this Arrangement.

3.2 All transfer requests by the United Kingdom will require approval by Rwanda prior to any relocation.

3.3 The Participants will make arrangements for the process of request and approval of individuals for relocation by Rwanda, taking into account Rwanda's capacity to receive them, and in relation to all administrative needs associated with their transfer.

3.4 In line with national legislation, Rwanda will ensure timely issuance of any authorisations required for the overflight of their territory and the landing in Rwanda of commercial aircrafts or chartered flights transporting Relocated Individuals.

PART 2 – RESPONSIBILITIES OF THE PARTICIPANTS

4 Assurances

4.1 The Participants assure one another that the understandings reached in this Arrangement will be met in respect of all Relocated Individuals.

5 Reception in the United Kingdom

5.1 In order to expedite the process of relocation to Rwanda in a timely manner, the United Kingdom will be responsible for the initial screening of asylum seekers, before relocation to Rwanda occurs in accordance with this Arrangement. This process will start without delay after the prospective relocated person arrives in the United Kingdom and has come to the attention of the United Kingdom.

5.2 Upon requesting the transfer of an individual, the United Kingdom will provide Rwanda with the name, sex and date of birth of the individual, their nationality and a copy of their travel document if they have one. Additionally, the United Kingdom will provide details of:

5.2.1 any special needs that they may have that will need to be accommodated in Rwanda;

5.2.2 any health issues it is necessary for Rwanda to know before receiving an individual (with the consent of the Relocated Individual);

5.2.3 any security issues known to the United Kingdom.

5.2.4 any available biodata and subject to satisfactory establishment of data sharing process, biometric data of the Relocated Individual

5.2.5. Any such available additional information as may be requested by Rwanda and agreed to by the United Kingdom

5.3 Nothing obliges Rwanda to approve the transfer of a Relocated Individual in the case where some of the information requested under 5.2 was not provided.

5.4 Nothing in 5.2 obliges the United Kingdom to disclose information if it would be contrary to domestic laws or the United Kingdom's international obligations, to do so.

6 Relocations to Rwanda

6.1 The United Kingdom will arrange the Relocated Individual's transport to Rwanda and will ensure that all the necessary authorisations have been obtained from the relevant authorities of

the United Kingdom, any countries of transit and Rwanda in relation to the traffic of commercial or chartered flights or other means of transport.

6.2 The United Kingdom will assume responsibility for the safe transportation of Relocated Individuals to Rwanda by aircraft, including the provision of escorts as necessary.

6.3 The United Kingdom will share the travel document details of the Relocated Individuals transported to Rwanda by aircraft as soon as possible after departure of the aircraft.

7 Arrival

7.1 Rwanda will give access to its territory to the Relocated Individuals, in accordance with its international commitments and Rwandan asylum and immigration laws.

7.2 Upon disembarkation of Relocated Individuals in Rwanda, Rwanda will check the details of the arrivals against the list of travel document numbers provided by the United Kingdom and provide the United Kingdom with written confirmation of their arrival.

8 Reception arrangements and Accommodation

8.1 Upon arrival, Rwanda will provide each Relocated Individual with accommodation that is adequate to ensure the health, security and wellbeing of the Relocated Individual and support that is adequate to ensure the health, security and wellbeing of the Relocated Individual.

8.2 A Relocated Individual will be free to come and go, to and from accommodation that has been provided, at all times, in accordance with Rwandan laws and regulations as applicable to all residing in Rwanda.

9 Asylum processing arrangement

9.1 Rwanda will ensure that:

9.1.1 at all times it will treat each Relocated Individual, and process their claim for asylum, in accordance with the Refugee Convention, Rwandan immigration laws and international and Rwandan standards, including under international and Rwandan human rights law, and including, but not limited to ensuring their protection from inhuman and degrading treatment and refoulement;

9.1.2 each Relocated Individual will have access to an interpreter and to procedural or legal assistance, at every stage of their asylum claim, including if they wish to appeal a decision made on their case; and

9.1.3 if a Relocated Individual's claim for asylum is refused, that Relocated Individual will have access to independent and impartial due process of appeal in accordance with Rwandan laws.

9.1.4 If a Relocated Individual does not apply for asylum, Rwanda will assess the individual's residence status on other grounds in accordance with Rwandan immigration laws.

10 Assurances as to treatment post asylum decision

10.1 For those recognised as refugees by Rwanda, Rwanda will grant the Relocated Individual refugee status and provide the same level of support and accommodation as a Relocated Individual seeking asylum, integration into society and freedom of movement in accordance with the Refugee Convention. Those recognised as refugees will be treated in accordance with the Refugee Convention and international and Rwandan standards.

10.2 For those who are not recognised as refugees Rwanda will consider whether the Relocated Individual has another humanitarian protection need, such that return to their country of origin would result in a real risk of their being subject to inhuman, degrading treatment or torture or a real risk to their life. Where such a protection need exists, Rwanda will provide treatment consistent with that offered to those recognised as refugees (as per paragraph 10.1) and permission to remain in Rwanda. Such persons will be afforded equivalent rights and treatment to those recognised as refugees and will be treated in accordance with international and Rwandan standards.

10.3 For those Relocated Individuals who are neither recognised as refugees nor to have protection need in accordance with paragraph 10.2, Rwanda will:

10.3.1 offer an opportunity for the Relocated Individual to apply for permission to remain in Rwanda on any other basis in accordance with its domestic immigration laws and ensure the Relocated Individual is provided with the relevant information needed to make such an application;

10.3.2 provide adequate support and accommodation for the Relocated Individual's health and security until such a time as their status is regularised or they leave or are removed from Rwanda.

10.4 For those Relocated Individuals who are neither recognised as refugees nor to have a protection need or other basis upon which to remain in Rwanda, Rwanda will only remove such a person to a country in which they have a right to reside. If there is no prospect of such

removal occurring for any reason Rwanda will regularise that person's immigration status in Rwanda.

10.5 Relocated individuals who have been refused asylum and do not have a humanitarian protection need will have the same rights as other individuals making an application under Rwandan immigration laws.

10.6 Implementation of the assurances in [paragraphs 8-10] will be monitored by the Joint Committee and the Monitoring Committee established under this Arrangement.

11 Return of Relocated Individuals to the United Kingdom

11.1 Following a request made by the United Kingdom, Rwanda will take all reasonable steps in accordance with international human rights standards to make a Relocated Individual available for return to the United Kingdom should the United Kingdom be legally obliged to facilitate that person's return.

12 Provision of information for the purpose of legal proceedings

12.1 Rwanda will provide the United Kingdom with any Information that it holds, upon request of the United Kingdom and without undue delay, for the purpose of defending a legal claim brought in a United Kingdom court in connection with a transfer or proposed transfer of one or more person under this Arrangement.

12.2 Nothing in paragraph 12.1 will oblige Rwanda to provide information if to do so would be contrary to its domestic law.

13 Access for inspection, monitoring and provision of legal services

13.1 The joint committee will determine the process for access to facilitate and ensure that the Monitoring Committee formed in accordance with paragraph 15 has unfettered access to the following for the purposes of completing their assessments and reports:

13.1.1 the locations they are required to inspect under their terms of reference, save that a relocated person may refuse them entry to their private accommodation if they do not wish it to be inspected,

13.1.2 relevant officials, employees and agents of both Participants for interview,

13.1.3 any other person they may wish to interview who is willing to be interviewed,

13.1.4 the records held in relation to Relocated Individuals at all stages of the relocation process from the initial screening by the United Kingdom up to and including the asylum process as well as records of decisions taken about them,

13.1.5 records of grants and refusals of refugee status and of appeals raised against refusals of refugee status and their outcome,

13.1.6 records of any procedures that directly impact Relocated Individuals, and

13.1.7 records of all complaints made by Relocated Individuals and the outcomes.

13.2 The Monitoring Committee will be granted such access at any time they wish to make an inspection without delay. There will be no requirement for the Monitoring Committee to provide prior notice of their visit.

13.3 A person (or persons) providing a Relocated Individual with legal assistance or legal advice will have unfettered access to the Relocated Individual, including in their accommodation.

13.4 Both participants will deploy a liaison officer in their respective diplomatic missions for a better coordination of this Arrangement.

13.5 In order to facilitate co-ordination under this arrangement, respective liaison officers deployed by Rwanda and the United Kingdom under paragraph 13.4 will be allowed in the operational process in both the United Kingdom and Rwanda, including the screening of asylum seekers.

14 Modern slavery

Rwanda will have regard to information provided about a Relocated Individual relating to any special needs that may arise as a result of their being a victim of modern slavery and human trafficking and will take all necessary steps to ensure these needs are accommodated.

15 Monitoring Committee

15.1 The Participants will make arrangements for the formation of a Monitoring Committee.

15.2 The Monitoring Committee will be comprised of persons independent of both Participants.

15.3 The Monitoring Committee's terms of reference shall include information regarding:

15.3.1 who is to form the Monitoring Committee;

15.3.2 how they will monitor the entire relocation process from the beginning including the initial screening and information provided by the United Kingdom

15.3.3 how often they will report on conditions in Rwanda, and this will include the ability to make unannounced visits to accommodation, asylum processing centres and any other locations where documents relating to Relocated Individuals, or their claims and appeals is held;

15.3.4 what conditions they will report upon, and these will include reception conditions, accommodation, processing of asylum claims, treatment and support of Relocated Individuals at all times whilst they remain in Rwanda and the Participants' implementation of the understandings set out in this Arrangement.

16 Resettlement of vulnerable Refugees

16.1 The Participants will make arrangements for the United Kingdom to resettle a portion of Rwanda's most vulnerable refugees in the United Kingdom, recognising both Participants' commitment towards providing better international protection for refugees.

17 Continuation of responsibilities

17.1 In respect of Relocated Individuals who have been relocated to Rwanda under this Arrangement, Rwanda will continue to comply with its obligations under the domestic law of Rwanda, International law and this Arrangement once it ceases to have effect.

PART 3 – DATA MANAGEMENT AND PROTECTION

18 General

18.1 Pursuant to this Arrangement, the Participants will securely share Information, including personal Information, for the purposes of being able to accurately identify a Relocated Individual and take decisions about that individual for the purpose of the objective set out in Paragraph 2 and in accordance with their respective laws and international law.

18.2 In sharing information for these purposes, the Participants commit to adhere to the principles set out in Annex A of this Arrangement.

PART 4 – FINANCIAL ARRANGEMENTS

19 Financial arrangements

19.1 The Participants will make financial arrangements in support of the relocation of individuals under this Memorandum of Understanding.

PART 5 – OTHER ARRANGEMENTS

20 Amendments to the Arrangement

20.1 This Arrangement may be amended by the written consent of both Participants.

20.2 In particular, the Participants commit to review the category of person eligible for relocation under these arrangements and to make any amendments considered by both Participants to be necessary to ensure that the arrangements continue to support the objectives specified in this Arrangement.

21 Joint Committee

21.1 A Joint Committee composed of the representatives of both Participants will be established without delay after this Arrangement comes into effect and will be co-chaired by a representative of each Participant of appropriate seniority.

21.2 The role of the Joint Committee will be to:

21.2.1 monitor and review the application and implementation of this Arrangement and to make non-binding recommendations in respect thereof; and

21.2.2 provide a forum for the Participants to exchange information, discuss best practice including relevant guidance from external stakeholders, and resolve issues of a technical or administrative character.

21.3 The Joint Committee will meet upon its formation, at the request of either Participant, and in any event no less than once every 6 months, unless the co-chairs decide otherwise. The co-chairs will set the Joint Committee's schedule of meetings and agenda by mutual consent.

21.4 The co-chairs may set terms of reference for the Joint Committee, which will include the secretariat function as well as such other tasks as may be required.

21.5 The co-chairs will set terms of reference for the Monitoring Committee in addition to but not contrary to those provided in paragraph 15 of this agreement.

22 Disputes

22.1 The Participants will make all reasonable efforts to resolve between them all disputes concerning this Arrangement. Neither Participant will have recourse to a dispute resolution body outside of this.

23 Duration and Effect

23.1 This Arrangement will last 5 years. It may be renewed upon request one year from the end of the period.

23.2 In the event that an order issued by a court of the United Kingdom or Rwanda prevents the lawful operation or implementation of the transfer arrangements under this Arrangement, the period during which the transfer arrangements cannot be implemented lawfully will not count towards the 5-year period in paragraph 23.1.

23.3 For the purposes of calculating the period during which transfer provisions cannot operate lawfully –

23.3.1 The period will start on the date on which the relevant order has effect in law;

23.3.2 The period will end on the date on which the relevant order ceases to have effect in law.

23.4 During the period referred to in Paragraph 23.3.1 and Paragraph 23.3.2 the terms of this arrangement will continue to apply in relation to anyone who has been transferred in accordance with its provisions.

23.5 This arrangement will cease to have effect upon agreement by both participants.

24 Coming into effect

This Arrangement will come into effect upon signature by both Participants.

ANNEX A – DATA MANAGEMENT AND PROTECTION

25 General

25.1 A Participant may initiate the sharing of Information by requesting Information from the other Participant or by providing the other Participant with Information because it is relevant to the purpose set out in Paragraph [18.1].

25.2 The Participants will initiate the sharing of all Information in writing. If it is not reasonably practicable to initiate the sharing of Information in writing, the initiating

Participant will confirm the sharing in writing as soon as possible after the request is made or the Information is provided.

25.3 If a Participant determines that sharing Information under this Arrangement may be inconsistent with its laws or international obligations or may prejudice or cause harm to its national sovereignty, national security, public policy, or other national interest, it may decline to provide all or part of the Information or offer to provide all or part of the Information subject to such terms and conditions as it may specify.

25.4 When a Participant declines or postpones the provision of Information, that Participant, whenever possible and appropriate to do so, will communicate in writing to the other Participant the reasons for declining or postponing the sharing of Information as soon as possible.

25.5 The Participants will not share Information if the sharing, use or further disclosure of the Information may:

25.5.1 cause the Information to become known to any government, authority or person of a third country from which the subject of the Information is seeking or has been granted protection –

25.5.1.1 under the Refugee Convention,

25.5.1.2 against torture in accordance with the 1984 Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (the "1984 Convention Against Torture"),

25.5.1.3 under the implied non-refoulement obligations in the 1966 International Covenant on Civil or Political Rights (the '1966 ICCPR') and its second optional protocol aiming at the abolition of the death penalty, or

25.5.1.4 under either Participant's laws implementing the relevant Conventions or Protocol;

25.5.2 by virtue of that government, authority or person becoming aware of such Information, cause the subject of the Information to become eligible for the protections set out above; or

25.5.3 cause the subject of the Information and/or the subject's family to be placed at risk of serious harm, including refoulement, persecution, arbitrary deprivation of life or the application of the death penalty, torture or other cruel, inhuman or degrading treatment or

punishment contemplated under the Refugee Convention, the 1984 Convention Against Torture or the 1966 ICCPR.

25.6 The Participants will use their best endeavours to share Information in a timely manner recognising that providing Information within reasonable timeframes is critical in ensuring informed decision making by the Participants.

25.7 The Participants will maintain a record of all data processing activities.

26 Information to be Shared

26.1 Prior to transfer, the United Kingdom will provide Rwanda with the Information necessary for Rwanda to respond to the transfer request.

27 Use and disclosure of Information

27.1 The Participants will not use, disclose or store any Information shared pursuant to this Arrangement for any purpose, except:

27.1.1 for the purpose specified in paragraph 18.1 to this Arrangement; and

27.1.2 as required or authorised by or under their law.

27.2 The Participants may, for the purpose identified in paragraph 18.1 and subject to the limitations on sharing information included in Paragraphs 27.1 and 27.4 disclose Information received under this Arrangement to the Participants' other domestic authorities responsible for pursuing the same purpose as they carry out their official duties as required by and/or permissible under their law.

27.3 The Participants may, subject to the limitations on sharing information included in Paragraph 27.1 and 27.4, disclose information received for the purpose identified in paragraph 18.1 of this Arrangement to the government of a third country for the purposes of verifying identity, establishing the provenance of identity documents, or removing a an individual whose asylum application/ claim has been refused to a third country.

27.4 For onward disclosure of Information for the purposes listed pursuant to Paragraph 18.1 and subject to the limitations on sharing information included in Paragraph 27.6, the Participant disclosing the information will:

27.4.1 ensure that authorities to whom it discloses Information commit to apply a similar level of protection to the information, and limit its use and disclosure, in accordance with this Arrangement; and

27.4.2 obtain prior approval in writing from the other Participant. In the exceptional case when advance notice is not practicable, the Participant disclosing the Information will notify the other Participant as soon as possible after the disclosure.

27.5 The Participants will ensure that security classification and any restrictions, conditions or special handling instructions are adequately marked on all Information shared pursuant to this Arrangement. In any particular case, the Participant providing the information may, by way of protective marking or otherwise, apply additional restrictions, conditions or special handling instructions to Information shared pursuant to this Arrangement. The Participant providing the Information may decline to provide all or part of the Information if the Participant requesting the Information is unable to comply with the restrictions, conditions or special handling instructions.

27.6 To prevent the unauthorised disclosure, copying, use, modification or disposal of Information received under this Arrangement, each Participant will restrict access to the Information to those who need it in the course of carrying out their official duties and for the purpose set out in paragraph 18.1 and use recognised security mechanisms such as passwords, encryption, or other reasonable safeguards to prevent unauthorised access.

27.7 Each Participant will ensure that all persons authorised to have access to Information received under this Arrangement are appropriately trained on the handling and usage restrictions which apply to this Information and intend to safeguard the Information in a manner consistent with this Arrangement.

27.8 Each Participant will notify the other Participant of any accidental or unauthorised access, use, disclosure, modification or disposal of Information received under this Arrangement within 24 hours of becoming aware of the security or privacy breach and, where possible, provide all necessary details of the accidental or unauthorised access, use, disclosure, modification or disposal of that Information as soon as practicable.

27.9 Each Participant will notify the other by telephone or in writing in the event of a situation that disrupts the intended transfer of Information between them within 24 hours of becoming aware of the situation, where possible.

28 Accuracy of Information

28.1 The Participants will provide to each other the most current and accurate Information available. In the event that either Participant becomes aware that Information being relied

upon is inaccurate, it will notify the other Participant immediately and provide correcting Information, where available.

28.2 When a Participant receives correcting Information, that Participant will correct, annotate or dispose of inaccurate Information, and any Information derived from it, in accordance with its laws. That Participant will also notify the other Participant, in writing that it has disposed of or corrected the Information.

29 Right of Access and Rectification

29.1 When Information is shared in relation to an individual or group of individuals, the Participants will make a notation on the subject's case record that the sharing has occurred. Additionally, the Participant receiving the Information will mark any Information retained as having been received from the providing Participant under the authority of this Arrangement.

29.2 Each Participant assures that it has in place a system by which individuals may request information about themselves that was shared under this Arrangement and its Annexes, and, where that information is disclosable to the individual, may request a correction or a notation that a request for correction was made. Any disclosure of information received under this Arrangement to the individual about whom the Information pertains is subject to the provisions of Paragraph 18.1.

29.3 Each Participant confirms that it has a system in place through which individuals may seek redress or to challenge a decision not to disclose Information to the individual about whom the Information pertains.

30 Retention and Disposal of Information

30.1 Each Participant will retain Information shared pursuant to this Arrangement in accordance with the terms of this Arrangement and its domestic laws.

30.2 Each Participant will assess the continued relevance of the Information received under this Arrangement and to dispose of the Information securely when it is no longer relevant in accordance with its domestic laws.

31 Transactions, Performance and Management Reporting

31.1 The Participants will maintain records of Information shared under this Arrangement and develop performance management measures that include, but are not limited to, the number and severity of any security or privacy breaches as well as a summary of the actions taken.

The Participants may keep other records in accordance with their respective domestic laws and retention policies and guidance.

Signed in Kigali, 13 April 2022

The Government of the United Kingdom of Great Britain and Northern Ireland	**The Government of the Republic of Rwanda**
The Rt Hon Priti Patel MP	Vincent Biruta
Secretary of State for the Home Department	Minister for Foreign Affairs and International Co-Operation

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