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Scrutiny of international agreements: UK–Rwanda Agreement on an Asylum Partnership

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International Agreements Committee

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SUMMARY

This report considers the following treaty, laid before Parliament in accordance with section 20 of the Constitutional Reform and Governance Act 2010:

- Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of Rwanda for the provision of an asylum partnership to strengthen shared international commitments on the protection of refugees and migrants ("the Rwanda Treaty").

The Rwanda Treaty responds to the judgment of the Supreme Court of 15 November 2023 which declared unlawful the Government's policy to send asylum seekers to Rwanda for processing by the Rwandan Government, on the grounds that Rwanda is not a safe country by reason of the risk to asylum seekers of refoulement, i.e. sending them to a country where they may be persecuted. The Supreme Court did not doubt the good faith of the government of Rwanda. Nor was it concerned about the terms of the previous MOU. Its main concern was the operation of Rwanda's asylum system in practice. The Rwanda Treaty underpins the Safety of Rwanda (Asylum and Immigration) Bill by which the Government proposes that Parliament should declare through legislation that Rwanda is a safe country, notwithstanding the findings of the Supreme Court. Parliament is asked to make this declaration—which under the Bill cannot be challenged in the courts—on the basis of the arrangements provided by the Rwanda Treaty.

The Rwanda Treaty puts into legally binding form the arrangements previously set out in a 2022 Memorandum of Understanding with Rwanda, but with some enhancements, notably a new asylum procedure and a commitment that no person relocated under the Treaty to Rwanda will be sent to any country other than the UK, if the UK so requests.

On paper the Rwanda Treaty improves the protections previously set out in the Memorandum of Understanding, but there are a significant number of legal and practical steps which need to be taken before the protections could be deemed operational such that they might make a difference to the assessment reached by the Supreme Court. Evidence that these arrangements have bedded down in practice is also needed. In short, the Treaty is unlikely to change the position in Rwanda in the short to medium term.

We recommend that the Treaty is not ratified until Parliament is satisfied that the protections it provides have been fully implemented since Parliament is being asked to make a judgement, based on the Treaty, about whether Rwanda is safe. The Government should submit further information to Parliament to confirm that all the necessary legal and practical steps and training which underpin the protections provided in the Treaty have been put in place, and then allow for a further debate before proceeding to ratification.

Scrutiny of international agreements: UK–Rwanda Agreement on an Asylum Partnership

AGREEMENT REPORTED FOR SPECIAL ATTENTION

Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of Rwanda for the provision of an asylum partnership to strengthen shared international commitments on the protection of refugees and migrants[1]

1. The agreement was laid before Parliament on 6 December 2023. The scrutiny period provided for by section 20 of the Constitutional Reform and Governance Act 2010 (CRAG) expires on 31 January 2024. We refer to the agreement in this report as "the Rwanda Treaty", the term used in the Safety of Rwanda (Asylum and Immigration) Bill.

2. The Rwanda Treaty has been the subject of significant public debate since it was announced by the Prime Minister on 15 November 2023. We issued a call for evidence on 13 December 2023 and received 16 submissions from the individuals and organisations listed in Appendix 2. We are grateful to all those who responded at very short notice over the Christmas and New Year period.

3. We held two oral evidence sessions on 18 and 19 December 2023, including a short session with the Home Secretary. The Home Office wrote to us on 11 January and provided written answers to supplementary questions. On the same date it published an "evidence pack" related to the Bill.

4. The statutory deadline for Parliamentary scrutiny of a treaty is 21 sitting days, which is a very short period to allow for proper consideration and debate of a politically significant international agreement such as the Rwanda Treaty. The Government has made the treaty scrutiny process more difficult by releasing a large quantity of relevant new information more than a month after laying the Treaty in Parliament at the same time as revising information which it published only in December, thus preventing full scrutiny by witnesses to this inquiry. The Government also delayed sending replies to the Committee's inquiries. This conduct illustrates more generally the defects and limitations of the current statutory framework for scrutinising treaties under the Constitutional Reform and Governance Act 2010 (CRAG), which is in need of reform.

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1 Foreign and Commonwealth Office, *Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of Rwanda for the Provision of an Asylum Partnership Agreement to Strengthen Shared International Commitments on the Protection of Refugees and Migrants*, CP 994, December 2023: https://assets.publishing.service.gov.uk/media/65705fd4746930000d4888dc/CS_Rwanda_1.2023_UK_Rwanda_Agreement_Asylum_Partnership_Protection_Refugees_Migrants.pdf [accessed 8 January 2024]

Background

5. The offshore processing of asylum claims is not new. We received evidence of previous schemes run by a few other countries including Australia[2]. Some other European countries are exploring similar schemes. But we were told that what distinguishes the UK's current proposals is that they involve the transfer of responsibility for asylum claims to a third country rather than mere processing overseas by officials of the transferring state. Some witnesses cast doubt on the compatibility of this arrangement with the Refugee Convention, as does the UN High Commissioner for Refugees (UNHCR),[3] but this was not an issue which was the subject of the recent Supreme Court judgement.[4]

6. In April 2022 the Government entered into a Memorandum of Understanding (MOU) with the Government of Rwanda to establish a Migration and Economic Development Partnership (MEDP). The MEDP provided for the transfer to Rwanda of all migrants entering the UK after 1 January 2022 who arrive "through an illegal and dangerous route" and without a right to remain. The MEDP envisaged that these migrants would have their asylum claims processed in Rwanda by the Rwandan Government.[5] The Government case is that the overarching purpose of the MEDP is "to deter dangerous and illegal journeys to the United Kingdom, which are putting people's lives at risk, and to disrupt the business model of people smugglers who are exploiting vulnerable people."[6]

7. The MOU was not a treaty and was not therefore laid before Parliament under CRAG. This Committee nevertheless considered that it was a significant international instrument that warranted Parliamentary scrutiny. We reported on the MOU on 18 October 2022.[7] The Report focused on the legal form of the MOU rather than the substance of the MEDP. We concluded that the MEDP should have been established through a legally binding international agreement to allow for both legal enforceability and appropriate Parliamentary scrutiny given its significant political and human rights implications.

8. The MEDP policy has been the subject of legal challenge and as a result no migrants have so far been sent to Rwanda. In December 2022 the Divisional Court found that the Home Office policy was, in principle, lawful, but this finding was overturned on appeal in June 2023. A majority of the Court of Appeal held that, on the evidence before it, there were substantial grounds to believe that asylum seekers relocated to Rwanda under the MEDP would

2 Written evidence from Amnesty International UK (URA0002), Joint Council for the Welfare of Immigrants (JCWI) (URA0007), Dr Joseph Mullen (URA0010), and Associate Professor Catherine Briddick and Professor Cathryn Costello (URA0015) and Q 3 (Professor Theodore Konstadinides)

3 UNHCR, *Analysis of the Legality and Appropriateness of the Transfer of Asylum Seekers under the UK-Rwanda arrangement*, (8 June 2022) https://www.refworld.org/docid/62a31cc24.html [accessed 16 January 2024] and UNHCR Updated Analysis, 16 January 2024 https://www.unhcr.org/uk/media/unhcr-analysis-legality-and-appropriateness-transfer-asylum-seekers-under-uk-rwanda-1 [accessed 16 January 2024]

4 Written evidence from Prof Catherine Briddick and Prof Cathryn Costello (URA0015) and Amnesty International UK (URA0002)

5 Home Office, *Migration and Economic Development Partnership: factsheet*, (15 November 2023): https://www.gov.uk/government/publications/migration-and-economic-development-partnership-factsheet/migration-and-economic-development-partnership-factsheet [accessed 8 January 2024]

6 HM Government, 'Rwanda Bill Factsheet', (11 January 2024): https://assets.publishing.service.gov.uk/media/65a139ebe96df5000df84586/Safety_of_Rwanda_Bill_Fact_Sheet_11_Jan_2023_FINAL.pdf [accessed 16 January 2024]

7 International Agreements Committee, *Memorandum of Understanding between the UK and Rwanda for the provision of an asylum partnership arrangement* (7th Report, Session 2022–23, HL Paper 71)

not have their asylum claims dealt with properly and there was a real risk of refoulement.[8] Accordingly, sending asylum seekers to Rwanda would be a breach of Article 3 of the European Convention on Human Rights (ECHR) (prohibition on torture or inhuman or degrading treatment) and would contravene section 6 of the Human Rights Act 1998 (duty of public authorities to act compatibly with the ECHR).

9. The Home Office appealed, but on 15 November 2023 the Supreme Court dismissed the appeal and upheld the Court of Appeal's finding that the Rwanda policy was unlawful. The Supreme Court did not question the principle of sending asylum seekers overseas for the processing of their claims, but considered that on the facts Rwanda was not a safe third country. The Supreme Court did not doubt that Rwanda had entered into the MOU in good faith and had incentives to comply, but said:

> "The central issue in the present case is … not the good faith of the government of Rwanda at the political level, but its practical ability to fulfil its assurances, at least in the short term, in the light of the present deficiencies of the Rwandan asylum system, the past and continuing practice of refoulement (including in the context of an analogous arrangement with Israel), and the scale of the changes … which are required. …
>
> [There is] evidence of a culture within Rwanda of, at best, inadequate understanding of Rwanda's obligations under the Refugee Convention. The evidence also goes some way to support the suggestion of a dismissive attitude towards asylum seekers from the Middle East and Afghanistan. It is also apparent from the evidence that significant changes need to be made to Rwanda's asylum procedures, as they operate in practice, before there can be confidence that it will deal with asylum seekers sent to it by the United Kingdom in accordance with the principle of non-refoulement. The necessary changes may not be straightforward, as they require an appreciation that the current approach is inadequate, a change of attitudes, and effective training and monitoring."[9]

10. Immediately following the Supreme Court judgement, the Prime Minister announced that the Government had been working on a treaty with Rwanda to "provide a guarantee in law that those who are relocated from the UK to Rwanda will be protected against removal from Rwanda". The treaty would be finalised in light of the judgment and ratified "without delay". Alongside the treaty, the Government would be introducing emergency legislation which "will enable Parliament to confirm that, … with our new treaty, Rwanda is safe".[10]

11. The Safety of Rwanda (Asylum and Immigration) Bill[11] was introduced in the House of Commons on 7 December 2023, the day after the Rwanda Treaty was laid in Parliament. Detailed consideration of the Bill is outside the scope of this inquiry and will be conducted by other Parliamentary committees.

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8 Refoulement means the expulsion of a person to a country where they are at risk of persecution or ill-treatment.

9 R (on the application of AAA (Syria) and others) v Secretary of State for the Home Department, judgment of the Supreme Court, [2023] UKSC 42, 15 November 2023 at paragraphs 102–104

10 Prime Minister's Office, PM remarks on Supreme Court Judgement: 15 November 2023, (15 November 2023): https://www.gov.uk/government/speeches/pm-remarks-on-supreme-court-judgement-15-november-2023 [accessed 8 January 2024]

11 Safety of Rwanda (Asylum and Immigration) Bill

Nevertheless, we highlight some provisions of the Bill which are relevant to our scrutiny of the Rwanda Treaty.

(a) Clause 1 sets out the purpose of the Bill which is "to prevent and deter unlawful migration, and in particular migration by unsafe and illegal routes, by enabling the removal of persons to the Republic of Rwanda". It states that to advance that purpose, the Rwanda Treaty—some aspects of which are summarised in clause 1(3)—has been laid before Parliament under CRAG. The Bill when adopted will "[give] effect to the judgement of Parliament that the Republic of Rwanda is a safe country".

(b) Clause 2 requires that "Every decision-maker must conclusively treat the Republic of Rwanda as a safe country". No judicial review or appeal is to be permitted of any decision to remove a person to Rwanda on the grounds that it is not a safe country. In particular, a court or tribunal "must not consider any claim or complaint that the Republic of Rwanda will not act in accordance with the Rwanda Treaty."

(c) Clause 9 links the coming into force of the Bill to the entry into force of the Rwanda Treaty.

12. It is clear therefore that the Bill is dependent on the Rwanda Treaty. Notwithstanding the Supreme Court's findings of fact, the Government is asking Parliament to declare through legislation that Rwanda is a safe country based on the terms of the Rwanda Treaty. In its Policy Statement published alongside the Bill and the Treaty, the Government set out its view that the Rwanda Treaty includes "significant new protections in response to the Supreme Court's conclusions [which] will enable Parliament to conclude that the Supreme Court's judgment has been addressed and that Rwanda is safe for relocations under the Migration and Economic Development Partnership."[12] In this report we consider whether the Treaty does in fact provide Parliament with a basis for declaring through the Bill that Rwanda is a safe country.

13. Before turning to the Treaty, we would make two preliminary points. We agree with those witnesses[13] who urged us to pay close attention to the constitutional principle of the separation of powers. The separation of powers requires both the courts and Parliament to exercise restraint and to respect the proceedings and rulings of the other.[14] It would therefore be constitutionally inappropriate for Parliament to seek through statute to overturn findings of fact by the Supreme Court, especially when the Bill includes an ouster clause excluding judicial review.[15] Although the Government is arguing that the facts have changed because of the Treaty, in our view it is still particularly

12 Home Office, *Safety of Rwanda (Asylum and Immigration) Bill Policy Statement*, (Updated 11 January 2024): https://assets.publishing.service.gov.uk/media/65a16e2b7eb42e000dceb78a/Safety_of_Rwanda__Asylum_and_Immigration__Bill_-_Policy_Statement-main.pdf [accessed 11 January 2024]

13 Written evidence from Professor Tom Hickman KC (URA0001), Professor Theodore Konstadinides and Rebecca Amor (URA0012) the Law Society (URA0016) and Dr Rossella Pulvirenti and Dr Kay Lalor (URA0003)

14 "The … principle of the separation of powers … requires the executive and the legislature to abstain from interference with the judicial function, and conversely requires the judiciary not to interfere with or to criticise the proceedings of the legislature." Submissions on behalf of the House of Commons Speaker in R (Wheeler) v Office of the Prime Minister [2008] EWHC 1409 (Admin) at paragraph 46

15 We expect that other Parliamentary committees will examine the constitutional implications of the Bill in more detail.

important that, when assessing the Treaty, this Committee—and Parliament more widely—should pay close attention to the reasoning of the UK Supreme Court in finding that Rwanda was not a safe country.

14. Second, in assessing the Treaty we have taken account of the Government's Policy Statement. This document provides supplementary information on how the Government considers that the concerns of the Supreme Court have been addressed and on how the Treaty will be implemented.

Content of the agreement

15. In summary, the Rwanda Treaty puts the MEDP MOU into legally binding form with certain modifications. Many provisions are substantially the same as those in the MOU but there are some enhancements, in particular:

    (a) The Treaty provides that no Relocated Individual[16] shall be removed from Rwanda except to the United Kingdom, at its request.[17]

    (b) There is to be a new system for processing asylum claims by Relocated Individuals with new institutional structures and provision for free legal advice. A First Instance Body comprising "appropriately trained individuals" will determine claims with advice from a seconded independent expert for its first six months of operation. A new Appeal Body, with Rwandan and Commonwealth co-presidents, will be established with "judges from a mix of nationalities". This will hear appeals from the First Instance Body with advice from an independent expert in asylum for its first 12 months.[18]

    (c) The independent Monitoring Committee established by the MOU has been retained but it will be bolstered by a support team and an expanded remit. The Monitoring Committee is to develop a process for the lodging of confidential complaints by Relocated Individuals. There is to be an enhanced initial monitoring period of three months which will involve daily monitoring.[19]

    (d) A mechanism for the resolution of disputes between the UK and Rwanda has been added. This provides for an initial phase when the parties must consult within the Joint Committee. If the dispute cannot be settled by negotiation, then either party may refer the matter to binding arbitration.[20]

Assessment

16. On paper, the Rwanda Treaty undoubtedly improves the arrangements originally set out in the MEDP MOU. However, as Professor Tom Hickman KC observed, echoing many witnesses to our inquiry: "the core finding of the Supreme Court was not that the terms of the previous MOU were not binding in law, or were insufficiently protective, but that the Rwandan government does not possess the practical ability to fulfil its assurances to

16 Relocated Individual is the term used in the Treaty for a person who is being considered for removal to Rwanda or has been removed, Rwanda Treaty, Article 1.
17 Rwanda Treaty, Article 10(3)
18 Rwanda Treaty, Article 9 and Annex B
19 Rwanda Treaty, Article 15
20 Rwanda Treaty, Article 22

the UK government, at least in the short term. That is not something that can be fixed by entering a binding treaty alone."[21]

17. The Home Office has asserted that the assurances and commitments in the Treaty "provide clear evidence of [Rwanda's] ability to fulfil its obligations generally and specifically to ensure that Relocated Individuals face no risk of refoulement".[22] The Treaty itself asserts that "the Parties agree to take all steps that are necessary or appropriate to ensure that their obligations can both in practice be complied with *and are in fact complied with*". (emphasis added)[23] But assurances in themselves are not proof of Rwanda's current ability to fulfil them.

18. It is also clear from the Government's own evidence that significant aspects of the Rwanda Treaty require further implementation before any assessment can be made of their effectiveness. Most notably, new domestic legislation is needed in Rwanda to implement the new asylum system outlined in the Treaty. The Home Secretary was unable to offer a timeframe for adoption of the new law, but it appears to be some months away.[24] We requested a copy of the draft law but it has not been made available.[25] In addition, other important provisions of the Treaty refer to implementing measures which are not yet in place:

    (a) *Non-refoulement*. Article 10(3)—the provision which prohibits Relocated Individuals being removed from Rwanda except to the UK—requires the parties to "agree an effective system for ensuring that removal contrary to this obligation does not occur". We asked the Home Office for further information about the nature and timing of these measures. The response was vague but indicated that the detail of measures had not yet been agreed. There was no commitment to publishing them.[26]

    (b) *Monitoring.* Under Article 15(9), the Monitoring Committee has yet to develop a process to enable Relocated Individuals to submit confidential complaints.

19. Moreover, implementation of the Treaty requires not just the adoption of new laws, systems and procedures, but also the recruitment and training of personnel. For example, the Monitoring Committee has to recruit a support team;[27] independent experts to advise the First Instance Body and Appeal Body have to be appointed;[28] steps have to be taken to ensure a sufficient

21 Written evidence from Prof Tom Hickman KC (URA0001) See also written evidence from Amnesty International UK (URA0002), Dr Rossella Pulvirenti and Dr Kay Lalor (URA0003), ILPA and JUSTICE (URA0005), Public Law Project (URA0006), JCWI (URA0007), Redress (URA0008), Prof Theodore Konstadinides and Rebecca Amor (URA0012), Prof Catherine Briddick and Prof Cathryn Costello (URA0015), Law Society (URA0016) and Bar Council (URA0018). Q 1 and Q 11 (Lord Anderson of Ipswich) and Q 7 (Professor Theodore Konstadinides).

22 Home Office Policy Statement at paragraph 13

23 Rwanda Treaty, Article 3(2)

24 Q 21 (Rt Hon James Cleverly MP) and Home Office Policy Statement at paragraph 20.

25 During our evidence session on 19 December, the Director General of Asylum and Immigration at the Home Office told us that Rwanda's new asylum law would simply reflect the terms of the Treaty. Q 21 (Dan Hobbs). We find that unconvincing since domestic legislation will inevitably add detail not covered by the very broad outline in the Treaty. It is clear from the Home Secretary's letter to the Chair of the Committee of 11 January that some of the detail of the new asylum system is still being discussed with Rwanda.

26 Letter from the Home Secretary to the Chair of the International Agreements Committee, 11 January 2024: https://committees.parliament.uk/publications/42871/documents/213213/default/

27 Rwanda Treaty, Article 15(8)

28 Rwanda Treaty, Annex B, paras 3.3.3 and 4.2.4

number of appropriately trained legal advisers and interpreters are available to ensure Relocated Individuals can access their rights under the Treaty;[29] and the Commonwealth national co-president and international judges of the Appeal Body have to be recruited and trained in Rwandan law and judicial practice.[30] On the last point, the Home Office have informed us that the process for selecting the co-presidents is still being discussed between the UK and Rwanda. The co-presidents will need to be appointed before the international judges can be selected. No decisions have been taken on how the international judges will be integrated into Appeal Body chambers nor whether there will be any requirement for each appeal chamber to include an international judge.[31]

20. **It is clear from this that significant legal and practical steps have to be taken before the assurances provided in the Rwanda Treaty can be fully implemented. The Government has provided no indication of the timeframe for the completion of these steps, but plainly it will take some time.**

21. Some witnesses[32] to this inquiry doubted that, even once these legal and practical steps have been completed, the protections outlined in the Rwanda Treaty processes could change the assessment that Rwanda is not a safe country, due to wider concerns identified in the Supreme Court judgment about Rwanda's human rights record and compliance with its international obligations.[33] Other witnesses argued that the framework outlined in the Treaty should be tested for a period of time before it could provide a reliable basis for making that assessment:

> "Considering the current risk to the principle of non-refoulement, … more evidence is necessary to demonstrate the extent of Rwanda's reforms aimed at enhancing its human rights practices, including changes in treatment and cultural attitudes. Such evidence should comprise concrete, empirical data that clearly illustrates the practical and identifiable improvements brought about by these reforms. … Given that the [Treaty] establishes a novel framework accompanied by new institutions to manage complaints, appeals and dispute resolution … the success of this partnership and the overall asylum relocation policy hinges on extensive preparation and capacity building. We argue this is a time-intensive process that cannot be accomplished within just a few months."[34]

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29 Rwanda Treaty, Annexes A and B. The Home Office Policy Statement refers at paragraph 86 to an agreement between the Government of Rwanda and the Rwandan Bar Association to provide legal advice to Relocated Individuals under the MEDP. It states that there are currently 38 lawyers practising in the field of asylum and migration which is a small number to meet the requirements of the Treaty given the volume of persons who may be sent to Rwanda. See written evidence from ILPA and JUSTICE (URA0005).

30 Rwanda Treaty, Annex B, paras 4.2 and 4.4

31 Letter from the Home Secretary to the Chair of the International Agreements Committee, 11 January 2024: https://committees.parliament.uk/publications/42871/documents/213213/default/

32 Written evidence from Dr Rossella Pulvirenti and Dr Kay Lalor (URA0003), ILPA and JUSTICE (URA0005), JCWI (URA0007), Ayesha Riaz (URA0011), Human Rights Watch (URA0013) and Justin Bahunga and others (URA0017)

33 The Supreme Court did not express a concluded view on the risk of ill-treatment in Rwanda, aside from the risk of refoulement.

34 Written evidence of Prof Theodore Konstadinides and Rebecca Amor (URA0012). See also written evidence from Prof Tom Hickman (URA0001), Amnesty International UK (URA0002), Public Law Project (URA0006), Dr Joseph Mullen (URA0010), Prof Catherine Briddick and Prof Cathryn Costello (URA0015) and Law Society (URA0016)

22. This chimes with the approach of the Supreme Court which drew a distinction between Rwandan law and practice. The existing Rwandan asylum law had been assessed by UNHCR as being compliant with international standards. It was the practical operation and application of this law that caused concern. The Rwanda Treaty introduces new procedures to try and address those concerns but, as the Supreme Court noted, "the necessary changes may not be straightforward, as they require an appreciation that the current approach is inadequate, a change of attitudes, and effective training and monitoring".[35] We will consider each of these briefly.

23. As regards an appreciation of the inadequacy of the current approach and the need for a change of attitudes, the Home Secretary told us:

> "[The Rwandan Government] really want this to work; their willingness to engage with us in the drafting and the implementation of the Treaty is incredibly strong. The combination of the legal robustness that I now believe we have with the attitude of the Government and their desire to make this a visible success puts us in a very strong place when it comes to their adherence to the points that were made by the Supreme Court."[36]

A separate point was made in the Home Office Policy Statement which draws attention to a decision in February 2023 in which the Rwandan High Court overturned a decision not to grant refugee status.[37] This is cited as new evidence to rebut the Supreme Court's conclusion that the Rwandan courts and legal profession might not operate independently in politically sensitive cases. We asked the Home Office to provide further details of this judgment to verify whether or not it was a politically sensitive case, but they have indicated that the judgment has not been released for publication by the Rwandan Government. The lack of transparency undermines confidence in the Government's contention.

24. The next issue was training. The Home Office Policy Statement provides details of further training in asylum procedures and the Refugee Convention provided to Rwandan officials. This indicates that 104 officials were trained in sessions during 2023. Further training is planned. The Policy Statement also refers separately to training for officials screening persons with vulnerabilities,[38] but it is not clear if this has already been provided and, if so, to how many. This training may well improve the capacity of Rwanda to comply with its obligations under the Refugee Convention but will take time[39].

25. As for monitoring, while the Rwanda Treaty provides for enhanced monitoring procedures, a number of issues have been identified with them.

26. First, some aspects of the monitoring arrangements under the Treaty are unclear or incomplete. Revised Terms of Reference for the Monitoring Committee and a Monitoring Plan for the three-month enhanced monitoring period were published late on 11 January 2024.[40] The effect of late publication of these documents is that expert witnesses to this inquiry

35 Supreme Court judgment at paragraph 104
36 Q 20 (Rt Hon James Cleverly MP)
37 Home Office Policy Statement at paragraph 31
38 Home Office Policy Statement paragraph 131
39 Written evidence from Prof Tom Hickman (URA0001), Amnesty International UK (URA0002), ILPA and JUSTICE (URA0005), Public Law Project (URA0006)
40 Home Office Policy Statement paragraphs 104 and 109

have had no opportunity to comment on them and we are therefore unable to make a fully rounded assessment of the monitoring system. Additionally, the confidential complaints process envisaged by Article 15 has yet to be adopted by the Monitoring Committee. It is not clear whether and how details of this process will be made available for scrutiny.

27. Second, the powers of the Monitoring Committee to address breaches of the Treaty are weak. The Treaty states that the parties shall "without delay afford access to all information and inspection facilities" that the Monitoring Committee requests, but there appears to be no means for the Committee to enforce this requirement. Lord Anderson of Ipswich told us that "you really need … powers to summon people, to require information to be produced and to require meetings with people without government officials present".[41]

28. The Home Office Policy Statement[42] makes clear that it is only during the three-month enhanced monitoring period that monitoring will take place daily in real-time. The Terms of Reference indicate that, after that period, on the ground monitoring will be relatively infrequent. Furthermore, the Monitoring Committee can only make recommendations to the Joint Committee which the parties have no obligation to accept. Nor is there any obligation to make these recommendations public.[43] The Law Society commented that

> "it is unclear what the Monitoring Committee's powers would be, should repeated and systemic failings be identified through its monitoring or inspection activities, or through a pattern of individual complaints. While the Monitoring Committee has the power to make recommendations to the Joint Committee, it is not explicit whether this includes the ability to recommend that the agreement be temporarily suspended (potentially to allow for further investigation) or even terminated."[44]

29. Third, Lord Anderson of Ipswich, who reviewed monitoring processes in the context of the Government's "deportation with assurances" policy when he was the Independent Reviewer of Terrorism Legislation, told us that effective monitoring is highly resource intensive. He said monitoring just a couple of people sent to Jordan required 50 per cent of the time of a single British Embassy staff member. He noted that monitoring is a very practical process, and that even though the Monitoring Committee has "some pretty distinguished representation [and] I can see the clout that people such as that might bring", "my experience on the ground in Jordan is that you really wanted some terriers there, people who have the time to spend on the ground beating on people's doors until they give in."[45] These comments underline the importance of the role of the Monitoring Committee support team, about which the Government has provided no concrete information as to its size or composition.[46]

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41 Q 8 (Lord Anderson of Ipswich)

42 Home Office Policy Statement at paragraphs 106-108. See also letter from the Home Secretary to the Chair of the International Agreements Committee, 11 January 2024: https://committees.parliament.uk/publications/42871/documents/213213/default/

43 Rwanda Treaty, Article 15(4) and the Terms of Reference of the Monitoring Committee at paragraph 104 of the Home Office Policy Statement.

44 Written evidence from the Law Society (URA0016)

45 Q 10 (Lord Anderson of Ipswich)

46 Letter from the Home Secretary to the Chair of the International Agreements Committee, 11 January 2024: https://committees.parliament.uk/publications/42871/documents/213213/default/

30. Fourth, as the Supreme Court noted, "The detection of failures in the asylum system by means of monitoring, however effective it may be, will not prevent those failures from occurring in the first place".[47] The nature of the monitoring system after the initial three-month period as noted in paragraph 28 above appears to rely mainly on ex-post identification of issues and complaints being raised by Relocated Individuals.

31. The Joint Council for the Welfare of Immigrants highlighted why this is a problem and why monitoring and dispute processes are not a panacea: "even if failures can be addressed through a complaints mechanism, arbitration by the Joint Committee, or international court or tribunal down the line, by then it would be far too late for the individuals whose lives would already be irreparably and irreversibly harmed. Our view is that, even in the best-case scenario, these mechanisms would only be able to address harms after they have occurred, and that is far from adequate in situations where a person's life and human rights have been violated."[48]

32. Having regard to all these considerations, Professor Theodore Konstadinides and Rebecca Amor of the University of Essex (in common with many other witnesses) concluded that "it is improbable that modifications to the asylum partnership arrangements brought about by [the Treaty] will address the concerns highlighted by the Supreme Court in the immediate or short term".[49]

33. **In reaching its assessment, the Supreme Court emphasised the need to consider Rwanda's operation of its asylum system in practice. While we acknowledge the efforts made by both the Home Office and the government of Rwanda to address the issues raised, we agree that these are unlikely to result in fundamental change in the short term.**

Rwanda's compliance with its international obligations

34. In its Policy Statement, the Home Office note that Rwanda has ratified many international human rights conventions, including the United Nations Convention Against Torture and the International Covenant on Civil and Political Rights. Rwanda is also a member of the Commonwealth and therefore subscribes to the principles of the Commonwealth Charter. However, the Supreme Court found that Rwanda's past human rights record raised questions as to its compliance with its international obligations.[50]

35. In relation to Rwanda's obligations concerning refugees, the Supreme Court drew attention to Rwanda's failure to comply with a 2013 agreement with Israel under which asylum seekers from Eritrea and Sudan were removed to Rwanda. Asylum seekers moved under that agreement were routinely moved clandestinely to Uganda in breach of Rwanda's obligations under the Refugee Convention.[51]

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47 Judgment of the Supreme Court at paragraph 105. See also the written evidence from Amnesty International UK (URA0002), ILPA and JUSTICE (URA0005), Public Law Project (URA0006), JCWI (URA0007), Ayesha Riaz and others (URA0011), Law Society (URA0016)

48 Written evidence from JCWI (URA0007)

49 Written evidence from Prof Theodore Konstadinides and Rebecca Amor (URA0012). See also the written evidence from Prof Tom Hickman (URA0001), ILPA and JUSTICE (URA0005), Public Law Project (URA0006), JCWI (URA0007), Redress (URA0008), Dr Joseph Mullen (URA0010) and Prof Catherine Briddick and Prof Cathryn Costello (URA0015).

50 Supreme Court judgment at paragraph 76

51 Supreme Court judgment at paragraphs 95–96

36. The Home Office response is that these failures were due to a lack of transparency and monitoring of the Rwanda-Israel arrangements and that the monitoring arrangements provided for by the Rwanda Treaty will ensure that it is complied with. This is essentially the same argument put to the Supreme Court. However, as can be seen from paragraphs 25 to 31 above, it is evident that monitoring does not provide a complete answer or panacea.

37. Professor Tom Hickman KC noted that the terms of the Treaty itself expressly contemplate that it might not be observed on the ground.[52] The non-refoulement commitment in Article 10(3) is accompanied by a requirement for the parties to agree a system for ensuring that removal contrary to this obligation does not occur. This could be taken as a lack of confidence by the parties that compliance with this requirement will always be assured in practice.

38. **The Government relies on its assertion that the conversion of the commitments in the MEDP MOU into a legally binding treaty guarantees that those commitments will be observed. Yet as witnesses pointed out,[53] Rwanda was already subject to international obligations prohibiting refoulement when the instances of refoulement highlighted by the Supreme Court took place. Members of Parliament should therefore carefully consider whether the Rwanda Treaty fundamentally changes the assessment of the Supreme Court on Rwanda's compliance with its international obligations.**

Other issues raised in evidence

39. Witnesses to the inquiry raised a number of other specific concerns about the protections in the Rwanda Treaty for Relocated Individuals, in particular:

    (a) The risks to vulnerable persons such as trauma victims, victims of trafficking and LGBTQI persons;[54]

    (b) Access to medical and mental health care;[55]

    (c) Availability of sufficient numbers of lawyers and interpreters to ensure individuals are able to receive advice in a language they understand;[56]

    (d) Whether Relocated Individuals are likely to be able to fully integrate into Rwandan society.[57]

40. While some witnesses doubted the capacity of Rwanda to deal with the concerns raised under these headings, witnesses also highlighted the lack of information or detail in the Treaty and accompanying documentation which made it difficult to assess how these issues would be addressed. Some further information on these issues has been made available by the Home Office as

52 Written evidence from Prof Tom Hickman (URA0001)
53 Written evidence from Amnesty International UK (URA0002), ILPA and JUSTICE (URA0005), Public Law Project (URA0006), Ayesha Riaz and others (URA0011), Prof Theodore Konstadinides and Rebecca Amor (URA0012) and Justin Bahunga and others (URA0017)
54 Written evidence from Dr Rossella Pulvirenti and Dr Kay Lalor (URA0003), University of Birmingham (URA0004), ILPA and JUSTICE (URA0005), Public Law Project (URA0006), Human Rights Watch (URA0012) and Prof Catherine Briddick and Prof Cathryn Costello (URA0015)
55 Written evidence from ILPA and JUSTICE (URA0005) and Ayesha Riaz (URA0011)
56 Written evidence from Prof Tom Hickman (URA0001), ILPA and JUSTICE (URA0005), Ayesha Riaz (URA0011), Law Society (URA0016) and Bar Council (URA0018) and Q 11 (Lord Anderson of Ipswich)
57 Written evidence from ILPA and JUSTICE (URA0005)

part of the collection of documents published on 11 January 2024, but this was too late for the expert witnesses to this inquiry to comment. Some of this additional information remains vague, for example regarding the nature of Rwanda's plans to safeguard vulnerable individuals.[58]

41. Concerns were also raised about the treatment of children. The Treaty envisages that unaccompanied children might be removed to Rwanda if their age is in dispute. If subsequently determined to be children they would be returned to the UK.[59] This might result in children being placed in unsafe situations.[60] Witnesses argued that this was contrary to the UK's obligations under the UN Convention on the Rights of the Child to prioritise the best interests of children, and specifically to the Committee on the Rights of the Child's recommendation, urging the United Kingdom "to ensure that children and age-disputed children are not removed to a third country".

42. Finally, it was noted that Article 21 of the Treaty provides that, once it has terminated, the parties must continue to comply with the Treaty in relation to persons who have been removed to Rwanda. The precise effect of this article is unclear since the protections granted by the Treaty rely to a large extent on its institutional mechanisms such as the Monitoring Committee and the special asylum process. When a treaty is terminated, its institutional mechanisms would normally cease to have effect. The Home Office did not engage with this point when asked about it.[61] **The effect of this article should be expressly clarified.**[62]

Conclusions

43. The Supreme Court relied heavily on the evidence of the UNHCR in making its assessment of whether Rwanda is a safe country. The rapid timetable for Parliamentary scrutiny of the Treaty did not allow enough time for UNHCR to respond to our call for evidence but on 15 January 2024 it published an updated assessment taking into account the Supreme Court judgment, the Rwanda Treaty and the Bill.[63] This states:

> "As of January 2024, UNHCR has not yet observed the changes in practice of asylum adjudication that would overcome the concerns set out in its 2022 analysis and in the detailed evidence presented to the Supreme Court. … UNHCR notes the detailed, legally-binding commitments now set out in the treaty, which if enacted in law and fully implemented in practice, would address certain key deficiencies in the Rwandan asylum system identified by the Supreme Court. This would however require sustained, long-term efforts, the results of which may only be assessed over time. …[U]ntil the necessary legal framework and implementation capacity is established, the conclusion of the treaty

58 Letter from the Home Secretary to the Chair of the International Agreements Committee, 11 January 2024: https://committees.parliament.uk/publications/42871/documents/213213/default/

59 Rwanda Treaty, Article 3(4)

60 Written evidence from ILPA and JUSTICE (URA0005), Prof Theodore Konstadinides and Rebecca Amor (URA0012) and Prof Catherine Briddick and Prof Cathryn Costello (URA0015)

61 Letter from the Home Secretary to the Chair of the International Agreements Committee, 11 January 2024: https://committees.parliament.uk/publications/42871/documents/213213/default/

62 Written evidence from Prof Tom Hickman (URA0001)

63 UNHCR, *Analysis of the Legality and Appropriateness of the Transfer of Asylum Seekers under the UK-Rwanda arrangement: an update*, (15 January 2024): https://www.unhcr.org/uk/sites/uk/files/2024-01/updated_unhcr_analysis_-_uk-rwanda_arrangement_1.pdf [accessed 16 January 2024]

in itself does not overcome continued procedural fairness and other protection gaps."

This assessment supports the views of witnesses to the inquiry.

44. In his evidence to us on 19 December 2023, the Home Secretary suggested[64] that we could draw an inference about UNHCR's views from the fact that it had transferred more than 160 asylum seekers to Rwanda the day after the Supreme Court judgment. However, the Home Office has subsequently confirmed[65] that this transfer was connected with a transit mechanism operated by UNHCR which was referred to by the Supreme Court: "Rwanda has also supported the UNHCR emergency transport mechanism for asylum seekers from Libya. Once in Rwanda, their claims are processed by UNHCR, and the claimants have been resettled by UNHCR in third countries".[66] This flight therefore has no bearing on the assessment of the Rwanda Treaty.

45. **The Government has presented the Rwanda Treaty to Parliament as an answer to the Supreme Court judgment and has asked Parliament, on the basis of the Treaty, to declare that Rwanda is a safe country. While the Treaty might in time provide the basis for such an assessment if it is rigorously implemented, as things stand the arrangements it provides for are incomplete. A significant number of further legal and practical steps are required under the treaty which will take time, in particular:**

    (a) **a new asylum law in Rwanda;**

    (b) **a system for ensuring that non-refoulement does not take place;**

    (c) **a process for submitting individual complaints to the Monitoring Committee;**

    (d) **the recruitment of a Monitoring Committee support team;**

    (e) **the appointment of independent experts to advise the asylum First Instance and Appeals Bodies;**

    (f) **the appointment of co-presidents of the Appeals Body;**

    (g) **the appointment of international judges;**

    (h) **training for international judges in Rwandan law and practice;**

    (i) **training for Rwandan officials dealing with asylum applicants; and**

    (j) **steps to ensure a sufficient number of trained legal advisers and interpreters are available. Moreover, the arrangements put in place by the Treaty need time to bed in to demonstrate that they operate in practice. The Home Office has been unable to offer any clear timeline for implementation, but we agree with the evidence we received that the Treaty is unlikely to change**

64 Q 20 (Rt Hon James Cleverly MP)
65 Letter from the Home Secretary to the Chair of the International Agreements Committee, 11 January 2024: https://committees.parliament.uk/publications/42871/documents/213213/default/
66 Supreme Court judgment at paragraph 77

the position in Rwanda in the short to medium term. Members of Parliament should take that into account in considering the Safety of Rwanda (Asylum and Immigration) Bill.

46. **Greater transparency is also required about aspects of the Treaty's implementation to allow for a full assessment**. Witnesses to this inquiry highlighted a number of areas of uncertainty as discussed in this report. The Government has now published some additional documentation through links in its revised Policy Statement, but the lateness of this disclosure means that we are unable to judge whether this meets the concerns raised.

47. In November the Prime Minister indicated a desire to ratify the Treaty as quickly as possible, which could be as early as February on the expiry of the CRAG scrutiny period. If the Government ratifies immediately, it gives the Government of Rwanda control over when the Treaty enters into force.[67] Rwanda might ratify before all the implementing measures have been adopted.[68] The Home Secretary told us that the Government would not "operationalise this scheme until we are confident that the measures underpinning the treaty have been put in place; otherwise, the treaty is not credible".[69] We welcome that commitment but would go further. **The Government should not ratify the Rwanda Treaty until Parliament is satisfied that the protections it provides have been fully implemented since Parliament is being asked to make a judgement, based on the Treaty, that Rwanda is safe.**

48. **The Government should submit further information to Parliament in due course to confirm that the necessary legal and practical steps and training identified in this report, which underpin the protections provided for in the Treaty, have been put in place and bedded in. It should then allow for a further debate before proceeding to ratification.**

49. In making this recommendation we draw to the attention of the House the terms of section 20 of the Constitutional Reform and Governance Act which provide that the House of Commons has the power to delay the ratification of a treaty. The House of Lords can also resolve that a treaty should not be ratified but the Government can override this if it lays a statement before the House.

50. We report the Rwanda Treaty to the House for special attention together with our comments in paragraphs 20, 33, 38, 42, 45–47 and 48–49.

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67 The Treaty will enter into force on the date of the last notification by the two parties that their internal procedures have been completed: Rwanda Treaty, Article 24

68 It is UK policy not to ratify any treaty before the necessary implementing measures are in place. See FCDO, 'Treaties and MOUs: Guidance on Practice and Procedures', (12 March 2022) ,at paragraph 11: https://www.gov.uk/government/publications/treaties-and-mous-guidance-on-practice-and-procedures [accessed 16 January 2024]. Other countries may not take the same approach.

69 Q 21 (Rt Hon James Cleverly MP)

APPENDIX 1: LIST OF MEMBERS AND DECLARATIONS OF INTEREST

Members

Lord Fox
Lord Geidt
Lord Goldsmith KC (Chair)
Lord Grimstone of Boscobel
Baroness Hayter of Kentish Town
Lord Howell of Guildford
Lord Kerr of Kinlochard
Baroness Kingsmill
Lord Marland
Lord Razzall
Lord Udny-Lister
Lord Watts

Declarations of Interest

Lord Fox
No relevant interests
Lord Geidt
Chairman of Council, King's College London
President, Royal Overseas League
Lord Goldsmith KC
Partner, Debevoise & Plimpton LLP (International law firm)
Lord Grimstone of Boscobel
No relevant interests
Baroness Hayter of Kentish Town
Senior Non-Executive Director, Association of British Insurers
Lord Howell of Guildford
No relevant interests
Lord Kerr of Kinlochard
Former trustee, Refugee Council
Baroness Kingsmill
No relevant interests
Lord Marland
Director, Janspeed Technologies Ltd (manufacturer of motor parts)
Lord Razzall
Director, North Atlantic Mining Associates Limited
Director, ZeU Technologies Inc
Shareholdings, ZeU Technologies Inc
Shareholdings, St-Georges Eco-Mining Corporation
Shareholdings, Tintra plc
Lord Udny-Lister
Advisor to the Group Chairman of HSBC
Lord Watts
No relevant interests

APPENDIX 2: LIST OF WITNESSES

Evidence is published online at https://committees.parliament.uk/work/8091/ukrwanda-asylum-agreement/publications/ and available for inspection at the Parliamentary Archives (020 7219 3074).

Evidence received by the Committee is listed below in chronological order of oral evidence session and in alphabetical order. Those witnesses marked with ** gave both oral evidence and written evidence. Those marked with * gave oral evidence and did not submit any written evidence. All other witnesses submitted written evidence only.

Oral evidence in chronological order

**	Lord Anderson of Ipswich, KBE, KC	QQ 1-18
*	Professor Theodore Konstadinides, Professor of Law, University of Essex	QQ 1-18
	Rt Hon James Cleverly MP, Secretary of State for the Home Department	QQ 19-31
*	Dan Hobbs, Director-General Migration and Borders, Home Office	QQ 19-31

Alphabetical list of all witnesses

	Amnesty International UK	URA0002
**	Lord Anderson of Ipswich, KBE, KC (QQ 1-18)	
	Joseph Bahunga and others	URA0017
	Bar Council	URA0018
	Associate Professor Catherine Briddick, University of Oxford and Professor Cathryn Costello, University College Dublin	URA0015
	Professor Tom Hickman KC, Professor of Public Law, University College London	URA0001
	Human Rights Watch	URA0013
	Immigration Law Practitioners' Association (ILPA) and JUSTICE	URA0005
	Institute for Research into Superdiversity, University of Birmingham	URA0004
	Joint Council for the Welfare of Immigrants (JCWI)	URA0007
	Professor Theodore Konstadinides, Professor of Law and Rebecca Amor, Assistant Lecturer, University of Essex (QQ 1-18)	URA0012
	Law Society	URA0016
	Dr Joseph Mullen	URA0010
	Public Law Project	URA0006

Dr Rossella Pulvirenti and Dr Kay Lalor, Manchester Law School, Manchester Metropolitan University	URA0003
Redress	URA0008
Ayesha Riaz and others, Queen Mary University of London and University of Greenwich	URA0012