Home Office

Country Information Note

Rwanda: Annex 2 (UNHCR evidence)

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Contents

Annex 2

Section updated: 26 April 2024

About the country information

1.1.1 This annex contains UNHCR submissions to the Divisional Court, the Court of Appeal and the Supreme Court in the case of AAA and others v SSHD.

1.1.2 The inclusion of a source is not necessarily an endorsement of it or any view(s) expressed.

1.1.3 Annex 2 forms part of the evidence base to assist caseworkers when making decisions about whether it is safe to relocate an individual from the UK to the Republic of Rwanda.

1.1.1 This Annex must be read together with other Country Policy and Information Team (CPIT) products:

- Country Information Note – Rwanda: Asylum system
- Country Information Note – Rwanda: Human rights
- Country Information Note – Rwanda: Medical and healthcare
- Country Information Note – Rwanda: Annex 1 Government of Rwanda (GoR) evidence
- Country Information Note – Rwanda: Annex 3 Other material

1.1.2 This Annex must also be read together with other Home Office guidance:

- Safety of Rwanda
- Inadmissibility: safe third country cases
- Considering Human Rights Claims
- Medical claims under Articles 3 and 8 of the European Convention on Human Rights (ECHR)

1.1.3 This Annex must be read together with other related information:

- 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 treaty)
- Safety of Rwanda (Asylum and Immigration) Act 2024

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A1. UNHCR Written Observations in the Divisional Court 19 August 2022

Written observations in the Divisional Court 19 August 2022 (cross references added 31 August 2022, sentence removed 7 September 2022)

CO/2032/2022; CO/2056/2022; CO/2077/2022; CO/2080/2022; CO/2072/2022; CO/2095/2022; CO/2098/2022; CO/2104/2022; CO/2072/2022

IN THE HIGH COURT OF JUSTICE QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

BETWEEN: THE QUEEN ON THE APPLICATION OF
AAA and OTHERS

Claimants

-and-
THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Defendant

-and-
THE UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES

Intervener

WRITTEN OBSERVATIONS OF THE UN HIGH COMMISSIONER FOR REFUGEES

Drafted by:

Angus McCullough QC
Laura Dubinsky QC
David Chirico
Benjamin Bundock
Jennifer MacLeod
Agata Patyna

On the instructions of:
Baker McKenzie
100 New Bridge Street, London EC4V 6JA

Acting pro bono

References:

[CB/*/*/*] = Core Bundle, tab *, document *, page *
[GDB/*/*/*] = Bundle of General Documentation, tab *, document *, page *
[Auth/CB/*/*] = Joint Core Authorities Bundle, tab *, page *
[Auth/SB/*/*] = Joint Supplementary Authorities Bundle, tab *, page *

*These Observations generally adopt the same abbreviations used in the Detailed Grounds of Defence ('***DGD***'). Key documents from the Government of Rwanda ('***GoR***') are referred to as follows:*

GoR Statement: pp. 522-530 of the bundle of Exhibits to the First Witness Statement of Kristian Armstrong ('**KA1**') [**GDB/E/92/1792-1800**];
GoR Response: pp. 13-20 of Exhibit KA 2(1) to the Second Witness Statement of Kristian Armstrong ('**KA 2'**) [**GDB/E/190/2809-16**];
GoR Email: pp. 8-9 of Exhibit 4(1), first exhibit to the Fourth Witness Statement of Kristian Armstrong (**'KA4**') [**GDB/E/208/3170-71**].

A. Introduction

1. The UN High Commissioner for Refugees ('**UNHCR**') is grateful for the Court's grant of permission to intervene. These proceedings concern a new and, for the UK, unprecedented, arrangement by which the UK's obligations under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol ('the **Refugee Convention**') would be externalised to Rwanda ('the **UK-Rwanda Arrangement**').[1] UNHCR advances these observations pursuant to its mandate, conferred by the UN General Assembly[2] to supervise the application of the Refugee Convention. Its observations are directed to questions raised by §§ 1.2-1.4; 2-4; 12.1; 12.4, and 20.3 on the principal parties' agreed list of issues of 17 August 2022.[3]

2. In summary, UNHCR observes that:

   2.1 Special regard is due both to UNHCR's assessment of factual matters within its remit; and to UNHCR's interpretation and analysis of the protection and standards required under the Refugee Convention. (**Section B**).

   2.2 It is a necessary (albeit not sufficient) condition for the lawful transfer, by one State to another, of asylum seekers[4] whose claims have yet to be determined for there to be fundamental safeguards in place. The requisite safeguards include the existence of an accessible, reliable, fair and efficient refugee status determination ('**RSD**') system in the receiving State. In the absence of such an RSD system in the receiving State (a) the vital rights and protections to which refugees are entitled under the Refugee Convention cannot be ensured so that (b) transfer should not take place. (**Section C**).

   2.3 The RSD system in Rwanda lacks irreducible minimum components of an accessible, reliable, fair and efficient asylum system. (**Section D**).

   2.4 UNHCR is moreover aware of specific instances of refoulement from Rwanda. The denial by the Secretary of State for the Home Department ('**SSHD**') and Government of Rwanda ('**GoR**') of any history of refoulements from Rwanda rests, at least in part, upon a misunderstanding of the prohibition of refoulement. There is a serious risk of onward refoulement from Rwanda. (**Section E**).

1 The elements of that arrangement are summarised in the Amended Statement of Facts and Grounds in *AAA* (CO/2032/2022), §§43- 67 [**CB/A/6/197-207**], and are not repeated here.

2 Statute of the Office of UNHCR (annexed to UN General Secretary Resolution 428(V) of 14 December 1950) [**Auth/SB/100/3420- 3435**].

3 These observations focus upon those points concerning which UNHCR has unique expertise and touch only briefly upon the domestic legal regime.

4 In these observations, the term 'asylum seeker' is used to refer to people who have communicated to a host State their intention to make an asylum claim. The term 'refugee' is used to mean anyone who is a refugee within the meaning of Article 1A(2) of the Refugee Convention, whether or not their status has been recognised as refugee status is declaratory in nature (see UNHCR Handbook at §28 [**Auth/CB/104/4814**], referenced at §4 below, and fn. 18 below).

2.5 The SSHD's contentions that Rwanda operates a 'no deportation' policy and that all rejected asylum seekers transferred under the UK-Rwanda Arrangement would be given a residence permit are not supported by the evidence, including her own. In any event, the provision of alternative status would offer no lawful substitute for the rights and protections owed to recognised refugees under the Refugee Convention. (**Section F**).

2.6 The defects in Rwanda's RSD system are not addressed by the Memorandum of Understanding ('**MoU**') dated 14 April 2022 or the Notes Verbales ('**NVs**') between the UK and Rwanda. The MoU and NVs impose only non-binding, unenforceable obligations; describe an RSD system which would require profound changes; and propose no concrete steps or timeframe by which those changes are to be achieved. (**Section G**).

2.7 The defects and risks in the Rwandan RSD system have the consequence that decisions to treat an asylum seeker's claim as inadmissible and to transfer him or her to Rwanda, owing to arrival in the UK by a 'dangerous journey', amount to unlawful penalisation contrary to Article 31 of the Refugee Convention where the asylum seeker 'came directly' within the meaning of the Convention. (**Section H**).

2.8 Contrary to the objects and purposes of the Refugee Convention, the UK-Rwanda Arrangement is, moreover, a burden-shifting arrangement which will diminish overall provision of international protection and whose replication would threaten the international protection system. (**Section I**).

2.9 For all these reasons, UNHCR's unequivocal position is that there should be no transfers of asylum seekers from the UK to Rwanda under the UK-Rwanda Arrangement.

B. UNHCR's factual assessments and interpretation of the Refugee Convention

3. As concerns the respect due to UNHCR's expertise and factual assessments in the present context, UNHCR notes that:

3.1 Where, as here, UNHCR warns unequivocally against transfer of asylum seekers to a particular destination, that has been treated as critically important if not decisive. Thus, in a case concerning intra-EU third country transfers, *MSS v Belgium and Greece* (2011) 53 EHRR 2 ('**MSS**'), the Grand Chamber of the European Court of Human Rights ('**ECtHR**'), in finding that the transfer of MSS constituted a breach by Belgium of its obligations under Article 3 ECHR, attached '*critical importance*' (§3498) to UNHCR's '*unequivocal plea for the suspension of transfers to Greece*' [**Auth/CB/27/1454**].[5]

3.2 As the Court of Appeal has explained,[6] UNHCR '*is today the holder of an internationally respected office with an expert staff (numbering 7,190 in 120 different states[7]), able to assemble and monitor information from year to year and to apply to it standards of knowledge and judgment which are ordinarily beyond the reach of a court*' and it was '*intelligible in this situation that a supranational court should pay special regard both to the facts which the High Commissioner reports and to the value judgments he arrives at within his remit*'.

3.3 UNHCR's interventions and other work are of an '*entirely non-political character*'.[8] Its approach to evidence in its interventions has been recognised by domestic courts to be '*dispassionate*'.[9]

3.4 UNHCR has a permanent presence on the ground in Rwanda since 1993. For UNHCR's experience and understanding of the asylum processes in Rwanda, see Lawrence Bottinick's Witness Statement of 26 June 2022 ('**LB2**') §§10-17 [**GDB/H/295/4320-4321**].[10] The SSHD has, rightly, not suggested that there is any more reliable independent source of information about the practical realities for asylum seekers and refugees in Rwanda than UNHCR.[11] Rather, her officials have acknowledged, internally, their lack of any other independent verification concerning the position on the ground in Rwanda.[12]

4. As to the weight given to UNHCR's interpretation of the Refugee Convention, the Supreme Court has stated that '*[t]he guidance given by the UNHCR is not binding, but "should be accorded considerable weight", in the light of the obligation of Member States under article 35 of the Convention to facilitate its duty of supervising the application of the provisions of the Convention*'.[13] In particular, UNHCR's governing body, its Executive Committee ('**ExCom**') makes regular '*recommendations […] on issues relating to refugee determination and protection*', which are '*designed to go some way to fill the procedural void in the Convention itself*', and are entitled to '*considerable weight*'.[14] The Courts have also identified as '*particularly relevant*' UNHCR's Handbook on Procedures and Criteria for Determining Refugee Status ('**the Handbook**').[15]

5 For the importance attached to the unequivocal nature of UNHCR's position in *MSS*, see *EM (Eritrea)* [2014] UKSC 12; [2014] AC 132, §§71-72 [**Auth/CB/75/3593-3594**], approving the statement by Sir Stephen Sedley in the Court of Appeal (*R (EM (Eritrea)) v SSHD* [2013] 1 WLR 576, §41 [**Auth/SB/54/1904**]) that there was a reason for according the UNHCR a special status in this context. For the application of that principle to other instances, see further *R (HK (Iraq)) v SSHD* [2017] EWCA Civ 1871, §§28; 30-31; 36-37 per Sales LJ as he then was [**Auth/SB/66/2361-4**]; also *R (Elayathamby) v SSHD* [2011] EWHC 2182 (Admin) per Sales J as he then was; [2011] ACD 117, §42(5); *R (Tabrizagh) v SSHD* [2014] EWHC 1914, §§87-88, 167 per Laing J as she then was; *R (MS and others) v SSHD* [2015] EWHC 1095, §135, per Lewis J as he then was [**Auth/SB/60/2119**]; *R (NA (Sudan)) v SSHD* [2016] EWCA Civ 1060; [2017] 3 All ER 885 ('**NA (Sudan)** '), §240 per Underhill LJ [**Auth/SB/64/2308**].

6 *R (EM (Eritrea)) v SSHD* [2013] 1 WLR 576, §41, per Sedley LJ [**Auth/SB/54/1904**], approved by Lord Kerr in *EM (Eritrea)* [2014] UKSC 12; [2014] AC 132, §§71-72 [**Auth/CB/75/3593-3594**].

7 The figures today of both staff and states in which UNHCR operates are significantly higher: 14,097 staff in 135 countries and territories with offices in 523 locations (UNHCR *Global Report* 2021).

8 Statute of the Office of the UNHCR, Article 2 [**Auth/SB/100/3427**].

9 *NA (Sudan)*, §207 referenced above [**Auth/SB/64/2300**].

C. Refoulement and third country transfer agreements: relevant principles

Refoulement

5. The prohibition of refoulement is a fundamental and non-derogable component of refugee law,[16] and a norm of customary international law.[17] Article 33(1) Refugee Convention prohibits expulsion or return of a refugee '*in any manner whatsoever, to the frontiers of territories where his life or freedom would be threatened*' [**Auth/CB/1/39**]. The protection of Article 33(1) arises for a person who meets the definition of a refugee at Article 1A Refugee Convention, whether or not refugee status has been recognised formally. To avoid the Article 33(1) protection being rendered nugatory by refoulement before entitlement to refugee status has been assessed, the protection of Article 33(1) applies to an asylum seeker from the time that they enter a State's jurisdiction unless and until a full, lawful determination is made that refugee status is not warranted on the facts of the case.[18]
6. Article 33(1) prohibits *expulsion* or return to *any* State where there are substantial grounds for believing that the refugee's life or freedom would be threatened, regardless of whether that is the refugee's State of origin.[19]
7. As is clear from the words '*in any manner whatsoever*', the prohibition of refoulement concerns substance (the protection of the refugee's safety and freedom) rather than form. The prohibition is not, therefore, exclusively concerned with expulsion or return *directly* to a State of persecution ('**direct refoulement**'). It extends also to return or expulsion to another State from which there is a real risk that the refugee will, in turn be compelled to travel to a State of persecution ('**indirect refoulement**'): '*[t]he one course would effect indirectly, the other directly, the prohibited result, i.e. his return "to the frontiers of territories where his life or freedom would be threatened*"'.[20]

10 As set out in that witness statement, UNHCR's assessments of and concerns about the Rwandan asylum system have been set out in private communications and meetings with the Rwandan (and more recently the UK) authorities, and on occasion have been set out publicly (see for example its July 2020 Submission to the Office of the High Commissioner for Human Rights' Universal Periodic Review('**July 2020 Universal Periodic Review**') at p.4 [**GDB/H/291/4300**] and its 2021 Rwanda Country Response Plan ('**RCRP**'), completed in March 2020 at p.10. The latter two documents, however, focused primarily on the support of prima facie refugees, returning Rwandan refugees, and the Emergency Transfer Mechanism for the short to medium-term resettlement of refugees from Libya; in all of which UNHCR had involvement.

11 The SSHD has relied upon what she presented as UNHCR's assessment of and participation in the asylum system in Rwanda. Her initial individual decision letters informed asylum seekers that UNHCR was *'closely involved'* in the UK-Rwanda Arrangement and would '*provide oversight'* of that Arrangement, and moreover that UNHCR had not raised substantial concerns over the Rwandan asylum system. UNHCR pointed out by letter of 9 June 2022 to the relevant Minister that those assertions were not correct [**GDB/H/283/4260-4261**]. The DGD now appears to suggest (erroneously) that UNHCR might act as a de facto independent monitor of the UK-Rwanda Arrangement, see DGD §8.16(2) [**CB/B/9/547**] and see §48.1 below

12 SSHD's disclosure bundle of 13 July 2022, p. 209, from 3 March 2022 note: '*We also currently have no independent verification of what we have been told by Country X*' [**GDB/F/241/3543**].

8. The prohibition extends to all the means ('*in any manner whatsoever*') by which a State compels a refugee to go to another State where s/he is at real risk of persecution. This includes instances where a refugee is expelled without a decision on the merits of his or her claim, without any inadmissibility procedure or decision, and without any determination of the safety of the place to which s/he is being removed (termed here '**peremptory refoulement**'). A refugee may, without being removed by force or being formally required to leave, be *de facto* compelled to leave due to severe problems in accessing international protection or in conditions in the receiving State (termed here '**de facto refoulement**'[21]. A refugee may also be expelled at the culmination ofan RSD process which has formally, but incorrectly, determined him or her not to be a refugee (which may be termed '**de jure refoulement**'). It is understood to be uncontroversial that all the foregoing constitute refoulement prohibited under Article 33(1) (see DGD §§8.39-41 [**CB/B/9/554-555**]).

Third country transfer agreements

9. A third country transfer agreement ('**TCTA**'), under which asylum seekers are transferred from one State to another before the full determination of their asylum claims must contain 'a*dequate safeguards and guarantees toensure respect for rights*'.[22] Moreover, these must be consistently implemented in practice[23] to be compatible with the objects and purposes of the Refugee Convention, and otherwise lawful.

13 *Al Sirri v SSHD* [2012] UKSC 54; [2013] 1 AC 745, §36 per Lady Hale and Lord Dyson, referring to observations originally made about the Handbook and approving them in relation to UNHCR's Background Note and Guidelines relating to the exclusion clauses under Art. 1F of the Refugee Convention.

14 *Rahaman v Minister of Citizenship and Immigration* 2002 ACWSJ Lexis 1026 [2002] F.C.J. No. 302 (Canadian Federal Court of Appeal) [**Auth/SB/99/3417**]. See further discussion in Hathaway, *The Rights of Refugees Under International Law*, 2nd edition (2021) ('**Hathaway (2021)**'), pp. 56-59.

15 CJEU in Case C-720/17 *Bilali v Bundesamt für Fremdenwesen und Asyl* [2019] 4 WLR 124, para 57. See also *R v SSHD, ex parte Adan and Aitseguer* [2001] 2 AC 477 at 520B [**Auth/CB/49/2702**].

16 *R (Yogathas) v SSHD* [2002] UKHL 36; [2003] 1 AC 920 ('**Yogathas** ', §23 (per Lord Hope.) [**Auth/SB/23/906**]. Article 42(1) of the 1951 Convention [**Auth/CB/1/44**] and Article VII(1) of the 1967 Protocol [**Auth/CB/1/58**], list Article 33 as one of the provisions of the 1951 Convention to which no reservations are permitted.

17 See Elihu Lauterpacht and Daniel Bethlehem, 'The Scope and Content of the Principle of Non-Refoulement: Opinion' in Feller and others, *Refugee protection and international law: UNHCR's global consultations on international protecction* (June 2003), p. 140-163; Concurring Opinion of Judge Pinto de Albuquerque in *Hirsi Jamaa v Italy* (Application 27765/09) (2012) 55 E.H.R.R. 21, 684 ('**Hirsi Jamaa** ') [**Auth/SB/7/279**]; and the Advisory Opinion of the Inter-American Court of Human Rights in OC-25/18, 30 May 2018, §181.

18 The Supreme Court recently explained 'Under *the 1951 Geneva Convention recognition that an individual is a refugee is a declaratory act. The obligation not to refoule an individual arises by virtue of the fact that their circumstances meet the definition of "refugee", not by reason of the recognition by a Contracting State that the definition is met. For this reason a refugee is protected from refoulement from the moment they enter the territory of a Contracting State whilst the State considers whether they should be granted refugee status.' G v G,* [2021] UKSC 9, [2022] AC 544, §81 [**Auth/CB/93/4448**], emphasis added.

10. The requisite safeguards and guarantees have as their object the prevention of refoulement and securing access to the other rights in the Refugee Convention.[24] These safeguards and guarantees may be divided into three categories, the first of which (a procedural obligation) relates to the quality of procedures in the transferring state and the second and third of which are substantive obligations relating to the asylum system and conditions in the receiving state:

    10.1 First, the transferring State must have in place and adequately operate a procedure, before transfer, which includes a rigorous examination of the asylum system in the receiving State and of conditions there, and moreover an individualised assessment ('*depending on all the circumstances of the case*' [25]) of the appropriateness of transfer for each asylum seeker whom it proposes to transfer;

    10.2 Second, <u>after</u> transfer, the receiving State must grant the person access to an accessible, reliable and fair asylum procedure for the determination of his or her protection needs and must not subject them to onward refoulement; and

    10.3 Third, in the receiving State, the person must be treated in conformity with fundamental rights standards[26] (particularly those protecting against serious harm and threats to life or liberty),[27] and if entitled to asylum, be granted lawful stay in the country and access to the corresponding rights of the Refugee Convention.[28]

19 See UNHCR Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations under the 1951 Convention, July 2007, §7. See likewise *Yogathas*, §9 (per Lord Bingham): a '*very important but very simple and very practical end*' of the Refugee Convention is '*preventing the return of applicants to places where they will or may suffer persecution*' [**Auth/SB/23/902**]. Exceptions to the principle of nonrefoulement under the 1951 Convention are permitted only in the limited circumstances expressly provided for in Article 33(2).

20 *Bugdaycay and others v SSHD* [1987] AC 514 ('**Bugdaycay** '), 532, Lord Bridge of Harwich [**Auth/CB/45/2597**].

21 The SSHD uses the term '*de facto refoulement'* somewhat differently at DGD §8.7 [**CB/B/9/543**].

22 UNHCR Note on the Externalisation of International Protection (28 May 2021) and accompanying Annex ('**Externalisation Note 2021**'), §6 [**Auth/SB/116/3540-1**]. The existence of such safeguards and guarantees is a necessary but not sufficient component of a lawful TCTA.

23 UNHCR Legal considerations regarding access to protection and a connection between the refugee and the third country in the context of return or transfer to safe third countries (April 2018) §10: '*Access to human rights standards and standards of treatment commensurate with the 1951 Convention and its 1967 Protocol may only be effectively and durably guaranteed when the state is obliged to provide such access under international treaty*
law, has adopted national laws to implement the relevant treaties and can rely on actual practice indicating consistent compliance by the state with its international legal obligations'. See also Externalisation Note pp. 5-6 [**Auth/SB/116/3540-3541**].

The RSD system in the receiving State: obligations of the transferring State

11. As stated by ExCom, a TCTA '*must include safeguards adequate to ensure in practice that persons in need of international protection are identified and that refugees are not subject to refoulement.*'[29] These include the transferring State ensuring that the receiving State will '*provide the asylum-seeker … with the possibility to seek and enjoy asylum*,'[30] and access '*fair and efficient procedures for the determination of refugee status and/or other forms of international protection*'.[31] That requirement has its analogue in the obligation under Article 3 ECHR [32] that the transferring State under a TCTA thoroughly assess '*the accessibility and functioning of the receiving country's asylum system and the safeguards it affords in practice'* (*Ilias v Hungary* (2020) 7 EHRR 6 ('**Ilias** '), §§139,141 [**Auth/CB/37/2114**]).

12. The judgment of the Grand Chamber of the ECtHR in *Ilias* shows that Article 3 ECHR requires a transferring State in a TCTA to proceed on the basis that, in the absence of '*an adequate asylum system, protecting [an asylum seeker] against refoulement*', '*art 3 implies a duty that the asylum seeker should not be removed to the third country concerned*' (§134) [**Auth/CB/37/2113**].

24 UNHCR has identified these safeguards in general terms in its 2013 Guidance Note on Bilateral and/or Multilateral Transfer arrangements for asylum seekers: ('**Bilateral Note**').) [**Auth/SB/114/3478**]:
The transfer arrangement needs to guarantee that each asylum-seeker
- will be individually assessed as to the appropriateness of the transfer…;
- will be admitted;
- will be protected against refoulement;
- will have access to fair and efficient procedures for the determination of refugee status and/or other forms of international protection;
- will be treated in accordance with accepted international standards...;- if recognized as being in need of international protection, will be able to enjoy asylum and/or access a durable solution'.

25 *Ilias v Hungary* (2020) 7 EHRR 6 ('**Ilias** '), §127 [**Auth/CB/37/2111**]*Ibid*.

26 This requirement arises, inter alia, from the objects and purposes of the Refugee Convention. See Preamble Recital referring to the '*widest possible exercise of these fundamental rights and freedoms'* [**Auth/CB/1/22**].

27 See for example *MSS*, §365 [**Auth/CB/27/1457**].

28 See the requirements at Article 2 to 34 of the Refugee Convention [**Auth/CB/1/25-39**]. As UNHCR's Resettlement Handbook explains at §1.3.4: '*The logic of the Convention framework is that, with the passage of time, refugees should be able to enjoy a wider range of rights, as their ties with the hosting State grow stronger. …These include inter alia the right to freedom of movement, access to the labour market, education, health care and other social services. Not least, the 1951 Convention provides for facilitated naturalization procedures in the country of asylum*.'

29 See ExCom Conclusion No. 71 (XLIV) (1993), §(l) [**Auth/SB/105/3447**].

30 See ExCom Conclusion No. 85 (XLIX) (1998), §(aa) [**Auth/SB/110/3468**].

31 Bilateral Note, §3(vi) [**Auth/SB/114/3478**].

32 See *MSS,* §342 [**Auth/CB/27/1453**].

13. The Refugee Convention requires no less. In the absence of a full determination of an asylum claim in the transferring State, an asylum seeker transferred under a TCTA must be presumed, for Article 33(1) purposes, to be a refugee, entitled to protection from refoulement; indeed, that is the SSHD's long-standing approach to 'safe third country cases'.[33] If, on the evidence, there is not an accessible, reliable and fair RSD system in the receiving State (so that there may still be no full determination of the asylum claim in the receiving State) each transferee must, likewise, be presumed to be at real risk of refoulement and is moreover not assured in the receiving State the full array of Refugee Convention rights and protections to which a refugee is entitled, with the consequence that transfer cannot take place.

14. Under the Refugee Convention (as under Article 3 ECHR[34]) the transferring State's duty to avert refoulement remains intact notwithstanding the transfer of an asylum seeker under a TCTA to another State for his or her claim to be determined there.[35] That is because, as explained at §5 and fn 18 above, protection from refoulement arises under Article 33 (1) of the Refugee Convention as soon as an asylum seeker is within the jurisdiction of the State where he or she seeks asylum and endures unless and until a full, lawful determination is made that such protection is not warranted.[36]

15. Those Refugee Convention rights and protections acquired by an asylum seeker upon entry to the territory or jurisdiction of the transferring State, including protection from refoulement as noted above[37], are acquired by the asylum seeker before, and not lost upon, transfer under a TCTA. The latter duty to ensure that inchoate rights will be respected in the receiving State arises because the transferring State must implement the Refugee Convention in good faith.[38] The requirement that the full array of rights and protections guaranteed under the Refugee Convention must be respected in a receiving State under a TCTA explains why the domestic Immigration Rules and current statutory scheme make it a necessary condition for Safe Third States that '*protection in accordance with the Refugee Convention*' is available for recognised refugees, separately from protection from refoulement.[39]

33 *Bugdaycay* at 531H: '*the implicit assumption that the appellant has or may have a well-founded fear of persecution*' [**Auth/CB/45/2596**].

34 See *MSS,* §342 [**Auth/CB/27/1453**].

35 '*In the absence of a functioning asylum system in the receiving State, the transferring State retains international responsibility for providing an adequate asylum procedure, flowing from its non-refoulement obligations under the Refugee Convention and international custom, as well as any relevant protection obligations established by regional treaties or custom*.': David Cantor and Others, 'Externalisation, Access to Territorial Asylum and International Law', in International Journal of Refugee Law (June 2022) [**Auth/SB/130/3723**].

36 See discussion in Hathaway and Foster, *The Law of Refugee Status*, 2nd Edition (2014) p. 40 [**Auth/SB/122/3630**].

37 Other such protections include, particularly relevantly for the purposes of the issues before this Court, Articles 3 (nondiscrimination), 16(1) (access to courts) and 31 (freedom from penalisation for illegal presence or entry) [**Auth/CB/1/26; 30; 38**].

38 See discussion of the good faith duty at §59 below.

39 Paragraph 345B (iv) Immigration Rules [**Auth/CB/21/1084-1085**] applicable to these Claimants; and s.80B (4)(c) of the Nationality and Immigration Act 2002 (inserted by s.16 Nationality and Borders Act 2022) which replaced it [**Auth/CB/17/1002**].

16. An accessible, reliable and fair RSD system in the receiving State is therefore essential to protect those transferred from refoulement, as well as to ensure that refugees are not denied the full array of rights and protections to which they would otherwise be entitled under the Refugee Convention.

Explanation of the Sections that follow

17. UNHCR's observations at Sections D to G below, and UNHCR's witness evidence, are directed to the adequacy or otherwise of the RSD system in Rwanda, and consequent risks of onward refoulement. Those points are relevant to the issues of:

    17.1 whether the SSHD was (and, after receipt of UNHCR's witness evidence, remained at the time of her July 2022 decisions) entitled to treat Rwanda as a 'safe third country' within the meaning of paragraph 345B(ii) to (iv) [Issues 1.2-1.3];

    17.2 whether the SSHD discharged her duty of enquiry under both domestic law and Article 3 ECHR in so treating Rwanda [Issues 1.3 to 1.4];

    17.3 whether the SSHD's policy or practice of transferring asylum seekers to Rwanda[40] is *ultra vires* s.2 of the Asylum and Immigration Act 1993 ('**the 1993 Act'**)[41] because it is contrary to the Refugee Convention to effect such transfers in circumstances where the available evidence indicates that (at least some) refugees so transferred will be (a) refouled from Rwanda; or (b) otherwise denied in Rwanda the rights and protections to which they are entitled under the Refugee Convention [Issues 3, 4, 12.1 and 12.4];

    17.4 Whether that policy or practice is unlawful in that its implementation '*will inevitably result in some decisions which breach individual Article 3 ECHR rights' [42]* [Issue 2]; and

    17.5 Whether the transfer to Rwanda of the individual Claimants would expose them to a real risk of serious harm [Issue 20.3].

40 Comprising the SSHD's assessment of Rwanda as meeting the criteria of paragraph 345B Immigration Rules, her instruction to her officials to proceed upon that basis in individual cases; and her policy or practice of seeking to remove individuals to Rwanda whose claims have been found inadmissible and who made a dangerous journey to the United Kingdom on or after 1 January 2022. See also Lewis LJ's reference in the PII judgment [2022] EWHC 2191(Admin) §23 to *'a policy whereby those seeking asylum have their claims determined in Rwanda*' [**Auth/CB/102/4773**].

41 Lord Steyn observed in *R (European Roma Rights Centre and others) v Immigration Officer at Prague Airport (UNHCR intervening)* [2004] UKHL 55; [2005] 2 AC 1, §41 [**Auth/CB/57/2992**]: '*Section 2 of the Asylum and Immigration Appeals Act 1993 provides: "Nothing in the immigration rules (within the meaning of the 1971 Act) shall lay down any practice which would be contrary to the Convention." It is necessarily implicit in section 2 that no administrative practice or procedure may be adopted which would be contrary to the Convention. After all, it would be bizarre to provide that formal immigration rules must be consistent with the Convention but that informally adopted practices need not be consistent with the Convention. The reach of section 2 of the 1993 Act is therefore comprehensive'.*

D. Access to an adequate asylum process in Rwanda

18. While the process of determining refugee status is not '*specifically regulated*' under the Refugee Convention,[43] UNHCR has identified irreducible minimum components of an 'accessible' and 'reliable' asylum system; and a fair one. Absence of any of these components significantly exacerbates risks of incorrect RSD decisions and refoulement.[44] UNHCR lists these below, describes the relevant safeguard (in italics) and then assesses its information concerning the RSD process in Rwanda against these required safeguards.

(1) Admission to the proposed receiving state. *Asylum seekers should be admitted to the territory of the country and given a temporary right to remain until a final determination of their asylum application is made. 'Border officials should not decide on asylum applications but should rather be required to act in accordance with the principle of non-refoulement'* [45].

Officials in Rwanda's Directorate General of Immigration and Emigration ('**DGIE**'), a sub-division of its National Intelligence and Security Service [46] summarily reject asylum claims, including at Rwanda's borders. UNHCR attests to the refoulements of asylum seekers, removed shortly after seeking to claim asylum at Kigali airport (see §22 below); it is '*very likely*' that there are further such incidents of which UNHCR is unaware.[47]

42 This formulation by the principal parties in the agreed list of issues is understood by UNHCR to refer to the public law test for an unlawful policy or practice. See *R (Detention Action) v First-tier Tribunal (Immigration and Asylum Chamber)* [2015] EWCA Civ 840, [2015] 1 WLR 5341 per Lord Dyson MR at §22 cited with approval by the Supreme Court in *R (A) v SSHD SSHD* [2021] UKSC 37. [2021] 1 W.L.R. 3931 at §§67-68 [**Auth/CB/96/4575-4576**]: *'in other words, a significant number of cases introduced into the system would be decided unfairly and hence unlawfully if the procedure rules were applied to them. This is in line with the principle articulated in Gillick to identify whether a policy is unlawful….*' The Supreme Court went on at §78 [**Auth/CB/96/4579**] to cite Lord Mance's dicta concerning the application of the test in the context of ECHR rights *In re Northern Ireland Human Rights Commission's Application for Judicial Review* [2018] UKSC 27, [2018] NI 228 §82: ""*It [is] sufficient that it will inevitably operate [incompatibly with Convention rights] in a legally significant number of cases". '. Lord Mance's formulation conforms with the approach in Gillick*'.' '*Gillick*' refers to *Gillick v West Norfolk and Wisbech AHA* [1986] AC 112 [**Auth/CB/44/2483-2578**], .

43 Handbook, §189 [**Auth/CB/104/4819**].

44 The SSHD states at DGD §8.43 [**CB/B/9/562**], in response to a point made by the Claimant RM, that '*the Rwandan system is not- and does not need to be- identical to the UK system*.' UNHCR describes –in this Section of its observations and in its own guidance cited in this Section- minimum safeguards required in any national asylum system.

45 Guide to international refugee protection and building state asylum systems, joint publication of UNHCR and the Inter-Parliamentary Union ('**IPU**') **('Handbook for Parliamentarians')**, p. 161 [**Auth/SB/115/3501**].

46 LB2 §26 [**GDB/H/295/4325**].

47 LB2 §§30 [**GDB/H/295/4326**], 108-111 [**GDB/H/295/4352-4355**]; LB3 §§13-17 [**GDB/H/304/4414-4416**].

(2) Access to the asylum procedure. *There must be the ability to make a formal asylum claim with the competent authority before an asylum seeker can be returned.*[48] *That is critical.*[49]

UNHCR has identified a range of instances in the period from 2020 to 2022 where summary rejections by DGIE have occurred, as particularised at section E below. These 'summary rejections' (which occur not only at Kigali airport but also where an asylum seeker presents their claim inside Rwandan territory) are asylum claims which the DGIE refuses to refer to the formal decision-maker, the Refugee Status Determination Committee ('**RSDC**') and thus result in an asylum seeker being unable to obtain a full examination of their asylum claim at first instance, let alone exercise any right of appeal. These rejections give rise to a serious risk of refoulement (see §§21-24 below). Where the summarily rejected asylum seeker lacks any permission to remain, the DGIE has also declined to issue a temporary residence permit, rendering these individuals liable to detention and expulsion.[50] In practice there is no recourse from a DGIE rejection.[51] The GoR points out at p. 15 of its Response that the DGIE has no authority in Rwandan law to do this [**GDB/E/190/2811**]. UNHCR agrees but is unequivocal that the practice is indeed occurring.[52] The GoR's failure to acknowledge the practice, still less that it must be stopped, is of grave concern[53] and has the consequence that the GoR has set out no plans to prevent this from continuing under the UK-Rwanda Arrangement. Rather, the GoR's explanation to the SSHD concerning the process at the DGIE stage was that '*the process is already in operation – this is not a new process'.*[54]

48 See *Hirsi Jamaa v Italy*, §§202-203 [**Auth/SB/7/271**]; ExCom Conclusion No. 81 (XLVIII) 1997, §(h) [**Auth/SB/108/3459**]. This includes reference to a central authority prior to return: ExCom Conclusion No. 15 (XXX) 1979, §(j).

49 See e.g. UNHCR, Follow-up on Earlier Conclusions of the Sub-Committee on the Determination of Refugee Status, inter alia, with Reference to the Role of UNHCR in National Refugee Status Determination Procedure, 3 September 1982, EC/SCP/22/Rev.1, §23. See also Handbook §192 [**Auth/CB/104/4819-4820**], citing ExCom Conclusion No. 8 (XXVIII) 1977 §(e)(i) [**Auth/SB/101/3436**], which make clear that any authority should have '*clear instructions for dealing with cases which might come within the purview of the relevant international instruments. He should be required to act in observance of the principle of non-refoulement and to refer such cases to a higher authority*'; see further Handbook for Parliamentarians, p. 159, 161, 163 [**Auth/SB/115/3499-3503**].

50 LB2 §§38(e), 41(i), 112 [**GDB/H/295/4328-4329; 4332; 4355-4356**].

51 LB2 §§38(d) and 38(e) [**GDB/H/295/4328-4329**].

52 LB3 §24 [**GDB/H/304/4419-4420**].

53 LB3 §§50-51 [**GDB/H/304/4432**].

(3) Confidentiality. *The Handbook states at §200 that '[i]t is of course of the utmost importance that the applicant's statements will be treated as confidential.'* [**Auth/CB/104/4821**] *ExCom has concluded that 'the registration process [of refugees and asylum seekers] should abide by the fundamental principles of confidentiality'.*[55] *UNHCR's Guidelines on International Protection No 5 state at §33 that 'at all times the confidentiality of the asylum application should be respected.'*[56] *Confidentiality prevents a refugee or family members/associates from being exposed to persecution or retaliatory/punitive measures.*[57] *It also ensures that asylum seekers are not inhibited from making an application and fully explaining their cases.*[58]

UNHCR is concerned that the Rwandan authorities '"*cross-check" with embassies of asylum seekers' countries of origin before making a decision*'.[59] The GoR's Response was that checks with (unspecified) Embassies are '*standard practice in RSD: one member of RSDC is from the Ministry of Foreign Affairs. The Ministry liaises with Embassies to gather background information on the applicant and/or to gather country information*'.[60] The GoR subsequently stated that '*[t]his background information refers to the RSDC seeking information about a specific event/situation in the asylum seeker's country of origin*'[61] from Rwandan embassies in those countries. UNHCR remains concerned that confidentiality is not respected.[62] If confidentiality is not respected, this in UNHCR's view is a very serious flaw in the Rwandan RSD process: a practice of '*cross-checking*' with countries of origin places the family members and associates of asylum seekers, left in the country of origin, at serious risk of reprisal; increases the risks of asylum determinations made on a flawed basis since the national authorities may (intentionally or not) provide erroneous information, unknown to the asylum seeker; and if the practice becomes known, is liable to inhibit full (or potentially any) disclosure of the true basis of an asylum claim.[63]

54 Email Chain exhibited to Statement of Chris Williams, CW6 [**GDB/E/130/2039**]. The GoR email also states '*The only difference for the MEDP is that people could have a lawyer present at the initial DGIE interview and would be granted a residence permit even if denied asylum/protection status.'* [**GDB/E/130/2039**]. That is at odds with the SSHD's position in the DGD at §8.43 [**CB/B/9/562**] and in decision letters (see e.g. Lucy Vaughan's statement, Exhibit 1, p.10) that '*Whilst the UNHCR's concerns about various factors of Rwanda's RSD process are noted, the process you will follow will be substantially different from that described by them*' [**GDB/E/159/2528**].

55 ExCom Conclusion No 91 (LII)-2001 at §(b)(ii) [**Auth/SB/112/3471**]; Handbook for Parliamentarians, p. 159 [**Auth/SB/115/3499**]. While UNHCR recognises limited exceptions to the requirement of confidentiality, these do not apply generally to the Rwandan RSD procedure.

56 Guidelines on International Protection No. 5: *Application of the Exclusion Clauses.*

57 UNHCR Advisory opinion on the rules of confidentiality regarding asylum information, §6 and §17.

58 *Ibid,* §15.

59 LB2 §41(h) [**GDB/H/295/4331-4332**]. UNHCR has also observed that family and community members are used as informal 'interpreters' further compromising confidentiality: LB2 §§41(d), 103, 106 [**GDB/H/295/4330-4331; 4351; -4352**].

60 Exhibit to KA2, p.16 [**GDB/E/190/2812**], emphasis added.

61 GoR Email p.9 [**GDB/E/208/3170**].

62 LB3 §23 [**GDB/H/304/4418-4419**].

63 *Ibid*.

(4) Refugee Convention compliant law (in principle and application). *Before transfer to a third State, the transferring State must be satisfied that the receiving State interprets the Refugee Convention satisfactorily.*[64]

In the course of this litigation, UNHCR has recognised and endorsed a specific concern raised by the Claimants over the protection gap in Article 7(1) of Rwanda's Law N° 13/2014 Relating to Refugees ('**the 2014 Law'**) [**Auth/SB/131/3741-3742**] for those at risk of persecution for reasons of imputed rather than actual political opinion and for those at risk from non-state agents.[65]

(5) Access to legal aid and legal assistance and representation.[66] *Asylum seekers should be granted access to legal advice and representation for submitting claims to the relevant authorities, as an instrumental element of establishing fair procedures.*[67] *Where legal aid is necessary to secure legal counsel, it should be granted.*[68]

UNHCR's consistent experience is that lawyers are not permitted to be present at DGIE or RSDC interviews[69] or in those cases where the Ministry in Charge of Emergency Management ('**MINEMA**') conducts an interview on appeal.[70] Nor can lawyers make oral submissions at the DGIE, RSDC or MINEMA stages: there is no hearing at any of those stages.[71] Information provided by the GoR cited in the SSHD's May 2022 Country Policy and Information Note concerning Rwanda's asylum system[72] ('**CPIN**') also appears to confirm that lawyers are not allowed at those stages.[73] The SSHD's evidence in response to UNHCR, as provided between 5 and 7 July 2022, did not dispute the exclusion of lawyers at the DGIE and RSDC stages: rather, it relied on what it characterised as the '*administrative nature'* of those stages of the process to justify the lack of legal representation.[74] The GoR now states that '*[t]he legal representative of the asylum seeker is permitted to attend the interviews at DGIE level and any interview at the RSDC*'.[75] The GoR Email is inconsistent with both the GoR's own earlier assertions and UNHCR's experience.[76] The inconsistency appears only to be explicable on the basis that the GoR Email is aspirational while theGoR's earlier statements describe the situation as it presently exists. There is already an acute shortfall of lawyers who provide assistance on the Rwandan RSD process (with only one legal officer and one lawyer properly trained and currently available to work on the Rwandan RSD process).[77] The GoR has described arrangements with advocates and legal officers,[78] but these only appear to relate to claims under appeal at the High Court (of which, as far as the UNHCR is aware, there have been none).[79] There is moreover a lack of clarity in the SSHD's evidence as to whether such services will be at the asylum seeker's cost: if so, that will be a practical bar to access in many cases. In any event, UNHCR is concerned that the organisations which might offer those services lack sufficient capacity.[80]

64 See e.g. *R v SSHD, ex parte Adan and Aitseguer* [2001] 2 AC 477, *per* Lord Slynn at p509E [**Auth/CB/49/2691**], *per* Lord Steyn at p 517C [**Auth/CB/49/2699**] which confirms that there is a single, autonomous, true interpretation of the Refugee Convention, and *TI v UK* Application No 43844/98; [2000] INLR 211 at 229 [**Auth/SB/1/27**], p. 15 of Report.

(6) Proper examination of the claim. *Determination of refugee status involves the individual assessment of each claim for international protection on its own merits.*[81] *An asylum seeker needs to be permitted to present their case as fully as possible.*[82] *Standard questionnaires will not normally be sufficient to enable a decision to be reached – interviews will be required and the examiner will need to 'gain the confidence of the applicant in order to assist the latter in putting forward his case and in fully explaining his opinions and feelings'.*[83] *Gender-sensitive procedures (including access to 'a sufficient number of female staff') and child-sensitive procedures are also necessary*[84] *as are procedures sensitive to claims based on sexual orientation or gender identity,*[85]*and access for persons with disabilities.*[86] *Applicants' statements 'cannot […] be considered in the abstract, and must be viewed in the context of the relevant background situation'.*[87] *Pending a preliminary assessment, a claim for asylum should in principle (subject to exceptions, which must themselves be subject to review of a court or independent body) have suspensive effect.*[88]

In UNHCR's experience, DGIE interviews are inadequate and there is no effective opportunity to submit further information to DGIE after the screening interview.[89] The DGIE is reluctant to receive any detailed country evidence, or any 'long' applications (of more than one or two pages).[90] Asylum seekers were moreover afforded no opportunity to provide an explanation or submit information to the DGIE in the airport refoulement cases.[91] At the RSDC stage (in principle the substantive decision-making stage) interviews take place only in a minority of cases;[92] and UNHCR understands that asylum seekers are not given an adequate opportunity either to provide further information or to present a claim fully.[93] The RSDC interview itself, which takes place before a large panel, is intimidating and often hostile and interviewers show inadequate knowledge of the case which they are determining or about how to assess credibility or use country of origin information.[94] These matters are not addressed in the SSHD's response in any detail.[95] It appears that the SSHD's response, from the GoR, is to indicate that more individuals will be hired and trained.[96] This is insufficient to address the concerns UNHCR has raised, given the need for structural change as to the entities which conduct interviews and make RSD decisions, and the decisionmaking process (particularly in light of doubts as to the training on offer, see §18(9) below).

65 LB2 §§81-88 [**GDB/H/295/4346-4347**], in particular §82. In July 2020 (July 2020 Universal Periodic Review, p. 4) UNHCR had recorded the view that the 2014 Law relating to Refugees '*is fully compliant with international standards*' (as highlighted in the DGD) albeit expressing reservations that '*its implementation appears challenging in practice'* (not highlighted in the DGD) [**GDB/H/291/4300**]. More detailed consideration of this legislation has revealed the specific defect in the law identified.

66 *MSS*, §301 [**Auth/CB/27/1444**]. See also, Handbook for Parliamentarians, p.157 [**Auth/SB/115/3497**].

67 *MSS*, §301 [**Auth/CB/27/1444**]. See also UNHCR Effective Processing of Asylum Applications: practical considerations and practices, March 2022, §29 [**Auth/SB/117/3550**].

68 *Ibid*.

69 LB2 §§60(j); 99 [**GDB/H/295/4338; 4350**]; LB3 §28(a) [**GDB/H/304/4421**].

70 LB2 §74 [**GDB/H/295/4344**].

(7) Opportunity to address adverse points and correct errors. *The asylum seeker should have an opportunity to clarify and provide explanations to address any potentially significant adverse credibility findings.*[97] *The asylum seeker should be given access to the report or record of their interview and asked to approve it, in order to avoid misunderstandings and clarify contradictions.*[98] *Specific opportunity should be provided to applicants to address potential rejections of their claims on grounds of an internal relocation option or of exclusion.*[99]

To the best of UNHCR's knowledge, there is no practice of giving asylum seekers an opportunity to address adverse points in the DGIE interview or RSDC stage, including on credibility.[100] Indeed, the (often cursory) DGIE interview may be the only interview that an asylum seeker in Rwanda has[101] and the only opportunity to present his or her case orally. The GoR has asserted that there are no concerns regarding the opportunity to address adverse points (at least at the DGIE stage: the matter not being fully addressed in respect of the RSDC).[102] The fact that the GoR does not recognise a difficulty in this regard again suggests that no steps will be taken to address this significant problem. Moreover, in UNHCR's experience,

there is no practice of providing asylum seekers at any stage with a transcript or record of the DGIE interview, or of the transcript or record of any eligibility officer or RSDC interview.[103] In the material served by the SSHD between 5 and 7 July 2022, the GoR did not dispute UNHCR's evidence that only minutes are taken during the '*wholly administrative*' RSD process.[104] The GoR has since asserted [105] that the DGIE interview is recorded electronically and a copy of the written record provided to the asylum seeker at the end of the interview. Based on UNHCR's observations, that assertion is incorrect.[106]

71 GoR Response, p. 15 [**GDB/E/190/2811**]; GoR Statement, §22 [**GDB/E/92/1800**].
72 'Home Office, Review of asylum processing, Rwanda: country information on the asylum system v 1.0' [**GDB/D/17/443-498**].
73 §4.8.3 citing the Director of the Response and Recovery Unit at the Ministry in Charge of Emergency Management ('**MINEMA**'): *'HO officials asked whether claimants were allowed to have a legal adviser for the first level claim if they wanted one and the Director explained: "No, only at the level where a case goes before the court. There is no legal assistance for appeal [review] to the minister."'* [**GDB/D/17/461**]. However, §4.8.2 appears to suggest, without explanation for the contradiction, that lawyers may be allowed at the MINEMA appeal stage [**GDB/D/17/460**].
74 *Ibid.* It should be noted that there is some suggestion that lawyers may be permitted at DGIE interviews in emails exhibited at CW 1, p55 [**GDB/E/130/2039**]. No explanation is given as to how this is consistent with the GoR's position that the process is administrative and legal representation is unnecessary.
75 GoR Email [**GDB/E/208/3171**].
76 LB3 §28(a) [**GDB/H/304/4421**].
77 LB2 §100 [**GDB/H/295/4350-4351**]; LB3 §28(c) [**GDB/H/304/4421**].
78 See GoR Response, p. 19 [**GDB/E/190/2815**]; GoR Statement, §22 [**GDB/E/92/1800**].
79 LB3 §28(b) [**GDB/H/304/4421**].
80 LB2 §100 [**GDB/H/295/4350-4351**]; LB3, §28(f) [**GDB/H/304/4421**]
81 Handbook for Parliamentarians, p. 128 [**Auth/SB/115/3488**].
82 Handbook, §205 [**Auth/CB/104/4821-4822**].
83 Handbook, §200 [**Auth/CB/104/4821**]. See further ExCom Conclusion No. 30 (XXXIV) 1983 (e) (i) [**Auth/SB/103/3443**].

(8) Clearly defined responsibilities for decision-makers. *There should be a clearly identified authority who has responsibility for examining requests.*[107]

The DGIE plays an opaque 'gatekeeper role', rejecting certain asylum seekers from further progress through the RSD system;[108] and also making recommendations to the RSDC which are not disclosed to asylum seekers.[109] The single eligibility officer, who also has no formal decision-making role, on occasion herself interviews asylum seekers and plays a pivotal but unclear role in the Rwandan RSD system.[110] While the GoR denies that DGIE makes recommendations that influence the outcome of the RSDC decision,[111] UNHCR is confident of its information on this point.[112] As to the eligibility officer, while GoR asserts variously that there are further eligibility officers employed or being sought,[113] the GoR's own evidence is that their role will continue to include conducting asylum seekers' interviews and drafting assessments.[114]

(9) Properly qualified personnel: *This requires 'specially established procedures by qualified personnel with necessary knowledge and experience, and an understanding of an applicant's particular difficulties and needs'.*[115] *Staff conducting interviews must be adequately trained.*[116] *This is particularly the case at the border, where officials should have clear instructions on dealing with such cases and should be required to act in accordance with the principle of non-refoulement and to refer such cases to a higher authority.*[117]

UNHCR has observed a lack of training or sufficient knowledge at all stages of the Rwandan RSD system.[118] The changing, part-time and non-specialist composition of what is in principle the main decision-making body on asylum claims, the RSDC, in UNHCR's view compromises the quality and integrity of the Rwandan RSD procedure. The RSDC's members are high level functionaries from an array of ministries, whose primary responsibilities lie elsewhere and many of whose portfolios do not otherwise include matters relevant to the asylum procedure.[119] UNHCR's repeated offers to provide training to the Rwandan RSD authorities have only been taken up on two occasions, with a gap of three years in between and those trainings were short and basic.[120]

84 See e.g. ExCom Conclusions No. 91, LII 2001, §(b)(v) [**Auth/SB/112/3472**]; No. 105, LVII 2006, §(iv); No. 107, LVIII 2007 (viii); Guidelines on International Protection No. 1: Gender-Related Persecution […] §36.

85 Guidelines on International Protection No. 9: *Claims to Refugee Status based on Sexual Orientation and/or Gender Identity* §§58, 60.

86 ExCom Conclusion No. 110, LXI 2010, §(j).

87 Handbook §42 [**Auth/CB/104/4816-4817**].

88 UNHCR Effective Processing of Asylum Applications: practical considerations and practices, March 2022, §31[**Auth/SB/117/3552**].

89 LB2 §§41(a), 38(d) [**GDB/H/295/4330; 4328**].

90 LB2 §34 [**GDB/H/295/4327**].

91 LB2 §29 [**GDB/H/295/4326**].

92 LB2 §§56, 58, 65(b) [**GDB/H/295/4335-4337; 4342**]; LB3 §26 [**GDB/H/304/4420**].

93 LB2 §§59, 60(e)-(j), 65(d) [**GDB/H/295/4337-4338; 4342**].

94 LB2 §§60, 96 [**GDB/H/295/4337-4338; 4349**]. The CPIN also indicates that country of origin information is not used systematically: §4.7.11 [**GDB/D/17/459**].

95 See LB3 §29(b) [**GDB/H/304/4422**].

The evidence of the GoR that a training for RSD members is '*being organised and shall be facilitated by local learning institutions …but also by institutions concerned by the RSD process including MINEMA, MINIJUST, NCHR, DGIE, MINAFETT*'[121] does not address that problem. On the contrary, to UNHCR's knowledge, the learning institutions named (University of Rwanda and the Institute of Legal Practice and Development) offer no refugee law courses.[122] NCHR does not appear to have had any engagement with advocacy or reporting in relation to the RSD process.[123] MINIJUST and MINAFETT appear to lack the relevant knowledge and expertise: whilst their ministers are represented on the RSDC neither ministry has ever provided relevant training on RSD.[124] MINEMA and DGIE are subject to the concerns already described above at §§18.2-3, 18.6-8, and 18.10 below. To UNHCR's knowledge, the International Organization for Migration has given no such training either; as been confirmed by that organisation, contradicting the SSHD's evidence from Mr Williams.[125]

(10) Decisions. *There is a right to reasoned decisions, which are not stereotyped [126] and respect the principle of nondiscrimination.[127] There is also granted to asylum seekers the right, if recognised as a refugee, to be informed accordingly and issued with documentation.[128]*

Asylum seekers whom the DGIE decides not to refer to the RSDC, so that their claims are effectively rejected, receive no written decisions, let alone reasons.[129] As the GoR denies that DGIE makes any decisions, the SSHD's evidence from the GoR does not address the form of those decisions. Even RSDC decisions are not always notified to asylum seekers.[130] The majority of RSDC decisions that are notified include either no reasons, or the barest, stereotyped, reasons that do not reveal any individualised consideration or reasoning[131] and are indicative of a poor quality of decision-making.[132] Where decisions are made by MINEMA, reasons are also brief and inadequate.[133] In the GoR Response it is asserted that asylum seekers receive notification of decisions (and thus no changes of practice are suggested), and that reasons are briefly provided (with templates being adjusted to provide detailed reasons).[134] The provision of further templates is no substitute for decisions adequately supported by individualised reasons and recent decisions remain inadequately reasoned.[135]

96 See e.g. table at KA 1, p. 379; at p. 396, row 32 [**GDB/E/80/1666-1667**].
97 Handbook for Parliamentarians, p. 172 [**Auth/SB/115/3512**].
98 *Ibid*.
99 Guidelines on International Protection No. 4: *Internal flight or relocation alternative* §35; Guidelines on International Protection No. 5: *Application of the Exclusion Clauses* §31.
100 LB2 §§41(b), 65 (d), 96 [**GDB/H/295/4329-4330; 4342; 4349**].
101 LB2 §§56-58, 65(b), 74 [**GDB/H/295/4335-4337; 4342; 4344**] and CPIN §4.7.5 [**GDB/D/17/458**].
102 GoR Response, pp. 15, 17 [**GDB/E/190/2811; 2813**].
103 LB2 §§41(e), 44 [**GDB/H/295/4331; 4333**].; LB3 §29 [**GDB/H/304/4421-4422**].
104 See GoR Response, p. 16 [**GDB/E/190/2812**]: '*[t]he RSD process being wholly administrative, only minutes are taken and basis for decision making are recorded in the minutes*'.
105 GoR Email [**GDB/E/208/3171**].

(11) Appeal. *There must be a right to appeal to an authority, court or tribunal, separate from and independent of the authority which made the initial decision and a full review must be allowed.*[136] *There must be adequate time for that appeal.*[137] *Asylum seekers should be able to request an oral hearing of their appeal; and an appeal interview should generally be provided.*[138] *Asylum seekers should have prompt access to interpreters, information about appeal procedures, and legal advice.*[139] *Asylum seekers also must be granted the right to remain in the country pending a decision on the claim, including on admissibility and pending the determination of appeals.*[140]

There is no right of appeal against a refusal at the DGIE 'gatekeeper' stage[141] which refusal, as explained above, the GoR does not acknowledge occurs. Appeals to MINEMA against a refusal at the RSDC stage are ineffective because of the absence of reasons and a lack of information provided about appeals to MINEMA to asylum seekers,[142] a problem which persists in recent decisions.[143] MINEMA lacks independence because it sits on the RSDC panel from which it hears an appeal; a MINEMA appeal (at least until recently) normally takes place on the papers without a further interview; there is no opportunity for oral representations by an asylum seeker, nor (if lawyers are permitted at all at this appeal stage,[144]) by a lawyer. The MINEMA decision again provides inadequate reasons, impeding any onward appeal to the High Court.[145] Until recently, UNHCR had been unaware of MINEMA ever overturning a rejection by the RSDC: the five MINEMA appeals of which UNHCR was aware when serving its statement on 26 June 2022 were all dismissed in the same terms.[146] UNHCR is unaware of the High Court appeal procedure ever having been used; the High Court's jurisdiction is unclear and, to the best of UNHCR's knowledge, asylum seekers are not informed of any such appeal right.[147] The GoR does not appear to deny that no appeals have ever taken place: while the GoR appears to have been asked whether or not there have been appeals to the High Court, no evidence of such appeals has been provided.[148]

106 See LB3 §29(a) for the assertion and UNHCR's response [**GDB/H/304/4422**]. See also LB2 §41(e) [**GDB/H/295/4331**]. The CPIN also indicates that any notes are manual (§4.9.3) [**GDB/D/17/463**].
107 Handbook, §192(iii) [**Auth/CB/104/4819-4820**]. See also Handbook for Parliamentarians, pp. 157-158 [**Auth/SB/115/3497-3498**].
108 LB2 §§38-39 [**GDB/H/295/4328-4329**].
109 LB2 §§40, 65 (e) [**GDB/H/295/4329; 4342**].
110 LB2 §§43-46 [**GDB/H/295/4332-4333**].
111 GoR Response, p. 15 [**GDB/E/190/2811**].
112 LB2 §40 [**GDB/H/295/4329**]; LB3 §24(d) [**GDB/H/304/4420**].
113 Table at KA1 47, p. 390, row 24 [**GDB/E/80/1660**].
114 See role description at KA1, p. 405 [**GDB/E/82/1675**].
115 Handbook, §190 [**Auth/CB/104/4819**].
116 *MSS*, §301 [**Auth/CB/27/1444**].
117 ExCom Conclusion No. 8, XXVIII (1977), §(e)(i) [**Auth/SB/101/3436**]; Handbook, §192(i) [**Auth/CB/104/4819-4820**].
118 See LB2 §§46 (the eligibility officer) [**GDB/H/295/4333**]; 53 (lack of specialisation on the RSDC) [**GDB/H/295/4335**]; 65(a), 85, 90-91 (lack of training) [**GDB/H/295/4342; 4346-4347; 4348**]; 92-97 (observations from basic training provided by UNHCR in December 2021) [**GDB/H/295/4348-4350**].

(12) Other aspects of the right to be heard. *Decision-makers must be aware of and take account of the different needs of vulnerable asylum seekers (such as those exposed to gender based persecution, children, the aged, people with disabilities). Where an asylum claim has been assessed and rejected, due process and the declaratory and forward-looking character of the refugee definition require that subsequent attempted asylum applications be assessed to ascertain whether there are any significant substantive changes to the asylum seeker's individual situation or the country of origin position; whether there is new evidence that supports the initial claim that warrants examination; or whether there are valid reasons why the asylum seeker did not disclose all the relevant facts in the initial claim.*[149]

The RSDC interview before a panel of up to 11 (and at least seven) people, is inimical to vulnerable asylum seekers providing vital details of their claims.[150] UNHCR is aware of no mechanism by which a person rejected under the Rwandan RSD system can make a fresh claim based on fresh evidence or changed circumstances.[151] That lacuna (in Rwandan law and in UNHCR's experience of what happens in practice on the ground in Rwanda) is not properly addressed by GoR's unparticularised assertion, in the SSHD's evidence,[152] in relation to 'fresh claims made on new evidence' that '*this is done at all levels of asylum process up to High Court*'.[153]3

(13) Interpreters *The applicant* '*should be given the necessary facilities, including the services of a competent interpreter, for submitting his case to the authorities concerned*'.[154]

119 LB2 §§49-53 [**GDB/H/295/4334-4335**]. Contrary to DGD §8.53 [**CB/B/9/566**] which refers to senior officials representing '*specialised institutions'*, the specialisms of most of the institutions represented on the RSDC are irrelevant to the RSD procedure, see LB2 §51 [**GDB/H/295/4334**].
120 LB2 §§90, 97 [**GDB/H/295/4348-4350**].
121 KA2(4), p.19 of exhibit [**GDB/E/190/2815**].
122 LB3 §34(c) [**GDB/H/304/4426**].
123 LB2 §49, fn 17 [**GDB/H/295/4334**].
124 LB3 §34(d) [**GDB/H/304/4426**].
125 Statement of Chris Williams, §44 [**GDB/E/124/1995-1996**]: see LB3 §34(e) [**GDB/H/304/4426**] and exhibit LB3/6 [**GDB/H/310/44498-4450**].
126 *MSS*, §302 [**Auth/CB/27/1444**].
127 ExCom Conclusion No. 15 (XXX) (1979), §(d).
128 ExCom Conclusion No. 8, XXVIII (1977), §(e)(v) [**Auth/SB/101/3436-3437**]; Handbook, §192(v) [**Auth/CB/104/4819-4820**].
129 LB2 §38(b) [**GDB/H/295/4328**].
130 LB2 §61(a) [**GDB/H/295/4338-4339**].
131 LB2 §§58(a)- (c); 61(c)-(f), 68 [**GDB/H/295/4336-4337; 4339-4340; 4343**].
132 See Exhibit LB4 to statement LB2 [**GDB/H/299/4376-4383**].
133 LB2 §73 [**GDB/H/295/4334**].
134 See GoR Response, p. 17 [**GDB/E/190/2813**].
135 See Exhibit LB3/5 to LB3 [**GDB/H/309/4446-4447**].
136 U*NHCR public statement in relation to Brahim Samba Diouf v. Ministre du Travail, d' l'Emploi et d' l'Immigration pending before the Court of Justice of the European Union*, 21 May 2010; Handbook for Parliamentarians, p. 1779 [**Auth/SB/115/3519**].
137 Handbook, §192(vi) [**Auth/CB/104/4819-4820**].
138 Handbook for Parliamentarians, p.179 [**Auth/SB/115/3519**].

In Rwanda's RSD system, difficulties with access to interpreters '*considerably heighten[…] risks of an applicant's evidence being misunderstood or contaminated*'.[155] Rwanda has limited experience of processing claims with professional interpreters [156]: the majority of refugees now in Rwanda speak one of the country's three official languages. Where interpretation is necessary, the GoR currently does not provide a professional interpreter if an asylum seeker is able to speak even a little of one of the official languages or if they can bring a community or family member to act as an informal interpreter.[157] The SSHD's evidence about the practice to date is consistent with UNHCR's in this respect.[158] The SSHD's evidence is that (1) the GoR is '*in the process to contract interpretation service provider* [sic] *and acquiring some tools that could help for interpretation expected needs'* and the GoR has identified interpreters for the '*initial lists received'* [presumably lists of languages received from the SSHD]; and (2) GoR will have access to English-speaking interpreters provided remotely from the UK.[159] As to (1), UNHCR is not aware of any formal recruitment processes or capacity increases having been undertaken. In any event, UNHCR is concerned over the lack of clarity as to when the GoR (and which GoR officer or body) will determine that interpreters are needed, and according to which criteria, particularly in circumstances where the SSHD's position now appears to be that the burden of identifying those people who need interpreters, the occasions on which interpretation services will be made available and the type of interpreter needed, will fall entirely on the GoR.[160] UNHCR is further concerned about the adequacy of the SSHD's proposed arrangements (involving English speaking interpreters provided remotely from the UK) in circumstances where there is not a common language between the decision-maker and the asylum seeker's interpreter, such that two interpreters (at least) are likely to be needed.[161] This problem cannot be addressed simply by supplying English-speaking interpreters for non-English-speaking decision-makers.

139 *Ibid*.

140 *MSS*, §§387-389 [**Auth/CB/27/1460-1461**]; ExCom Conclusion No. 8 (XXVIII) 1977, §(e)(vii) [**Auth/SB/101/3436-3437**]; Handbook, §192(viii) [**Auth/CB/104/4819-4820**]; ExCom Conclusion No. 30 (XXXIV), §(iii) [**Auth/SB/103/3443**].

141 LB2 §§38(d)-38(e) [**GDB/H/295/4328-4329**]. Any possible recourse to the High Court does not appear to be available in practice.

142 LB2 §§61(e), 68, 69 [**GDB/H/295/4339-4340; 4343-4344**]; LB3 §46; although on occasion legal provisions have been cited: see LB2 §69 which refers to '*at least two recent decisions of the RSDC*' where this has occurred [**GDB/H/295/4343**].

143 See Exhibit LB3/5 to LB3 [**GDB/H/309/4446-4447**].

144 UNHCR is unaware of any instances where asylum seekers were able to instruct a lawyer to represent them at the MINEMA stage. See LB2 §74 [**GDB/H/295/4344**]. See also CPIN §§4.8.2-3 [**GDB/D/17/460-461**].

145 LB2 §§68, 79-80 [**GDB/H/295/4343; 4345**].

146 LB2 §75 [**GDB/H/295/4344-4345**].

147 LB2 §§76-77, 80 [**GDB/H/295/4345**]; LB3 §30 [**GDB/H/304/4422**].

148 See KA1 47, p. 395, row 31 [**GDB/E/80/1665-1666**]. GoR refers to 4 appeals to an Intermediate Court from 2012-2014, but makes clear that this Court no longer has jurisdiction to hear such appeals.

(14) Information. *Adequate information for asylum seekers about the procedures to be followed must be provided: without this, there can be a 'major obstacle' to access to the procedure.*[162] *That information should be given in a language understood by the asylum seeker in question.*[163]

To the best of UNHCR's knowledge, prior to the UK-Rwanda agreement the GoR had published no materials in any language which explain to asylum seekers the process for making and progressing an asylum claim.[164] It appears that the GoR has now published a brochure, in English, which is intended to be distributed to individuals transferred from the UK.[165] If this brochure is in fact (a) made widely available; (b) translated into the languages of all asylum seekers in Rwanda, including those transferred under the UK-Rwanda Arrangement; and (c) adequately explained to any asylum seeker who, for limited literacy or because of some other disability, was unable to read it, this would allay UNHCR's concerns over this single point of lack of provision of information.

(15) Access to and by UNHCR. *There must be an opportunity to contact UNHCR (and access by UNHCR to contact and visit persons in need, including at the border).*[166]

UNHCR has neither access nor presence at Kigali airport or Rwanda's other official borders.[167] Asylum seekers are not routinely (if at all) informed of their right to access UNHCR or how to do so. The GoR does not systematically inform UNHCR of persons seeking asylum. UNHCR has not attended any interviews with the DGIE or the eligibility officer, and has only once been invited to attend a meeting of the RSDC.[168] While UNHCR has not requested to attend a DGIE interview, it has sought to attend RSDC meetings as an observer since at least 2019.[169] The GoR appears to see a minimal role for the UNHCR: the GoR is '*clear that they do not want the UNCHR (*sic*) to play a supervisory role*'.[170]

149 Handbook for Parliamentarians, p.178 [**Auth/SB/115/3518**]; UNHCR Effective Processing of Asylum Applications: practical considerations and practices, March 2022, §31 [**Auth/SB/117/3552**].
150 LB2 §60(d)-(e) [**GDB/H/295/4337**].
151 LB2 §87 [**GDB/H/295/4347**].
152 GoR Response, p. 18 [**GDB/E/190/2814**].
153 Not least as the UNHCR is not aware of any appeals to the High Court: see LB2 §76 [**GDB/H/295/4345**], and see also Home Office, *Review of asylum processing, Rwanda: assessment* (v1.0, May 2022) §2.3.3 [**GDB/D/16/433**].
154 *MSS*, §301 [**Auth/CB/27/1444**]; ExCom Conclusion No. 8 (XXVIII) 1977, §(e)(iv) [**Auth/SB/101/3436**; Handbook, §192(iv) [**Auth/CB/104/4819-4820**].
155 LB2 §107 and see further §§101-106 [**GDB/H/295/4351-4352**].
156 LB2 §§101-102 [**GDB/H/295/4351**].
157 LB2 §103 [**GDB/H/295/4351**].
158 See GoR Response, pp. 15-16 [**GDB/E/190/2811-2812**].
159 On (1), see GoR Response, p. 19 [**GDB/E/190/2815**]. On (2), see KA4, §9 [**GDB/E/207/3166-3167**].
160 For the SSHD's most recent evidence, and UNHCR's concerns, see LB3 §35 [**GDB/H/304/4426-4427**]

E. Risks of onward refoulement from Rwanda

19. In light of the principles described at Section C above, and the acute defects in Rwanda's RSD system described at Section D above, those transferred to Rwanda are at a serious risk of onward refoulement. The SSHD's contention that such risks will not arise in the particular context of transfers made under the particular mechanism of the UK-Rwanda arrangement (including the MoU and NVs) is specifically addressed at Sections F and G below.

20. UNHCR has described a history of refoulements by the GoR and summarises this below.

Peremptory refoulement

21. The GoR has peremptorily expelled individuals who sought to claim asylum from Rwanda before determining their claims on the merits.

    21.1 UNHCR has furnished evidence concerning the cases of six individuals who sought to claim asylum but who were summarily expelled from Kigali airport in the 16-month period from February 2021 to June 2022.[171] The GoR does not deny that individuals who sought to claim asylum were turned back at Kigali Airport. Rather, the GoR denies (erroneously) that its actions constituted refoulement and mentions what may be additional such episodes.[172] It is not clear whether the specific examples now given by the GoR are exhaustive: the GoR has referred to '*routinely*' intercepting '*deceitful travelers*' [sic] and taking '*appropriate measures*' against them.[173]

    21.2 UNHCR has supplied evidence [174] of nationals of a non-African State with which Rwanda enjoys close diplomatic relations whose asylum claims were summarily rejected by the DGIE. This includes at least 10 families (of at least 29 individuals) whose asylum claims were not referred to the RSDC by the DGIE.[175] In one case, the individual's passport was confiscated by the Rwandan authorities at the request of his State of origin. In that individual's case (and also in another case) asylum seekers were told to leave Rwanda within twelve hours, threatened with imminent refoulement to their State of origin if they failed to comply and told that this was happening at the request of their country of origin. Others felt compelled to leave Rwanda and seek asylum elsewhere.[176] In three more recent cases, individuals who were nationals of that same State were also required to leave Rwanda having claimed asylum.[177] Those individuals were required by the DGIE to leave Rwanda within periods of a few days or taken to the border with Tanzania and required to depart.[178]

161 See LB3 §35 [**GDB/H/304/4426-4427**]. By way of hypothetical example, the Rwandan authorities and the SSHD are unlikely to be able to furnish any Vietnamese-Kinyarwanda interpreters (Kinyarwanda being the first language of almost all Rwanda's decision-makers). Even if the SSHD were able to furnish, remotely, a Vietnamese-English interpreter for an asylum seeker removed to Rwanda, this would be wholly inadequate if only some of the decision-making tribunal spoke moderate English (and no Vietnamese).

21.3 UNHCR's uncontroverted evidence is that during the Israel-Rwanda Arrangement, which operated from 2014 until 2018, asylum seekers transferred from Israel to Rwanda, having been told by the Israeli authorities that they would be accommodated in a hotel and assisted to apply for asylum, permission to remain and permission to work, were '*routinely*' and '*clandestinely*' taken by the Rwandan authorities across the border into Uganda; were not permitted to make asylum claims; received threats of deportation from unknown agents and overnight visits from unknown agents at their accommodation to the extent that asylum seekers became too frightened to move around; and in some instances disappeared.[179]

De facto refoulement

22. The DGIE's summary rejections of asylum claims have led to *de facto* refoulement. Of those asylum seekers who were transferred from Israel to Rwanda, in the circumstances described immediately above, many of those transferred felt compelled to leave Rwanda. Some returned to Europe through Libya where they experienced extortion, detention, abuse and torture, with some dying *en route* and others '*risking their lives once again by crossing the Mediterranean to Italy*'.[180] In addition, of the 29 nationals referred to in §15.2 above whose asylum claims were summarily rejected, several left Rwanda before they could be expelled or their passports confiscated.[181] As to the LGBTIQ+ asylum seekers whose asylum claims were summarily rejected, while at least two have stayed in Rwanda, almost all have left as they were unable to progress their asylum claims.[182]

23. As described at §21 above, in UNHCR's experience, those summarily rejected have been (albeit not invariably) forcibly expelled or told to depart Rwanda at short notice, by the GoR. Conversely, UNHCR's experience is that individuals whose asylum claims are formally rejected are generally not forcibly expelled or ordered to leave. Rather, the temporary residence permit granted (for periods of three months at a time) while the asylum claim is pending is allowed to lapse. If these individuals can obtain no other status, they have no entitlement to reside in Rwanda or to work, and are moreover liable to detention and expulsion.[183]

162 Handbook, §192 (ii) [**Auth/CB/104/4819-4820**]; *MSS*, §§301, 304 [**Auth/CB/27/1444**]; *Hirsi Jamaa* §204 [**Auth/SB/7/271**], where the court reiterated the importance of guaranteeing that information, to enable asylum seekers to gain effective access to the relevant procedures and substantiate their complaints. See also ExCom Conclusion No. 8 (XXVIII) 1977, §(e)(ii) [**Auth/SB/101/3436**].

163 See Handbook for Parliamentarians, p. 157 [**Auth/SB/115/3497**]; *MSS* §87 (recording the recommendations of the Council of Europe's Commissioner for Human Rights) [**Auth/CB/27/1406-1407**].

164 LB2 §27 [**GDB/H/295/4326**]; LB3 §30 [**GDB/H/304/4422**].

165 See KA2, §3.(f) [**GDB/E/186/2799**], p. 24KA2, exhibit 6 [**GDB/E/192/2820-2823**].

166 ExCom Conclusions No. 8 (XXVIII) (1977) [**Auth/SB/101/3436-3437**]; No. 22 (XXXII) section III [**Auth/SB/102/3440**]; No. 72 (XLIV) (1993), §(b) [**Auth/SB/106/3452-3453**]; No. 79 (XLVII) (1996), §(p) [**Auth/SB/107/3456**].

167 LB2 §§19(b), 29 [**GDB/H/295/4322; 4326**].

168 LB2 §§18-21 [**GDB/H/295/4322-4323**].

169 LB3 §42 [**GDB/H/304/4429**].

170 See the emails at CW 6 [**GDB/E/130/2038**]. See also GoR Response, p. 13 [**GDB/E/190/2809**].

24. It is particularly problematic that, as discussed at §30.3 below, such alternative residence permits as can be obtained in these circumstances require a valid passport.[184] In UNHCR's view, for all the reasons set out above, the acute precarity of refugees erroneously denied recognition in Rwanda gives rise to a serious risk of onward refoulement.

F. The response of the SSHD and GoR

25. The SSHD makes four principal points in response to risks of refoulement from Rwanda. UNHCR addresses these in turn below.

(1) No forcible removals 'to the countries of which these Claimants are nationals'

26. The SSHD denies that the GoR conducts '*forcible removals to the countries of which these Claimants are nationals*'.[185] Refoulement is not confined to forcible removals or to removals to the State of nationality (see fn 18 above). The DGIE summarily rejects asylum claims and (a) removes asylum seekers overland to neighbouring States and by air to transit States, where the asylum seekers have no right to reside and which may themselves lack adequate RSD systems[186]; (b) orders asylum seekers to leave Rwanda; and (c) refuses to grant asylum seekers a temporary residence permit. These practices give rise to a serious risk of peremptory refoulement ((a) and (b)) or *de facto* refoulement ((c)) as detailed in Section E above.

(2) The GoR's denial that it has ever sent back 'any asylum seekers'

27. The SSHD relies upon the GoR's denial that it has ever engaged in refoulement. UNHCR makes the following observations.

27.1 The GoR's assertion that '*Rwanda has never sent back from its frontiers any asylum seeker to the country of origin or to another country'*[187] rests upon the GoR's insistence that those not allowed by the DGIE to make asylum claims are not asylum seekers. This is apparent from the GoR's explanation that the '*DGIE does not have the authority to reject a claim and not refer an application to the RSDC*';[188] and its description of the airport refoulement cases as cases of people '*seeking illegal entry'*.[189] The GoR also appears erroneously to treat certain asylum seekers as disentitled from protection by their conduct or circumstances. The GoR consequently considers expulsion as not amounting to refoulement for persons who:

171 LB2 §§29, 30, 108-111 [**GDB/H/295/4326; 4352-4355**]; LB3, §§12-17 [**GDB/H/304/4414-4416**].
172 See KA2 (2) [**GDB/E/188/2803-2804**], p. 14 of exhibits [**GDB/E/190/2810**].
173 See KA2 (2), p. 7 of exhibits [**GDB/E/188/2803**].
174 See LB2 §112 [**GDB/H/295/4355-4356**]; LB3, §§18-19 [**GDB/H/304/4416-4418**].
175 LB3 §19 [**GDB/H/304/4417-4418**].
176 *LB3 §19Ibid.*
177 LB3 §18 [**GDB/H/304/4416-4417**].
178 LB3 §19 [**GDB/H/304/4417-4418**].

i. fail to state their need for asylum immediately upon arrival (the GoR states that *'an asylum seeker is required to present his/ her need for protection immediately upon arrival but not to invoke asylum claim as an alternative reason after failing to satisfy immigration entry requirements*');

ii. travel to Rwanda on visas granted for other purposes and seek to enter before claiming asylum (treated by the GoR as '*deceitful travelers'* whom it acknowledges are '*routinely*' intercepted and subjected to *'appropriate measures'* and whose deportations the GoR recently stated '*will continue whenever necessary*'.[190] It is axiomatic that genuine asylum seekers may travel on visas granted for different purposes (or be driven to engage in other pretences or evasion).[191]

iii. seek to claim asylum inside Rwanda, having previously held another form of residence permit.[192] This approach appears to have caused at least some concern in the Home Office, as it was an issue on which further explanation was sought from GoR,[193] but no reassuring information has been forthcoming to UNHCR's knowledge.

179 See LB2 §§124-125 [**GDB/H/295/4359-4361**] and exhibit LB 7 to LB21 p.12 [**GDB/H/302/4400**]. Contrary to DGD §§8.41B-F [**CB/B/9/555-556**], the Israel-Rwanda Arrangement sheds important light on Rwanda's past approach to a TCTA. It is rightly not suggested by the SSHD that Israel would have entered into an agreement with Rwanda that authorised the treatment which eventuated under that Arrangement, or that Israel would have lied to those transferred about the conditions and protections to which they were entitled under that Arrangement.

180 LB2 §124 [**GDB/H/295/4359-4361**].

181 LB3 §19 [**GDB/H/304/4417-4418**].

182 LB2 §113 [**GDB/H/295/4356**]; LB3 §32(b) [**GDB/H/304/4424**].

183 March 2022 Kigali interview between UNHCR and SSHD, Home Office, *Review of asylum processing, Rwanda: interview notes (Annex A)* (v1.0, May 2022) pp. 57-58 [**GDB/D/19/656-657**]. UNHCR in that interview referred to experiences of detention and moreover to the position in Rwandan law. For completeness, Article 13 of Law No 57/2018 on Immigration and Emigration in Rwanda [**Auth/SB/140/4210-4211**] defines an '*irregular foreigner'* (which includes at Art. 13(2) a person whose residence permit has expired and at Art. 13(3) a person who is authorised to remain in Rwanda but engages in unauthorised activities). The expulsion of foreigners unlawfully present in Rwanda is addressed at Article 15 of that Law [**Auth/SB/140/4213-4214**] and at Articles 45-52 of the Ministerial Order relating to Immigration and Emigration No 6.01 of 29/5/2019 [**Auth/SB/141/4216-4220**] the latter of which also (at Art. 523) addresses detention [**Auth/SB/141/4220**]. See also CPIN §6.2.3 [**GDB/D/17/471**].

184 LB3 §32a(i) has examples of cases where individuals from Syria were left without a residence permit after refusal of their asylum claim [**GDB/H/304/4423**].

185 DGD §2.10 [**CB/B/9/501**].

186 See LB3 fn. 17 [**GDB/H/304/4418**].

187 See e.g. Letter from GoR, 11 May 2022, p. 519 of exhibits to KA1 [**GDB/E/90/1789**].

188 GoR Response, p. 15 [**GDB/E/190/2811**].

189 GoR Response, p. 14 [**GDB/E/190/2810**].

190 *Ibid.*

27.2 The GoR also apparently (and erroneously) treats the removal of an individual to a State other than the State of origin as not constituting refoulement regardless of whether the transit State is safe, and regardless of whether they have a right to reside in or whether they will be sent from that transit State back to the State of origin.[194] This would appear to explain why the GoR does not dispute UNHCR's evidence that GoR peremptorily removed to Uganda persons transferred from Israel,[195] yet at the same time denies any breach of the Refugee Convention.[196]

27.3 The foregoing is indicative of fundamental misunderstandings by the GoR of its obligations under the Refugee Convention and gives no reason to believe that such practices will change.

(3) No airport push-backs under the UK-Rwanda Arrangement; role of the DGIE

28. The SSHD argues[197] that there is no real risk of airport push-backs under the UK-Rwanda Arrangement and that any that did occur would most likely be to the UK. On the evidence currently available to it, UNHCR does not dispute this, at least for the initial period following implementation when the UK-Rwanda Arrangement is likely to be under greatest scrutiny. However, the airport push-backs described by UNHCR (a) form part of the wider picture of DGIE summary rejections (not only at Kigali Airport but also within Rwandan territory) and consequent risk of refoulement; (b) are well-evidenced instances of practices which constitute or risk refoulement; (c) are, along with the GoR's explanations in response, indicative of a failure to abide by or understand fundamental obligations under the Refugee Convention (see Sections D and E above). Accordingly, the apparent reduced likelihood (at least at the initial period of the Arrangement) of airport push-backs to dangerous destinations does not meet concerns arising out of the defects in the Rwandan RSD process.

191 See Article 31(1) of the Refugee Convention; see also dicta of Simon Brown LJ (as he then was) in *R (Adimi) v Uxbridge Magistrates Court & Anor* [2001] QB 667, 674B: *'[T]he combined effect of visa requirements and carriers' liability has made it well-nigh impossible for refugees to travel to countries of refuge without false travel documents.'* [**Auth/CB/50/2721**]

192 See e.g. GoR Statement, §13 pp. 526-527 [**GDB/E/92/1796-1797**] (approach to Syrian and Yemeni individual cases); KA1 exhibit 61 '[GoR's] Asylum Application Statistics Commentary', p. 533 [**GDB/E/94/1803**]; GoR Response p. 17 [**GDB/E/190/2813**].

193 KA1 exhibit 47 ('Information Requests of GoR'), p. 386 [**GDB/E/80/1656**]: '*15 Where there are entries indicating that individuals have been refused because they already have a status in Rwanda can this please be explained more fully....'.*

194 GoR Response, p.14 [**GDB/E/190/2810**].

195 The GoR was asked specifically by the SSHD to address UNHCR's evidence concerning the Israel-Rwanda Arrangement at §§124- 128 of LB2 [**GDB/H/295/4359-4362**] – see GoR Response, p19 [**GDB/E/190/2815**]. The GoR offered no denial of the factual allegations.

196 See also GoR Response, p .14 [**GDB/E/190/2810**]: '*of all the persons who had to be sent back by the airlines from the Kigali Airport in Rwanda, none were sent back to their countries of origin*.'

197 DGD §§8.9-8.10 [**CB/B/9/543-545**].

29. The GoR insists that those transferred under the UK-Rwanda Arrangement will be processed under the same RSD system already in existence (see §34 below and see also Chris Williams, Exhibit p.55 '*the process is already in operation – this is not a new process*') [**GDB/E/130/2039**]; denies any difficulty in the role of the DGIE (asserting that the DGIE has no authority in law to reject asylum claims, a proposition with which UNHCR agrees as matter of law); and maintains its erroneous understanding of fundamental precepts of refugee law (see §27 above). These are all, in UNHCR's respectful observation, reasons to believe that the practices of DGIE summary rejection and refoulement, most relevantly here for in-country applicants,[198] will persist.

(4) Temporary residence permits

30. The SSHD asserts that even if poor decisions are made, this will not lead to expulsion because transferees refused asylum will be eligible for residence permits in Rwanda.[199] That is not an answer to the flaws identified in the Rwandan RSD system for the following reasons:

    30.1 There is in the MoU and NVs no guarantee that refused asylum seekers will in fact obtain a residence permit. Rather the MoU gives an assurance that for '*those Relocated Individuals who are neither recognised as refugees nor to have protection need* [sic]' the GoR will '*offer an opportunity for the Relocated Individual to apply for permission to remain in Rwanda on any other basis in accordance with its immigration laws*'.[200] The MoU assures those individuals '*the same rights as other individuals making an application under Rwandan immigration laws*'.[201] There has been no assurance that all rejected asylum seekers transferred under the UK-Rwanda Arrangement will be eligible for another status. They will merely be eligible to apply ('*opportunity … to apply*') for another status. Notably, the SSHD [202] does not refer to what is said in the MoU or NVs concerning residence permits. Rather, the SSHD's assertion that all failed asylum seekers will be 'eligible' for a residence permit relies exclusively upon a paraphrased repetition by one of the SSHD's witnesses of his understanding of what he was told by the DGIE [203] (which is not confirmed by anything stated in the MoU or NVs).

198 The GoR's Statement (pp.528-529 §18) [**GDB/E/92/1798-1799**] indicates that the DGIE will register the claims of those transferred under the UK-Rwanda Arrangement after they have entered Rwanda, by attending their hostel/residence; and subsequently consider their claims. That is, those transferred would be applying for asylum to the DGIE once inside Rwanda rather than at the airport.

199 DGD §8.37 [**CB/B/9/553-554**].

200 MoU §10.3.1 [**GDB/D/13/401**]. See, to similar effect, the NV on reception and accommodation at §16.2 assuring such Relocated Individuals '*the opportunity to regularise their immigration status*.' [**GDB/D/15/423**]

201 MoU §10.5 [**GDB/D/13/402**].

202 DGD §8.37(2) [**CB/B/9/554**].

203 Witness Statement of Chris Williams, §42 [**GDB/E/124/1995**].

30.2 In any event, to UNHCR's knowledge no such residence permits are in practice granted to failed asylum seekers in Rwanda [204] (on the contrary, in UNHCR's experience, failed asylums seekers may remain in limbo with no status).[205] Consistently with the references in the MoU to Rwanda's '*immigration laws'* (indicating a continuation of existing law and practice), the GoR's evidence is that no parallel asylum system (including, UNHCR understands, arrangements for rejected asylum-seekers) is now being created (§34 below).

30.3 Vital aspects of the proposal remain unclear. No basis in Rwandan law has been identified by the SSHD or GoR for a catch-all residence permit (as distinct from a permit for a specific purpose, such as for work or business) for failed asylum seekers (and UNHCR is aware of none).[206] Nor is it clear what the documentary requirements would be for any such permit. At present, for those permits of which UNHCR is aware in Rwanda and which are available to rejected asylum seekers (e.g. work permits) a valid passport is a pre-requisite. That requirement has led in UNHCR's experience to rejected asylum seekers whom it considered in fact had valid protection claims having to choose between remaining in Rwanda without a residence permit and thus liable to detention and expulsion;[207] approaching the authorities of the State of persecution for a fresh passport; or obtaining false documents.[208]

30.4 It is also unclear what rights would accrue to the holders of these residence permits. It is no answer to a refugee entitled to be recognised as such that they can obtain a lesser form of status. UNHCR accepts and does not repeat the submissions made by the Claimants in AAA, CO/2032/2022 (Amended Summary Facts and Grounds of 22 July 2022 ('**SFG**') §§158, 226-27 [**CB/A/6/247; 284**]), concerning the importance of the full array of rights accorded under the Refugee Convention to recognised refugees and the need to ensure, under any TCTA, that these are available in practice. Quite apart from the lack of clarity (addressed in the AAA SFG at §§159-160 [**CB/A/6/247-249**]) over whether *recognised* refugees will in Rwanda receive the full array of rights to which they are entitled under the Refugee Convention, there is no indication of which, if any, of those rights would accrue to a (potentially erroneously) rejected asylum seeker granted a residence permit under '*under Rwandan immigration laws*'.

204 See LB2 §142(c) [**GDB/H/295/4366**]. See also LB2 §112, 124(b) [**GDB/H/295/4355-4356; 4360**] for instances where asylum seekers were not given residence permits if their claim was not referred to the RSDC.

205 LB3 §36 [**GDB/H/304/4427**] and examples at §32(a)(i) [**GDB/H/304/4423**]).

206 LB3 §36 [**GDB/H/304/4427**].

207 UNHCR Analysis of the Legality and Appropriateness of the Transfer of Asylum-Seekers under the UK-Rwanda arrangement 8 June 2022, Exhibit 1 to LB1 ('**UNHCR Legal Analysis of 8 June 2022**') at §18a20 [**GDB/H/282/4256**].

208 LB3 §32(a)(i) [**GDB/H/304/4423**].

30.5 Most importantly, a residence permit does not protect against refoulement because it can be withdrawn at will and provides no security of status. That is in contrast with refugee status which, under Article 1C Refugee Convention, may be ceased only on limited bases, which must be strictly interpreted [209] and, for which decisions, UNHCR's advice may be sought by the State of refuge, as occurs in the UK.[210] The temporal problem of ordinary residence permits generally is *a fortiori* here given the limited duration of the UK-Rwanda Arrangement (five years, MoU §23.1 [**GDB/D/13/405**]) and the lack of clarity over any protections for transferred, rejected asylum seekers if the Arrangement is cancelled during that period or not renewed.[211]

G. The assurances in the Memorandum of Understanding and the Notes Verbales

31. The SSHD's answers to concerns over Rwanda's deficient RSD system rest heavily upon assurances in the MoU and associated NVs.[212] For the reasons explained below those assurances provide insufficient answers to the concerns identified, and do not render the proposed arrangements lawful.

Relevant principles: assurances

32. The nature and sufficiency of state assurances have been the subject of frequent judicial consideration in the contexts of extradition or deportation: by the ECtHR and the domestic courts.[213] The following factors are emphasised:

    a. Specificity: '*whether the assurances are specific or are general and vague*';[214]

    b. Enforceability: whether they can '*bind the receiving state*';[215]

    c. Past record: '*the receiving state's record in abiding by similar assurances*';[216]

    d. Verifiability: Whether '*compliance with the assurances can be objectively verified through diplomatic or other monitoring mechanisms, including providing unfettered access to the applicant's lawyers*'; and whether the receiving state was '*willing to co-operate with international monitoring mechanisms (including international human rights NGOs)*';[217]

    e. Practical effectiveness: there must be a '*sound objective basis for believing that the assurances will be fulfilled*'.[218]

209 See *R (Hoxha) v Special Adjudicator* [2005] UKHL 19; [2005] 1 WLR 1063 §§65-66 [**Auth/SB/27/1047**].
210 See paragraph 358C Immigration Rules.
211 See NV on reception and accommodation, §§11.3, 16.3 [**GDB/D/15/422-423**].
212 See e.g. DGD §§3.5 [**CB/B/9/504**] and 8.11ff [**CB/B/9/545**], where it is asserted that '*The MOU and NVs ensure a fair RSD procedure*.'
213 See *Othman v United Kingdom* (2012) 55 EHRR 1 ('**Othman**') [**Auth/CB/28/1489-1574**]; *RB (Algeria) v SSHD* [2009] UKHL 10; [2010] 2 AC 110, §23 per Lord Phillips; *BB v SSHD* [2015] EWCA Civ 9, §27 [**Auth/CB/78/3631-3632**].
214 *Othman* §189(ii) [**Auth/CB/28/1546**].
215 *Othman* §189(iii) [**Auth/CB/28/1546**].
216 *Othman* §189(vii) [**Auth/CB/28/1547**].

33. The focus is on what the receiving State will or may do (or be able to do) in practice, and not simply upon the content of the laws and policies formally promulgated by that State. Assurances were relevant to the reasoning and outcome in *MSS*. In the course of concluding that Belgium had violated Article 3 ECHR, the ECtHR made clear that: (i) the fact that Greek legislation contained a number of guarantees designed to protect asylum seekers from refoulement, and (ii) the fact that the Greek Government had provided a number of assurances to the effect that the applicant's case would be examined in accordance with such laws, did not render MSS's removal lawful, given the evidence as to what the position was *in practice.*[219]

The problems with the assurances in this case

34. The MoU and moreover the Note Verbales concerning procedure must be read against the GoR's explanation that it will *'not have a parallel RSD process system for applicants under the partnership, on one hand, and applications received ordinarily, on the other*'.[220]

35. In UNHCR's view, the assurances contained in the MoU and associated NVs are inadequate, for the reasons provided in the AAA SFG at §§135-142 [**CB/A/6/238-241**]. UNHCR highlights the following:

36. <u>The non-binding and non-justiciable nature of the assurances</u>: UNHCR's long-standing position is that in the context of arrangements between States for the transfer of asylum seekers, such arrangements are best '*governed by a legally binding instrument, challengeable and enforceable in a court of law by the affected asylum-seekers.*' Such arrangements should also '*clearly stipulate the rights and obligations of each State and the rights and duties of asylum seekers*'.[221]

37. The MoU and associated NVs are expressly stated (i) not to create any individually enforceable or justiciable legal rights and (ii) not to be legally binding even as between the UK and Rwanda.

38. As the UK Foreign Office Guidance on Practice and Procedures in relation to Treaties and Memoranda of Understanding (March 2022) observes (§4) [**Auth/SB/118/3555**], '*An MoU is used where it is considered preferable*

to avoid the formalities of a treaty – for example, where there are detailed provisions which change frequently or the matters dealt with are essentially of a technical or administrative character; in matters of defence or technology where there is a need for such documents to be classified; or where a treaty requires subsidiary documents to fill out the details.'

217 *Othman* §189(viii); (ix) [**Auth/CB/28/1547**]
218 *RB (Algeria)* supra §23.
219 *MSS* §§299-320; 353-354 [**Auth/CB/27/1444-1447; 1455**]. Similarly, the Family Court in *Re Al M (Assurances and Waiver)* [2020] 1
WLR 1858 was not satisfied with assurances provided by the Emir of Dubai as to his intention to comply with the orders of the Court in connection with wardship proceedings, but carefully scrutinised the extent to which such assurances would in practice be enforced.
220 See GoR Statement §16 [**GDB/E/92/1798**].
221 Bilateral Note, §3(v) [**Auth/SB/114/3478**].

39. None of that guidance explains why the assurances at issue in these proceedings are non-justiciable and nonbinding. The requirements of an adequate asylum process will not '*change frequently'*. The MoU is not confidential. Its provisions are not matters that are '*essentially of a technical or administrative character*', nor does it require '*subsidiary documents to fill out the details'*. It is, on the contrary, concerned with matters that (including on the SSHD's own case) are fundamental to the purported lawfulness of any proposed transfer.

40. The enforcement of such matters (i) has been left to diplomatic means; (ii) without the benefit of judicial review in either State; and (iii) without even the force of international law or the benefit of international dispute resolution mechanisms. This seriously limits the force and utility of such assurances. As set out above, it is not simply a question of good faith or honest aspirations: the question is whether there is a sound objective basis for believing that the assurances will in fact and in practice be fulfilled. The absence of any available legal process to support or compel such fulfilment, if and when necessary, is highly relevant.

41. The aspirational nature of the assurances: A number of the assurances within the MoU and the NVs promise transferred asylum seekers benefits which are not currently available or in existence in Rwanda (as addressed in UNHCR's evidence). This includes, within the MoU, the assurance of '*access to independent and impartial due process of appeal in accordance with Rwandan law*s' (MoU §9.1.3) [**GDB/D/13/401**]; and within the NV regarding the asylum process ('**Process NV**') [**GDB/D/14/411-414**]: (i) the determination of the claim within a reasonable time (§4.1); (ii) the taking of decisions by persons who are appropriately trained (§4.2); (iii) the provision of an appropriately qualified and experienced interpreter at the asylum interview (§4.4.2.3) and when meeting with legal representatives (§9.1); (iv) the recording of reasons for first instance decisions (§4.7), the notification of such reasons in writing (§4.8) and the translation of such reasons (§4.9.1); (v) the possibility to make oral representations on appeal to MINEMA (§5.2); and (vi) the provision, on appeal of legal assistance and representation free of charge (§8.1).

42. Such assurances have been provided in a context where UNHCR's assessment is that '*long-term and fundamental engagement is required to develop Rwanda's national asylum eligibility structures with sustainable capacity to efficiently adjudicate individual asylum claims through fair and consistently accessible procedures*'.[222]

43. As stated in UNHCR's witness evidence,[223] the MoU and the Process NV envisage structural or legal features of the RSD process which apparently do not exist (the option of humanitarian protection, MoU §10.20 [**GDB/D/13/401**]); or if they do exist have never been used (appeal to the High Court, Process NV §5.3 [**GDB/D/14/413**10). The same concerns apply to the GoR Email.[224]

222 UNHCR Legal Analysis of 8 June 2022, §17 [**GDB/H/282/4255-4256**].
223 LB2 §142 [**GDB/H/295/4366-4367**].
224 LB3 §§28(a), 29(a)-(b) [**GDB/H/304/4421-4422**].

44. There is provision for arrangements which '*will be made*' for a complaints process at §10 of the Process NV [**GDB/D/14/415**]. No new process appears yet to have been established.

45. Notably absent from the MoU and the NVs is any outline of the practical steps which the UK and Rwanda intend to take, including timing, training, funding, increasing capacity and resources, division of responsibilities within Rwanda, or administration, to see those aspirations become a practical reality.

46. Rwanda's past record in relation to assurances: UNHCR notes and does not repeat what is said in SFG §§143- 145 [**CB/A/6/241-242**] as regards Rwanda's past compliance with human rights obligations and international obligations. See moreover §21.3 above in relation to the precedent of events under the Israel-Rwanda Arrangement.

47. UNHCR also notes that even guarantees and safeguards in Rwandan primary legislation are not currently complied with. For example, the requirement in primary legislation of reasons for RSD decisions is currently rarely met.[225] Likewise, the timeframes stipulated in Rwandan legislation for steps in the RSD process are exceeded [226] and the steps to be taken, according to Rwandan legislation, by MINEMA where a case has not been referred by the DGIE to the RSDC within 15 days are not in fact taken.[227]

48. The limits of the assurances on their face: UNHCR notes the following:

48.1 No provision stipulates that asylum seekers will be referred to UNHCR or informed of their right to access UNHCR or how to do so. UNHCR lacks the necessary access to monitor systematically the RSD procedure in Rwanda.[228] It is also unclear what the orientation provision in §7.1 of the Process NV will cover. These factors undermine the SSHD's suggestion[229] that UNHCR will serve as a de facto independent monitor of the MoU.

48.2 There is no provision enabling an asylum seeker to be represented at the first instance asylum interview (at DGIE, eligibility officer or RSDC stage). The reference to *'assistance'* in §7.3 of the Process NV is to be contrasted with '*assistance and representation'* at §8.1 of the Process NV [**GDB/D/14/414**], reflecting the current practice of the GoR,[230] which is to prohibit lawyers and UNHCR from attending or observing at such interviews.

225 See LB2 §§61,147 [**GDB/H/295/4338-4340; 4368**]; LB3 §29 [**GDB/H/304/4421-4422**]. See also, LB2 §38(e) [**GDB/H/295/4328-4329**]; and UNHCR Legal Analysis of 8 June 2022, §18g [**GDB/H/282/4256**].

226 UNHCR Legal Analysis of 8 June 2022, §18g [**GDB/H/282/4256**].

227 LB2 §38(e) [**GDB/H/295/4328-9**].

228 See LB2 §§18-19 [**GDB/H/295/4322-4323**].

229 DGD §8.16 (2) [**CB/B/9/547**].

230 See also discussion at §18(5) above concerning apparent internal inconsistencies in the GoR's explanations of lawyers' role in the RSD process; at best the GoR Email indicates an aspiration to alter the current practice. The practice of excluding lawyers (and a rare exception) are described at LB2 §§19(d)(i); 41(c); 60 (j) [**GDB/H/295/4322; 4330; 4338**].

48.3 On appeal, the access of the asylum seeker's legal representative to material evidence and information is heavily restricted under §8.2 of the Process NV [**GDB/D/14/414**]. That refers to sweeping powers of the Government not to allow the lawyer to access their client's file where (in, it would appear, the opinion of the Government) disclosure '*would jeopardise'* (i) '*national security*'; (ii) '*the security of the organisations or person(s) providing the information*'; (iii) '*the security of the person(s) to whom the information relates*'; (iv) '*where the investigative interests relating to the examination of applications for international protection by the competent authorities of Rwanda*' would be '*compromised*'; or (v) where '*the international relations of Rwanda*' would be '*compromised*'. Whilst some of these restrictions may be justifiable in principle, there is no identified process for challenging the Government's application of any of them.

48.4 The MoU guarantees eligibility to apply for a residence permit for failed asylum seekers, not eligibility to receive such a permit, see §30.1 above.

48.5 There is provision for arrangements which 'will be made' for a complaints process at §10 of the Process NV [**GDB/D/14/415**]. The GoR has confirmed that the existing complaints procedure for DGIE services will be used.[231] The SSHD has requested further detail about the complaint process, with no indication that such detail has been provided.[232]

49. The SSHD invokes Rwanda's status as a signatory of the Refugee Convention and of the UN Convention Against Torture [233] as reasons why assurances offered by the GoR should be trusted. Such reasoning is undermined where the GoR breaches and misunderstands its fundamental duty of non-refoulement under both Conventions, in all the respects identified above at section E and §27.

50. The SSHD states[234] that '*the weight to be given to an assurance from a sovereign state depends upon the context*'. UNHCR agrees but observes that the context here is significantly more exacting than that of the cases cited.[235] *J1* and *Othman*, typically for assurances cases, (a) related to the deportation of individuals assessed to be a threat to national security; (b) required no systemic legal or procedural change in the receiving State; and (c) required, principally, restraint (from torture, other mistreatment, and use of the death penalty) rather than the adoption of a wide range of positive acts. The present case by contrast:

(1) Concerns the future treatment of an (unlimited) class of asylum seekers;

231 See CW exhibit 1, p.17 [**GDB/E/125/2001**].
232 *Ibid,* p. 20 [**GDB/E/125/2004**].
233 DGD §§8.12-8.13; 8.15 [**CB/B/9/545-546**].
234 DGD §§8.16(3) [**CB/B/9/547-548**].
235 *J1 v SSHD* [2013] EWCA Civ 279 ('**J1** ') [**Auth/SB/53/1864-1888**] and *Othman*.

(2) Necessitates fundamental and large-scale systemic changes, including:

(i) legislative and structural change, with the creation of a designated decision-making body of properly trained individuals (rather than an ad hoc committee that is the current RSDC); the creation of what appears to be a new class of residence permit promised;[236] the creation of a genuinely independent appeal process; a hearing at the MINEMA appeal stage that offers an opportunity to make oral representations;[237] the creation of a fresh claims process (based upon changed circumstances or fresh evidence); and the alteration of the DGIE's role and the ability to access legal assistance and representation at each stage of the RSD procedure;[238]

(ii) long-term capacity building, including the availability of sufficient numbers of competent lawyers and of adequately trained decision-makers; and

(iii) the modification of a range of practices and beliefs (to take just three examples, (a) DGIE involvement at all levels of RSD decision-making, see §18(8) above; (b) DGIE 'backgroundchecks', in UNHCR's understanding with countries of origin, see §18(3) above; (c) bias against Middle Eastern cases including refusals on unspecified 'security' grounds and anomalously high rejection rates.[239] As to the latter, contrary to DGD §§2.10; 8.41S [**CB/B/9/501; 559**], the fact that asylum seekers' admission under the UK-Rwanda Arrangement will be preapproved by the GoR is not a reliable safeguard against biased decision-making by individual decision-makers or by units within the GoR.

51. For all these reasons the MoU and Process NV can provide no sufficient answer to the basic and fundamental defects in the Rwandan RSD system identified by UNHCR, nor to the consequent serious risks of refoulement and moreover of wrongful denial of other rights and protections owed to refugees, for those transferred under the UK-Rwanda Arrangement.

H. Article 31(1) of the Refugee Convention

52. This section (H) and the next (I) address the questions of whether the SSHD's policy or practice of pursuing removals to Rwanda [240] is contrary to Article 31 or otherwise contrary to the objects and purposes of the Refugee Convention. In turn, these impact on the issues of whether the policy or practice is, for those further reasons, ultra vires s.2 of the 1993 Act or otherwise unlawful (§§3 and 12.1 on the principal parties' agreed list of issues).

236 NV on reception and accommodation for relocated individuals, §16.2 [**GDB/D/15/423**].
237 Process NV §5.2 [**GDB/D/14/413**].
238 GoR Email [**GDB/E/208/3171**], see §18(5) above.
239 LB2 §114 [**GDB/H/295/4356-4357**]; LB3 §32(a) [**GDB/H/304/4423-4424**]. The SSHD criticises UNHCR's data concerning bias as being (unavoidably given Rwanda's inexperience with such cases) based on small samples; however UNHCR's conclusions concerning bias are not based on that data alone but on multiple mutually reinforcing sources of information.

53. Article 31(1) of the Refugee Convention prohibits States from imposing '*penalties*' on refugees '*on account of their illegal entry or presence*' if certain conditions are met, including '*coming directly'* from a State of persecution.

54. The Claimants are eligible for transfer to Rwanda for the processing of their asylum claims owing to the fact that they have been assessed by the SSHD to have arrived in the UK '*illegally by dangerous journey*s' (see DGD §3.10 [**CB/B/9/506-507**] and Inadmissibility Guidance).

Coming Directly

55. On the meaning of '*coming directly*', UNHCR agrees with the AAA Claimants' submissions at SFG §192 [**CB/A/6/270-273**]; and on its application to the UK-Rwanda arrangement in general, UNHCR endorses SFG §§208-212 [**CB/A/6/278-280**].[241] UNHCR emphasises the following:

    55.1 There is no principle in the Refugee Convention and no requirement under international law that persons fleeing persecution must claim asylum in the first safe country in which they arrive.[242]

    55.2 On the contrary, the primary responsibility for identifying refugees and affording international protection rests with the State in which an asylum seeker arrives and seeks that protection.[243]

    55.3 Article 31(1) must be construed broadly and in light of its purposes and aims,[244] namely as a protective provision.

    55.4 Article 31(1) was intended to address the practical situation of refugees who are '*rarely in a position to comply with the requirements for legal entry into the country of refuge*'.[245] The position of such persons was to be distinguished from '*those where were lawfully settled, temporarily or permanently, in another country and had alreadynfound protection there and who decided to move onward irregularly for reasons unconnected to their need for international protection*', or those who had failed to seek asylum in a timely fashion in a State when they could reasonably have done so.[246]

240 See fn. 40 above

241 As intervener, UNHCR does not comment on the application of those principles to the specific facts of the individual cases before the Court.

242 See *R (Adimi) v SSHD* [2001] QB 667 [**Auth/CB/50/2714-2744**] and, for example, UNHCR Summary Conclusions on the Concept of 'Effective Protection' in the Context of Secondary Movements of Refugees and Asylum Seekers (Lisbon Experts Roundtable 9 and10 December 2002), February 2003 §11.

243 UNHCR Legal considerations regarding access to protection and a connection between the refugee and the third country in the context of return or transfer to safe third countries (April 2018) at §2; Bilateral Note at §1 [**Auth/SB/114/3477**].

244 *R v Asfaw* [2008] AC 1061 per Lord Bingham at §11 [**Auth/CB/63/3153-3154**].

245 UNHCR Updated Observations on the Nationality and Borders Bill as amended (January 2022) at §27.

246 *Ibid* §27.

55.5 Stays in third countries *en route* to claiming asylum in another safe country accordingly do not *per se* deprive asylum seekers of the benefit of Article 31(1).[247]

55.6 The Divisional Court in *Adimi* identified three benchmarks to be considered when asking whether an individual has '*come directly*': (1) the length of stay in the intermediate State; (2) the reason for delaying in the third country (where '*even a substantial delay in an unsafe third country would be reasonable were the time spent trying to acquire the means of travelling on*') and (3) whether or not the refugee sought or found protection from the persecution they were fleeing.[248]

55.7 S.37(1) of the Nationality and Borders Act 2022 can be construed compatibly with the Refugee Convention (as there is a '*strong presumption*'[249] that it should be) by construing '*reasonably*' in accordance with the principles set out above, and by construing '*stopped*' as ceasing to be in flight (or ceasing to seek to acquire the means of continuing in flight) in pursuit of protection. This is consistent with Lord Hope's interpretation of the word '*stopped*' (appearing in a similarly worded statutory provision) in *Asfaw*: As Lord Hope explained, there was universal acceptance by the drafters of the Refugee Convention that *'the mere fact that refugees stopped while in transit ought not deprive them of the benefit of the article*'[250]; and unless the refugee has '*stopped running*' [251] he or she still comes directly.

'Penalties'

56. As for the meaning of 'penalties' for the purposes of Article 31(1) of the Refugee Convention, UNHCR observes that:

56.1 The purpose of Article 31(1) is to offer a '*fundamental protection*' against penalisation on account of illegal entry or presence [252] and (consistently with the purposive approach to Article 31 commended by the majority in *Asfaw*), an '*overly restrictive approach to defining this term*' will be inappropriate.[253]

247 *R v Asfaw* [2008] AC 1061 per Lord Bingham §11 and Lord Hope at §56 [**Auth/CB/63/3153-3154; 3170**].

248 *Adimi* at 678E [**Auth/CB/50/2725**], cited with approval by Lord Bingham in *Asfaw* §22 [**Auth/CB/63/3158**]. UNHCR has, for its part, endorsed those benchmarks and emphasises that each case is to be judged on its merits: see e.g. UNHCR Updated Observations on the Nationality and Borders Bill as amended (January 2022) at §123.

249 '*There is no doubt that there is a "strong presumption" in favour of interpreting an English statute in a way which does not place the United Kingdom in breach of its international obligations: see, for example, per Lord Hoffmann in R v Lyons [2003] 1 AC 976, para 27*' *Assange v Swedish Prosecutor*, [2012] UKSC 22; [2012] 2 AC 401 per Lord Dyson at §122 [**Auth/SB/51/1799**].

250 *Asfaw* per Lord Hope at §56 [**Auth/CB/63/3170**].

251 *Ibid* and see also Lord Bingham at §26 [**Auth/CB/63/3161**].

252 Guy Goodwin-Gill, 'Article 31 of the 1951 Convention Relating to the Status of Refugees: Non-Penalization, Detention, and Protection' in Feller et al (eds), *Refugee Protection in International Law: UNHCR's Global Consultations* (2003) ('**Goodwin-Gill (2003)**'), p. 195 [**Auth/SB/121/3618**].

253 *Ibid*.

56.2 The plain meaning of '*penalty'* is a '*loss, disability or disadvantage' inflicted for breach of a law or rule*' [254] and the term refers to any sanction which has not only a preventative, but also a '*retributive and/or deterrent character*'.[255]

56.3 Professor James Hathaway (whose work has been cited with approval by the UK's highest courts including in *Asfaw* (§§20, 51, 99, 135) [**Auth/CB/63/3158; 3168; 3181-2; 3193-4**]) has noted that the wording of Article 31(1) itself shows that it is directed, not against the imposition of *'a particular kind of penalty'* (i.e. a criminal penalty) but against '*penalties (in general) imposed in a particular context*'.[256]

56.4 The Canadian Supreme Court has rejected the proposition that 'penalties' under Article 31 are limitedto criminal sanctions as '*counter to the purpose of art. 31(1) and the weight of academic commentary*'[257] (emphasis added) citing with approval eminent academic commentary, including the observation of A. Gallagher and T. David that '*[o]bstructed or delayed access to the refugee process is a "penalty" within the meaning of art. 31(1) of the Refugee Convention*'.[258] That is in line with UNHCR's view.

57. UNHCR's position is that:

(1) A decision that foreseeably exposes a category of asylum seekers to less favourable asylum procedures than would otherwise be provided, based on their allegedly illicit mode of arrival, amounts to a penalty. This applies *a fortiori* where, as here, the effect is to expose those asylum seekers to an RSD system which lacks essential minimum safeguards of an accessible, reliable and fair asylum procedure and thus to a serious risk of refoulement.

(2) A decision to treat an asylum seeker's claim as inadmissible on the basis that the individual arrived '*illegally, by a dangerous journey'*, with the consequence that the claim will be determined only in Rwanda, under less favourable asylum procedures, is a penalty.

254 Hathaway (2021), p. 515 [**Auth/CB/110/4942**]. See also Expert Roundtable organized by UNHCR and the Graduate Institute of International Studies, Geneva, Switzerland, 8–9 November 2001: Summary Conclusions: Article 31 of the 1951 Convention, p. 256 §10(h): '*The term 'penalties' includes, but is not necessarily limited to, prosecution, fine, and imprisonment.*' [**Auth/SB/119/3584**]

255 Goodwin-Gill (2003), p.195 [**Auth/SB/121/3618**].

256 Hathaway (2021), p. 514 [**Auth/CB/110/4941**] (original emphasis).

257 In *B010 v Canada* [2015] SCC 58; [2015] 3 SCR 704 §§,62-63 [**Auth/CB/103/4794**].

258 A. Gallagher and T. David, *The International Law of Migrant Smuggling* (2014), p. 165. *B010 v Canada* §57 [**Auth/CB/103/4793**]; discussed further in Hathaway (2021), p. 516 [**Auth/CB/110/4943**] and in Cathryn Costello et al, 'Article 31 of the 1951 Convention Relating to the Status of Refugees', Division of International Protection UNHCR, Legal and Protection Policy Research Series (2017) p. 37 [**Auth/SB/123/3652**].

58. In response to the SSHD's submissions at DGD §§10.5-10.11 [**CB/B/9/577-581**], UNHCR observes:

58.1 Contrary to DGD §10.5 [**CB/B/9/577**], Article 31(1) is not concerned with '*criminal penalties only*', for the reasons at §56 above.

58.2 The SSHD rightly recognises (DGD §10.9 [**CB/B/9/580-1**]) that the leading commentators on Article 31 adopt a '*broader*' approach to '*penalties*' than that for which she argues.

58.3 Contrary to DGD §10.6(1) [**CB/B/9/577-578**], both language versions of Article 31(1) ('sanctions pénales' and 'penalties') must be interpreted purposively, with literal meaning a starting but not an endpoint,[259] and in light of the broad humanitarian aims of the Refugee Convention.[260] That was how, in Asfaw, the majority concluded that Article 31 covered offences committed by a refugee in order to leave a transit State, even though, as Lord Rodger (dissenting) put it, '*[o]n its face, the article is all about entry and presence and says nothing about leaving*' (§82) [**Auth/CB/63/3177**]. The purposive approach shows that a formalistic distinction between criminal and administrative sanctions is impermissible.[261] Such a distinction would permit arbitrary differences according to the domestic legal arrangements of different Signatory States. An identical fine, imposed upon asylum seekers who enter by illicit means, might be classified by one Signatory State as a civil penalty and by another as administrative.

58.4 Contrary to DGD §§10.6(2)-(4) [**CB/B/9/578-579**], (i) *Asfaw* concerned the availability (or otherwise) of defences based on Article 31(1) of the Convention to specific and specified criminal offences under UK law; (ii) in those circumstances the House of Lords was not asked, and did not purport, to determine the extent to which, other sanctions might engage Article 31(1) of the Convention; (iii) still less did the House of Lords reject that proposition.

259 See *Asfaw,* §§10-11 per Lord Bingham [**Auth/CB/63/3153-3154**].

260 *Ibid* §§9, 26 [**Auth/CB/63/3153; 3161**].

261 To the extent that the SSHD relies on the observations of Lord Simon Brown in *Kola v SSHD* [2007] UKHL 54, §45 [**Auth/CB/62/3134**], those observations are plainly *obiter* (Lord Brown concluded, in the passage from which the SSHD quotes, that the question whether Article 31(1) refers to criminal penalties only '*should be left for another day*').

58.5 The SSHD's submission, in reliance on the Dublin regime, that '*relocation to a third country is not a criminal penalty and is not imposed as a punishment*' (DGD §§10.7, 10.10 [**CB/B/9/580-581**]) is misconceived:

(i) The question under Article 31(1) is not simply whether a course of action by a State amounts to a penalty, but rather whether it amounts to a penalty '*on account of […] illegal entry or presence*'. The Dublin regime was not designed to, and does not, react to a person's '*illegal entry or presence'* in a single EU member State. Rather it is a burden-sharing arrangement intended to determine, on the basis of objective criteria, the State best placed rapidly to assume responsibility for a claim made within a single geographical area. Contrast the eligibility criteria for transfers to Rwanda.

(ii) An asylum seeker transferred under the Dublin III Regulation is in any event protected from any further detriment by the fact that transfer can only be made between countries bound by mutual and enforceable provisions governing asylum procedures, reception conditions, and recognition principles.

58.6 Contrary to the SSHD's suggestion (DGD at §10.6(5) [**CB/B/9/579**]), nothing in the preparatory materials undermines the broad, purposive construction of 'penalties' which the UNHCR considers applies to Article 31(1). To the extent that commentary on the *travaux* suggests otherwise, UNHCR disagrees.

58.7 UNHCR agrees with the SSHD that a bare act of transfer (or expulsion) without more will not amount to a penalty within the meaning of Article 31(1) of the Convention (DGD §§10.9-10 [**CB/B/9/580- 581**]). It is necessary also to consider the purpose (in the transferring State) and the consequences (in the receiving State) of the transfer. If the act of declaring an asylum claim inadmissible in one State, and requiring that it be processed in another, causes relevant detriment, then it constitutes a 'penalty'.

I. Burden shifting and burden sharing

59. Independently of all the foregoing, transfers under the UK-Rwanda Arrangement would breach the UK's obligations under the Refugee Convention, for the following reasons.

59.1 The fundamental objects and purposes of the Refugee Convention include (i) ensuring '*refugees the widest possible exercise of …fundamental rights and freedoms*'; and (ii) the sharing of burdens placed on certain countries by the grant of asylum through '*international cooperation'* as the Preamble to the Refugee Convention [262] and UNHCR's ExCom Conclusions [263] make clear.

[262] '*Considering that the United Nations has, on various occasions, manifested its profound concern for refugees and endeavoured to assure refugees the widest possible exercise of these rights and freedoms…Considering that the grant of asylum may place unduly heavy burdens on certain countries, and that a satisfactory solution of a problem of which the United Nations has recognized the international scope and nature cannot therefore be achieved without international cooperation*' [**Auth/CB/1/22**]

59.2 Signatory States are required to interpret the Refugee Convention in good faith in light of its objects and purposes (Article 31(1) Vienna Convention on the Law of Treaties ('**VCLT**')) and must also pursue their obligations under it in good faith (Article 26 VCLT) [**Auth/CB/3/71-732**].

59.3 The good faith duty requires those interpreting and implementing a treaty to do so in a way which renders the treaty effective (gives it *effet utile*).[264] Conversely, the good faith '*duty is breached if a combination of acts or omissions has the overall effect of rendering the fulfilment of treaty obligations obsolete, or defeats the object and purpose of a treaty.*'[265]

59.4 If a State Signatory to the Refugee Convention enters with another State (whether or not the latter is a Signatory) into a TCTA whose effect is not burden sharing but the abdication of responsibility and the diminution of those rights, freedoms and safeguards accorded to refugees under Articles 2-34 of the Refugee Convention, that is incompatible with the good faith pursuit of the transferring State's obligations under the Refugee Convention.

59.5 UNHCR's published guidance draws a categorical distinction[266] between two classes of TCTAs.

(1) Burden-sharing TCTAs which are '*lawful practices involving transfer of the responsibility for international protection*'.[267] These are '*regulated in the spirit of international co-operation*' and '*alleviat[e] the burden on developing states, hosting 85% of the world's refugees*'. The Dublin Regulations, in UNHCR's view, exemplify lawful burden-sharing in that these attempt to approach the situation of asylum seekers on a '*co-operative, international basis*', while '*guarantee[ing] effective access to the procedures for determining refugee status […]*'.[268]

263 See ExCom. No. 52 (XXXIX) 1988, §(4) [**Auth/SB/104/3445**]: '*the respect for fundamental humanitarian principles is an obligation for all members of the international community, it being understood that the principle of international solidarity is of utmost importance to the satisfactory implementation of these principles*'. See also ExCom. No. 112 (LXVII) 2016, Preamble [**Auth/SB/113/3473**]: '*[…] achieving international cooperation in solving international problems of a humanitarian character is among the purposes of the United Nations as defined in its Charter, and […] the 1951 Convention Relating to the Status of Refugees acknowledges that the grant of asylum may place unduly heavy burdens on certain countries, and that satisfactory solutions to a problem, of which the United Nations has recognized the international scope and nature, cannot therefore be achieved without international cooperation*' and ExCom. No. 85 (XLIX) 1998, §(g) [**Auth/SB/110/3465**]: '*the refugee experience, in all its stages, is closely linked to the degree of respect by States for human rights and fundamental freedoms and the related refugee protection principles*'. Further, ExCom. No 89 (LI) 2000, Preamble; No. 90 (LII) 2001, §(f); No. 100 (LV) 2004, Preamble; No. 103 (LVI), Preamble; No. 104 (LVI) 2005, §(r).

264 See generally *Observance, Application and Interpretation of Treaties,* Jean-Marc Sorel, Valérie Boré Eveno in *The Vienna Conventions on the Law of Treaties* Edited By: Olivier Corten, Pierre Klein. See also *The Corfu Channel Case* 9 April 1949, ICJ Reports 1949, p. 24.

265 Guy Goodwin-Gill and Jane McAdam, *The Refugee in International Law*, 4th edition (2021). p. 433 [**Auth/SB/129/3691**], emphasis added.

(2) Burden-shifting [269] TCTAs which are by their nature incompatible with the lawful, good faith interpretation and operation of the Refugee Convention. Burden-shifting consists of measures which '*shift […] responsibility for identifying or meeting international protection needs to another State or leav[e…] such needs unmet*" and which '*involve inadequate safeguards to guarantee international protection'.*[270]

59.6 The UK-Rwanda Arrangement falls in the latter category. This Arrangement is a burden-shifting measure incompatible with the UK's good faith implementation of its obligations owed under the Refugee Convention. First, because of the inadequacies in the Rwanda RSD procedure, it will inevitably result in failures to recognise refugees as such. The foreseeable effect of the Arrangement is refoulement. Second, the further foreseeable effect is to deny to refugees, who claim asylum in the UK but who are wrongly denied recognition as refugees in Rwanda, their entitlements under the Convention.[271] Third, and relatedly, it:

(i) serves in practice to shift, minimise or avoid responsibilities, notably to '*less well-resourced and relatively inexperienced third countries*';[272]

(ii) does so by shifting responsibility for identifying and meeting international protection needs to another State where it is inevitable that this will result in such needs being unmet in at least some cases;

(iii) obstructs rather than facilitates access to international protection through international cooperation; and

(iv) has the potential to erode the international protection system and, if adopted by many States, would have the effect of rendering international protection increasingly inaccessible, placing many asylum seekers and refugees at risk of limbo, mistreatment or refoulement.

266 UNHCR's position in relation to such arrangements is set out in the Externalisation Note 2021 [**Auth/SB/116/3540-3541**] and in its Bilateral Note [**Auth/SB/114/3477-3479**].

267 Externalisation Note 2021 §§5-6 [**Auth/SB/116/3540-1**].

268 See *EM (Eritrea)* 2014] UKSC 12; [2014] AC 132 §40 [**Auth/CB/75/3585-3586**]; Dublin III Regulation Preamble, Recital (5).

269 Also referred to in UNHCR publications as '*externalisation*'.

270 *Ibid.* See also Hathaway and Foster, *the Law of Refugee Status*, 2nd Edition (2014), p.34 [**Auth/SB/122/3624**]: the Convention '*does not afford states any authority to deprive refugees of their acquired rights in pursuit of a protection elsewhere rule*'.

271 In particular, and in addition to Article 33(1), the protection from refoulement; Article 1C (cessation); Article 28 (travel document); Article 32 (protection from expulsion); Article 34 (naturalisation) [**Auth/CB/1/24-25; 37; 38-39**]. Furthermore, for recognised refugees, Rwanda does not offer family reunification. On the importance of the principle of family reunion/reunification, see ExCom Conclusions No. 9 (XXVIII) 1977, No. 24 (XXXII) 1981, No. 88 (L) 1999 [**Auth/SB/111/3470**].

272 Hathaway (2021), p. 365.

J. Conclusion

60. UNHCR warns, unequivocally, against the transfer of asylum seekers to Rwanda under the UK-Rwanda Arrangement, which would expose refugees to a serious risk of refoulement. UNHCR regrets, particularly in relation to one of the founding States of the Refugee Convention, that it is necessary for it to warn that the UK-Rwanda Arrangement is incompatible with UK's fundamental obligations under the Refugee Convention including:

    60.1 the prohibition of refoulement at Article 33(1);

    60.2 the prohibition upon penalisation of refugees '*on account of [*their*] illegal entry or presence'* at Article 31(1);

    60.3 the provision to refugees of the further rights and protections to which they are entitled under the Refugee Convention; and

    60.4 the good faith implementation of objects and purposes of the Convention, namely international cooperation and the widest possible enjoyment of rights and freedoms for refugees.

61. UNHCR concludes:

    61.1 Rwanda is not a safe third country within the meaning of paragraph 345B (ii) to (iv) of the Immigration Rules. The contrary conclusion is not rational as a matter of public law.

    61.2 For the reasons summarised at §60 above, the SSHD's policy or practice of transfers to Rwanda under the UK-Rwanda Arrangement is ultra vires s.2 of the 1993 Act.

    61.3 The implementation of that policy or practice will inevitably[273] expose transferred individuals to serious risks of (i) refoulement contrary to Article 33(1) Refugee Convention and (ii) harm contrary to Article 3 ECHR.

19 August 2022
As perfected on 31 August 2022

[273] See §17.4 and fn 42 above.

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A2. UNHCR Written Observations in the Court of Appeal, 23 March 2023

Written observations in the Court of Appeal dated 23 March 2023 (cross references added 14 April 2023)

IN THE COURT OF APPEAL (CIVIL DIVISION)
Case Nos: CA-2023-000176, CA-2023-000180, CA-2023-000170, CA-2023-000172, CA-2023-000185, CA-2023-000187, and CA-2023-000189

On appeal from: [2022] EWHC 3230 (Admin) (Lewis LJ and Swift J)

B E T W E E N:

THE KING
on the application of AAA and Others

Appellants

-and-
THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

-and-
THE UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES

Intervener

WRITTEN OBSERVATIONS OF
THE UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES

Angus McCullough KC
Laura Dubinsky KC
David Chirico
Jennifer MacLeod
Aarushi Sahore
Joshua Pemberton

Instructed by:

Baker McKenzie

100 New Bridge Street, London EC4V 6JA

Acting *pro bono*

23 March 2023

Replacement 14 April 2023

GLOSSARY

UK-Rwanda Transfer Policy The Respondent's proposal to remove to Rwanda asylum-seekers whose claims are deemed inadmissible, to have their asylum claims determined and, if found entitled to international protection, to remain there.

The UK-Rwanda Arrangement The Migration and Economic Development Partnership and a Memorandum of Understanding ('**MoU**') and Notes Verbales ('**NVs**') between the UK and Rwanda and domestic Immigration Rules and legislation,1 pursuant to which transfers would occur.[1]

The Refugee Convention The 1951 Convention relating to the Status of Refugees and its 1967 Protocol.

CEAS Common European Asylum System.

Dublin Regulations Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013.

GoR Government of Rwanda.

MINEMA Ministry in charge of Emergency Management, the relevant Rwandan ministry.

MGPE Michigan Guidelines on Protection Elsewhere.

RSD Refugee Status Determination. In the Rwandan context, this term is used to refer to individualised (rather than *prima facie*) decision-making on asylum claims.

DGIE Directorate General of Immigration and Emigration in Rwanda.

RSDC Refugee Status Determinations Committee, the body with the primary role in determining refugee status in Rwanda.

LB1, LB2, LB3 The evidence submitted by UNHCR in these proceedings in witness statements from Mr Lawrence Bottinick dated 9 June 2022 ('**LB1**'), 26 June 2022 ('**LB2**'), and 27 July 2022 ('**LB3**').

TCTA Third Country Transfer Agreement by which asylum-seekers are transferred from one State to another without prior determination of their asylum claims.

SSHD Secretary of State for the Home Department.

UNHCR Handbook Handbook on Procedures and Criteria for Determining Refugee Status.

UR Unique reference for individual Grounds of Appeal as set out in the Annex to the Order of the Court of Appeal dated 23 March 2023.

BUNDLE REFERENCES

Common Documents Bundle **[ComB/Tab/Page]**

AAA Appellants' Core Bundle **[AAACORE/Tab/Page]**

1 Described in J/§§18-27.

Core Authorities Bundle **[Auths/Tab/Page]**

Supplementary Authorities Bundle **[SuppAuths/Tab/Page]**

Judgment of Lewis LJ and Swift J of 19.12.2022 **[J/§xx]** at **[ComB/1/11-149]**

UNHCR Observations before the Divisional Court of 19.08.2022 **[Obs/§xx]** at **[ComB/12/650-677]**

A. INTRODUCTION

1. These proceedings concern the legality of a fundamental departure from the regime by which the UK has previously sought to comply with its international protection obligations. UNHCR is grateful for the Court's permission, by Order of the Vice-President dated 9 March 2023, to maintain its intervention.

2. In summary, UNHCR's position is that:

(1) Removal to Rwanda pursuant to the UK-Rwanda Arrangement will expose asylum-seekers to a real risk of breaches of the Refugee Convention, including onward refoulement, arising out of the failure to recognise refugees; and of serious harm contrary to Article 3 ECHR, notwithstanding the assurances. That assessment arises principally from UNHCR's knowledge of (a) systemic and acute flaws in Rwanda's RSD system for deciding individual asylum claims; and (b) incidents of actual or narrowly averted refoulement of asylum-seekers from Rwanda in a range of circumstances[2] (Section C below, addressing *AAA and others'* Ground 3 [UR 3]; *RM*'s Ground 3 [UR 7] and *AS*' Ground 2 [UR 6][3]).

(2) The Divisional Court (a) misdirected itself as to the special regard owed to UNHCR's reporting of facts and evaluations of risk relating to a domestic asylum system; and in any event, (b) misunderstood or overlooked (or if it considered, gave no reasons for treating as irrelevant) essential aspects of UNHCR's position and evidence concerning Rwanda (Section D below, addressing *AAA and others'* Ground 3 [UR 6]; *RM's* Ground 3 [UR 7]).

(3) Contrary to the approach of the SSHD and then the Divisional Court, there can be no lawful determination of whether a TCTA is compliant with Article 3 ECHR (and/or the Refugee Convention) for *Ilias* purposes[4], or whether assurances in this context suffice, for *Othman* purposes[5], without thorough examination of the current position in the Receiving State including any history of violations of the rights of asylum-seekers (Section E below, addressing *AAA and others'* Grounds 1-2, 4 [UR 1-2, 4]; *AS'* Ground 1 [UR 5]).

2 These are described in LB2 and LB3. The factual position referred to here is current as of 27 July 2022, the date of LB3.

3 References to individual Appellants' Grounds refer to the numbering supplied in their skeletons of 20 March 2023.

4 In accordance with the principles set out in *Ilias and Ahmed v Hungary* (2020) 71 EHRR 6 §§128-141 [Auths/69/2863-2865].

5 In accordance with the approach set out in *Othman v United Kingdom* (2012) 55 EHRR 1 §§187-189 [Auths/66/2681-2682].

(4) The UK-Rwanda Transfer Policy permits the Respondent, by reason of an asylum-seeker's mode of arrival in the UK, to make decisions (a) to treat their claim as inadmissible so that it cannot be processed in the UK; and (b) to cause any asylum claim processing to occur in the Rwandan RSD system, with its acute shortfalls in accessibility, effectiveness and fairness. Those decisions constitute the imposition of '*penalties*' '*on account of*' the asylum-seeker's '*illegal entry or presence*' in breach of Article 31 of the Refugee Convention. While the Court below noted that expulsion alone does not constitute a penalty, the detriment to which UNHCR points is the less favourable asylum system. The fact that the detriment would be accompanied by expulsion makes no difference to this point (Section F below, addressing *AAA and others'* Ground 6 [UR 11]; *RM's* Ground 4 [UR 12]).

B. UNHCR'S MANDATE AND EXPERTISE

3. UNHCR is entrusted, by the mandate conferred by the UN General Assembly[6], with supervision of the proper interpretation and application of the Refugee Convention. UNHCR employs 14,097 staff in 135 countries and territories, and has offices in 523 locations[7]. Its published guidance concerning the interpretation and application of the Refugee Convention *'"should be accorded considerable weight", in the light of the obligation of Member States under article 35 … to facilitate its duty of supervising the application of the provisions of the Convention*'[8].

4. UNHCR has been present in Rwanda since 1993 and, at the time of the evidence prepared for the hearing below, had 332 staff on the ground there[9]. UNHCR plays no official role in Rwanda's RSD system for individualised decision-making[10] and, notwithstanding provision for this in Rwandan legislation and UNHCR's requests[11], has been denied observer status in RSDC sessions.

6 Statute of the Office of UNHCR (annexed to UN General Assembly Resolution 428(V) of 14 December 1950) [Auths/78/3621-3627].

7 UNHCR *Global Report* 2021.

8 *Al Sirri v SSHD* [2012] UKSC 54; [2013] 1 AC 745, §36 [SuppAuths/15/489], applying observations originally made about the UNHCR Handbook, and approving them in relation to UNHCR's Background Note and Guidelines relating to exclusion clauses under the Refugee Convention.

9 For UNHCR's presence in Rwanda, see LB2 §§10-12 [ComB/96/1679].

10 UNHCR provides support for approximately 138,000 refugees in Rwanda, the overwhelming majority of whom are from neighbouring countries and have been recognised on a *prima facie* basis. Those figures include the Emergency Transit Mechanism, which involves evacuating vulnerable asylum-seekers from Libya to Rwanda, where UNHCR itself carries out status determinations, before submitting cases to a resettlement country for consideration: see LB2 §§11-16 [ComB/96/1679-1680].

11 LB2 §§19; 55; 90 [ComB/96/1681-1682; 1694; 1707]; LB3 §§33(e); 42 [ComB/104/1778; 1782].

Nonetheless, UNHCR's Rwanda offices and staff serve asylum-seekers in Rwanda, including intervening on their behalf where UNHCR becomes aware of a threat of imminent refoulement. UNHCR funds, trains and liaises with NGOs working with the Rwandan asylum system; loans, *ad hoc* and where asked and practicable, resources including interpreters to the Rwandan RSD system; interacts frequently with (and has on two occasions, most recently in December 2021, trained[12]) Rwandan officials charged with asylum decision-making, from senior to ground levels. UNHCR has been, albeit intermittently, sent by the Rwandan RSD authorities copies of asylum decisions, both at first instance and following appeals, as well as receiving information from asylum-seekers directly or through NGOs, enabling UNHCR to collate data and more fully to understand the practical realities and deficiencies of Rwanda's RSD system.

C. UNHCR'S POSITION CONCERNING TRANSFERS TO RWANDA

5. UNHCR was not informed of the UK-Rwanda Arrangement by either State party before it was announced, and the MoU published, on 14 April 2022[13]. Since then, UNHCR has consistently expressed its opposition and concerns, initially in dialogue with the SSHD (meetings in the UK and Rwanda on 14, 21 and 25 April)[14], then in public documents and in documents prepared for this litigation.

6. UNHCR will not lightly make public statements critical of Rwanda or of any other countries where it operates for the reasons explained in its witness evidence[15]. Nonetheless, there has been no room in these proceedings for any realistic doubt about UNHCR's position. Thus, for example:

   (1) On 8 June 2022, UNHCR published its *Analysis of the Legality and Appropriateness of the Transfer of Asylum-Seekers under the UK-Rwanda arrangement.* It concluded that the UK-Rwanda Arrangement '*contains inadequate safeguards to guarantee international protection*' and '*fails to meet the required standards relating to the legality and appropriateness of bilateral or multilateral transfers of asylum seekers*' [§§25-26][16].

12 LB2 §§90-97 [ComB/96/1707-1709].
13 LB2 §§131, 133 [ComB/96/1722].
14 LB2 §§134-136 [ComB/96/1722-1723] and see in particular the Respondent's note of the 25 April 2022 meeting at [ComB/92/1651-1653].
15 LB2 §5 [ComB/96/1676-1677] '*As a general rule, UNHCR's refugee protection responsibilities are delivered in partnership with states. Maintaining productive relations with the governments of those states, especially those hosting large numbers of refugees, is key to securing and maintaining access to protection for refugees. In addition to this consideration, UNHCR always needs to ensure the safety of its staff and associate organisations and the asylum seekers and refugees whom it serves on the ground.*'
16 [ComB/88/1638].

(2) On 9 June 2022, UNHCR's Acting Representative to the UK, Mr. Bottinick, wrote to the Minister for Immigration expressing concern over the SSHD's letters to asylum-seekers which described UNHCR's position wholly inaccurately[17]. These letters had also quoted, selectively, from a submission which UNHCR had made to the Universal Periodic Review in July 2020, at a time when there was almost no individual RSD decision-making and the overwhelming majority of Rwanda's refugees were still processed through a '*prima facie'* determination system[18]. UNHCR's letter explained[19]:

> *'UNHCR is concerned that asylum-seekers transferred from the UK to Rwanda will not have access to fair and efficient procedures for the determination of refugee status, with consequent risks of refoulement. … Rwanda has for decades been a generous and long- standing host to hundreds of thousands of refugees, primarily from neighbouring countries, however such protection is accorded on a prima facie basis, and Rwanda's national asylum system for the determination of refugee status on an individual basis is still nascent. UNHCR has highlighted the shortcomings of the Rwandan asylum system on a number of occasions, including in our public submission to the Universal Periodic Review in July 2020, directly to the Rwandan authorities, and in the course of interviews with UNHCR Rwanda by Home Office personnel in Rwanda on 21 March and 25 April, 2022'* [emphasis added].

(3) At the interim relief hearing before Swift J on 10 June 2022 UNHCR exhibited these documents to LB1; and explained its '*serious concerns … that shortfalls in capacity together with unfair practices at various stages in the asylum procedure, will lead to direct or indirect refoulement*'[20].

(4) The NVs, signed on 14 April 2022 but then unpublished, were disclosed to UNHCR by the SSHD partway through the interim relief hearing of 10 June 2022[21]. In the appeal against the refusal of interim relief, UNHCR's '*unequivocal position* [was] *that (a) the flight on 14 June 2022 to Rwanda should not proceed; and more generally (b) removals to Rwanda under the UK-Rwanda agreement should be suspended*'[22]. It warned that '*there* [was] *a real risk of … onward refoulement occurring under the UK-Rwanda Arrangement. The intentions expressed in the Notes Verbales do not remove that risk'*[23] [emphasis added].

17 [ComB/89/1640-1641].

18 Under which, as explained above, refugee status is granted to nationals of a particular country (or nationals of a country sharing particular characteristics) without individualised consideration of claims. Rwanda's RSD system is however still nascent, as explained at LB2 §§22-23 [ComB/96/1683].

19 [ComB/89/1640-1641].

20 UNHCR, 'Written Submissions of the Proposed Intervener' 10 June 2022 §§6-7 [ComB/90/1643-1645].

21 LB2 §141 [ComB/96/1724].

22 UNHCR, 'Written Submissions of the Proposed Intervener' 11 June 2022 §7 [ComB/93/1656].

23 UNHCR, 'Written Submissions of the Proposed Intervener' 11 June 2022 §31 [ComB/93/1663]; see also §§22; 26-31 [ComB/93/1660-1663].

(5) LB2 details UNHCR's concerns about the RSD system in Rwanda, and about the assurances contained in the MoU and the NVs. UNHCR was concerned that '*Rwanda's serious capacity issues cannot be addressed within a short space of time'* and that *'many of the problems in Rwanda's RSD system are structural and not susceptible to change through a process such as the MoU or Notes Verbales'*[24]. The statement concludes with a warning that:

> *'asylum seekers transferred to Rwanda are at serious risk of both direct and indirect refoulement and will not have access to fair and efficient asylum procedures, adequate standards of treatment or durable solutions, in line with the requirements set out in international refugee law'*[25] [emphasis added].

(6) LB3 provides further detailed evidence about the Rwandan asylum system and takes into account the responses of the GoR to UNHCR's concerns. It concludes that, notwithstanding those responses,

> *'[t]he Memorandum of Understanding and Notes Verbales between the UK and the GoR and the commitments described in the SSHD's evidence do not suffice to establish an accessible, reliable or fair asylum system in Rwanda';* that there remains *'a real risk of direct and indirect refoulement for those transferred to Rwanda under the UK-Rwanda Arrangement'*[26]*;* and that *'UNHCR is concerned that the GoR's response to UNHCR's evidence has not acknowledged current problems of lack of capacity, training or expertise; of arbitrariness, lack of due process or unfairness. Rather, the GoR's response has: (i) denied the existence of facts of which UNHCR is certain, including in respect of refoulement and access to asylum …; or (ii) acknowledged the facts but denied that these constitute a breach of the Refugee Convention even where these manifestly do'*[27] [emphasis added].

(7) UNHCR's Written Observations before the Court below set out again, at §60, UNHCR's specific warning [ComB/12/677]

> '*… unequivocally, against the transfer of asylum seekers to Rwanda under the UK-Rwanda Arrangement, which would expose refugees to a serious risk of refoulement'.*

The Written Observations also stated (§51) [ComB/12/672] that

> '*the MoU and Process NV can provide no sufficient answer to the basic and fundamental defects in the Rwandan RSD system identified by UNHCR, nor to the consequent serious risks of refoulement and moreover of wrongful denial of other rights and protections owed to refugees, for those transferred under the UK-Rwanda Arrangement*' [emphasis added].

24 LB2 §§142-147 [ComB/96/1725-1727]. The reasons for the concerns are particularised there.
25 LB2 §148 [ComB/96/1727].
26 LB3 §52 [ComB/104/1785-1786].
27 LB3 §50 [ComB/104/1785].

7. Each of the above documents represents UNHCR's considered organisational view, following stringent internal approval procedures including careful review and contribution by UNHCR staff in Rwanda; in the Regional Bureaux for East and Horn of Africa and the Great Lakes and for Europe; in UNHCR headquarters in Geneva; and in UNHCR's London offices. The LB2 and LB3 statements were moreover the product of[28]:

> '*close engagement, including through numerous calls by telephone and Zoom, with UNHCR staff in Kigali and in UNHCR's Regional Bureau for the East, Horn of Africa, and Great Lakes in Nairobi*'; '*careful…review…*' by those staff of '*the records and other information available to UNHCR based on the organisation's first-hand experience in Rwanda*'; and '*many hours of liaison with UNHCR staff in Geneva and in person discussions with … London colleagues*'.

Further, the statements had been reviewed in draft form[29]:

> '*by senior staff in UNHCR offices in Geneva, London, Kigali, and Nairobi, who … also commented, and provided authorisation*'.

Key aspects of UNHCR's evidence below

Flaws in Rwanda's RSD system

8. Before the Divisional Court, UNHCR gave evidence that: '*Rwanda's RSD process is marked by acute arbitrariness and unfairness, some of which is structurally inbuilt, and by serious safeguard and capacity shortfalls, some of which can be remedied only by structural changes and long-term capacity building*'[30]. Three examples illustrate the point:

(1) UNHCR identifies the unacknowledged 'gatekeeper' role of the DGIE as a key flaw in Rwanda's RSD system. The DGIE, under Rwandan law, is not authorised to reject asylum claims[31]; as the GoR agrees[32]. Yet, notwithstanding the GoR's apparent denials[33], UNHCR is aware that the DGIE rejects certain asylum claims without written notification, still less reasons[34]. UNHCR's data shows that of the 319 asylum claims in Rwanda from 2020 until 21 June 2022 of which UNHCR was aware, 8% were summarily rejected by the DGIE[35], the latter figure, as UNHCR explained being likely a significant undercount[36]. Moreover the '*acutely inadequate'* 20-30 minute DGIE interview

28 LB3 §2 [ComB/104/1763].
29 Ibid
30 LB2 §148 [ComB/96/1727].
31 LB3 §24a [ComB/104/1772].
32 GoR Response [ComB/67/1335].
33 GoR Response [ComB/67/1335]; KA1/47, row 27 [ComB/76/1401].
34 LB2 §41f [ComB/96/1690].
35 Exhibit 1 to LB3 [ComB/105/1788].
36 LB3 §8b [ComB/104/1766].

(the brevity of which is denied by the GoR)[37] may be an asylum-seeker's only interview[38]; lawyers and other representatives are excluded[39]; and the DGIE makes recommendations to the RSDC which are not shown to the asylum-seeker, another fact denied by the GoR[40]. As the GoR has never accepted that the DGIE plays that role in the system, it has taken no steps to address the issue. On the contrary, the DGIE would continue to perform a key role in the RSD system under the UK-Rwanda Arrangement including the '*majority of the work on case preparation*'[41].

(2) UNHCR has identified serious deficiencies in the right to be heard. There is no guaranteed hearing; nor any other guaranteed opportunity to make representations after the initial DGIE interview, up to and including MINEMA level. The formal decision-making body, the RSDC, which may consider as many as 40 cases in a single session[42] does not automatically notify asylum-seekers when it is sitting, still less necessarily interview them or hold a hearing[43]. The eligibility officer (a single person for Rwanda's entire RSD System, at least at the time of UNHCR's evidence[44]) may interview certain asylum-seekers but this is *ad hoc* rather than guaranteed[45]. The appeal to the Minister (MINEMA, which UNHCR considers to lack independence from the tier below[46]) may occur on the papers. Lawyers are not permitted at the RSDC or MINEMA sessions, even in those instances where asylum-seekers are invited to attend[47]. The GoR and SSHD pointed to the possibility in Rwandan legislation of a further appeal to the High Court despite that route being untested[48]. While the assurances provide for legal *"assistance"* at all levels, legal representation is only assured at the level of the High Court appeal[49].

(3) The deficit of reasons in Rwandan written asylum decisions is in UNHCR's view indicative of a cursory approach to decision-making [Obs/§18(10)] [ComB/12/662]; and in any event, unfair and an impediment to effective exercise of appeal rights. Rwandan law already requires the provision of written reasons by the RSDC[50]; and the MoU guarantees these[51]. Nonetheless, over three months after the MoU was signed, UNHCR still received copies of decisions bereft of reasons[52].

37 KA2/4 [ComB/67/1335].

38 LB2 §41a [ComB/96/1689].

39 LB2, §41c [ComB/96/1689].

40 LB2 §§40, 41g [ComB/96/1688; 1690]; cf GoR Response [ComB/67/1335]; cf Annex A CPIN [ComB/20/893].

41 As explained in a document entitled 'The United Kingdom and Rwanda Migration and Economic Development Partnership (MEDP): pre-departure assurance' [ComB/78/1424]. The DGIE may still conduct the only asylum interview in the system envisaged under the MoU (Process NV §§4.3.2, 4.4 '*the asylum interview*' [ComB/14/696]; see also the pre-departure assurance document at [ComB/78/1425]). The DGIE will still have responsibility for registering the asylum claim and for issuing initial temporary residence permits [ComB/68/1342; 1347; 1348]. The DGIE will also still determine the information that is passed to the RSDC [ComB/78/1425]; will still sit on the RSDC (LB2 §49 [ComB/96/1693]; Williams 1 §35 [ComB/29/1077] and see Prime Minister's Order No.112/03 of 19.06.2015, Art. 3 [ComB/36/1127-1128]); and will still have responsibility for extending temporary residence permits [ComB/78/1433]. It is also intended that the DGIE will handle complaints about the asylum process [ComB/78/1425; 1428].

42 LB3 §10 [ComB/104/1766].

43 LB2 §§56-59 [ComB/96/1694-1696].

Refoulement

9. UNHCR's evidence below detailed instances of actual or narrowly averted refoulement from Rwanda and explained that these were '*likely to be a significant underrepresentation'* of the true prevalence of the practice[53].

10. UNHCR's evidence relating to events at Kigali airport showed that the GoR expelled individuals in circumstances which constituted, or threatened to give rise to, refoulement:

    (1) in the face of a UNHCR Note Verbale warning that '*removal would be inconsistent with Rwanda's obligations'* under the Refugee Convention '*and the principle of non-refoulement*' (two Libyans removed from Kigali airport in February 2021[54]);

    (2) during the period in which the assurances were under negotiation (two Afghan airport cases, chain refouled to Afghanistan on 24 March 2022[55]); and also

    (3) after the MoU had been concluded (a Syrian airport case, chain refouled to Syria on 19 April 2022[56]).

11. UNHCR's evidence also referred to 34 individuals from a country with which Rwanda enjoys close bilateral relations[57] who sought to claim asylum inside Rwanda but whose claims were peremptorily rejected by the DGIE. At least three of these asylum-seekers were forcibly expelled to the Tanzanian border; another two were instructed to leave Rwanda within days; another at least two were threatened with direct expulsion to their country of origin. In at least one case, the Rwandan authorities confiscated the individual's passport at the request of the authorities of the individual's country of nationality. These '*cases give UNHCR serious concern that DGIE decision-making is influenced by considerations of Rwanda's international relations*'[58].

12. That evidence of serious flaws in Rwanda's RSD system and of refoulement from Rwanda required from the Court, but with respect did not appear to receive, careful analysis and clear conclusions, as addressed in the next Section.

44 LB3 §25 [ComB/104/1773].
45 LB2 §44 [ComB/96/1692].
46 LB2 §72 [ComB/96/1703].
47 LB2 §60(j) [ComB/96/1697]; LB3 §28(a)-(b) [ComB/104/1774].
48 GoR Response [ComB/67/1335]; cf LB3 §31 [ComB/104/1775].
49 LB3 §28b [ComB/104/1774]; MoU §§9.1.2, 13.3 [ComB/13/685; 687]; Process NV 7.2-3, 8.1 [ComB/14/698].
50 LB2 §61 [ComB/96/1697-1699].
51 Process NV §4.9.2 [ComB/14/697].
52 LB3 §27c [ComB/104/1773]; Exhibit 5 to LB3 [ComB/109/1800].
53 Refoulement Table, General Note 1 [ComB/113/1810]; see further LB2 §§30, 108-113 [ComB/96/1685; 1711-1715]; LB3 §16 [ComB/104/1768-1769].
54 LB2 §108a [ComB/96/1711-1713]; LB3 §13a [ComB/104/1767] and [ComB/106/1790].
55 LB2 §108b [ComB/96/1713]; LB3 §13b [ComB/104/1768].

D. APPROACH TO UNHCR'S EVIDENCE

The Court's self-direction

13. The Divisional Court considered that the question that it was required to answer was '*whether, notwithstanding the opinion that UNHCR has now expressed, the Home Secretary was entitled to hold the contrary opinion*' [J/§70]. In answering that question, the Court addressed [J/§71] '*the weight to be attached to evidence and conclusions of fact set out in UNHCR reports and other materials*'. It stated that the '*several authorities'* which had considered that question '*speak with one voice: that evidence carries no special weight; it is to be evaluated in the same manner and against the same principles of* [sic] *as any other evidence*'. The Court concluded that the context of the present case '*renders the conclusion clearer still*'; that UNHCR's assessment '*carries no overriding weight*'; and that the SSHD's opinion was not '*undermined to the extent it can be said to be legally flawed*'. UNHCR respectfully highlights its concerns as to the Divisional Court's approach in the following aspects.

The required approach to UNHCR's evidence

14. The Divisional Court was correct to direct itself in general terms that ordinary principles of evidence apply to evidence adduced by UNHCR[59]. However, the application of ordinary principles to the evidence of UNHCR does not mean that its evidence has no special weight in relation to matters within UNHCR's expertise.

15. As to '*special weight'*, respect or regard generally:

    (1) The Court of Appeal has explained, in comments cited with approval by the Supreme Court, that UNHCR '*is today the holder of an internationally respected office with an expert staff (numbering 7,190 in 120 different states*[60]*), able to assemble and monitor information from year to year and to apply to it standards of knowledge and judgment which are ordinarily beyond the reach of a court. In doing this, and in reaching his conclusions, he has the authority of the General Assembly of the United Nations, by whom he is appointed and to whom he reports. It is intelligible in this situation that a supranational court should pay special regard both to the facts which the High Commissioner reports and to the value judgments he arrives at within his remit*'[61].

    (2) As Elias LJ observed in *HF (Iraq) v SSHD* [2013] EWCA Civ 1276; [2014] 1 WLR 1329 ('***HF (Iraq)***') §43 [SuppAuths/21/691]*,* '*the authorities which demonstrate the considerable respect which the courts afford to UNHCR material are entirely consistent with the conventional view that questions of weight are for the court'*.

56 LB2 §108c [ComB/96/1713]; LB3 §13c [ComB/104/1768].

57 See LB3 §§18-19 [ComB/104/1769-1771]; Refoulement Table case studies nos. 7-40 [ComB/113/1813-1814].

58 LB2 §112 [ComB/96/1714-1715].

59 Certain of those principles are set out in *AAA and others'* Skeleton Argument of 20 March 2023 §21 [AAACORE/3/46].

60 The figures now are significantly higher, see [4] above.

(3) In *Ilias and Ahmed v Hungary* (2020) 71 EHRR 6 ('***Ilias***') the Grand Chamber noted the status accorded to UNHCR in the CEAS (*Ilias* §47)[62] and itself characterised UNHCR's reports as '*authoritative*' (§§141; 163) [Auths/69/2865; 2869]. The Hungarian authorities' failure to '*address … in substance or in sufficient detail the concrete risks pinpointed there and, in particular, the risk of arbitrary removal in the two applicants' specific situation*' was one of the key factors contributing to the finding that Hungary had breached Article 3 EHCR (§§160; 163) [Auths/69/2868-2869].

16. UNHCR considers that the following must be taken into account when determining the weight to be attached to UNHCR's evidence in a given case:

(1) The extent and duration of UNHCR's presence in the Receiving State;

(2) The degree to which the matters to be resolved fall within UNHCR's specific expertise. UNHCR has '*unique and unrivalled expertise … in the field of asylum and refugee law*'[63]. Where, as here, UNHCR evaluates a national RSD system to be deficient, that assessment reflects both (a) UNHCR's conclusions as to the essential minimum safeguards for an accessible, reliable and fair RSD system [Obs/§18] [ComB/12/656-664] a matter at the heart of its mandate and expertise, and also (b) its specific institutional knowledge of the position on the ground and the extent to which those safeguards exist and are complied with in practice. Thus the Courts attach particular weight to UNHCR's assessments of the adequacy of asylum systems in proposed safe third countries (see §17(1)-(2) below).

(3) Whether there are competing sources of information and, if so, the expertise and independence of those sources;

(4) The form of UNHCR's evidence, including the level of detail supplied; the methodology by which it has been prepared; and the rigour of internal approval and checking to which it has been subjected;

(5) The strength of any recommendation by UNHCR and, in particular, the difference between cases where UNHCR requests a case-by-case assessment of individual protection claims (and gives guidance about factors relevant to that assessment) and far rarer cases in which UNHCR unequivocally recommends an embargo on returns; and moreover

(6) The static and always significant factors of UNHCR's global presence, authority, overview and mandate, including '*the entirely non-political character of its work*'[64].

61 *R (EM (Eritrea)) v SSHD* [2012] EWCA Civ 1336; [2013] 1 WLR 576, §41 [SuppAuths/17/546], per Sedley LJ, approved by Lord Kerr in *EM (Eritrea) v SSHD* [2014] AC 1321, §§71-72 [Auths/38/1230-1231].

62 The Court cites para. 48 of the Preamble to the Recast Asylum Procedures Directive (*Directive 2013/32/EU*) which states that: '*In order to ensure the correct application of the safe country concepts based on up-to-date information, Member States should conduct regular reviews of the situation in those countries based on a range of sources of information, including in particular information from other Member States, EASO, UNHCR, the Council of Europe and other relevant international organisations.*' [Auths/69/2837-2838]

63 *EM (Eritrea) v SSHD* [2014] AC 132, §72 [Auths/38/1231].

17. As to §16(5) above, the importance of the distinction between an unequivocal warning and an exhortation to case-by-case assessment became apparent in a series of cases which, like the present, concerned removal of asylum-seekers to safe third countries:

    (1) In *MSS v Belgium and Greece* (2011) 53 EHRR 2 ('***MSS***'), the Grand Chamber of the ECtHR attached '*critical importance*' (§349) to UNHCR's '*unequivocal plea for the suspension of transfers to Greece*' [Auths/65/2589].

    (2) In *EM (Eritrea) v SSHD* [2014] AC 132, Lord Kerr contrasted UNHCR's '*pointed and direct*' criticisms of Greece in *MSS* with the '*more muted contents*' of UNHCR's reports on Italy: whilst the reports on Greece had had a '*pre-eminent and possibly decisive quality*', it was of '*obvious significance*' that UNHCR had not recommended a general suspension of returns to Italy, and its '*useful information*' should '*form part of the overall examination of the particular circumstances of each of the appellant's cases, no more and no less*' (§§72-74) [Auths/38/1231].

    (3) In *R (Tabrizagh) v SSHD*, Laing J (as she then was) contrasted UNHCR's '*recent … call on member states to suspend Dublin returns to Bulgaria, and … in relation to Greece*' with the absence of any such call from UNHCR in respect of Italy[65]. On appeal to the Court of Appeal, the claimant sought to argue that Laing J had attached too much weight to the UNHCR reports and relied particularly upon Lord Kerr's reference to UNHCR reports forming '*part of the overall examination […] no more and no less*'[66]. Refusing permission, the Court of Appeal emphasised that this reference '*was clearly not intended to undercut*' Lord Kerr's confirmation of the '*special regard*' which could legitimately be given to UNHCR's reports[67].

    (4) In *R (HK and others) v SSHD* [2017] EWCA Civ 1871, Sales LJ (as he then was) concluded that there was '*high authority*' for the proposition that in this context '*the view of the UNHCR was of considerable importance*' (§28) [SuppAuths/24/1004]. The judge below had been entitled to '*place… particular weight on*' the fact that, having previously recommended a '*suspension of returns to Bulgaria*' (§§30-31; 36-37) [SuppAuths/24/1004-1007], UNHCR had replaced that with a recommendation for case-by-case examination.

64 Statute of the Office of UNHCR (annexed to UN General Assembly Resolution 428(V) of 14 December 1950) Art. 2 [Auths/78/3617]. 11

65 *R (Tabrizagh) v SSHD* [2014] EWHC 1914, §§87-88; see also §167.

66 *R (Tabrizagh) v SSHD* [2014] EWCA Civ 1398, §19 per Underhill LJ [Auths/37/1203] (permission decision but citable: see §33) [Auths/37/1206].

67 Ibid, §20 [Auths/37/1203]. Underhill LJ emphasised that it was also '*important not to go to the opposite extreme and treat the reports or the views of the UNHCR as decisive*'; UNHCR had itself '*disclaimed any role as an arbiter*' (Ibid). Similarly, in *Mhute v SSHD* [2003] EWCA Civ 1029, the Court of Appeal rejected a submission that the Tribunal had been *bound* to follow a call for a halt to removals to Zimbabwe.

18. There are good reasons why an unequivocal warning from UNHCR to refrain from removals to a particular destination (generally or for a sub-category of asylum-seeker) carries particular weight. A direct and public request for an embargo on 'safe third-country' returns to a country where UNHCR works is an exceptional step, occurring only when UNHCR has formed the view that the evidence is sufficiently strong and the risk sufficiently high. UNHCR, which works in close partnership with States and whose field-work requires it to maintain constructive relations with the States in which it operates, does not take that step lightly. While the absence of a '*call for a halt'* by UNHCR should not be treated as '*a clean bill of health*' (as the Supreme Court has observed), such a call from UNHCR has been accorded '*pre-eminent weight'*[68].

19. Any consideration of the factors at §16 above in the present case would have recognised that (a) UNHCR has a sustained presence in Rwanda (§4 above); (b) UNHCR's evidence concerns issues falling squarely within its field of expertise, namely RSD processes and risks of refoulement, issues which UNHCR is tasked with supervising in the field; and concerning which it issues general guidance often treated as authoritative[69]; (c) UNHCR's detailed evidence was prepared with the careful methodology and rigorous checking and approval described at §7 above; (d) there is no other independent body with the mandate, access, expertise and resources to be reliably capable of verifying the state of Rwanda's RSD system[70]. Rather, the SSHD is dependent upon what she is told by the GoR, which is not an independent source and whose evidence is often unparticularised and at times internally contradictory or regrettably factually inaccurate[71]. Finally and importantly, UNHCR has stated unequivocally that asylum-seekers should not be transferred to Rwanda[72].

The approach the Court in fact took

HF (Iraq) and AS (Afghanistan

20. The Divisional Court did not evaluate UNHCR's evidence by reference to the factors described at §16 above or otherwise. Rather, the Court relied upon the approach to UNHCR's evidence in *HF (Iraq)* [SuppAuths/21/675] and in *AS (Afghanistan) v SSHD* [2021] EWCA Civ 195 ('***AS (Afghanistan)***') [SuppAuths/37/1391]. These two cases concerned humanitarian conditions in countries suffering from internal armed conflict; in each, the specialist tribunal had departed to some degree from UNHCR eligibility guidelines. The Court below

68 *EM (Eritrea) v SSHD* §§71, 73 [Auths/38/1230-1231].

69 See e.g., in addition to *Al Sirri* (fn 8 above), *R v SSHD ex p Adan and Aitseguer* [2001] 2 AC 477 at 520, Lord Steyn referring to the UNHCR Handbook as having '*high persuasive authority*' [Auths/25/747].

70 SSHD's disclosure bundle 13 July 2022, from 3 March 2022 note: '*We also currently have no independent verification of what we have been told by Country X*' [ComB/49/1207].

71 For examples, see [Obs/§§18(5); 18(7); 18(8); 18(9); 18(11); 18(12); 18(13); 27; 30.4-5] [ComB/12/658-664; 666-669].

72 See §6 above.

without elaboration, that the difference in context between the present case and those two cases '*renders the conclusion clearer still.*' *HF (Iraq)* and *AS (Afghanistan)* were indeed cases in a different context but it is not apparent how that supports the conclusion that UNHCR's evidence in this case carries no special weight. Applying the factors at §16 above, differences in context suggest that UNHCR's evidence was of greater, not lesser, significance in the present case. Neither *HF (Iraq)* nor *AS (Afghanistan)* concerned asylum procedures or reception conditions. In both cases, UNHCR was one of many independent, authoritative sources. There was no unequivocal warning at all in *HF (Iraq)*[73].

21. Indeed, *dicta* in *HF (Iraq)* indicated a very different approach from that taken in the present case. In the country guidance decision under appeal in *HF (Iraq),* '*a raft of reports from various international, state and non-governmental organisations*' had been considered[74]. Elias LJ rejected the comparison that counsel for the appellants had sought to draw with certain domestic authorities concerning presumptively binding conclusions by specialist, expert bodies. He stated that those were '*all cases where a specialist body has reached a finding or findings of fact in the exercise of its statutory function. It is generally not rational for another executive body simply to reject such findings without good reason. If the only evidence available to the Upper Tribunal about risk on return had been the UNHCR report, no doubt there would be room for the same principle to apply*' [§47, emphasis added] [SuppAuths/21/692]. In the present context, the '*only evidence available'* which is independent, reliable and detailed, is that of UNHCR. The availability of assurances did not vitiate the need for cogent reasons if UNHCR's evidence was to be rejected.

The proper question for the Court

22. The Appellants contend[75] that the Divisional Court was required to determine for itself (a) the risk of a Refugee Convention breach, as a matter of domestic law (owing to s.2 Immigration and Asylum Act 1993, the principles in *Gillick v West Norfolk and Wisbech AHA* [1986] AC 112 and/or those in *R (Munjaz) v Mersey Care Trust* [2006] 2 AC 148); and also (b) the risk of serious harm as a matter of Article 3 ECHR as given effect by domestic law. The Court below appeared to consider it uncontroversial that it should determine risks of refoulement for itself[76]. UNHCR observes that the Divisional Court did not, in fact, do so, as is particularly stark in the question it asked itself concerning UNHCR's evidence (see §13 above).

73 In *HF (Iraq)* [SuppAuths/21/675], UNHCR had recommended a case-by-case assessment, and provided guidance to assist in that consideration. In *AS (Afghanistan)*, UNHCR had warned unequivocally against treating Kabul as a suitable final place of relocation for people originating elsewhere in Afghanistan (§§8; 14) [SuppAuths/37/1393-1394] but the tribunal below had given good reasons for disagreeing (§§16; 23) [SuppAuths/37/1395-1397].

74 *HF (Iraq) v SSHD* [2013] EWCA Civ 1276 §§24; 44 [SuppAuths/21/685; 691]. The Upper Tribunal had listed 720 documents which it considered, including many detailed reports by major international organisations.

75 Appellants' Skeleton Arguments dated 20 March 2023 in *AAA and Ors* §§25; 35; 37-38; 47-48; 54; 55; *RM* §§37-42 and *AS* §§38; 57; 70.

76 Divisional Court's judgment on consequential matters [2023] EWHC 55 (Admin) §§17-18 [ComB/2/157-158].

Suggestions of inconsistency

23. The Divisional Court also suggested that UNHCR's position had been inconsistent in two respects.

    (1) First, the Court recorded an oral answer on behalf of UNHCR '*on instructions*' that Rwanda could not be relied upon to comply with its Refugee Convention obligations and with its obligations under the assurances[77] and declared it '*surprising that this opinion was stated through counsel at the hearing rather than in any of the witness statements*' [J/§§69, 70, emphasis added]. That was not a conclusion that the Court could properly reach in light of UNHCR's statements since 14 April 2022 (see §6 above) and in particular its witness statements[78]. Indeed, it was clear beyond doubt, by the 5 July 2022 decision-letters at the very latest, that the SSHD understood UNHCR's position[79]. Notwithstanding the Court's caveat ('*be that as it may'*) the error persisted in the Court's ultimate approach to UNHCR's assessment of risk, which the Court treated as '*the opinion that UNHCR has now expressed*' [J/§70, emphasis added].

    (2) Second, the Court suggested '*for what it is worth*' that UNHCR's position '*now expressed*' did not sit *'particularly easily'* with UNHCR's '*previously published views*' as to which it cited the July 2020 submission to the Universal Periodical Review. That too was unsustainable since the July 2020 submission, inevitably given its date, principally concerned Rwanda's *prima facie* asylum system; it moreover already pointed to serious flaws in Rwanda's nascent individualised RSD system[80], as UNHCR's 9 June 2022 letter to the Minister explained (see §6(2) above)[81].

77 For the exact words, which were put to UNHCR's counsel by the Bench, see the transcript at [ComB/115/1830-1832].

78 Where a State gives assurances that it will comply with the Refugee Convention, there is no material difference between (a) an assessment that a real risk of refoulement exists notwithstanding the assurances; and (b) an assessment that the giver of the assurances cannot, in light of the combined factors of the history of refoulements from that State and the defects in its RSD system, be relied upon to comply with its obligations under the Refugee Convention or, by extension, with the assurances. Both assessments address the capacity and capability of the giver of assurances (including their understanding of the international obligations which are the subject of those assurances); the sufficiency of the assurances on their face to address extant defects; and potentially also the question of good faith. 'Real risk' refers to breach of individual rights under the Refugee Convention; reliability refers to breach of State obligations; these are two sides of the same coin.

79 On 5 July 2022, the SSHD took fresh decisions in relation to various of the claimants, partly in order to take account of the material now received from UNHCR (see for example the decision *in AAA*'s case [AAACORE/18/664]). All contained similar summaries of '*UNHCR's view that the assurances in the MEDP's MoU and notes verbales cannot be relied upon given that they include features which either do not exist at present or they are unaware of capacity building by Rwanda which would indicate their ability to deliver on them.*' [Emphasis added].

80 See fn 19 above, and the explanation at LB2 §22-23 [ComB/96/1683] for the distinction between the 'prima facie' system and the RSD under consideration for transfers from the UK.

81 See also LB3/§40 [ComB/104/1781].

Practical realities of Rwanda's RSD system – lack of conclusions

24. At §18 of its Observations below, UNHCR identified 15 areas in which Rwanda's RSD procedure lacks '*irreducible minimum components of an "accessible" and "reliable" asylum system'*. UNHCR considers that, separately and cumulatively, these deficiencies give rise to inadequate decision-making and a real risk of onward refoulement [Obs/§19] [ComB/12/656-664].

25. It is unclear whether the Court (which referred at no point in its Judgment to the existence or contents of UNHCR's Written Observations) rejected UNHCR's account and/or evaluation of the failures of Rwandan's RSD system to meet core minimum standards. The question of whether that RSD system is adequate is critical, particularly because the GoR stresses that no 'parallel' system will be created[82].

Refoulement – lack of conclusions

26. UNHCR highlights as cause for great concern the (a) repeated incidence of refoulement from Rwanda; (b) sustained and legally baseless GoR denial that its actions constituted prohibited refoulement; (c) persistence with refoulements in circumstances where UNHCR's scrutiny or the context of the MoU might be thought to incentivise compliance; and (d) incidents of actual or threatened refoulement on the apparent basis of Rwanda's external relations. Considerably less was capable of demonstrating real risk[83]: it is unnecessary, in the context of a 'real risk' assessment, to identify a precise historic match for the circumstances in which transfers would occur under the UK-Rwanda Arrangement[84].

27. The specific facts identified by UNHCR as constituting refoulement were apparently not contested[85]. Rather, the GoR issued a blanket denial of refoulement, and a specific explanation that, in certain cases, the events had not, in the GoR's view amounted to refoulement as a matter of law[86]. Indeed, as concerned airport pushbacks, the GoR Response referred to what appeared to be another four such cases of which UNHCR had been unaware[87]. The SSHD does not appear to have questioned the GoR's misunderstanding, instead relying upon the GoR's denials[88].

82 GoR Statement of 2 July 2022 ['**GoR Statement**'] [ComB/68/1347]; see also email from Kristian Armstrong, 17 June 2022 [ComB/65/1327].

83 *R v SSHD ex p Bugdaycay* [1987] AC 514 at 533-534 [Auths/20/547-548] illustrates the point. That case turned upon the SSHD's failure to investigate '*an obscurely drafted affidavit'* demonstrating that the Receiving State had '*at some unspecified time in the past been guilty to an unspecified extent*' of expulsions and had elicited a '*protest from the UNHCR*'.

84 These refoulements are important in that they have continued while the MoU was in prospect and then signed, see §10 above and (along with the GoR's subsequent explanations) indicate the GoR's ongoing failure to understand or abide by fundamental obligations under the Refugee Convention. That is so notwithstanding UNHCR's view [Obs/§28] [ComB/12/667], on the evidence available to it, that, at least for initial transfers under the UK-Rwanda Arrangement (when that Arrangement is likely to be under greatest scrutiny) there would be no real risk of this particular form of refoulement, namely expulsions from Kigali Airport. UNHCR emphasises that this view is limited to *initial* transfers: certain individuals transferred to Rwanda under the Israel-Rwanda Agreement were indeed taken from Kigali airport to Uganda, resulting in narrowly-averted refoulement, see LB2 fn 50 [ComB/96/1720].

27. The specific facts identified by UNHCR as constituting refoulement were apparently not contested[85]. Rather, the GoR issued a blanket denial of refoulement, and a specific explanation that, in certain cases, the events had not, in the GoR's view amounted to refoulement as a matter of law[86]. Indeed, as concerned airport pushbacks, the GoR Response referred to what appeared to be another four such cases of which UNHCR had been unaware[87]. The SSHD does not appear to have questioned the GoR's misunderstanding, instead relying upon the GoR's denials[88].

28. However, the Divisional Court substantively addressed neither the individual instances of actual or narrowly averted refoulement identified by UNHCR, nor their cumulative significance. The Court was also silent concerning the GoR's misunderstanding of the prohibition of refoulement. The Court noted, instead, only '*two matters'* in UNHCR's evidence concerning Rwanda's asylum system: the state of Rwandan law and the confidentiality of asylum claimants: [J/§55].

29. UNHCR's concerns over the Judgment are compounded by the Court's comment [J/§54] that '*[t]he use of the same word [refoulement] to describe so many different matters risks confusion*' and its restraint from definition ('*however the term is used'*). Far from 'refoulement' being a fluid term whose definition is a matter of semantic dispute, the meaning of the term is fixed by international refugee law. The broad definition of refoulement (which, contrary to its use by the GoR, includes indirect refoulement and also refoulement to a place of persecution other than the State of nationality [Obs/§§6-7] [ComB/12/653-654]) reflects the fundamental obligation under Article 33(1) not to refoule a person '*in any manner whatsoever'*[89].

30. In the circumstances, it is impossible to know from the Judgment whether the Court considered that incidents of actual or narrowly averted refoulement, at different stages of the asylum process, described by UNHCR were proven, were prohibited conduct (and if not, why not), or were simply irrelevant (and if so, why). Nor (crucially) is it possible to know from the Judgment whether the Court considered that the GoR's response was evidence of a failure to appreciate fundamental obligations under the Refugee Convention and if so, what impact that would have on the likely efficacy of the assurances obtained under the MoU or the NVs, which are the subject of the next Section.

85 Albeit the GoR, while accepting that it had removed Syrians and Afghans, denied any refoulements to Syria or Afghanistan: see Refoulement Table, right-hand column [ComB/113/1810-1812]. The SSHD is wrong to suggest (SSHD's Submissions on Permission to Appeal §6(2) dated 3 March 2023) that there is a *'factual dispute between UNHCR and Rwanda*' regarding the airport pushbacks. Any dispute concerns not the facts, but the legal characterisation of what occurred.

86 GoR Response [ComB/67/1334], which refers to the UNHCR's concerns regarding airport refoulement as "*standard immigration practice*", and [ComB/67/1339]; GoR Statement, §§11-13 [ComB/68/1345-1346]; and KA2/4 row 21 [ComB/76/1398] and row 27, where it is indicated that '*Cases referred to by UNHCR are not recognised as refoulement because all those cases are foreigners who have been refused entry visa because they were using forged documents and thus, not meeting immigration entry requirements*'; see further row 34 [ComB/76/1408].

87 LB3 §16 [ComB/104/1768-1769].

88 KA/1 §§83-90 [ComB/26/1044-1046] and exhibits to KA/1 including GoR Response [ComB/67/1333] and GoR Statement [ComB/68/1341]. 16

E. ASSURANCES

Ilias and assurances

32. Ilias requires a State entering into a TCTA to conduct a '*thorough examination'* of '*the accessibility and functioning of the receiving state's asylum system and the safeguards it affords in practice'* (*Ilias*, §§139, 141, emphasis added) [Auths/69/2865]. The '*thorough examination'* is a fundamental procedural duty upon the Transferring State, and the same duty arises under the Refugee Convention, for reasons set out in UNHCR's Written Observations below [Obs/§§11-16] [ComB/12/655-656]. The procedural duty is not discharged (and nor can a court fill gaps in an inadequate examination by the executive of the asylum system in the Receiving State) by pointing to assurances concerning the '*accessibility and functioning… and safeguards*' of the Receiving State's asylum system. This is because (a) *Ilias* is concerned with *de facto* protection for asylum-seekers (*'the safeguards* [the Receiving State] *affords in practice' Ilias,* §141); (b) the *Ilias* duty of thorough examination applies notwithstanding even the presumption of compliance within the CEAS '*regardless of whether the receiving third country is an EU Member State or whether it is a State Party to the [ECHR] or not*' (*Ilias*, §134 [Auths/69/2864] and see also *MSS,* discussed at §35 below); the position here is *a fortiori*. At the very least, there is certainly no principled reason to apply lesser scrutiny to prospects of compliance with assurances from a State outside the CEAS than to prospects of compliance with binding and legally enforceable obligations entered into by CEAS States. Consequently, where assurances are obtained in the context of a TCTA, UNHCR considers that the procedural duty is modified only to the extent of requiring thorough examination by the Transferring State both of the extant asylum system and also of such safeguards that the assurances would afford '*in practice'* in the Receiving State[90].

89 Refugee Convention, Art. 33(1) [Auths/13/304]: '*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.*'

90 As UNHCR explains in its Note on Diplomatic Assurances and International Refugee Protection, August 2006 'Diplomatic Assurances Note' (§19) '*Where the receiving State has given diplomatic assurances with regard to a particular individual, or where there are assurances in the form of clauses concerning the treatment of persons transferred under a general agreement on deportations or other forms of removal, these form part of the elements to be assessed in making this determination. Such assurances do not, however, affect the sending State's obligations under customary international law as well as international and regional human rights treaties to which it is party.*' [SuppAuths/66/2162] [Emphasis added.] See to similar effect MGPE §3 '[*f]ormal agreements and assurances are relevant to this inquiry but do not amount to a sufficient basis for a lawful transfer under a protection elsewhere policy. A sending state must rather inform itself of all facts and decisions relevant to the availability of protection in the receiving state*.' [SuppAuths/88/3242].

***Othman* requirements in the context of a TCTA**

32. The ECtHR in *Othman v United Kingdom* (2012) 55 EHRR 1 ('***Othman***') [§§187-189] [Auths/66/2681-2682], gave authoritative guidance concerning assurances in the context of transfer of an individual to a State where a real risk of torture must be averted. UNHCR notes that while *Othman* at §189 lists factors to be considered ('**the *Othman* list**'); the Divisional Court described that list as '*not intended to be either prescriptive or exhaustive*' [J/§63]. The *Othman* list is indeed non-exhaustive but it is prescriptive (the court '*will have regard inter alia to the following factors*', *Othman*, §189, emphasis added). The listed factors are mandatory considerations, albeit the relevance of each will be contextually determined.

33. Othman arose in a context where (absent assurances) there was a real risk of torture. The assessment required consideration of '*the general human-rights situation in that country*' (§187) and whether there was '*an effective system of protection against torture*' (§189(9)).

Requirement to consider the current position in the Receiving State

34. The *Othman* guidance is clear that there must be an assessment of the current position: '*assurances are not in themselves sufficient to ensure adequate protection against the risk of ill-treatment. There is an obligation to examine whether assurances provide, in their practical application, a sufficient guarantee*' (*Othman*, §187, emphases added). That '*obligation*' had previously been explained by the Grand Chamber in *Saadi v Italy* (2009) 49 EHRR 30 where the provision of assurances:

> '*would not have absolved the Court from the obligation to examine whether such assurances provided, in their practical application, a sufficient guarantee that the applicant would be protected against the risk of treatment prohibited by the Convention. The weight to be given to assurances from the receiving State depends, in each case, on the circumstances prevailing at the material time.'* [§148, Emphasis added.] [SuppAuths/43/1710].

35. In the context of assurances given in relation to a TCTA, the '*obligation*' to assess the sufficiency of any assurances in light of concrete conditions in the Receiving State is modified to the extent of requiring consideration of (1) the '*general human rights situation'* and also (2) whether there exists in the Receiving State '*an effective system of protection*' against onward refoulement, including '*an effective system'* to identify refugees. That was the approach taken by the Grand Chamber in *MSS*. In *MSS*, the Grand Chamber observed, immediately before finding the diplomatic assurances inadequate (§353) [Auths/65/2590] that '*the existence of domestic laws and accession to international treaties guaranteeing respect for fundamental rights in principle are not in themselves sufficient to ensure adequate protection against the risk of ill-treatment where, as in the present case, reliable sources have reported practices resorted to or tolerated by the authorities which are manifestly contrary to the principles of the Convention*' [emphasis added]. This information ought to emanate, at least in part, from the *Ilias* enquiries.

36. In the Rwandan context, the need to consider the effectiveness of the present system was all the more powerful, given the insistence of the GoR that the system envisioned under the MoU was in essence the one already in operation (see §25 above) and references in the MoU and Process NV themselves to processing claims in accordance with '*Rwandan standards*' as well as with international law and standards[91]. However, the Divisional Court did not reach any conclusions on the matters referred to at (1) and (2) in the preceding paragraph, see further Section D above. Rather, the Court apparently treated those matters as irrelevant in light of the assurances.

Requirement to consider suitability

37. UNHCR considers it a necessary part of the task of assessing the sufficiency of assurances '*in their practical application'* to consider whether, and if so to what extent, the subject matter is suitable for assurances[92]. The construction of a complex system where there is none, or the multi-faceted amelioration of a complex system are also at the less suitable end of a spectrum of amenability to assurances. Key considerations are how much time and how many and how complex steps are required to implement the assurances. Assurances are unlikely to suffice where structural change and/or long term capacity and capability development are required and yet to occur, because of the temporal problem (typically assurances must suffice in both the immediate and long-term); and because of the difficulty in these circumstances for the court assessing their sufficiency to anticipate the '*practical application'* of the assurances or to be satisfied, as it must be, that there exists '*a sound objective basis for believing that the assurances will be fulfilled*'[93]*.*

38. The Court below did not address the nature of the changes required or their suitability for assurances save to the following limited extent. The Court accepted [J/§65] that *'it is a fair point that, to date, the number of claims handled by the Rwandan asylum system has been small. It is also fair to point out, as Mr. Bottinick has, that it will take time and resources to develop the capacity of the Rwandan asylum system*'. The Court, however, omitted to consider the nature, magnitude or complexity of the deficiencies the assurances must address; or the time that rectification of the RSD system would require. Instead, it proceeded directly to the question of the sufficiency of the assurances, concluding that the answer was to be found in the significant financial assistance and the monitoring mechanisms available under the MoU; the requirement for consent by the Rwandan authorities to transfer; as well as in the confidence expressed by the SSHD through Mr. Mustard. The error was material since:

91 MoU §9.1.1 [ComB/13/685], Process NV §2 [ComB/14/695]. See also references to Rwandan law: MoU §§2.1, 7.1, 10.3.1, 10.5 [ComB/13/683-686] and Process NV §§2, 7.3 [ComB/14/695; 698].

92 UNHCR, Diplomatic Assurances Note, §20, '*diplomatic assurances may be relied upon only if they are a suitable means to eliminate the danger to the individual concerned*…', see also §§33-34, 37 [SuppAuths/66/2163; 2168-2169].

93 *RB (Algeria) v SSHD* [2009] UKHL 10; [2010] 2 AC 110, §23.

(1) UNHCR identified flaws in Rwanda's RSD system which are not quantitative; nor amenable to speedy change even with substantial external support; nor remediable by reducing the flow of asylum-seekers from the UK (see e.g. the role of the DGIE, addressed at §8(1) above; the lack of a specialist body at the RSDC stage[94]; and the protection gap in Rwandan law[95] relating to refugee recognition on the basis of political opinion, [Obs/§18.4] [ComB/12/658][96]).

(2) As UNHCR observed below [Obs/§§41, 43] [ComB/12/670-671], *'the MoU and the Process NV envisage structural or legal features of the RSD process which apparently do not exist'*. See for example *'the option of humanitarian protection, MoU §10.20'*; '*the assurance of "access to independent and impartial due process of appeal in accordance with Rwandan laws"(MoU §9.1.3)'; 'the possibility to make oral representations on appeal to MINEMA (Process NV §5.2)'*; '*regularisation*' for transferees denied international protection who cannot be removed[97]; and a complaints procedure[98]. The assurances offer no practical steps, let alone timescale, by which these changes would be effected.

(3) As UNHCR also pointed out below [Obs/§48] [ComB/12/671-672], further key deficiencies in the Rwandan asylum system are not addressed by or persist under the MoU and NVs on their face, e.g. no right for legal representatives to attend the DGIE, RSDC, eligibility officer (or indeed MINEMA[99]) stages; wide powers to restrict access to material evidence; and lack of systematic access for UNHCR to asylum-seekers[100]. UNHCR repeats those observations and is concerned that the Divisional Court has not engaged with them at all.

(4) In the absence of acknowledgment or current rectification by the GoR of flaws in its current system (for example as to the role of the DGIE, §8(1) above, or refoulement, §§9-12 above; or the quality and reasoning of Rwandan RSD decisions §8(3) above), there is no indication that those will be rectified.

94 LB2, §147 [ComB/96/1727].

95 Article 7(1) of Rwanda's Law N° 13/2014 Relating to Refugees adds an impermissible gloss to Art. 1A(2) of the Refugee Convention, referring to '*political opinion different to the political line of the country of his/her nationality*' [SuppAuths/75/2504]. This would in many cases remove protection from persecution by non-state agents.

96 Such a protection gap may suffice to necessitate a halt to returns to an otherwise safe third country, see *R v SSHD ex p Adan and Aitseguer* [2001] 2 AC 477 [Auths/25/704].

97 MoU/§10.4 [ComB/13/686], Obs/§30 [ComB/12/668-669].

98 Process NV/§10 [ComB/14/699], LB2 §142(b) [ComB/96/1725].

99 The Process NV refers to legal representatives or counsel being permitted to furnish *'legal assistance at every stage of the claim'* (§7.3) in contrast to '*representation*' before the High Court (§8.1) [ComB/14/698], emphasis added]. This appears to reflect the general GoR practice of excluding lawyers and indeed UNHCR from the DGIE, RSDC and MINEMA stages [Obs/§18.5] [ComB/12/658-659]; LB2 §§19(d)(i)-(ii), 41(c), 60(j), [ComB/96/1681-1682; 1689; 1697]; LB3 §28a [ComB/104/1774]. Concerning MINEMA, the Process NV states at §5.2 [ComB/14/697] that any legal representative engaged '*will have the opportunity to make submissions when appropriate before the end of the process of appeal to the minister*' (emphasis added) which also appears consistent with excluding lawyers from the MINEMA hearings that do occur.

Requirement of verifiability

39. The *Othman* list requires an assessment of whether assurances can be objectively verified (*Othman* §189(8) [Auths/66/2682]). Assurances which concern the treatment of an open class of people (rather than named individuals) and violations of which may transpire through incidents of unfairness or through the forced movement of people into a fourth State (rather than, for example, poor prison conditions at a known location) are less susceptible to verification.

40. Owing to their poor amenability to assurances and the obstacles to verification, UNHCR's long-standing position is that TCTAs are '*best governed by a legally binding instrument, challengeable and enforceable in a court of law by the affected asylum-seekers*' and should '*clearly stipulate the rights and obligations of each State and the rights and duties of asylum seekers*'[101] Indeed, UNHCR is unaware of any previous case before the English courts (or ECtHR or CJEU) in which a Transferring State has successfully relied upon assurances, by a receiving State, that (a) a new asylum procedure will be brought into effect in the future; or (b) fundamental changes to the existing system, or significant increases in the capacity of that system, will be implemented in the future.

The significance of the Receiving State's understanding

41. If the authorities providing assurances and tasked with their implementation do not understand the scope of their obligations under the assurances (including international legal obligations cited in those assurances), that is a mandatory relevant consideration. The Receiving State's understanding of the relevant obligations forms an intrinsic part of the practical realities against which assurances must be tested; and of a court's task of ascertaining whether '*an effective system of protection*' exists against the relevant abuses. The GoR's history of refoulements (including during and after negotiations over the MoU, see §10 above) and its denials and explanations in this litigation are, as UNHCR stated below [Obs/§27.3] [ComB/12/667], '*indicative of fundamental misunderstandings by the GoR of its obligations under the Refugee Convention and gives no reason to believe that such practices will change*'. As already noted, the Divisional Court was silent on this point.

100 UNHCR concurs with the view expressed in the MGPE at §16 that it is one of the 'minimum' requirements of a TCTA that this '*grant UNHCR the right to …unhindered access to transferred refugees in order to monitor compliance with the receiving state's responsibilities towards them'* [SuppAuths/88/3246].

101 Guidance Note on Bilateral and/or Multilateral Transfer arrangements for asylum-seekers ['**Bilateral Note**'], §3(v) [SuppAuths/67/2176].

Past violations in the context of previous TCTAs

42. A history of past non-compliance with assurances is plainly relevant and must be investigated: *Othman* §189(7) [Auths/66/2682]. The Divisional Court noted [J/§68] that there has been no investigation by the Respondent of the Israel-Rwanda Agreement but considered that to be a '*permissible approach'* by the SSHD and that '*it discloses no error of law'.* UNHCR is concerned by this conclusion. UNHCR provided evidence, uncontested in these proceedings, that in the context of the Israel-Rwanda Agreement, those transferred were routinely and clandestinely expelled from Rwanda (including some from the airport upon their arrival), prevented from making asylum claims, and subjected to grossly intimidating treatment (threats of deportation, and overnight visits by unknown agents) following which those transferred became too frightened to move around or simply disappeared: the result was large-scale indirect refoulement[102]. UNHCR considers that it is not '*permissible*', whether for the executive or a court assessing the efficacy of assurances obtained for the purpose of a TCTA, to disregard evidence of large-scale and gross abuses arising out of a recent TCTA. *Othman* §189(7) required investigation of the Israel-Rwanda Agreement. That information ought to have been available through discharge of the positive *Ilias* obligation, see e.g. *Ilias* §163 [Auths/69/2869].

F. ARTICLE 31

43. Article 31(1) of the Refugee Convention prohibits States from imposing 'penalties' on refugees *'on account of their illegal entry or presence'*, provided that certain conditions are met, including '*coming directly'* from a State of persecution [J/§119].

44. It is a precondition for transfers of asylum-seekers to Rwanda under the UK-Rwanda Transfer Policy that they are assessed to have arrived in the UK '*illegally by dangerous journey*s'[103]; and the purpose of that policy is, expressly, to deter such journeys [J/§§16; 125]. In short the Rwanda policy targets journeys that give rise to '*illegal entry or presence'*.

45. The Court rejected any incompatibility of the UK-Rwanda Transfer Policy with Article 31 [J/§§123-126], on the bases that (i) there is '*a clear* [academic] *consensus*' that '*Article 31 does not prevent a state expelling a refugee*'; and (ii) that the submission about Article 31 '*merges with* [that] *on whether Rwanda is a safe third country*' and '*removal that is not contrary to article 33* [the prohibition on refoulement] *is not a penalty for the purposes of article 31*'[104].

102 See [Obs/§21.3] [ComB/12/665]; LB2 §§124-125 and fn 50 [ComB/96/1718-1720].
103 Amended Detailed Grounds of Defence §3.10 [ComB/10/295]; see also [J/§16].
104 The Court did not expressly address the meaning of '*coming directly*' for the purposes of Article 31(1). Should that become relevant on appeal, UNHCR has set out its position in [Obs/§§55.1-7] [ComB/12/673-674].

46. The central question in this litigation as concerns Article 31 is whether the consequences of the SSHD's decisions under challenge amount to a penalty. UNHCR's position remains [see Obs/§57] [ComB/12/674] that:

    (1) A decision that foreseeably exposes a category of asylum-seekers to less favourable asylum procedures than would otherwise be provided, based on their allegedly illicit mode of arrival, amounts to a penalty (and this would be the case whether those less favourable asylum procedures were imposed in the country where a person has sought to claim asylum or, following removal, in another country).

    (2) This applies *a fortiori* (but not exclusively) where, as here, the effect is to expose those asylum-seekers to an RSD system which lacks essential minimum safeguards of an accessible, reliable and fair asylum procedure and thus to a serious risk of refoulement.

    (3) A decision to treat an asylum-seeker's claim as inadmissible on the basis that the individual arrived '*illegally, by a dangerous journey*', with the consequence that the claim will be determined only in Rwanda, under less favourable procedures, is a penalty.

47. UNHCR has not sought to argue in these proceedings that a bare act of transfer (or expulsion) without more will amount to a penalty within the meaning of Article 31(1). Nor does UNHCR suggest that a purely subjective detriment to an asylum-seeker (which the Court characterised as '*simple denial of a subjective preference to make an asylum claim in one country rather than another*' [J/§123][105]) is a penalty. These were the only two models of 'detriment' which the Court considered [J/§§125; 123].

48. UNHCR instead identified the relevant detriment as being exposure to foreseeably less favourable asylum procedures and/or reception conditions [Obs/§57] [ComB/12/674]. This accorded with the submission made by the claimants in *AAA and others*[106]. The Court did not engage with the key question whether this form of detriment amounts to a penalty.

49. As UNHCR observed [Obs/§§56; 58] [ComB/12/674-675], this approach is supported by:

    (1) The plain meaning of penalty (a '*loss, disability or disadvantage inflicted for breach of a law or rule*')[107];

    (2) Academic commentary upon the meaning of 'penalty' in Article 31[108];

105 A subjective detriment may be relevant to the question whether a person should be treated as having 'come directly' from a state of persecution, but that is a different question

106 Skeleton Argument in the Divisional Court of *AAA and others* §§450.1; 453 [AAACORE/12/533-534].

107 Hathaway, *The Rights of Refugees Under International Law*, 2nd edition (2021), p.515 [Auths/82/3718].

108 *The generally accepted view is that denying a person access to the refugee claim process on account of his illegal entry or for aiding others to enter illegally in their collective flight to safety, is a "penalty" within the meaning of article 31(1). Thus, measures such as arbitrary detention or procedural bars on applying for asylum may constitute "penalties"* Goodwin-Gill and McAdam, *The Refugee in International Law*, 4th edition (2021), p.277 [Auths/83/37

(3) The Supreme Court's approach to Article 31: while literal meaning must be the '*starting point*', '*the words must be construed in context and an instrument such as the Refugee Convention must be given a purposive construction consistent with its humanitarian aims*'[109];

(4) The conclusion of the Canadian Supreme Court that '*[o]bstructed or delayed access to the refugee process is a "penalty" within the meaning of art. 31(1) of the Refugee Convention*'[110];

(5) The absence of any contrary binding authority, or contrary statement in the *travaux préparatoires*.

50. UNHCR further agrees, for similar reasons, with RM's submission[111] that treatment amounting to a penalty may include treatment foreseeably causing a loss or detriment, viewed objectively, whether or not that loss or detriment amounts to a breach of fundamental rights: examples given by RM would be separation from family members or separation from a supportive community.

51. The Court was therefore wrong to conclude (J/§125) that removal to Rwanda would only breach Article 31 if it also breached Article 33 (so that Article 31 lacked independent effect on the Court's analysis). A decision taken in consequence of a person's illegal entry or presence in the UK, and which has the foreseeable consequence that the person will be exposed to objectively less favourable asylum procedures, amounts to a penalty in the meaning of Article 31. The fact that the detriment (exposure to less favourable asylum procedures) is accompanied by the further detriment of a transfer or expulsion does not have the effect of disapplying Article 31 or removing the fundamental protection which that article offers. Suppose the UK adopted a parallel asylum procedure within its borders which afforded to those arriving by 'illegal, dangerous journeys' lesser access to legal representation and to an independent appellate body. That would constitute a penalty contrary to Article 31. The protection of Article 31 is not lost because the detriment occurs under an 'offshore' arrangement – that would defeat the '*humanitarian objects and the broad aims*'[112] of the Refugee Convention.

109 *R v Asfaw* [2008] 1 AC 1061 §11 [Auths/31/1071-1072].

110 *B010 v Canada* [2015] SCC 58; [2015] 3 SCR 704, §57 [Auths/77/3589], further discussed in Hathaway (2021), p.516 [Auths/82/3719] and in Cathryn Costello et al, 'Article 31 of the 1951 Convention Relating to the Status of Refugees', UNHCR, Legal and Protection Policy Research Series (2017) p.37 [Auths/81/3708].

111 RM Skeleton Argument before the Court of Appeal dated 20 March 2023 §61 [RMCORE/3/42-43].

112 *R (ST (Eritrea)) v SSHD* [2012] 2 AC 135, §30 [SuppAuths/16/517], stating that the Refugee Convention should be given a '*generous and purposive interpretation, bearing in mind its humanitarian objects and the broad aims reflected in its preamble'.*

(1) The treatment which UNHCR identifies as a penalty is not bare '*removal to a safe third country*', but rather exposure of an individual asylum-seeker to foreseeably less favourable asylum procedures and reception conditions.

52. The SSHD has suggested[113] that any argument that '*removal to a safe third country is a "penalty" involves impugning the EU regime under the Dublin* [*Regulations*]'. In fact, there is no difficulty in explaining why the Dublin Regulations may lead to actions generally compatible with Article 31 while the UK-Rwanda Arrangement does not:

(2) There is no necessary connection between a Dublin transfer and any prior illegal entry or presence in the Transferring state. A person may be transferred under the Dublin Regulations whether or not there has been any prior illegality in the Transferring state (for example transfers in the best interests of children; or by consent in order to reunite families or transfers to a country where a person has previously been granted a residence permit or visa)[114].

(3) The Dublin regime is a burden-sharing arrangement intended to determine, on the basis of objective criteria, the State best placed rapidly to assume responsibility for a claim made within a common '*area of freedom, security and justice*' and under a common asylum system (the CEAS). Transfers under the Dublin Regulations are based on '*objective criteria*' which are intended to identify the country within that area which is best-placed to determine a person's asylum claim, and to ensure '*effective*' and '*rapid*' access to a determination of the right to international protection[115]. The presumption against detriment is hard-wired into the Dublin process.

53. A further issue before the Court was whether the detriment which Article 31 prohibits must be imposed by *criminal* proceedings. The Court declined to determine this [J/§124]. UNHCR's position, set out in Obs/§§56; 58.1-4 and 58.6 [ComB/12/674-675], is that Article 31 includes no such restriction, having regard to (i) the purposes of Article 31(1); (ii) the plain meaning of the term 'penalty'; (iii) the approach of the leading commentators on Article 31[116]; (iv) the judgment of the Supreme Court of Canada in *B010 v Canada* [2015] SCC 58; [2015] SCR 704, §§62-63 [Auths/77/3591]; and (v) the arbitrary consequences if the scope of Article 31(1) depended upon the different frameworks (establishing boundaries between criminal law on the one hand and administrative or civil law on the other) in different jurisdictions.

113 SSHD's Skeleton Argument before Divisional Court §§10.11; 10.13 [ComB/11/576-577].
114 Regulation No. 604/2013, Articles 8(1), 8(2), 11, 12 [SuppAuths/2/25-26].
115 Ibid, preamble paragraph (5) [SuppAuths/2/17].
116 See fn 108 above; see also the exposition of the drafting history of Article 31 in Hathaway (2021), pp. 513-515 [Auths/82/3716-3718].

G. CONCLUSION

54. Regarding the issues upon which UNHCR has sought permission to intervene at this appeal, and for all the foregoing reasons:

    (1) The removal of asylum-seekers pursuant to the UK-Rwanda Transfer Policy will expose transferred individuals to serious risks of (i) refoulement contrary to Article 33(1) Refugee Convention and (ii) harm contrary to Article 3 ECHR.

    (2) The Divisional Court erred in its assessment of the evidence concerning those risks, including evidence emanating from UNHCR.

    (3) The assurances contained within the MoU and NVs, when correctly assessed both in the context of evidence about the present asylum system in Rwanda and by reference to the *Othman* guidance, are insufficient to avert those risks.

    (4) The UK-Rwanda Transfer Policy is incompatible with Article 31 of the Refugee Convention.

55. In these circumstances, UNHCR considers that the UK-Rwanda Transfer Policy is incompatible with the UK's fundamental obligations under the Refugee Convention. UNHCR maintains its unequivocal position that there should be no transfer of asylum-seekers to Rwanda.

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A3. First Witness Statement of Lawrence Bottinick (LB), 9 June 2022

First Witness Statement of Lawrence Bottinick dated 9 June 2022

WITNESS STATEMENT OF LAWRENCE BOTTINICK

I, Lawrence Bottinick, of UNHCR London, 10 Furnival St, London, EC4A 1AB, will say as follows:

1. I am a Senior Legal Officer and the Acting Representative for UNHCR London, having arrived to London in August 2020. I have worked for UNHCR since 1996.
2. Earlier in my career I served one year with the U.S. Department of Justice as an Asylum Officer in Los Angeles and at the UN Secretariat in NY as an Ethics Officer. I am a graduate of the University of Michigan and Georgetown University Law School.
3. As the Acting Representative in the UK, I am responsible for overseeing the implementation of the organization's mandate in the UK. This includes supervising staff and ensuring advancement of our priorities related to refugee protection in the UK. I am also responsible for ensuring that the UK government, courts and tribunals have access to our expertise and advice related to international refugee law and refugee status determination. In our role as an intergovernmental organization, we closely work with and provide advice to the UK government on their asylum system.
4. I am authorised by UNHCR to make this statement in support of UNHCR's proposed intervention in the Claimants' application for interim relief. The matters addressed in this witness statement are within my personal knowledge save where expressly stated otherwise.
5. I am aware that on 9 June 2022, UNHCR's Geneva office sent to the Secretary of State for the Home Department a document titled *UNHCR Analysis of the Legality and Appropriateness of the Transfer of Asylum-seekers under the UK-Rwanda Arrangement.* I am further aware that 9 June 2022 UNHCR sent a letter to UK Government expressing concerns as to the incorrect statements made by the UK in decision letters issued to asylum seekers being removed to Rwanda.
6. I can confirm that the contents of that document and letter reflect UNHCR's institutional position and understanding of the facts, as well as my own understanding. The document and letter are exhibited to this statement as **LB1** and **LB2**.

Statement of truth

I believe that the facts stated in this witness statement are true. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

[Signed by Lawrence Bottnick and dated 9 June 2022]

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A4. UNHCR Exhibit LB-1, 9 June 2022

Exhibit LB-1 to First Witness Statement of Lawrence Bottinick dated 9 June 2022

This is the Exhibit marked “LB-1” referred to in the Witness Statement of Lawrence Bottinick dated 9 June 2022.

…….
UNHCR Analysis of the Legality and Appropriateness of the Transfer of Asylum-Seekers under the UK-Rwanda arrangement

Overview

1. On 14 April 2022, the government of the United Kingdom of Great Britain and Northern Ireland (“the UK”) and the government of the Republic of Rwanda (“Rwanda”) published a new Migration and Economic Development Partnership, under which the two States entered into a Memorandum of Understanding (“MOU”) "for the provision of an asylum partnership arrangement to strengthen shared international commitments on the protection of refugees and migrants"[1](also referred to in this paper as the “UK-Rwanda arrangement”). Under this arrangement, asylum-seekers in the UK may be transferred to Rwanda where their claims for international protection would be determined under the national Rwandan asylum system. Individuals transferred to Rwanda would not be relocated back to the UK once their claims have been decided upon.[2]
2. This note summarizes the views of the United Nations High Commissioner for Refugees (“UNHCR”) on the legality and appropriateness of this arrangement, with reference to international refugee law norms and principles, as articulated notably in the 2013 UNHCR Guidance Note on bilateral and/or multilateral transfer arrangements of asylum-seekers[3] and UNHCR’s 2021 Note on the “Externalization” of International Protection.[4]

1 https://www.gov.uk/government/publications/memorandum-of-understanding-mou-between-the-ukand-rwanda/memorandum-of-understanding-between-the-government-of-the-united-kingdom-ofgreat-britain-and-northern-ireland-and-the-government-of-the-republic-of-r

2 Factsheet: Migration and Economic Development Partnership, April 2022, available at: https://homeofficemedia.blog.gov.uk/2022/04/14/factsheet-migration-and-economic-developmentpartnership/

3 UN High Commissioner for Refugees (UNHCR), Guidance Note on bilateral and/or multilateral transfer arrangements of asylum-seekers, May 2013, available at: https://www.refworld.org/docid/51af82794.html

4 UNHCR Note on the “Externalization” of International Protection, 28 May 2021, www.refworld.org/docid/60b115604.html

3. These comments are provided pursuant to the responsibility granted to UNHCR by the United Nations General Assembly to ensure the promotion and supervision of compliance with international refugee law.[5] UNHCR's supervisory responsibility is reiterated under two treaties binding upon the UK and Rwanda - namely the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol Relating to the Status of Refugees (hereafter collectively referred to as "1951 Convention") – which require all States parties to "co-operate with" UNHCR "in the exercise of its functions," and to "facilitate [UNHCR's] duty of supervising the application" of refugee law.[6]

Principles determining the legality and appropriateness of bilateral transfer agreements.

4. It is UNHCR's position that asylum-seekers and refugees should ordinarily be processed in the territory of the State where they arrive, or which otherwise has jurisdiction over them.[7] This is also in line with general State practice.[8]

5. A State's refugee protection obligations are engaged, inter alia, when an asylum-seeker enters their territory, including territorial waters, or is intercepted at sea by their authorities.[9] The primary responsibility to provide protection rests with the State where asylum is sought.

6. In the context of initiatives involving the transfer of asylum-seekers from one country to another for the purpose of processing their asylum claims, transferring States retain responsibilities under international refugee and human rights towards transferred asylum-seekers. In the current case, neither the arrangement entered into between the UK and Rwanda nor the fact of transfers conducted under it would relieve the UK of its obligations under international refugee and human rights law towards asylum-seekers transferred to Rwanda. At a minimum, and regardless of the arrangement, the transferring State (in this instance the UK) would be responsible for ensuring respect for the principle of non-refoulement.[10] Non refoulement obligations would be triggered in case of a risk of persecution or ill-treatment in the state to which the asylum-seekers would be transferred (direct refoulement), or of onward removal to another country where they could face such risks (indirect refoulement).

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

6 Art. 35 of the 1951 Convention Relating to the Status of Refugees (189 UNTS 137); Art. 2 of the 1967 Protocol Relating to the Status of Refugees (606 UNTS 267).

7 UNHCR, Guidance Note on bilateral and/or multilateral transfer arrangements of asylum-seekers, p1.

8 UN High Commissioner for Refugees, Protection Policy Paper: Maritime interception operations and the processing of international protection claims: legal standards and policy considerations with respect to extraterritorial processing, November 2010, available at: http://www.unhcr.org/refworld/docid/4cd12d3a2.html.

7. The assessment of the legality and / or appropriateness of bilateral transfer arrangements is governed by a number of principles outlined in the 2013 UNHCR Guidance Note on bilateral and/or multilateral transfer arrangements of asylum-seekers, which are considered below with reference to the modalities of the arrangement entered into by the UK and Rwanda, as set out in the MOU and other public statements by the UK and Rwanda, as well as UNHCR's assessment of likely difficulties in implementing the arrangement in line with those principles.

8. Although States may make arrangements with other States to ensure international protection, such arrangements must, as the Preamble of the 1951 Convention provides, advance international cooperation to uphold refugee protection, enhance responsibility sharing and be consistent with the widest possible exercise of the fundamental rights and freedoms of asylumseekers and refugees. International law requires States to fulfil their treaty obligations in good faith.[11]

9. Arrangements should be aimed at enhancing burden- and responsibility-sharing and international/regional cooperation and should not result in burden-shifting.[112] Such arrangements need to contribute to the enhancement of the overall protection space in the transferring State, the receiving State and/or the region as a whole. Transfer arrangements would not be appropriate where they represent an attempt, in whole or part, by a 1951 Convention State party to divest itself of responsibility; or where they are used as an excuse to deny or limit jurisdiction and responsibility under international refugee and human rights law.

10. In UNHCR's view, the bilateral transfer modality entered into by the UK and Rwanda does not contribute to burden- and responsibility-sharing. Nor does it enhance international cooperation or enhance the protection space in any State. Developing countries, including in Africa, host the vast majority of the world's refugees, with the least developed countries providing asylum for one-third of the global total. Only a very small fraction of refugees hosted in these regions may eventually move to Europe. In light of these global perspectives, UNHCR considers the arrangement to be inconsistent with global solidarity and responsibility-sharing.

9 UN High Commissioner for Refugees (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, 26 January 2007, available at: https://www.refworld.org/docid/45f17a1a4.html, Para 24; UN High Commissioner for Refugees (UNHCR), Guidance on Responding to Irregular Onward Movement of Refugees and Asylum-Seekers , September 2019, available at: https://www.refworld.org/docid/5d8a255d4.html, para 16; UNHCR, Guidance Note on bilateral and/or multilateral transfer arrangements of asylum-seekers, p 1; UNHCR, General Legal Considerations: Search-and-Rescue Operations Involving Refugees and Migrants at Sea, November 2017, www.refworld.org/docid/5a2e9efd4.html, including at para 7.

10 UNHCR, Guidance Note on bilateral and/or multilateral transfer arrangements of asylum-seekers, p3.

11 Article 26 of the 1969 Vienna Convention on the Law of Treaties (1155 UNTS 331)

11. UNHCR notes that whilst Rwanda has generously provided safe haven to refugees for decades and has made efforts to build the capacity of its asylum system, its national asylum system is still nascent. In UNHCR's assessment, there is a serious risk that the burden of processing the asylum claims of new arrivals from the UK could further overstretch the capacity of the Rwandan national asylum system, thereby undermining its ability to provide protection for all those who seek asylum. In comparison, the UK national asylum system is highly developed and well capacitated to consider asylum claims.

12. An important consideration when assessing the compatibility of a proposed bilateral transfer arrangement with refugee protection obligations under international law is whether the transferof asylum-seekers is governed by a legally binding instrument, challengeable and enforceable in a court of law by the affected asylum-seekers. In the case of the arrangement between the UK and Rwanda, UNHCR notes that the arrangement is currently governed through a MOU, whose terms include express stipulations that the arrangement is not binding in international law and does not create or confer enforceable individual rights.[13]

13. Bilateral transfer arrangements must also provide a number of guarantees for each asylumseeker. Where these guarantees cannot be agreed to or met, then transfer would not be legal or appropriate. UNHCR recalls that the obligation to ensure that conditions in the receiving State meet these requirements in practice rests with the transferring State, prior to entering into such arrangements.

14. Firstly, asylum-seekers must be individually assessed as to the lawfulness and appropriateness of the transfer, subject to procedural safeguards, prior to transfer. Asylumseekers subject to transfer under a bilateral arrangement must be protected against refoulement and have access to fair and efficient procedures for the determination or refugee status and/or other forms of international protection.[14]

12 UN High Commissioner for Refugees, Expert Meeting on International Cooperation to Share Burdens and Responsibilities, 28 June 2011, available at: http://www.unhcr.org/refworld/docid/4e9fed232.html, para. 8.

13 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, provisions 1.6 and 2.2.

14 ExCom Conclusion No. 8 (XXVIII) (Determination of Refugee Status) (1977); UN High Commissioner for Refugees, Global Consultations on International Protection/Third Track: Asylum Processes (Fair and Efficient Asylum Procedures), 31 May 2001, EC/GC/01/12, available at: http://www.unhcr.org/refworld/docid/3b36f2fca.html.

15 See, e.g. Independent Chief Inspector of Borders and Immigration (ICIBI), An inspection of asylum casework (August 2020 – May 2021), para. 3.15-3.16, available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1034012/An_inspection_of_asylum_casework_August_2020_to_May_2021.pdf; ICIBI, An inspection ofthe Home Office's approach to the identification and safeguarding of vulnerable adults, available at: https://www.gov.uk/government/publications/an-inspection-of-the-home-offices-approach-to-theidentification- and-safeguarding-of-vulnerable-adults.

15. UNHCR considers that the initial asylum screening interview, which will take place prior to deciding whether an individual may be transferred to Rwanda, is not sufficient to discharge the UK's obligations to ensure the lawfulness and appropriateness of removal to Rwanda on an individual basis. There are long-standing concerns about the quality of information collected at screening and registration, and in particular about the identification of vulnerabilities.[15] There are recognized barriers to disclosure in screening interviews,[16] which are usually conducted shortly after arrival; for men arriving by small boat, they are normally conducted in detention, and often by telephone. Whilst the screening interview pro forma asks people for their travel route, the reasons for not accessing protection in an interim country are explored very briefly[17]. Histories of trafficking and exploitation are explored in a single, complex question,[18] which can make it difficult for individuals to disclose information.[19] Similarly, there are significant barriers in the disclosure of a history of gender-based violence[20] and of sexual orientation or gender identity at screening.[21]

16. After receiving a notice of intent for removal to Rwanda, asylum-seekers in the UK will have seven days to make written representations as to why they should not be removed to the country. This places an excessive onus on the asylum-seeker who is likely to know little about conditions in Rwanda and its asylum system, being unlikely to have transited through or otherwise visited the country, and may not have had sufficient access to legal advice in order to understand the process and make representations as necessary.

17. To be deemed legal, transfer arrangements must ensure access to fair and efficient procedures for the determination of refugee status. UNHCR has serious concerns that asylumseekers transferred from the UK to Rwanda will not have access to fair and efficient procedures for the determination of refugee status, with consequent risks of refoulement. As noted above, structures for determining eligibility for refugee status are still in development in Rwanda and have primarily provided protection to asylum-seekers from neighbouring countries on a prima facie basis. It is UNHCR's assessment that long-term and fundamental engagement is required to develop Rwanda's national asylum eligibility structures with sustainable capacity to efficiently adjudicate individual asylum claims through fair and consistently accessible procedures.

16 YL (Rely on SEF) China [2004] UKIAT 00145, available at: https://tribunalsdecisions.service.gov.uk/utiac/2004-ukiat-145

17 The question is: "It appears that you may have had the opportunity to claim asylum one or more times on your way to the UK. Why didn't you?" The usefulness of this question in eliciting sufficient information to make an inadmissibility finding is also limited by the prevailing approach to the screening interview as an occasion on which only basic information is elicited, and issues are not explored. See, Independent Chief Inspector of Borders and Immigration (ICIBI), An inspection of asylum casework (August 2020 – May 2021), para. 9.5-9.11.

18 "By exploitation we mean things like being forced into prostitution or other forms of sexual exploitation, being forced to carry out work, or forced to commit a crime. Have you ever been exploited or reason to believe you were going to be exploited?"

18. UNHCR has expressed concerns with regard to shortcomings in the capacity of the Rwandan asylum system in its July 2020 submissions to the Universal Periodic Review [22] and with both the Rwandan and UK authorities.[23] UNHCR's concerns in this regard include:

    a. Some persons seeking asylum are arbitrarily denied access to asylum procedures by Rwanda's Directorate General for Immigration and Emigration (DGIE) and are not referred to the Refugee Status Determination (RSD) Committee for consideration of their claims for international protection. This places those wishing to claim asylum undocumented, at risk of detention and deportation and has resulted in recent incidents of chain refoulement.

    b. Discriminatory access to the asylum procedures is of concern, including the fact that some LGBTIQ+ persons are denied access to asylum procedures.

    c. UNHCR has concerns about the impartiality of the RSD Committee's decisionmaking, with high rates of rejection observed for asylum applicants originating from both neighbouring and non-African countries.

    d. Lack of representation by a lawyer for asylum seekers during panel deliberations on their case.

    e. Reasons for negative decisions are not provided, rendering the right to appeal difficult or impossible to exercise in practice.

    f. Appeals against rejection at the first instance are made to Rwanda's Ministry of Emergency Management (MINEMA), which is also part of the RSD Committee which makes the first instance decisions. This raises concerns about the independent nature of the administrative appeal stage. There is No precedent for asylum appeals at the High Court.

19 In litigation around the now-abolished Detained Fast Track, the NGO had argued that the question "have you ever been tortured?" should be asked at screening "as a means of facilitating disclosure." Home Office policy was "to the contrary: he [the SSHD] will not make inquiries about torture at the initial screening. The justification is that victims of torture will possibly only have just arrived in the United Kingdom. They may not be ready to talk about their past or be too traumatised to trust anyone, particularly at the initial stage of fast track detention, and particularly to someone who appears to them to be a figure of authority." The disclosure of torture was "a rare occurrence at initial screening". MT, R (on the application of) v Secretary of State for the Home Department & Ors [2008] EWHC 1788 (Admin), para. 38-39, available at: https://www.bailii.org/ew/cases/EWHC/Admin/2008/1788.html Subsequent litigation continued to recognize the "limitations of the screening interview" in identifying victims of torture, and the importance of subsequent safeguards. Detention Action v Secretary of State for the Home Department [2014] EWHC 2245 (Admin), para. 122, available at: https://www.bailii.org/ew/cases/EWHC/Admin/2014/2245.html

20 Detention Action, para. 150-151.

21 UK Home Office, Asylum Policy instruction: Sexual orientation in asylum claims (Version 6.0), pp. 14, 34. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/54B3882/Sexual-orientation-in-asylum-claims-v6.pdf

g. The efficiency and timeliness of the asylum procedure is of concern, with decisions taking up to one to two years to be issued in some cases. In recent years there has only been one MINEMA eligibility officer tasked to prepare all cases for the RSD Committee.

h. There is insufficient access to interpreters for asylum claimants throughout the process.

i. There is a need for an objective assessment of the fairness and efficiency of the asylum procedures, followed by a range of capacity development interventions including, but not limited to, sustained capacity building and training for all actors working in the Rwandan national asylum system.

j. UNHCR has been unable to systematically monitor the quality of decisionmaking and compliance with procedural standards within the Rwandan asylum system. Over the past years, UNHCR has not been permitted to observe the RSD Committee and information on asylum cases is not shared systematically with UNHCR by the Rwandan authorities.

19. In terms of UNHCR's guidance, the legality of transfer arrangements further requires that those transferred are treated "in accordance with accepted international standards [including], appropriate reception arrangements; access to health, education and basic services; safeguards against arbitrary detention; [and that] persons with specific needs are identified and assisted.[24] These requirements reflect the rights granted to refugees under the 1951 Refugee Convention. Furthermore, Article 34 of the 1951 Convention calls on States to facilitate the assimilation and naturalisation of refugees.

20. UNHCR has concerns that asylum-seekers relocated from the UK to Rwanda may not be treated in accordance with accepted international standards. For example, in the context of protests by refugees in Rwanda against food ration cuts in 2018, 12 individuals were killed, 66 were arrested and some remain detained.[25] UNHCR is concerned that persons of concern relocated from the UK to Rwanda may be at significant risk of detention and treatment not in accordance with international standards should they express dissatisfaction through protests after arrival.[26]

22 UNHCR Submission for the Office of the High Commissioner for Human Rights' Compilation Report Universal Periodic Review: 3rd Cycle, July 2020.

23 UNHCR's comments to the UK authorities in this regard have since been published by the UK Home Office, available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1073961/RWA_CPIN_Review_of_asylum_processing_-_notes.pdf, pages 52-62.

24 UNHCR, Guidance Note on bilateral and/or multilateral transfer arrangements of asylum-seekers, p2.

25 This is referenced at page 60 (incidents at Kiziba), UK Home Office, Review of asylum processing Rwanda: interview notes (Annex A), May 2022, available at:https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file /1073961/RWA_CPIN_Review_of_asylum_processing_-_notes.pdf

26 In this respect, UNHCR notes that some individuals in the UK who have received notifications that they are to be removed to Rwanda started a hunger strike in protest at the decision: https://www.bbc.com/news/uk-61676961

21. UNHCR is also concerned that the relocation of asylum-seekers from the UK to Rwanda is not in accordance with Article 31(1) of the 1951 Convention. Article 31(1) prohibits penalties imposed on account of irregular entry or presence of a refugee or asylum-seeker. UNHCR, based on widely-accepted principles of treaty interpretation and supported by academic experts, considers that the term "penalties" should be interpreted broadly, referring to any criminal or administrative measure taken by the State that has a detrimental effect on the refugee or asylum-seeker.[27] As such, the relocation of asylum-seekers from the UK to Rwanda is prohibited under Article 31(1) for those who have come directly, presented themselves to the authorities without delay and shown good cause for their irregular entry/presence. For those who do not meet these conditions of 'directness', 'promptness' and 'good cause', Article 31(1) does not protect them from a penalty on account of irregular entry or presence. However, notwithstanding Article 31(1), effectively depriving asylum-seekers of access to a fair and efficient asylum determination and treatment in line with international standards is not permissible, as it may expose them to the risk of refoulement and other rights violations.

22. Finally, transfer arrangements must ensure that "if recognized as being in need of international protection, [the person transferred] will be able to […] access a durable solution".[28] UNHCR has concerns that the local integration prospects of relocated asylum-seekers who do not originate from countries immediately surrounding Rwanda would be limited in practice and that, if recognized as being in need of international protection, they would not be able to accessa durable solution. In this respect, UNHCR recalls concerns that individuals previously relocated from Israel to Rwanda under a separate bilateral transfer arrangement did not find adequate safety or a durable solution to their plight and that many subsequently attempted dangerous onward movements within Africa or to Europe.[29]

23. In summary, UNHCR considers that the arrangement entered into by the UK and Rwanda does not meet the requirements necessary to be considered a lawful and / or appropriate bilateral transfer arrangement.

27 The French language version of Article 31(1) of the 1951 Convention refers to 'sanctions pénales'; possibly a narrower concept. However, in this context, in line with Article 33(4) of the Vienna Convention on the Law of Treaties, the broader concept of "penalties" from the English language version is to be preferred in accordance with the 1951 Convention's object and purpose of protecting fundamental rights and freedoms. ExCom Conclusion No. 22 (XXXII) 1981, para. II.B.2.(a). G S Goodwin-Gill and J McAdam, The Refugee in International Law (OUP 2021), pp. 276 and 277. G S Goodwin-Gill, Article 31 of the 1951 Convention Relating to the Status of Refugees: Non-Penalization, Detention, and Protection, June 2003, p. 204, www.refworld.org/docid/470a33b10.html, referencing a decision from the Social Security Commissioner accepting that any treatment that was less favourable than that accorded to others and was imposed on account of illegal entry was a penalty within Article 31 unless objectively justifiable on administrative grounds. Noll in A Zimmermann (ed), The 1951 Convention Relating to the Status of Refugees and its 1967 Protocol (Oxford University Press, 2011), p. 1264.

28 UNHCR, Guidance Note on bilateral and/or multilateral transfer arrangements of asylum-seekers, p2

Principles relevant to the determination of whether the UK-Rwanda arrangement amounts to externalization of international protection

24. The externalization of international protection refers to measures taken by States— unilaterally or in cooperation with other States—which are implemented or have effects outside their own territories, and which directly or indirectly prevent asylum-seekers and refugees from reaching a particular 'destination' country or region, and/or from being able to claim or enjoy protection there.[30] Such measures constitute externalization where they involve inadequate safeguards to guarantee international protection as well as shifting responsibility for identifying or meeting international protection needs to another State or leaving such needs unmet; making such measures unlawful.[31]

25. As detailed above, the arrangement between the UK and Rwanda contains inadequate safeguards to guarantee international protection. In UNHCR's view, the arrangement also acts to attempt to shift responsibility for identifying and meeting international protection needs from the UK to Rwanda, against the principle of burden sharing. Therefore, UNHCR considers the arrangement as an example of externalization of international protection and is, as such, unlawful.

Concluding remarks

26. As shown in the present analysis, the UK-Rwanda arrangement fails to meet the required standards relating to the legality and appropriateness of bilateral or multilateral transfers of asylum-seekers. This arrangement, which amongst other concerns seeks to shift responsibility and lacks necessary safeguards, is incompatible with the letter and spirit of the 1951 Convention.

27. In UNHCR's view, the UK-Rwanda arrangement cannot be brought into line with international legal obligations through minor adjustments. The serious concerns outlined in the present analysis require urgent and appropriate consideration by the governments of the UK and Rwanda in line with their obligations under well established and binding norms of international refugee law.

UNHCR, 08 June 2022

29 'UNHCR concerned over Israel's refugee relocation proposals', 17 November 2017, available at: https://www.unhcr.org/news/press/2017/11/5a0f27484/unhcr-concerned-israels-refugee-relocationproposals.html

30 UNHCR Note on the "Externalization" of International Protection, 28 May 2021, www.refworld.org/docid/60b115604.html

31 As above.

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A5. UNHCR Exhibit LB-2 9 June 2022

Exhibit LB-2 to First Witness Statement of Lawrence Bottinick dated 9 June 2022

This is the Exhibit marked “LB-2” referred to in the Witness Statement of Lawrence Bottinick dated 9 June 2022.

…….

LAWRENCE BOTTINICK UNHCR 10 Furnival Street London EC4A 1AB Tel.: +44 203 761 9500 Email: bottinic@unhcr.org 09 June 2022

Minister Tom Pursglove MP, Parliamentary Under-Secretary for Immigration Compliance and the Courts Home Office, 2 Marsham Street, London, SW1P 4DF

Dear Minister Pursglove,

I have the honour to write with regards to the Migration and Economic Development Partnership (MEDP) concluded between the Governments of the United Kingdom and Rwanda in April 2022.

As you will be aware, UNHCR is not a party to or in any way involved in the MEDP and has conveyed its concerns regarding the arrangement to both Governments, most recently in a meeting between the High Commissioner and the Secretary of State for the Home Department together with the Minister of Foreign Affairs of Rwanda on 19 May in Geneva.

In this regard I wish to draw to your attention a number of inaccuracies in letters recently sent by the Immigration Enforcement team of the Home Office to asylum seekers whose removal to Rwanda is contemplated under the arrangement. The text of these letters incorrectly states that UNHCR is “closely involved” in the MEDP and that UNHCR “will provide oversight of individuals relocated from the UK.” In fact, at no stage has UNHCR agreed to be involved in the arrangement, whether in an oversight capacity or otherwise.

We are also concerned by statements made in the letters indicating that UNHCR has not expressed substantial concerns with regard to the shortcomings in the capacity of the Rwanda asylum system. UNHCR is concerned that asylum-seekers transferred from the UK to Rwanda will not have access to fair and efficient procedures for the determination of refugee status, with consequent risks of refoulement. As noted by the High Commissioner in his meeting with the Secretary the of State and the Rwandan Foreign Minister, Rwanda has for decades been a generous and long-standing host to hundreds of thousands of refugees, primarily from neighbouring countries, however such protection is accorded on a prima facie basis, and Rwanda’s national asylum system for the determination of refugee status on an individual basis is still nascent. UNHCR has highlighted the shortcomings of the Rwandan asylum system on a number of occasions, including in our public submission to the Universal Periodic Review in July 2020, directly tothe Rwandan authorities, and in the course of interviews with UNHCR Rwanda by Home Office personnel in Rwanda on 21 March and 25 April, 2022.

In addition to these inaccuracies, I also wish to note our concerns regarding parallels drawn between the MEDP arrangement and UNHCR's Emergency Transit Mechanism in the same letters. The latter is strictly dedicated to the voluntary evacuation of highly vulnerable asylum seekers and refugees out of a life-threatening situation in Libya, to bring them to safety while a durable solution is found, normally in a third country.

We would be very grateful if the letters to asylum seekers were to be amended to reflect these observations. The UK is a long-standing champion of refugee protection and a strong and valued partner to UNHCR, and we look forward to continuing to support your Government in its efforts to ensure access to asylum through fair, efficient and effective procedures in the UK, and to uphold and strengthen refugee protection globally.

Please accept, Sir, the assurances of my highest consideration.

Lawrence Bottinick

UNHCR Representative (Ad-Interim) to the United Kingdom

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A6. Cover Note to Second Witness Statement of LB, 7 September 2022

Cover note to the second witness statement of Lawrence Bottinick dated 7 September 2022

COVER NOTE TO THE SECOND WITNESS STATEMENT OF LAWRENCE BOTTINICK ('LB2')

1. This cover note endeavours to ensure that the position as to evidence provided in LB2 is clear and accurate, while adhering to the Court's Order of 1 August 2022 concerning non-Reply or updating evidence.

2. This Note (a) adds no new evidence; and (b) makes only those corrections which UNHCR would have made through the excluded passages of LB3.

3. UNHCR no longer relies upon the case study set out at §58(a) LB2 as an example of a case where an asylum seeker's claim was refused after an interview at the DGIE stage only. While correct as to UNHCR's knowledge at the time of LB2 (26 June 2022), the following is no longer correct: '*This asylum claimant was not interviewed concerning her claim by anyone after the DGIE screening interview*'.

4. As is indicated in §62 of LB2 and in the heading of the Table at §63, UNHCR could only provide statistics in LB2 concerning decisions of which it was aware. Indeed, UNHCR was sent further RSD decisions by the GoR after LB2 was filed and served (see §30 of Mr. Bottinick's Third Statement).

5. While §§74,75 LB2 correctly describe UNHCR's knowledge and understanding at the time of LB2, they are no longer correct, save for these words at §74: '*UNHCR is aware of two occasions when MINEMA, recently at the appellate stage conducted an interview with the asylum seeker. In both instances the asylum seeker was not permitted to have a legal representative present*.'

UNHCR
7th September 2022

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A7. Second Witness Statement of Lawrence Bottinick 26 June 2022

Second witness statement of Lawrence Bottinick dated 26 June 2022 (enclosing Exhibits LB-1 to LB-7) dated 26 June 2022

WITNESS STATEMENT OF LAWRENCE BOTTINICK

I, Lawrence Bottinick, of UNHCR London, 10 Furnival St, London, EC4A 1AB, state as follows:

A: INTRODUCTION
General introduction to statement

1. I am authorised by the United Nations High Commissioner for Refugees ('**UNHCR**') to make this statement in UNHCR's intervention.

I address the following matters in this statement:

- UNHCR and its presence in Rwanda (Section B);
- The refugee status determination process in Rwanda (Section C);
- UNHCR's further concerns with the refugee status determination
- process (Section D);
- Refoulement (Section E);
- Concerns about conditions for asylum seekers (Section F);
- The previous arrangement between Israel and Rwanda (Section G);
- Communication between UNHCR and the UK Home Office
- (Section H); and
- UNHCR comments on the Notes Verbales between the
- Governments of the UK and Rwanda (Section I).

3. The facts and matters set out in this statement are within my own knowledge unless otherwise stated, and I believe them to be true. Where I refer to information supplied by others, the source of the information is identified, and the facts and matters derived from other sources are true to the best of my knowledge and belief. In particular, I have relied on information supplied by UNHCR's headquarters in Geneva, the Regional Bureau for East and Horn of Africa and the Great Lakes, and UNHCR's office in Kigali, Rwanda. In overview:

   a. The information at paragraphs §§10-118 and §§142-147 below is derived from information supplied from UNHCR's Kigali office and the Regional Bureau for East and Horn of Africa and the Great Lakes; and from my perusal of UNHCR's documentation concerning Rwanda.

   b. The information at paragraphs §§7-8, 130-141 below is derived from my own experience and from my perusal of UNHCR's documentation.

4. There is now produced and shown to me a bundle of exhibits which contain true copies of documents to which I will refer in this statement.

Context in which this statement is provided

5. As a general rule, UNHCR's refugee protection responsibilities are delivered in partnership with states. Maintaining productive relations with the governments of those states, especially those hosting large numbers of refugees, is key to securing and maintaining access to protection for refugees. In addition to this consideration, UNHCR always needs to ensure the safety of its staff and associate organisations and the asylum seekers and refugees whom it serves on the ground.
6. For those reasons:
   a. Absence of comment by UNHCR on a given issue in this statement should not be viewed as confirmation that no problem exists.
   b. I have on occasion had to address material at a higher level of generality than would otherwise be the case in a statement made for the purposes litigation. I have also ensured that the sources of certain of UNHCR's information are not directly specified. I have only done so to the most limited degree necessary to achieve the objectives described in the preceding paragraph.
   c. Where formal meetings were held between the Rwandan Government and UNHCR I have not discussed these because these occur, to UNHCR's understanding, on a confidential basis in order to enable productive discussions.
   d. Further, I have sought to preserve confidentiality in respect of individua l asylum seekers whose cases are addressed below, and as such identifying detail has been removed. Again, however, I have done so only to a very limited extent. Save where otherwise specified, all case studies are from 2021-22.

My role in UNHCR and qualifications

7. I have worked for UNHCR since 1996. Among my UNHCR posts, as is materially relevant:
   a. From July 2015 to April 2020 I was UNHCR's Senior Protection Officer in Israel – which is of relevance to the matters discussed below at §§119-129 (Section G).
   b. From 1 March 2022 until 15 June 2022 (when the new UK Representative arrived in post) I was the Acting Representative for UNHCR in the UK. I was thus responsible for overseeing the implementation of UNHCR's mandate in the UK at the time the Memorandum of Understanding ('**MOU'**) between the Governments of the UK and Rwanda was published. This is of particular relevance to the matters discussed below at §§130-140 (Section H).

c. I have now reverted to my earlier position of Senior Legal Officer for UNHCR UK. In that role, I lead on legal advocacy. This means that I am responsible for supervising UNHCR's UK legal unit concerning advisory services, including with respect to resettlement, integration, and the cancellation, revocation and exclusion process as well as UNHCR's other UK legal unit, working on legal policy and quality assurance activities. I also serve as the *de facto* Deputy Representative of UNHCR in the UK (the officer in charge in the absence of the Representative).

8. Earlier in my career, I served one year with the U.S. Department of Justice as an Asylum Officer in Los Angeles and at the UN Secretariat in New York as an Ethics Officer. I am a graduate of the University of Michigan and Georgetown University Law School.

B: UNHCR AND ITS PRESENCE IN RWANDA

UNHCR's mandate

9. UNHCR was established in 1950 by the United Nations ('**UN**') General Assembly as a subsidiary organ of the UN and is entrusted by the General Assembly with the mandate to provide international protection to refugees and, together with Governments, to seek solutions. UNHCR fulfils its international protection mandate by, *inter alia,* "*promoting the conclusion and ratification of international conventions for the protection of refugees, supervising their application and proposing amendments thereto*".[1] UNHCR has almost 70 years of experience in fulfilling that mandate and currently has staff in some 133 countries and territories with offices in 510 locations.[2] UNHCR has twice been awarded the Nobel Peace Prize for its work, in 1954 and 1981.

Field presence

10. UNHCR has been permanently on the ground in Rwanda since May 1993. UNHCR's work in Rwanda focuses on protection, emergency preparedness and, primarily for those in camps, delivering services. In parallel, UNHCR engages with the Government of Rwanda concerning the protection of refugees and other persons within the scope of UNHCR's mandate.

1 UN General Assembly, *Statute of the Office of the United Nations High Commissioner for Refugees*, 14 December 1950, A/RES/428(V)

2 See: https://reporting.unhcr.org/globalappeal2022#_ga=2.52997032.142516773.1655418195-674193293.1618256597Global Appeal 2022, p. 112.

11. UNHCR has a Representation Office in Kigali which coordinates together with the Government of Rwanda operations for around 127,369[3] refugees across five refugee camps, two transit centres for returnees, and two reception centres spread throughout the country. In addition to those camp-based refugees, UNHCR's Kigali office also provides limited assistance to over 10,000 urban refugees of various nationalities. UNHCR also has a Sub-Office in Kirehe District, field offices in Huye, Karongi, Gicumbi, and Bugesera Districts and a field unit in Gatsibo District.

12. As of June 2022, UNHCR had 332 personnel working in Rwanda including 122 national staff members, 44 international staff, 96 affiliate personnel (27 international/ 69 national). An additional 70 personnel serve the Emergency Transit Mechanism ('**ETM**') population, including 12 international staff, 24 national staff and 34 affiliate personnel (32 international/ 2 national).

The Emergency Transit Mechanism

13. UNHCR operates an ETM in Gashora, Rwanda. The ETM was set up in mid-2019, following an agreement between the Government of Rwanda, UNHCR, and the African Union (and with financial support from the European Union, Austria, Denmark, Germany, and the US).

14. The ETM is dedicated to the voluntary evacuation of highly vulnerable asylum seekers from a life-threatening situation in Libya, to bring them to safety in Rwanda while a durable solution is found, thus far all in third countries (not Rwanda). As part of the operation of the ETM, UNHCR with support from donors provides assistance including shelter, food, medical care, psycho-social support for vulnerable cases, activities for children, and language courses.

15. Since 2019, 1075 asylum seekers have been evacuated from Libya with 664 persons having been now resettled to third countries. There are currently 442 asylum seekers remaining in the ETM, with some soon to depart for resettlement and others still undergoing processing by UNHCR.

16. UNHCR carries out refugee status determination for those it assists under the ETM in order to submit their cases to a resettlement country for consideration. That process is entirely separate from decisions on refugee status undertaken by the Government of Rwanda, addressed below.

[3] As of 21 May 2022.

UNHCR's legal partner organisations in Rwanda

17. UNHCR provides funding to two Rwandan legal aid NGOs: the Prison Fellowship Rwanda (**'PFR'**) and Legal Aid Forum ('**LAF**'). These NGOs provide a wide range of services to refugees and asylum seekers, including assistance in dealing with Rwandan authorities (for example for the purpose of birth registration); transportation; monitoring of detention; legal advice and representation in criminal and civil proceedings (other than the individual refugee status determination ('**RSD**') procedure explained at §22b below). These proceedings concern for example, criminal defence, family court matters such as divorce and paternity disputes, employment disputes, road traffic accidents and debt. These NGOs' work also includes awareness raising; and counselling for survivors of violence and torture. I discuss their involvement in the RSD process in more detail further below.

The limits of UNHCR's role or oversight (and that of UNHCR's partner organisations) in Rwanda's RSD procedure

18. UNHCR does not participate at any stage of Rwanda's national RSD procedure.[4] UNHCR is able to obtain considerable information from its informal discussions and meetings with the Rwandan Government and from interactions with asylum seekers who seek the assistance of UNHCR or its partner organisations, and from documents which are at some stages disclosed to UNHCR. UNHCR is not able to systematically monitor Rwanda's RSD procedure.

19. In particular,

    a. UNHCR is not informed systematically by the Rwandan Government of all asylum claims in Rwanda.[5]

    b. UNHCR has no presence at the airport and nor do its partner organisations.

    c. Asylum seekers are not referred by the Rwandan Government to UNHCR or its partners organisations in Rwanda. Those asylum seekers who contact UNHCR or its partner agencies do so at their own initiative.

    d. To the best of the knowledge of UNHCR's current staff in Kigali with whom I communicated for this statement,

        i. UNHCR has never been allowed to attend an interview of an asylum seeker with the Directorate of Immigration/Emigration ('**DGIE**') (which, as explained at §§36-37 below, is the first, and often only, interview undertaken in the RSD process) and one of its partner organisations has been allowed to observe just once;

4 In 2006, UNHCR seconded 4 national consultants to the National Refugee Council for one year. The arrangement ended in 2007 as planned. Since then, UNHCR has not played a direct role in conducting RSD in Rwanda (except in the ETM, discussed above).

5 See also: *UNHCR Analysis of the Legality and Appropriateness of the Transfer of Asylum-Seekers under the UK-Rwanda arrangement* (8 June 2022), §18(j); Home Office, *Review of asylum processing, Rwanda: interview notes (Annex A)* (v1.0, May 2022), p55-56.

ii. UNHCR has never been invited to attend (or attended) an interview of an asylum seeker with the eligibility officer (whose role is discussed at §42-47 below);

iii. While Article 7 (1) of the Prime Minister's Order No.112.03, from 29 June 2015 ('**the 2015 Prime Ministerial Order**') states that UNHCR 'may' be invited to meetings of the Refugee Status Determination Committee ('**RSDC**'), whose functions are discussed below at §§48-56, and that UNHCR's advice "*may*" be sought by the RSDC on "*certain issues on the agenda*", UNHCR has only once, in 2016, been allowed to attend such a meeting since the inception of the RSDC;[6] and

iv. The DGIE, RSDC and the Ministry in Charge of Emergency Management ('**MINEMA'**) whose functions are also discussed below at §66-75, have never sought UNHCR's advice on specific cases.

20. To the best of UNHCR's knowledge, UNHCR's partner organisations, PFR and LAF, like UNHCR, also have not been allowed to attend DGIE or RSDC interviews nor RSDC meetings. There was, however, one recent exception in 2022 when one of our partner organisations was allowed to observe an interview with an LGBTQ+ asylum seeker. Nor has advice been sought by the DGIE, RSDC or MINEMA from UNHCR's partner organisations.

21. Recently, MINEMA has sent to UNHCR copies of RSDC decisions. UNHCR does not know if it is being sent copies of all or only some RSDC decisions.

C: THE RSD PROCESS IN RWANDA

Background

22. The Government of Rwanda has historically recognised refugee status in two ways:

a. *Prima facie* recognition. Under *prima facie* recognition, refugee status is granted to nationals of a particular country (or to nationals of a country sharing particular characteristics) on the basis of readily apparent objective circumstances rather that individualised consideration of claims. The vast majority of refugees now present in Rwanda have been recognised in this way. These have been refugees from Burundi and the Democratic Republic of the Congo ('**DRC**') who arrived in Rwanda in situations of mass influx following conflict. Since August 2020, the Government of Rwanda has made no further grants of *prima facie* status.[7]

6 It was attended by UNHCR's protection officer. One of my colleagues recalls a further instance where they were invited to attend a RSDC session in 2017 and 2018 but the meeting was then cancelled. The then director of Ministry in Charge of Emergency Management later told UNHCR that a decision had been made not to allow UNHCR to attend discussions.

7 The Home Office Notes of the meeting with UNHCR in Kigali, published in 'Review of asylum processing, Rwanda: interview notes (Annex A) (V.10, May 2022) (at Annex A8) refer to August 2021 as the date when prima facie registration stopped for Burundian nationals, which is incorrect.

b. *Individual* refugee status determination ('**RSD'**). This occurs where asylum seekers are not recognised through the *prima facie* process but individual cases are decided on their merits. UNHCR is aware of 333 cases which have been dealt with through Rwanda's RSD procedure since 2019.[8]

23. UNHCR's population statistics as of 31 May 2022, show that only 0.43% of the refugee population in Rwanda were not from either Burundi or the DRC. The 0.43% includes individuals in the ETM, who make up the vast majority of asylum seekers in Rwanda from non-neighbouring countries.

24. UNHCR has described Rwanda's RSD procedure as "nascent". This is for the following reasons:

    a. As explained above, only a small number of cases (approximately 333 of which UNHCR is aware) have ever been processed through Rwanda's RSD process;

    b. Although Rwanda has undertaken RSD decisions since 2006, the present RSD procedure is considerably more recent:

        i. Rwanda's Law relating to Refugees (Law No.13 of 21 May 2014, '**the 2014 law'**) was enacted on 21 May 2014;

        ii. The RSDC was established pursuant to Articles 3 to 5 of the 2014 law, and the specifics of its composition and procedures were set out in Articles 3 to 11 of the 2015 Prime Ministerial Order;

        iii. The appeal from the RSDC to MINEMA was established under Article 11 of the 2014 law;

        iv. The Rwandan High Court's jurisdiction, in principle, to hear RSDC cases was established by Article 47 of the Law determining the Jurisdiction of the Courts No30/2018 of 2 June 2018 ('**the 2018 law'**). To the best of UNHCR's knowledge, no appeals to the High Court of Rwanda against a refusal of refugee status have ever taken place.

    c. Finally, as addressed in more detail below, there are significant deficiencies in Rwanda's capacity to undertake RSD, as well as a serious deficit of fairness, and a significant element of arbitrariness, in Rwanda's RSD process.

25. Below, I endeavour to explain the steps of the Rwandan RSD procedure (i.e. the individualised determination) and how these operate in practice. It is UNHCR's view that at various stages of that process, there is considerable ambiguity concerning the role and procedures of different entities or decision-makers.

8 For the reasons set out at §§19, 62 below, UNHCR does not have full statistics.

First stage: DGIE

Initiation of claim with the DGIE

26. The initial stage of an asylum claim is addressed by the DGIE. This is a department within the National Intelligence and Security Service which UNHCR understands reports to the President's Office. Border officers at airport and land crossings are DGIE staff.
27. To UNHCR's knowledge, the Rwandan Government publishes no materials in any language which explain to asylum-seekers the process for making and progressing an asylum claim.

Claims on arrival at the Rwandan border

28. A person can initiate a claim for asylum by making their claim to a border officer of the DGIE, on arrival at the Rwandan border, whether by land or air.
29. While UNHCR is not present at those border posts, including relevant airports , UNHCR understands from speaking to asylum seekers and correspondence with the Rwandan authorities in the airport refoulement cases described below that DGIE officers at the airport[9] do not provide asylum-seekers an opportunity or sufficient time to seek any advice or themselves write out an application or submit any documentary evidence before or while they are interviewed for the purposes of their asylum claim.
30. UNHCR addresses incidences of refoulement in section E below. The individuals affected by those incidences of refoulement were spoken to by DGIE, while still in the transit area, where they sought to claim asylum. This was the only stage of the RSD process to which they were subject: their claims were never referred to the RSDC. UNHCR has become aware of those incidences only because the asylum seekers had the good fortune, contacts or resourcefulness to contact UNHCR, by telephone or email (or in one instance, a fellow passenger did this on the asylum seeker's behalf) before their expulsion. UNHCR is therefore concerned that it is very likely that there are further incidents of refoulement at the airport of which UNHCR is unaware.

9 UNHCR has less knowledge about what happens at land border points. This is because people who come from neighbouring countries can cross the border without additional formalities and, in UNHCR's experience, approach the DGIE to claim asylum at a later stage.

In-country claims

31. Asylum seekers who are already in the country must report to the local authority (who should refer them to DGIE) or submit claims directly with a local DGIE office. Asylum seekers will be in the country (rather than make a claim at the border):

    a. if they have crossed into Rwanda other than at an official border; or

    b. where an individual has entered Rwanda with another form of leave but subsequently makes a claim for asylum.

32. It is the latter group (those who claim asylum inside Rwanda, and most commonly, the subset of individuals who already were in Rwanda, with another form of leave who are most frequently able to contact UNHCR or UNHCR's partner organisations. For these individuals, one of the partner organisations will provide legal assistance in preparing an asylum claim if they are contacted by the asylum seeker.

33. Asylum seekers are not referred to UNHCR, LAF or PFR by the Rwandan authorities. An asylum claimant will only encounter UNHCR or our partner organisations on their own initiative.

34. DGIE officials have complained that the inclusion of documents, in particular country of origin information ('**COI**') makes asylum applications too long; the officials said that applications should be a page or two pages long.

35. In UNHCR's experience, where a written asylum claim is submitted in-country, the asylum seeker will normally be asked to return to the DGIE a few days later for a screening interview. However in some cases they may not be asked back for an interview for a number of weeks or even months.

36. The DGIE will, in UNHCR's experience, interview the asylum seeker in the majority of cases. However, UNHCR is aware of at least five cases where individuals submitted written applications for asylum through the DGIE outside Kigali and those individuals were never interviewed before their claims were refused.

37. This single screening interview with the DGIE may be the only interview undertaken during the whole RSD process for an individual asylum claimant in Rwanda.[10]

10 Through discussion with my colleagues in Kigali, it has become apparent that interviews may also (but will not always) take place at later stages in the process. Those further interviews are discussed later in this statement.

The nature of the DGIE process

38. In Rwandan law, the DGIE reviews the case of the asylum seeker and may grant a temporary resident permit, referring the refugee status application to the RSDC 15 days later.[11] However, the DGIE in fact operates as a far more substantive screening stage. The DGIE plays a gatekeeping role by deciding whether or not to refer individual claims to the RSDC:

    a. UNHCR's statistics show that a significant proportion of claims are not admitted by the DGIE and not progressed to the RSDC. This includes, but is not limited to, airport refoulement cases.

    b. Where a decision is taken by the DGIE not to refer a claim to the RSDC then no written decision, let alone written reasons, are provided.

    c. In most cases, asylum-seekers have reported that they are not able to, nor invited to submit further information or documents to the DGIE following the screening interview.

    d. UNHCR is not aware of any instance when a decision by the DGIE not to refer a claim to the RSDC was successfully challenged.

    e. Indeed, further access to the RSDC procedure is blocked where the DGIE does not refer a case to the RSDC. Article 8 of the 2015 Prime Ministerial Order provides that if the DGIE fails to submit the application to the RSDC within the required period of 15 days, the RSDC "*can take a decision upon request by the Minister".* However, despite the provisions in the Order and advocacy by UNHCR, to date, the RSDC has, to UNHCR's knowledge, never taken up a case that had not been referred by the DGIE. UNHCR is aware of two LGBTIQ+ cases where the DGIE informed the applicants verbally that they would not be issued with residence permits. Both applicants sought to appeal, in writing, to MIDIMAR (predecessor of MINEMA), specifically referring to DGIE's refusal to transfer their cases to RSDC, and were informed that under the 2014 Law they could not appeal because their applications had not yet been submitted to the RSDC for adjudication. I exhibit one of the letters in response as **LB1**. My colleagues confirmed that the other letter was drafted in materially the same terms.

39. This is supported by evidence seen by UNHCR, in particular:

    a. In respect of the airport refoulement cases, addressed at §§108-111 below.

    b. It is also the case from in country refusals, as addressed further in the refoulement section at §112-113 below.

11 Article 8 of the 2014 law provides "*The department in charge of emigration …shall submit the file of the applicant for refugee status to the Refugee Status Determination Committee within fifteen (15) days*

c. UNHCR is also aware of several cases in 2021 and 2022 where individuals were told by the DGIE that their cases would not be referred to the RSDC solely because they had come to Rwanda on a work permit or tourist visas. They were told by the DGIE to make an application only once their permit expires. These cases have also not been mentioned in any of the materials thus far before the Court: they came to my knowledge in discussions for the purpose of this statement.

40. In addition to this gatekeeping function played by the DGIE, DGIE officers, on more than one occasion, have verbally informed UNHCR that, where a case is referred to the RSDC, the DGIE produces a report for the RSDC which contains a recommendation for grant or refusal based on their internal assessment of the claim, despite not having conducted any form of RSD interview or assessment. To UNHCR's knowledge, asylum seekers are not informed of that recommendation at any stage.

Adequacy of the DGIE process

41. UNHCR does not consider that the DGIE's procedures are fair. The procedure before the DGIE lacks transparency, breaches confidentiality and violates procedural fairness which continues to give rise to a serious risk of refoulement for those that the DGIE does not refer to the RSDC. This is for the following reasons:

a. Asylum seekers who have spoken to UNHCR report that the DGIE interview is brief, around 20-30 minutes. Asylum seekers are asked basic questions concerning, to a large extent, how they travelled to Rwanda and their reasons for choosing Rwanda. Asylum seekers are also not given sufficient opportunity, indeed often have no opportunity to state why they left their country of origin. In UNHCR's view, this is acutely inadequate for an interview which may be the asylum seeker's only opportunity to put forward their asylum claim.

b. From conversations with asylum seekers, to the best of UNHCR's knowledge, there is no practice at the DGIE of alerting the asylum seeker to any potential problems in their claim, and thus asylum seekers are not given an opportunity to address adverse points (for example, points taken to undermine their credibility). In UNHCR's view, asylum seekers must be afforded an opportunity to address adverse points.

c. Lawyers, legal officers or indeed institutional observers are not permitted to attend the DGIE interview (although as I have already indicated, our partner organisation PFR was, once recently, permitted to observe).

d. The DGIE does not provide its own interpreters. In UNHCR's understanding, if the asylum claimant can speak some of one of Rwanda's three official languages (English, French, Kinyarwanda) or if someone is available to unofficially interpret, no interpreter will be contacted. However, in some instances when the applicant cannot provide their own interpreter, the DGIE

has contacted one of UNHCR's partner organisationsto ask if they can send an interpreter to the DGIE (and on occasion the partner organisation will in turn ask UNHCR to 'loan' one of its own interpreters from the ETM). In other cases the individual will bring a member of their community or family to interpreter for them. The use of informal interpreters or interviews between people who only partially understand each other introduces a significant risk of oral evidence being misunderstood or contaminated, in UNHCR's experience.

e. To UNHCR's knowledge, asylum seekers are not provided, at any stage of their asylum claim, with a transcript or record of the DGIE interview. UNHCR does not know whether those interviews are recorded. The provision of interview transcripts or records is a vital mechanism to correct errors or omissions in interview.

f. The DGIE does not provide written notice (still less reasons[12]) to asylum seekers of its decisions not to refer a case. In UNHCR's view, this introduces significant unfairness. It is unclear whether Article 8 of the Prime Ministerial Order of 2015 functions as a challenge to a refusal by the DGIE to refer a person to the RSDC. Even if it does, that mechanism would be rendered ineffective without a reasoned decision.

g. The recommendations of the DGIE are not shared with the asylum seeker.

h. UNHCR is concerned that the DGIE, a unit within Rwanda's intelligence and security services, may not respect systematically the confidentiality of the asylum process. UNHCR in Kigali was told by a senior official that the authorities 'cross-check' with embassies of asylum seekers' countries of origin before making a decision. In each of the cases of airport refoulement referred to further below, UNHCR was informed by DGIE officials that the asylum seekers (all of Middle Eastern or Afghan origin) were being rejected for reasons of 'security'. In the airport refoulement cases, discussed at §§108-11, Rwandan government officials specifically intimated to UNHCR that they had access to sources of information about the individual asylum seekers that UNHCR did not. UNHCR received a recent report from an asylum seeker who, during his DGIE interview, saw papers on his file with official letterhead from his country of origin.[13] UNHCR has also been shown a refugee status acceptance letter from the RSDC which refers to 'the background check in your country'. I exhibit this **as LB2.**

12 Apart from cases where an individual is told they cannot yet submit a claim because they have another form of residence permit in Rwanda.

13 He had not himself submitted any such papers in his application to DGIE.

i. Over the past five years, UNHCR has also consistently received reports that LGBTIQ+ asylum seekers are not able to register their claims based on their sexual orientation or gender identity because their claims are verbally rejected by the DGIE.[14] UNHCR made concerns about this clear to the Rwandan government and in published documents. In the last few months, UNHCR became aware of two cases where LGBTIQ+ individuals were allowed to progress their claims at the RSDC.[15] The sample is too small and too recent to draw any conclusions as to whether Rwandan practices toward LGBTIQ+ asylum seekers have altered. Very recently, UNHCR received a report from an LGBTIQ+ asylum-seeker who reported a very negative experience in his DGIE interview, which included difficulties in understanding the interviewing officer (who did not speak fluent English) and hostile and intrusive questioning. He understood that he was told to leave the interview when he struggled to answer questions. He was not issued with a residence permit. He has not had any updates on the progress of his claim as DGIE are not responding to his enquiries.

j. There is a particular concern that there is a denial of access to in-country processes, as set out above.

Interim Stage: The role of the eligibility officer

42. The RSDC is assisted by an eligibility officer employed by MINEMA. There is only one eligibility officer for Rwanda. In UNHCR's view, this creates a clear problem of capacity which will be aggravated if asylum arrivals increase.

43. UNHCR is also concerned about the lack of clarity about the eligibility officer's role. As far as UNHCR understands, the officer is tasked with a coordination role to receive screened-in applications from DGIE and preparing a case file for the RSDC to consider but officially has no decision-making authority.

44. UNHCR is aware of cases where the eligibility officer undertook an interview with the asylum seeker prior to the decision by the RSDC. It is not clear to UNHCR how or why cases are selected for interview with the eligibility officer. UNHCR has not seen any clear pattern for selection. UNHCR has not seen any interview transcripts or notes prepared by the eligibility officer and is not aware of these being shared with asylum seekers prior to the decision-making stage at the RSDC. UNHCR has never been invited to or attended an interview between the eligibility officer and an asylum seeker.

14 In one further instance, the asylum seeker reported hostile questioning in the presence of others – which he considered a breach of confidentiality – which prevented him from progressing the claim.

15 Of the two LGBTQ+ claims accepted into the RSD system, one, a transgendered person, has been granted refugee status but placed by the Rwandan authorities in a camp which UNHCR considers entirely inappropriate for that person. The other LGBTQ+ asylum claim is still pending; that person has been told not to continue their activism in Rwanda.

45. UNHCR understands that the eligibility officer is responsible, at minimum, for gathering additional information prior to passing the person's file to the RSDC. UNHCR has not seen examples of such files and to the best of UNHCR's knowledge, nor do asylum claimants see these. As I explain in further detail below, the eligibility officer participated in a short UNHCR training in December 2021.

46. UNHCR has concerns that the eligibility officer does not have expertise in the tasks necessary to undertake fair refugee status interviews and determinations, including the ability to handle sensitive cases such as claims based on gender based violence.The eligibility officer also lacks knowledge regarding assessing the credibility of a claim; or how to carry out country of origin information research. The eligibility officer is francophone - when communicating in English with UNHCR staff, there are considerable problems of mutual unintelligibility. This raises concerns over communications in interviews with anglophone (or partially anglophone) asylum seekers. Replacement of the current eligibility officer by another would not remedy the fundamental problem. Rather, UNHCR is concerned by the arbitrariness that arises out of a single individual playing such a pivotal, but unclear role in the RSD process.

47. UNHCR is not shown, systematically, the files sent from the DGIE, via the eligibility officer, to the RSDC. However, UNHCR is concerned that those files may not, certainly systematically, contain interview transcripts, COI or any relevant caselaw or UNHCR guidance concerning country conditions or relevant legal principles.

Second stage: Refugee Status Determination Committee ('RSDC')

48. The RSDC is tasked with assessing and determining asylum claims referred to it by the DGIE.

Composition of the RSDC

49. The RSDC's members are high-level functionaries (Director and Director General level) from 11 ministries and institutions,[16] including: the Prime Minister's Office, ministries in charge of refugees, foreign affairs, local government, justice, defence forces, natural resources, internal security, and health, the National Intelligence and Security Service and the National Commission for Human Rights.[17] Officials from both the DGIE and MINEMA sit on the RSDC.

50. Committee membership is assigned *ex officio* to those holding particular positions (e.g. the Director within a certain ministry) and not to individuals (thus if a new person is appointed to the relevant position, membership of the Committee changes).

16 Article 5 of the 2014 law and Article 3 of the 2015 Prime Ministerial Order.

51. RSDC members are not appointed on a full-time basis. Rather, sitting on the RSDC is one of many diverse responsibilities associated with a Committee member's own ministry or institution. Given their high positions in their individual ministries, most have very busy schedules (as members of the RSDC reported to UNHCR during the December 2021 training described further below). The portfolio of most of the ministers (apart from their RDSC work) does not include matters relevant to asylum procedures.

52. UNHCR has very limited interaction with the RSDC and does not get updates about changes to the Committee's composition. Our staff understand, however (from information given to them) that there is a high turnover of Committee members as officials change positions or are replaced.

53. In UNHCR's view, the lack of specialisation of RSDC members undermines the quality and integrity of the procedure. These concerns are aggravated by the lack of adequate training and relevant knowledge of the committee members on interviewing techniques; assessment of credibility; assessment of country conditions; the applicable legal principles; or the type of legal analysis required to reach an accurate and lawful decision.

RSDC procedure (including interview)

54. The Committee must meet at least twice per quarter (under Article 7 of the 2015 Prime Ministerial Order). UNHCR was told by the RSDC members that they meet on a Friday once there are '***enough cases'*** to consider. UNHCR has reason to believe that up to 40 cases may be considered at one meeting. It is not clear to UNHCR how much time is allocated to each case at a sitting.

55. The notes of the Home Office interviews with the government of Rwanda on 18 January and 22 March 2022[18] state that additional institutions can be invited to the RSDC meeting and provide information and that '*[f]or example, on a country where there is not much information or the decision is more difficult, they can link us with officers in that country to obtain information to assist the decision-making process*.' However, as already indicated, UNHCR has not, with one exception in 2016, been invited to observe meetings or interviews with the RSDC, nor has the RSDC ever consulted UNHCR in an individual case.[19] Indeed, UNHCR is not informed of the dates of the committee sessions. Nor has UNHCR been approached for technical guidance on individual cases.

17 The National Commission for Human Rights (**NCHR**) is mandated with monitoring Rwanda's compliance with human rights standards and with reporting and advocacy on a broad range of human rights issues, including receiving, examining and investigating complaints relating to human rights violations. Refugees are specifically included in the NCHR Service Charter as well as in the 2018-2024 Strategic Plan, although reference is mostly made to monitoring activities in refugee camps. Despite being a member of the RSDC, asylum seekers and the RSD procedure are not mentioned in the Strategic Plan and, to UNHCR's knowledge, the NCHR has engaged in no advocacy or reporting concerning the RSD process.

18 Home Office, *'Review of asylum processing, Rwanda: interview notes (Annex A)'* (v1.0, May 2022), Annex A1 Meetings with Rwandan Government officials, 18 January 2022 and 22 March 2022, p6)

56. The RSDC can make a decision on the papers available or invite the asylum seeker to a panel interview. UNHCR understands that interviews are undertaken in a minority of cases. It is not clear to UNHCR according to what criteria or by whom decisions are made as to whether or not an individual should be interviewed by the RSDC.

57. I turn below first to cases refused without an RSDC interview (which as I explain above appear to be the majority of cases). I then turn to what happens in RSDC interviews where those are carried out.

58. **Cases refused without interview:** In the following three examples of cases rejected in 2022, none of the asylum seekers were interviewed by the RSDC (or the eligibility officer):

    a. A woman and her family members from a non-neighbouring country, who in UNHCR's view was likely to be in need of international protection given UNHCR Position on Returns (which advises against all non-voluntary returns to their country of origin). The claims were, in UNHCR's view, very strong on their face because of country conditions , her specific profile, and the risk of gender-based violence. This asylum claimant was not interviewed concerning her claim by anyone after the DGIE screening interview. Her claim was refused in 2022 by the RSDC. The rejection letter issued by the RSDC stated without further elaboration that she did not meet the eligibility criteria (and that '*the reasons you provided during interview is not pertinent')*. The reference to interview seems either to be a copy-paste error or reference to the RSDC's reliance on her interview with the DGIE.

    b. Two women from neighbouring countries, who claimed to be victims of severe gender-based violence connected to conflict, claimed asylum. These too were, in UNHCR's view, strong cases on their face. In 2022, the asylum seekers were rejected by the RSDC without an interview. The notification letter from the RSDC indicated no reasons for the rejection.

    c. Several nationals from a neighbouring country had previously been recognised as *prima facie* refugees in Rwanda. After returning to their state of nationality voluntarily, all claimed to have been subjected to further persecution. When they claimed asylum on return to Rwanda, they submitted written applications for asylum but were not given an interview. All were then rejected, and then further rejected (without an interview) on appeal to the Minister.

19 In its Submission for the Office of the High Commissioner for Human Rights' Compilation Report - Universal Periodic Review: 3rd Cycle, 37th Session (July 2020) UNHCR stated it was not 'regularly' allowed to observe the RSDC. The correct position is as set out above.

59. In UNHCR's understanding, where asylum claims are refused without an RSDC interview, asylum seekers are not invited to, and have no opportunity to, provide any further information before the RSDC makes its decision as they are not even aware that a decision is being taken on their claim.

60. **Interviews:** From a variety of sources, including individual asylum seekers and others present at the RSDC, there are a number of concerns with the interview process that does take place:

    a. RSDC interviews are too short to enable asylum seekers to present their asylum claim. The average interview for an asylum seeker with the RSDC appears to be 20-40 minutes.

    b. Professional interpreters are rarely used for RSDC or eligibility officer interviews. In the rare instances that an interpreter was used, questions were addressed to interpreters instead of asylum seekers.

    c. UNHCR is aware that at least in two incidents the asylum seeker was not able to submit additional documentation during the RSDC interview.

    d. The RSD interview occurs before a large committee.[20] Asylum seekers have reported to UNHCR that they found the process of being interviewed by a large panel of mainly senior male officials intimidating.

    e. Asylum seekers are not provided sufficient opportunities to express their claim freely (e.g., being frequently cut off by RSDC members while trying to speak). UNHCR is concerned that this environment is inimical to an individual providing vital details about their claim, especially where this includes an account of torture, sexual violence or other serious ill-treatment or where the asylum seeker is vulnerable.

    f. Questions are asked by different members who usually do not introduce themselves and do not explain the interview process to the applicant.

    g. As at the DGIE level, asylum seekers reported that they were asked very few questions concerning the substance of their claim. Asylum seekers are often asked about the reasons why they chose Rwanda, with the implication that there is general mistrust of individuals who did not claim asylum 'closer to home'. Asylum seekers reported questions focussing on their detailed route and movements before entering Rwanda and any identity documents.

    h. Some asylum seekers reported accusatory questions, hostile attitudes and negative comments by RSDC members during the interview.

    i. The questions reported by the asylum seekers indicated that RSDC members had poor knowledge of the case being examined, suggesting that the asylum request had been poorly reviewed or analysed (if at all) before the interview, and questions were being asked randomly.

20 Article 7 of the Prime Minister's Order provides that the RSDC's meeting shall be held if two-thirds of its members are present, which means at least 7 members.

j. There is no opportunity for asylum seekers (whether or not interviewed) to make submissions (in person or through a lawyer) to the RSDC. Lawyers are not permitted at the RSDC stage. UNHCR and its legal aid partners have been told repeatedly that if a person was telling the truth, they had no need for a lawyer. Over the years, when legal aid partners have inquired about the possibility of legal representation, they have been told that as the relevant national refugee law does not specifically refer to provision of legal representation, it cannot be permitted.

Provision of decisions, lack of reasons, apparently erroneous decisions

61. Article 9 of the 2014 Law provides that *"The decision of the Refugee Status Determination Committee shall set out the reasons for granting or refusing to grant refugee status."* However:

a. RSDC refusals are not always notified to asylum seekers. In two cases in the last week (mid-June 2022), MINEMA sent UNHCR copies of RSDC refusals. UNHCR then contacted the asylum seekers to inquire if they needed assistance for an appeal application: they were unaware that their claim was rejected or that they could appeal.

b. Where a written RSDC decision is provided, this is in one of Rwanda's three official languages. UNHCR is not aware of written decisions (from the RSDC or indeed any other decision-making body in Rwanda's RSDC process) being translated for asylum-seekers.

c. In none of the 116 written RSDC decisions which UNHCR has seen (because they were provided by either individual asylum seekers, or our legal partners, or MINEMA's eligibility officer) were reasons set out in sufficient detail to allow the asylum seeker to understand why their claim has been rejected and in most instances, no reasons at all were supplied for refusals by the RSDC.

d. The standard rejection template seen by UNHCR states "*We regret to inform you that the Refuge Status requested was not granted because you don't meet the eligibility criteria and the reasons you provided during the interview are not pertinent*".[21] Of the 50 rejection letters seen by UNHCR this year 36 have this standard text. No further reasons or explanation are given in any of those 36 letters. I exhibit as **LB3** a rejection letter containing the sample wording. It is representative of the other 35 decisions which UNHCR has seen which are in materially identical terms.

21 Similarly, the grant template simply states "*your claim has been accepted and granted*".

e. Even in the 14 cases where the briefest of reasons were provided, there was no, or no detailed reference to information provided by the asylum seeker and, as I have already said, the reasons were in UNHCR's view too cursory to enable an effective appeal. Thus, for example, in an Eritrean case (where the individual's former country of asylum was Ethiopia) the RSDC's reasons were limited to stating that *"We regret to inform you that the refugee status requested was not granted because you are not meeting the eligibility criteria and the reasons why you fled your country of asylum (Ethiopia) are not for protection*". I further Exhibit as **LB4** a table summarising reasons given in all refusal decisions which UNHCR has seen this year.

f. UNHCR is not aware of any cases where asylum seekers were provided additional reasons for refusal verbally.

Statistics

62. UNHCR does not have comprehensive, up-to-date figures and trends on asylum applications in Rwanda. As explained at §19 above, that information is not routinely shared with UNHCR by the Rwandan Government.[22] In an attempt to keep records of known cases, since the start of 2021 UNHCR has recorded in a list all asylum seekers known to it (those who have approached UNHCR or its legal aid partners for advice). For the purpose of this statement, my UNHCR colleagues also reviewed the information available to them (obtained from individual asylum seekers or UNHCR's legal partners) from 2020.

63. A summary of the outcomes of all cases known to UNHCR which were processed by RSDC since the start of 2020 is set out in the table below.

22 In this respect, the statement of a Rwandan official included at §4.14.6 of the Home Office *'Review of asylum processing, Rwanda: country information on the asylum system'* (v1.0, May 2022) that '*When someone applies for asylum we communicate that to UNHCR'* is incorrect. UNHCR normally only becomes aware of those claims if informed of them by its partner organisation or approached directly by the asylum seeker. See also *'Review of asylum processing, Rwanda: interview notes (Annex A)'* (v1.0, May 2022), Annex A1 Meetings with Rwandan Government officials, 18 January 2022 and 22 March 2022, p8.

Table 1: Overview of cases processed by RSDC as known by UNHCR for 2020 to 2022 (as of 21 June 2022)

This is a summary of all cases known to UNHCR from (a) information on the refugee registration database (b) information shared by the Government of Rwanda (c) information provided by individual asylum seekers and (d) information provided legal partners

Nationality	Number of cases	% of total Number	Recognised		Rejected	
			Number	%	Number	%
Afghanistan	2	1.3%	0	0	2	100%
Burundi	57	36.5%	17	30%	40	70%
Cameroon	5	3.2%	0	0%	5	100%
DRC	50	32.1%	5	10%	45	90%
Egypt	1	0.6%	1	100%	0	0%
Eritrea	18	11.5%	8	44%	10	56%
Ethiopia	5	3.2%	3	60%	2	40%
Kenya	1	0.6%	0	0%	1	100%
Lebanon	1	0.6%	0	0%	1	100%
Nigeria	1	0.6%	0	0%	1	100%
Palestine	1	0.6%	1	100%	0	0%
Rep. of Congo	1	0.6%	0	0%	1	100%
South Sudan	4	2.6%	1	25%	3	75%
Sudan	2	1.3%	0	0%	2	100%
Syria	3	1.9%	0	0%	3	100%
Turkey	1	0.6%	0	0%	1	100%
Yemen	3	1.9%	0	0%	3	100%
Total	**156**	**100.0%**	**36**		**120**	
% of Total				**23%**		**77%**

64. UNHCR has recorded a high rejection rate[23] for countries of origin and profiles highly likely to have grounds for refugee status, according to UNHCR country specific guidance and relevant country of origin information. This includes a 100% rejection rate for Afghan, Syrian and Yemeni cases, and a 56% rejection rate for Eritrean nationals at RSDC stage. While these are small samples (and therefore summarising reasons given in all refusal decisions which UNHCR has seen this year.

23 UNHCR notes an error on its online data portal which gives a figure of '0' rejected cases each year between 2016 and 2021. My colleagues in Kigali recently checked this data and it appears that this occurred because the data team in Rwanda input all known rejected cases into the 'otherwise-closed' category due to lack of comprehensive data disaggregation. It has been practice for the data team in an effort not to underestimate the true magnitude of rejected cases in the absence of a fully disaggregated dataset available to UNHCR per calendar year. Further, as I explained above, during those years, UNHCR did not have systematic access to decisions rejecting claims and so the figures are only the best available figures available to my colleagues at the time.

Adequacy of the RSDC process

65. In UNHCR's view, the procedure before the RSDC is unfair. It does not, in UNHCR's view, offer a viable corrective to any errors or unfairness committed by the DGIE. To summarise the matters above:

    a. The composition of the RSDC is of non-specialist individuals, who rotate on a regular basis and have minimal substantive expertise.

    b. UNHCR is concerned about a number of cases refused without an RSD interview by the RSDC, especially given the limitations of the screening interview conducted by DGIE.

    c. The interviews that are conducted do give rise to a number of concerns, including as to the procedure and substance.

    d. In overview, there is no systematic opportunity (and for those not interviewed by the eligibility officer or RSDC, no opportunity at all) for the asylum seeker to present their claim in full, or address provisional adverse findings (eg to address a credibility concern that has arisen in the view of the decision-maker(s), including through a lawyer).

    e. There is a lack of transparency. Asylum seekers will be unaware of the DGIE's recommendation to the RSDC or of what information has been passed to the RSDC (by the DGIE or eligibility officer) concerning their case. Decisions are not always provided to asylum seekers, and when they are they are often deficient.

    f. There is a high refusal rate for individuals of nationalities and profiles that are likely to be in need of international protection.

Third Stage: Appeal to the Minister

66. A person refused asylum has, in principle, the right to appeal against the negative decision to the Minister of MINEMA (although UNHCR understands that the appeal is in fact decided not by the Minister herself, but a team of advisers).

67. UNHCR has six areas of concern in relation to the appeals process.

68. First, UNHCR considers that the lack of reasons (or adequate reasons) by the RSDC precludes any effective right of appeal. Rejected asylum claimants cannot address, for example, any issues regarding their credibility or having a well-founded fear as a result of the RDSC interview or fill any gap identified in their evidence. From contact with our partner organisations and individual asylum seekers who approach us, UNHCR is aware that asylum seekers are left with no choice but to simply repeat their claims when attempting to appeal negative decisions. The lack of reasons provided by the RSDC is particularly problematic because the appeal is usually decided by MINEMA on the papers without a further hearing.

69. Second, UNHCR considers information as is provided to asylum claimants about the appeals process to be inadequate. None of the 50 RSDC rejection letters seen by UNHCR include information in writing about the right of appeal. Some asylum seekers have told UNHCR that they were verbally informed of the right of appeal when they collected the notification of rejection decision, but UNHCR

understands that this does not always happen in practice. UNHCR was also informed by Rwandan officials that asylum seekers are not systematically informed of the right to appeal during the RSDC session (or at the time of the decision). In at least two recent decisions of the RSDC, the RSDC had enclosed a copy of a page from the 2014 law which cites three legal provisions, including Article 11, the provision concerning a right of appeal. This document appears in Rwanda's three official languages. The provision of this document to asylum seekers is haphazard. UNHCR is aware of cases decided around the same time for which the asylum claimant was not provided with that document. I have exhibited the printout at **LB5**. Even where the copy of a page from the 2014 law is supplied, UNHCR is concerned that the enclosure of this document, without adequate explanation, with an (unreasoned) refusal letter does not suffice to explain to asylum seekers that they can appeal or how to do this. There is, moreover, no standard application form or other *pro forma* documents or guidance to assist an asylum seeker to lodge an appeal.

70. Third, the nature of the appeal procedure is opaque. It is unclear to UNHCR what the jurisdiction is of MINEMA (e.g. is it a re-taking of a decision or limited to legal errors).

71. Fourth, the Government of Rwanda does not provide access to free legal assistance for appeals from the RSDC to the Minister. In limited cases, UNHCR's partner organisations do help with preparing and lodging appeal documents.

72. Fifth, UNHCR is concerned about the lack of impartiality in the appeals process. Although the Minister does not herself sit on the RSDC, in the current procedure, MINEMA is part of the RSDC: MINEMA's current Permanent Secretary is the Secretary of the RSDC, and, as explained above, MINEMA's eligibility officer sometimes undertakes an interview with the asylum seeker.

73. Sixth, UNHCR is concerned that MINEMA too does not give reasons for refusal. I exhibit as **LB6** an example of a MINEMA refusal letter which informs the asylum seeker that their appeal is dismissed '*considering the information /proof you provided which were not neither [sic] satisfactory nor pertinent to convince the above mentioned Committee, based on the report of the appeal panel which re - examined your case, I regret to inform you that the decision taken by the Refugee Status Determination Committee rejecting your application for refugee status remains unchanged*.'

74. As I have indicated above, most MINEMA decisions are taken on the papers. However, UNHCR is aware of two occasions when MINEMA, recently at the appellate stage conducted an interview with the asylum seeker. In both instances the asylum seeker was not permitted to have a legal representative present.

75. UNHCR is not aware of any case where the RSDC decision was overturned at appeal. UNHCR has seen five Ministerial appeal decisions made this year. All five were decided on the papers and all were rejected in the same terms ('*Based on the report of the appeal panel which reexamined your case I regret to inform you the the* 30 *decision by the RSDC rejecting your application for refugee status remains unchanged)*.[24]

Final stage: Appeal to the High Court

76. Article 47 of the 2018 law provides that *'The High Court also adjudicates cases relating to the applications for asylum'*. Although that legislation was enacted on 2 June 2018, to the best of UNHCR's information, no appeal (or 'adjudication') by the High Court in an RSD case has ever occurred. That there are no known cases is consistent with the information set out in the Home Office, *Review of asylum processing, Rwanda: assessment* (v1.0, May 2022) at §2.3.3.
77. The jurisdiction of the High Court in the RSD process is not clear (Article 47 does not refer to an appeal and appears under a heading 'Ordinary jurisdiction of the High Court at first instance').
78. The procedure for any appeal (or 'adjudication') by the High Court in the RSDC process is also unclear. UNHCR is aware of no guidance or application form issued to or available to asylum seekers concerning how to approach the High Court.
79. Much as for the lower level, in UNHCR's view, the lack of written reasons in rejections from RSDC and MINEMA impedes any effective appeal to the High Court.
80. In addition, to the best of UNHCR's knowledge, asylum seekers are not informed by MINEMA of any right of appeal to the High Court. The sample decision letter I referred to at §73 above makes no reference to the High Court. At this level, the Rwandan Government does not, to the best of UNHCR's knowledge, enclose any further document copying out the relevant statutory provisions.

D: UNHCR'S FURTHER THEMATIC CONCERNS REGARDING THE RSD PROCESS

The substance of Rwandan asylum law

81. UNHCR has serious concerns about protection gaps arising from the letter of Rwandan law and also its application.

[24] I am aware that the Home Office Country policy and information note: Rwanda, asylum system, May 2022, at §4.14.5, refers to two appeals where a decision was changed. My colleagues in Kigali told me that neither they nor the legal partner they spoke to could recognise those cases.

82. As concerns Rwandan legislation, UNHCR has already indicated to the Court[25] that, although UNHCR had not identified that gap before the present litigation, it agrees with the Claimants that there is a protection gap in the definition of Refugee Convention Grounds at Article 7(1) of the 2014 law. The definition of political opinion ('political opinion different from the political line of the country of his/ her nationality') creates a serious protection gap for those risking persecution for reasons of imputed rather than actual political opinion and for those at risk from non-state agents.

83. With regard to Rwandan interpretation and implementation, UNHCR has serious concerns about decisions which indicate that Rwandan decision-makers do not understand the concept of refugees *sur place.* UNHCR is aware of several cases from 2021-2022 where it was suggested to asylum seekers that they were not '*genuine refugees'* as they had been able to obtain a visa or make other stay arrangements prior to seeking asylum.

84. There was difficulty for UNHCR staff, in UNHCR's training for Rwandan decisionmakers in late 2021, in explaining to decision-makers the concept of particular social group; this is a complex area of refugee law that inexperienced decision-makers often struggle with.

85. It is unlikely, in UNHCR's view, that fundamental concepts developed in the particular context of sexual orientation and gender identity and expression claims, such as the right of LGBTIQ+ asylum seekers not to have to hide their identity in order to avoid persecution (per *HJ (Iran) v Secretary of State for the Home* 2010 1 AC 596*)*[26] will be understood and applied correctly within an asylum system with little experience or training in such types of claims. These concerns are heightened by the consistent refusal of DGIE to register asylum claims by LGBTIQ+ individuals, as discussed above at §41(i).

86. UNHCR has similar concerns about analogous protections to those in *HJ Iran* arising out of religious belief or political opinion (*RT (Zimbabwe) v Secretary of State for the Home Department* [2013] 1 AC 152). It can be difficult for decision-makers, to understand that an individual can not be denied refugee status on the basis that they could hide a fundamental aspect of their identity protected by the Convention, such as their sexual orientation, gender identity, ethnicity, religion or political opinion.

87. UNHCR is also aware of no mechanism by which a person whose claim has been rejected under the RSD procedure can make a further asylum claim in Rwanda on the basis of fresh evidence or changed circumstances.

25 UNHCR's written submissions of 10 June 2022, §11.

26 See also *UNHCR Guidelines on International Protection No. 9: Claims to Refugee Status based on Sexual Orientation and/or Gender Identity within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees, 23 October 2012*, HCR/GIP/12/01, available at: https://www.refworld.org/docid/50348afc2.html.

88. UNHCR is also concerned that Rwandan decision-makers may interpret and apply the exclusion provisions of the Refugee Convention without the necessary consideration of individual responsibility or of the seriousness or nature of crimes person is alleged to have committed. While it is very difficult to discern the reasoning underpinning RSDC letters, in two of the letters analysed for this statement, there appeared to be a (potentially erroneous) attempt to exclude an individual from Refugee Convention protection. In one Burundian case, the RSDC stated that: '*refugee status requested was not re-granted because of your participation in rebel groups.'* and in another: '*We regret to inform you that the refugee status requested was not granted because you are not meeting the eligibility criteria and you escaped justice'* (emphases added).

Lack of training

89. UNHCR has observed serious shortcomings in knowledge and training regarding RSD among relevant officials at all levels. UNHCR considers that this lack of training gives rise to a serious risk that refugees will be refused recognition by the Rwandan Government and refouled.

90. In recent years, the Rwandan authorities have not been receptive to UNHCR offers of assistance to build the capacity of their national asylum system. UNHCR provided a three-day training to Rwandan Government officials in June 2017.[27] Between June 2017[28] and December 2021, although UNHCR repeatedly offered training, no UNHCR RSD training was conducted.

91. UNHCR is not aware of any other organisations or NGOs providing training on RSD to Rwandan officials.

92. In December 2021, after four years of inactivity in RSD capacity building, UNHCR was invited to co-facilitate (together with MINEMA, Rwanda Law Reform Committee and the University of Rwanda) a workshop for staff and officials at the DGIE and RDSC. The training was intended to last 4.5 days but lasted just over three days because of the unavailability of committee members.

27 The fact of this earlier training came to my attention when preparing this statement.

28 Following the June 2017 training, UNHCR recorded a number of concerns regarding RSD in Rwanda, including: (a) asylum applicants (typically those presenting non-political claims, e.g. related to gender, and/or those from countries neighbouring Rwanda) being 'screened out' and denied access to asylum procedures by immigration officials; (b) repeated resistance, notably from the MIDIMAR (now MINEMA) official charged with considering appeal applications, to refugee claims based on sexual orientation and gender identity; (c) lack of an independent appeal entity; (d) UNHCR staff not informed or invited to the RSDC, and not in receipt of information about the numbers of cases processed and the outcomes of the decision-making; (e) despite invitations and repeated follow up by UNHCR, the Director of MIDIMAR's Refugee Department and MIDIMAR's eligibility officer had not attended. As is clear from the description of UNHCR concerns raised in December 2021, many of the same concerns have remained.

93. The training was attended by only 15 participants. Out of 11 RDSC members at the time, eight attended, but even some of those could only attend partially because of their conflicting professional schedules and ministerial commitments[29] (and one attended for only two days). The RSDC chair (who was new to the process at the time and had not yet attended any RSD-related adjudication) and secretary missed at least the first day of the training which covered basic principles of refugee law.

94. At the time of the training, most RSDC members were new, had no prior exposure to RSD and had not attended RSDC deliberations. One of the officials remarked that he did not understand why he was required to undertake RSD given that his departmental role was not connected to asylum.

95. The training was targeted at an extremely basic level. It included, in the main, general principles of refugee law, in addition to brief and basic training on assessing individual claims and interviewing techniques. My colleagues felt that the basic knowledge of the attendees did not allow them to cover crucial areas such as how to deal with claims based on membership of a particular social group.

96. The participants' lack of relevant knowledge and skills was particularly apparent during a simulation of RSDC interviews and decision making. Observations from UNHCR's trainers noted that the participants lacked interviews skills and had very limited or no understanding of how to assess refugee status. In a simulation involving a husband and wife, the 'couple' were interviewed together and the husband was allowed to answer for the wife. In addition, there was no opportunity for the 'asylum seeker' to express relevant gender-based violence related elements of her claim. It was also noted that elaborate leading questions were asked by participants and that the 'asylum seeker' was not given an opportunity to respond in full to questions, nor were they alerted to adverse credibility points. When making their assessments of the cases, participants were unable to demonstrate knowledge of how to assess credibility and COI; or of key concepts in refugee law. This is not surprising given that the participants are senior civil servants with no background in RSD.

97. In UNHCR's view, this short (and truncated) one-off workshop cannot be considered adequate training to ensure fair RSD decision making, especially for training participants with little or no prior knowledge and experience of refugee law. RSDC members still at the end of the training lacked by some distance the requisite knowledge and skills to make fair, reliable RSC decisions. RSDC members require significant further in-depth on-the-job training and shadowing of appropriate procedures. However, in UNHCR's view, while that is necessary to rectify some of the problems in the RSDC process, it would be far from sufficient:

29 The problem of non-attendance of key officials was also raised by UNHCR after its previous training, delivered in July 2017.

the non-specialist composition of the RSDC is inimical to fair, reliable RSD decision-making. UNHCR was further concerned by attitudes expressed by Rwandan authorities during this training that DGIE are within their rights to deny access to its territory or to RSDC procedures if they consider the profile of an individual applicant unpalatable, including on unspecified grounds of national security. The Rwandan staff and officials present at UNHCR's December 2021 training did not appear to consider such 'screened out' persons as asylum seekers or consider that their deportation would constitute refoulement.

98. As concerns judicial training, I am aware from colleagues that the Judicial Institute for Africa (JIFA), the International Association of Refugee and Migration Judges (IARMJ) Africa Chapter and UNHCR signed an MOU in August 2021 to create a 'centre of excellence' to train judges and lawyers on refugee law. UNHCR understands that five Rwandan judges attended their online training in late 2021. However, four of those were from other courts. Only one was a High Court judge.

Access to legal assistance

99. I have explained above the extremely limited provision for legal representation in the RSD process. In particular, lawyers are not permitted in either DGIE or RSDC interviews.

100. Moreover, to UNHCR's knowledge there is only one legal officer (an employee of PFR in Kigali) to regularly provide assistance on the Rwandan RSD process. Shehas an undergraduate degree in law but has not qualified as a lawyer. Assistance with RSD applications is one of her many duties, which also include assistance for refugees in a range of criminal and civil cases (including family and employment matters). UNHCR, having enquired further for the purposes of this statement, now understands that there is in addition a lawyer at PFR who, although his ordinary tasks are not to work on the RSD process but rather to provide assistance for refugees in a range of criminal and civil cases (including family and employment matters) can stand in as a backup if the legal officer is unavailable. These are, UNHCR understands, the only legal officer and lawyer available to work on the Rwandan RSD process. PFR also has legal officers (four, in my understanding) who assist with the ETM and are not available to be reallocated. UNHCR's other partner organisation in Rwanda, LAF, operates in camps and urban centres outside Kigali. LAF's current involvement in the RSD process is minimal[30] (to the best of my colleagues' knowledge, LAF provide assistance in very rare cases where an asylum claim is made from one of the locations where LAF operates).[31] My colleagues in Kigali understand from PFR that LAF routinely refers RSD cases in Kigali to PFR.[32]

30 As of January 2020, LAF's geographical area of intervention for RSD purposes does not cover Kigali where the majority of asylum applications are made. When speaking to LAF for the purposes of assisting in preparing this statement my colleagues were informed that, that, while it was more regularly involved in helping with applications in 2018-9 since the start of 2020, LAF has only assisted with four applications.

Concerns about lack of access to and inappropriate use of interpreters

101. To date, the vast majority of asylum seekers have come to Rwanda from neighbouring countries and are able to speak one of the official languages of Rwanda. The three official languages of Rwanda are English, French and Kinyarwanda. French is one of the official languages in both Burundi and DRC.

102. The use of professional interpreters is rare in the RSD process in Rwanda. To the best of UNHCR's knowledge, the Rwandan Government has historically had no interpreters of its own for the RSD process; UNHCR is unaware of any change in that position.

103. In UNHCR's understanding from its observation and information provided by asylum seekers, a professional interpreter is not provided if the asylum claimant is able to speak *some* degree of any of Rwanda's official languages. Asylum claimants are also allowed to bring family or community members (who are usually not professional interpreters) to interpret at DGIE, eligibility or RSDC interviews.

104. UNHCR is aware of a case of an asylum seeker of African origin who complained of unfairness at all stages of the interview process. He was interviewed by DGIE but felt that he did not have enough time to express himself (he was also questioned as to why he claimed asylum instead of applying for a work visa). Prior to his RSDC interview, he explained that he wanted to be interviewed in an official language of his country (which is also an official language of Rwanda) in which he was fluent. At the start of the interview, he was asked to speak in another language spoken in his country of origin. Despite protesting that he wanted to speak in his preferred language, he was told that as a national of his country he should conduct the interview in the language specified by the panel. A short interview was conducted in the language specified by a lead panel member (the others stayed silent). The asylum seeker could not fully understand as the panel member spoke in a different accent. He was not provided with an opportunity to submit additional documents which assisted his claim. His claim was rejected and his appeal to the Minister refused without a further interview.

31 For the purpose of preparing the statement, my colleagues consulted LAF and were informed that none of the staff at LAF routinely provide assistance to refugees in the RSD process. Four lawyers have some previous experience in assisting in the RSD process but very rarely do so at the moment. This more detailed information came to light when preparing this statement.

32 Unfortunately, in preparing its country assessment documents, the UK Home Office met with LAF but not PFR, in circumstances where the latter, not the former, is a key stakeholder in the RSD process. My colleagues noted that the notes of the interview with LAF recorded in the *Country policy and information note: Rwanda, interview notes* (Annex A), May 2022 that "*Some are referred to LAF via UNHCR and others self-refer*." However, it is not correct that UNHCR currently refers RSD cases to LAF

105. Since the start of 2021, UNHCR has on very limited occasions been approached by the Government of Rwanda to provide interpretation services in cases where the individuals do not speak one of the three official languages of Rwanda. UNHCR has only ever provided interpreters in Tigrinya or Arabic (those interpreters had been hired by UNHCR for the ETM and were 'loaned' by UNHCR).

106. Where the applicant or their family or community member can speak *some* of one of Rwanda's three official languages UNHCR is not informed of the person's interpretation needs.

107. In UNHCR's view, reliance for RSD interviews on the asylum claimant's own potentially fragmented knowledge of one of Rwanda's official languages, or that of family members, considerably heightens risks of an applicant's evidence being misunderstood or contaminated.

E: REFOULEMENT

Airport refoulement

108. In 2021-22 UNHCR has encountered five cases of airport refoulement, all involving individuals from the Middle East and Afghanistan.[33] In all those cases, UNHCR sought to intervene with senior DGIE and MINEMA staff but UNHCR's intervention failed to prevent refoulement. UNHCR is aware that MINEMA is not prepared to intervene in DGIE's matters. The five cases were as follows:

    a. In February 2021, two Libyans tried to claim asylum[34] in Kigali airport. The individuals were able to contact UNHCR's office in Kigali and communicate with one of our staff members on WhatsApp. The airport staff did not speak to UNHCR directly (and UNHCR does not have direct contact to officials at the airport). UNHCR contacted the MINEMA Permanent Secretary for support to facilitate the individuals' access to asylum and to assess their international protection needs. In response, MINEMA stated that the individuals had said that they came to Rwanda for business opportunities and did not meet the requirements for entry to Rwanda.[35] The authorities refused to process the asylum claims on the basis that asylum is "*not applicable when entry has already been denied"*.[36]

33 UNHCR also highlighted these cases at the meeting with the Home Office on 25 April 2022, which is discussed further below. The Home Office, *'Review of asylum processing, Rwanda: assessment'* (v1.0, May 2022) document is therefore incorrect, at §2.3.13, in stating that the example of two Libyans was '*one possible exception*' to the lack of examples of refoulement.

34 In respect of those cases, the *Home Office Rwanda assessment* document states, at §2.3.12 that it was not clear whether the Libyan nationals sought to claim asylum. This is incorrect. Correspondence received by UNHCR from the Rwandan authorties referred to those individuals' attempts to claim asylum.

On 3 February 2021, UNHCR sent to MINEMA and DGIE a Note Verbale explaining that the individuals were located within the airport and UNHCR was aware of their expressed need for international protection. UNHCR clearly stated removal would be inconsistent with Rwanda's obligations under the Refugee Convention and the principle of non-refoulement. Despite UNHCR's efforts, the individuals were removed from Rwanda. (Notes Verbales are confidential diplomatic communications. It is important that they remain confidential and they are therefore not exhibited to this statement.)

In UNHCR's experience, the fact that a person travels to a country of refuge under a visa granted for another purpose is not an indication that they are not in need of international protection.

b. On 24 March 2022, two Afghan nationals at Kigali airport were able to contact UNHCR by WhatsApp and email. They told UNHCR that they initially explained that they had arrived on a tourist visa but when they were denied entry, they stated that they were not able to return to Afghanistan as their lives would be in danger because of their profile and the recent collapse of the Afghan government. At least one of them was affiliated with international forces[37] and, in UNHCR's view, had on the face of it very strong protection claims (UNHCR advises against any non-voluntary returns to Afghanistan, with work performed by an asylum applicant for international forces as an additional risk factor). UNHCR sent an email to MINEMA's Permanent Secretary urging facilitation of access to asylum and reminding the government of its position against any non-voluntary returns. Despite UNHCR's intervention, the Afghans were prevented from making asylum claims and expelled and eventually refouled to Afghanistan.[38]

c. On 8 April 2022, UNHCR assisted a Syrian national who also attempted to seek asylum. UNHCR considers that the vast majority of Syrian asylum seekers continue to be in need of international protection and calls on States not to forcibly return Syrian nationals to any part of Syria. The individua l was prevented from making his claim and removed from Rwanda, initially to Turkey and then by land to Syria.[39]

35 They did not have a host and it was considered that they did not have sufficient funds to stay in Rwanda. Officials also raised concern about their 'deceptive' purpose of travel because they had initially stated they only had one-way tickets, when the opposite turned out to be the case.

36 The individuals were stranded between 29 January and 5 February 2021. On 30 January 2021, they were removed to Dubai but denied admission there and sent back to Rwanda. They reported to UNHCR being physically and emotionally exhausted, sleep deprived, anxious, confused and denied access to asylum claims. My colleagues noted that the details of this incident are incorrectly described in the record of UNHCR's conversation with the Home Office set out in the *Country policy information note*: *Rwanda, interview notes* (Annex A). In particular, they do not recognise the reference to the Libyans being well treated.

37 UNHCR was not able to speak to the other individual, who, according to his friend was having panic attacks.

109. UNHCR does not know what information was elicited from any of the refouled individuals, who interviewed them, or who made the decision to remove them. Despite UNHCR's representations, my colleagues were only provided with an update once the individuals were put on the plane to depart Rwanda. The Rwandan officials referred in the airport refoulement cases to grounds of national security as a reason for refusing access to territory and the asylum procedure but failed to provide any detailed reasons for that decision.

110. On 21 April 2022 by colleagues in Kigali sent a Note Verbale to MINEMA and the DGIE in respect of the Syrian and Afghan nationals, highlighting that their removal had been in breach of the Refugee Convention and the principle of non-refoulement.

111. As explained above, UNHCR does not have any presence at Kigali's airport and only became aware of those cases by chance (because, for example, a fellow passenger contacted UNHCR or the individual was proactive enough to seek advice). UNHCR is concerned that it is very likely that further people have been turned away from the airport without UNHCR being notified.

In-country applications

112. There were at least three cases in 2020-22 of asylum seekers[40] from a non-African country (which, to UNHCR's knowledge has close diplomatic relations with Rwanda[41]). These asylum seekers claimed asylum on grounds of actual and imputed political opinion. The claims were very strong on their face because of conditions prevalent in that country for persons of their profile. The individuals submitted asylum claims to the DGIE but were not issued a residence permit, putting them at risk of detention and deportation. Their cases were not referred by the DGIE to the RSDC. The asylum seekers were later informed that they had to leave the country within days, without any formal refusal of their asylum claim. In all cases, UNHCR had to intervene to prevent refoulement of those asylum seekers by arranging their urgent resettlement in different countries. Given the limitations of its oversight explained at §§18-19 above, UNHCR is concerned that there may be other nationa ls of the same country who have been refouled without UNHCR's knowledge. These cases give UNHCR serious concern that DGIE decision-making is influenced by considerations of Rwanda's international relations.[42] These cases have not been mentioned, owing to their sensitivity, in any of the materials thus far before the Court.

38 UNHCR remained in contact with these individuals as they were sent back from Kigali to Nairobi to Dubai (their travel route). UNHCR offices were not able to intervene. On 30 March 2022, UNHCR UAE was informed by a friend of the asylum seekers that they were sent to Afghanistan from Dubai.

39 UNHCR also highlighted these cases at the meeting with the Home Office on 25 April 2022, which is discussed further below. The Home Office, *'Review of asylum processing, Rwanda: assessment'* (v1.0, May 2022) document is therefore incorrect, at §2.3.13, in stating that the example of two Libyans was "*one possible exception*" to the lack of examples of refoulement.

113. UNHCR moreover has serious concerns that refoulement may occur where claims are verbally rejected by the DGIE. For example, I have already mentioned at paragraph §41(i) above the DGIE's pattern, at least until recently, of rejection of LGBTIQ+ asylum claims. As I already explained, two LGBTIQ+ asylum claimants were recently allowed into the RSD system. Every other asylum claimant of whom UNHCR is aware who made a claim based on their LGBTIQ+ identity had their claim verbally rejected by the DGIE and thus was not referred to the RSDC or otherwise allowed into the RSD system. Almost all of those LGBTIQ+ asylum claimants who were verbally rejected subsequently left Rwanda.

Concerns about bias

114. UNHCR is also seriously concerned about bias, at both DGIE and RSDC level, against asylum claimants from the Middle East and Afghanistan. Its concerns are based on the following:

a. All five recent cases known to UNHCR of refoulement from the airport are for individuals from Afghanistan, Libya and Syria;

b. In all of those cases, Rwandan officials relied on unexplained security grounds to justify refusal;

c. There is an anomalously high rate of rejections for asylum seekers from countries for which, if the law were properly applied and the country evidence properly considered, there should be few refusals (Afghanistan, Libya, Syria, Yemen, see above);

d. UNHCR's staff have heard senior government officials state that asylum seekers from the Middle East and Afghanistan should claim asylum in their own region; and

e. Asylum seekers from the Middle East and Afghanistan have regularly complained to UNHCR about the delays in processing their asylum claims.

F: CONCERNS ABOUT CONDITIONS FOR ASYLUM SEEKERS

115. Below, I make reference principally to matters already in the public domain.

40 Including two families.

41 UNHCR is unable to name the country because of the sensitivity of its own operations there and the high sensitivity of the cases mentioned.

116. In February 2018, about 700 Congolese refugees resident in Kiziba camp in Rwanda marched towards Karongi town and camped outside the UNHCR Karongi Field Office. The refugees were protesting outside a UNHCR building against a 25 percent cut in food rations. Two days later, the Rwandan police fired live ammunition on protesting refugees killing at least 12 people outside the UNHCR Field Office in Karongi and in Kiziba refugee camp. Between February and May 2018, 66 refugees[43], including three minors and three females, were arrested following this incident. Eighteen were released without charge, but many were charged with a range of offences including "spreading false information with intent to create a hostile international opinion against the Rwandan state" (under Art. 451 of the Penal Code), "inciting insurrection or trouble amongst the population" (under Art. 463 Penal Code), and participating in an illegal demonstration or public gathering (under Art. 685 Penal Code). A number were sentenced to periods of imprisonment, and one was sentenced to 15 years in prison.

117. Human Rights Watch's investigation into the events, found that refugees were unarmed and that Rwandan police had used excessive force.[44] UNHCR's statement at the time stated the same[45] and that remains UNHCR's view. I note however, that in 2018, Rwanda's National Commission for Human Rights ('**NCHR'**) published the findings of its investigation into those killing, which stated that police responded to a "violent and organized attack" and used force as a last resort.[46]

118. UNHCR has grave concerns that asylum seekers relocated from the UK to Rwanda are at significant risk of detention and serious harm should they express dissatisfaction through protests after arrival.

G: THE ISRAEL-RWANDA ARRANGEMENT

119. The Israel-Rwanda Arrangement is in my view, illustrative of the danger and suffering that are, in UNHCR's view, liable to arise from the UK's externalisation plan.

42 In another recent example, the individual's case was forwarded by DGIE to RSDC. The asylum seeker reported that in his DGIE interview, the DGIE officer mentioned Rwanda's relationship with his country ("*They have built [infrastructure] here, and they have given us [equipment]… because of all these things, we cannot accept your application, you better find yourself another place to go to"*). He was also told the officer thought his application was highly likely to be rejected at the DGIE stage (which it later was).

43 UNHCR's July 2020 submission to the Universal Periodic Review stated that 77 refugees were arrested between February and May 2018. However, a review of UNHCR's internal records indicates that the number arrested was in fact 66.

44 *'Rwanda: A Year On, No Justice for Refugee Killings'* (23 February 2019), available at https://www.hrw.org/news/2019/02/23/rwanda-year-no-justice-refugee-killings .

45 *'UNHCR shocked over reports of refugee deaths in Rwanda'* (23 February 2018), available at: https://www.unhcr.org/uk/news/briefing/2018/2/5a8fde6b4/unhcr-shocked-reports-refugee-deathsrwanda.html

46 NCHR, *'Summary of the NCHR Report on Kiziba Refugee Camp Incident'*, undated, available at: http://www.cndp.org.rw/fileadmin/user_upload/SUMMARY_OF_THE_NCHR_REPORT_ON_KIZIBA_ REFUGEE_CAMP_INCIDENT.pdf

120. The Israel-Rwanda Arrangement was a confidential bilateral agreement reached between the Governments of Rwanda and Israel in 2013 for the removal of Eritrean and Sudanese nationals from Israel to Rwanda. Israel also concluded a bilateral agreement in the same period with Uganda.

121. The information in this section is based on matters within my own knowledge during the time I was in Israel as a Senior Protection Officer. I have refreshed my memory by reference to various press statements made by UNHCR and a published report[47] and I have also been shown documentation concerning that Arrangement by my colleagues in UNHCR Kigali. I exhibit as **LB7** an internal summary prepared by UNHCR in May 2016 concerning the situation of Eritrean and Sudanese nationals relocated from Israel to Rwanda. This internal summary further details the issues and events I discuss below.

.122. Although the Israeli government described the transfer programme to Rwanda as voluntary, asylum seekers initially had a choice of detention, and, in later years, one year in semi-open detention facility[48] in Israel or removal. Those removed were provided with a cash payment of US$3,500.

123. From January 2018, individuals were subject to detention if they didn't "consent" to be removed. Through interviews held both in Rwanda and Europe between 2015 and 2017 with those who had been transferred from Israel to Rwanda, UNHCR gathered the following information.

124. The situation asylum seekers found in Rwanda was completly different to what they had been promised by the Israeli authorities. Asylum seekers reported to UNHCR that they had been told that they would be put in a hotel and assisted to apply for asylum, permission to remain, and the right to work. Instead, any support provided rarely extended beyond accommodation for the first night, and access to RSD procedures was not systematically provided:

    a. In March 2014, UNHCR Rwanda made contact with 21 Eritrean nationals who had been transferred from Israel - young male adults aged between 21 and 35, most of whom had undergone compulsory military service in Eritrea. They informed UNHCR of an additional three Eritrean nationals detained in Kigali owing to lack of documentation (UNHCR was unable to trace them). They reported being taken to a hotel on arrival, for one to two nights, before their documentation was taken and they were moved to private accommodation selected for them. They were given no information.

47 See https://hotline.org.il/wp-content/uploads/2018/02/Testimonies-of-refugees-departed-Israel-to-Rwanda-and-Uganda-who-reached-Europe-research-report-Birger-Shoham-and-Bolzman-Jan-2018- ENG.pdf

48 The indivudals were sent to Holot, a detention facility in the Negev desert. Whilst the facility is described as open its location made it difficult to leave.

UNHCR also made contact with three Sudanese nationals who had been transferred from Israel. UNHCR identified protection needs for all of these individuals, and advocated to the Minister for MINEMA for their access to the RSD procedure, without success. The group reported to immigration in Kigali to lodge asylum claims according to standard procedure, and sought assistance from UNHCR, whose employee attended. Despite this, the individuals were refused entry to the premises and werenot permitted to lodge their claims. This was justified on grounds of 'security concerns', and on the basis that admitting them might create a 'pull factor' for other Eritrean or Sudanese nationals. At the time, UNHCR noted that the way the DGIE interpreted its role in the RSD procedure could lead to refoulement, as a result of denial or delay in access to RSD. The group were in need of humanitarian assistance (food and shelter). They reported arrests for lack of documentation, and so confined their movement to minimise the risk of arrest. They reported threats of deportation from unknown agents, following which eight disappeared. They reported continuous, random overnight visits by unknown agents at their accommodations. All feared for their personal safety, and feared refoulement to their country of nationality. Thereafter, further transferred individuals became known to UNHCR, and a further seven went missing.

b. In January 2016, UNHCR was aware of only nine Eritreans and two South Sudanese transferred from Israel who had remained in Rwanda. At the time, 10 were registered as asylum seekers, and had temporary stay permits issued by DGIE. None of them had obtained any other forms of residence permit or documentation, including work authorisation. UNHCR noted breaches of Rwandan law in the processing of their cases, in particular that most had been kept pending for many months despite the law requiring referral to the RSDC within 15 days. Four asked to be transferred to a refugee camp, as they had no assistance from the Rwandan authorities in Kigali, and were fully reliant on UNHCR for financial assistance. The Government of Rwanda refused their request to be transferred to a camp. As of May 2016, UNHCR observed that their asylum claims had still not been submitted to the RSDC, and that they were experiencing significant challenges accessing any form of employment. Their contact, provided to them upon arrival but whose affiliation remains unknown, had sought to dissuade them from seeking assistance from MINEMA.

c. Between November 2015 and December 2017, UNHCR interviewed 80 Eritrean and Sudanese asylum seekers in Italy who had previously been transferred from Israel to Rwanda. Asylum seekers reported that they had received very little support in Rwanda, beyond accommodation for the first night. UNHCR summarised the interviews as follows: *'feeling they had no other choice, they travelled many hundreds of kilometers through conflict*

49 See '*UNHCR appeals to Israel over forced relocations policy'*, 9 January 2018, available at: https://data.unhcr.org/es/news/20503.

zones in South Sudan, Sudan and Libya after being relocated by Israel. Along the way they suffered abuse, torture and extortion before risking their lives once again by crossing the Mediterranean to Italy'.[49] Some asylum seekers reported that people travelling with them had died *en route* to Libya, and many experienced extortion, detention, abuse, violence and torture.

125. Further, arrivals to Rwanda were routinely moved clandestinely to Uganda even if they were willing to stay in Rwanda. UNHCR gathered reports from dozens of asylum seekers that on arrival in Rwanda (or, in the case of one flight, on the airport tarmac), their documents were confiscated, and they were taken to a house in Kigali where they were kept under guard. Within a few days they were smuggled to Uganda.[50]

126. My international colleagues serving in Kigali at the time told me that they heard from asylum seekers who tried to remain in Rwanda and open small businesses that they had experienced serious obstacles to integration. Their inability to communicate in Kinyarwanda meant they were unable to negotiate fair commercial contracts or otherwise successfully run a business, or negotiate fair market rent on housing. They reported quickly running out of money, and then made onward journeys out of Rwanda.

127. In summary based on the information gathered by UNHCR, individuals did not find adequate safety and effective protection under this agreement, or a durable solution. Many attempted dangerous onward movements within Africa and to Europe.[51]

50 In late 2015, UNHCR interviewed three Eritreans in detention in Kenya. All had left Israel to Rwanda on 13 November 2015, in a group of 10 Eritreans. All confirmed that they had wanted to stay in Rwanda. They reported being separated from the other passengers, taken to a different section of the airport, and told to hand in their documents. They were taken to a fenced and guarded house and not allowed to leave. They did not receive any orientation session. They were then told that staying in Rwanda was not possible. They were each made to pay $250 and were taken to the Ugandan border the same day. They all sought accommodation in a Ugandan refugee camp but were told it was not possible. They moved on to Kenya where they were detained in a prison for illegal entry. They were scheduled to be refouled to Eritrea on 30 November 2015. Their deportation was only prevented by a last minute intervention by UNHCR in Nairobi. The three individuals reported that the other 7 Eritreans in their group, having obtained no protection or documentation in Rwanda or Uganda, planned to go to South Sudan to continue their journey. UNHCR spoke to another Eritrean who had departed Israel to Rwanda on 6 January 2016 (in a group of 24 Eritreans and 1 Sudanese). Documents were taken from 12 Eritreans (including this individual) at the airport, by men who identified themselves as immigration officials. They were brought to a guarded house. The following day, men who said they had been sent by the Rwandan government arrived to take them to Uganda. The Eritreans protested that they wished to remain in Rwanda, but were told if they did not agree to the transfer, they would be further split up and taken to another place. Fearing detention, they cooperated. They were driven to an unmarked border and had to walk to Uganda. The individual interviewed was told that there was no possibility of legal status in Uganda, so he and another Eritrean were smuggled to Kenya and then Ethiopia. UNCHR heard reports that the remaining 13 men on the flight from Israel were kept in Kigali airport, to board an onward flight to Uganda.

128. UNHCR is aware of two individuals who were transferred from Israel to Rwanda and who in 2022 still have no formal status in Rwanda, despite having claimed asylum several years ago.

129. UNHCR considers that the UK-Rwanda Agreement creates serious risks of (a) increased people smuggling, and (b) an increase in asylum seekers being exposed to dangerous journeys and life-threatening conditions. As to the former, it should not be thought that, because asylum seekers are relocated without cash (unlike the Israeli-Rwandan Arrangement) they will not be exposed to people smuggling. It is in UNHCR's experience common for asylum seekers to enter into debt to people smugglers (owing the majority of the money after the journey) or to borrow from friends and family in the home country. As to the latter, the natural route to Europe from Rwanda will take asylum seekers through the conflict areas of South Sudan and through Libya, where asylum seekers in transit are at serious risk of arbitrary detention, torture and enslavement.

H: COMMUNICATION BETWEEN UNHCR AND THE UK HOME OFFICE REGARDING RSD IN RWANDA AND THE UK-RWANDA ARRANGEMENT

130. I now turn to the communication between the UNHCR and the UK Home Office regarding the UK-Rwanda arrangement.

131. At no stage before the official announcement of the UK-Rwanda arrangement on 14 April 2022 date, was UNHCR consulted by either the UK or the Government of Rwanda.

132. On 21 March 2022, Ms. Zahra Mirghani (Senior Protection Officer), Ms. Dina Puspita Hapsari (Associate Protection Officer) and Ms. Rediet Hirpaye (Reporting focal person) of UNHCR's Rwanda office met with [name redacted] (Home Office Country Policy Team), [name redacted] (Country Researcher), Mr. Finn Crellin (Team Leader, International Policy Priorities) and Ms Catherine Parr (from the Home Office Legal team). The meeting took place at the British High Commission in Kigali. The Home Office did not inform UNHCR of its plans for the UK-Rwanda arrangement either before or during this meeting. Thus no information was elicited from UNHCR concerning the impact on Rwanda's RSD system of substantial numbers of arrivals from disparate countries, speaking different languages. Nonetheless, UNHCR informed the Home Office representatives of significant shortcomings in the existing RSD procedures for individual asylum claimants. The Home Office subsequently published a summary of its notes of this meeting in Annex A8 of its published document *'Review of asylum processing, Rwanda: interview notes (Annex A)'* (v1.0, May 2022).

51 See also '*UNHCR concerned over Israel's refugee relocation proposals*', 17 November 2017, available at: https://www.unhcr.org/news/press/2017/11/5a0f27484/unhcr-concerned-israels-refugee-relocationproposals.html

133. UNHCR, and I in particular as Acting Representative in the UK, were not informed of the UK-Rwanda Arrangement by the Home Office until its publication on 14 April 2022.

134. On 14 April 2022, a high level meeting occurred between the Assistant High Commissioner for Protection ('**AHC-P'**), Gillian Triggs, and the UK Permanent Resident, Simon Manley. This was organised at the request of the UK Government, at short notice, the day before. By the time of the meeting, the UK-Rwanda Arrangement had been announced but the AHC-P had not yet seen the MOU. The UK-Rwanda Arrangement was discussed at a general level. The AHC-P expressed concerns that the UK-Rwanda Arrangement appeared to be burden-shifting rather than burden-sharing and raised concerns about legal safeguards and the legality of the Arrangement. The AHC-P also referred to alternatives to the UK-Rwanda Arrangement including developing legal pathways to the UK.

135. On 21 April 2022, I, along with Ms. Tahlia Dwyer, Legal Officer and Ms. Elizabeth Ruddick, Senior Protection Associate, of UNHCR UK met with Mr. Dan Hobbs, the Home Office Director of Asylum, Protection and Enforcement; Mr. Antoine Boo, Head of Policy; Ms. Kristiina Wells, Head of Bilateral and Multilateral Migration; and Ms. Miv Elimelech, Deputy Director Asylum and Family Policy of the Home Office. The meeting was conducted remotely. By this time, UNHCR was aware of the UK-Rwanda arrangement. At this meeting, UNHCR expressed concerns about the UK-Rwanda arrangement; over Rwandan capacity and incidents of refoulement . The fact of that meeting, and UNHCR's concerns, were omitted from the Home Office's published policy documents.

136. On 25 April 2022, a further meeting took place at the British High Commission in Kigali between Ahmed Baba Fall (UNHCR Representative to Rwanda), Zahra Mighani, Rediet Hirpaye, Finn Crellin and Anna Wilson (Development Director, FCDO) UNHCR raised serious concerns regarding the Rwandan RSD system and process, including the systematic rejection of claimants from the Middle East; recent cases of refoulement (including two cases to Afghanistan), concerns about lack of independence in the appeals process; and serious questions regarding the Government of Rwanda's capacity, including with respect to appropriately qualified interpreters. Again the fact of this meeting, and UNHCR's concerns, were omitted from the Home Office's published policy documents. These meetings were not made public until 10 June 2022, in the course of the interim relief hearing before the Administrative Court, after UNHCR had alerted the Defendant's counsel and the Court of the fact of the meeting.

137. UNHCR's concerns were also expressed to UK Officals during high-level discussions in Geneva, including the 19 May 2022 meeting between the UNHCR High Commissioner and the UK Home Secretary and Rwandan Minister of Foreign Affairs.

138. On 9 June 2022, UNHCR's Geneva office sent to the UK Home Secretary, through the UK Permanent Mission in Geneva, a document titled *UNHCR Analysis of the Legality and Appropriateness of the Transfer of Asylum-seekers*

under the UK-Rwanda Arrangement. This formally described UNHCR's extensive and serious concerns regarding the legality of UK-Rwanda arrangement. I do not repeat those here.

139. While preparing UNHCR's application to intervene in the Administrative Court, UNHCR became aware that the Defendant was issuing decision letters refusing the human rights claims of asylum seekers whom the Defendant had decided to remove to Rwanda, which included incorrect statements regarding UNHCR. The letters asserted that *"UNHCR is closely involved with the MEDP* [Migration and Economic Development Partnership] *and will provide oversight of individuals relocated from the UK"* . The letters also stated that UNHCR had not *"submitted correspondence highlighting substantial concerns over the asylum system in Rwanda" .*

140. On 9 June 2022 I wrote to the Minister for Justice and Tackling Illegal Migration, Mr. Tom Pursglove, expressing UNHCR concerns about the inaccuracy of the letters, and asking that the letters be amended. I emphasised UNHCR's concern that asylum seekers transferred from the UK to Rwanda will not have access to fair and efficient procedures for the determination of refugee status, with consequent risks of refoulement, and UNHCR's view that Rwanda's national system for determining individual asylum claims is still nascent.

I: UNHCR COMMENTS ON THE MEMORANDUM OF UNDERSTANDING AND NOTES VERBALES

Provision of the Notes Verbales

141. While preparing to seek leave to intervene in the Claimants' application for interim relief, UNHCR became aware of the existence of (undated and unpublished) *Notes Verbales* ('**NVs'**) between the UK and Government of Rwanda. On 6 June 2022, UNHCR directly requested disclosure of the NVs from the Defendant. On 8 June 2022, UNHCR sent a further request for disclosure of the NVs from the Defendant as a matter of urgency, through its solicitors Baker & McKenzie LLP ('**Baker McKenzie**'). Baker McKenzie sent follow-up requests on 9 June 2022, and twice on the morning of 10 June 2022 (at 8.48am and 9.59am), before the hearing of the application for interim relief that day. The Defendant eventually provided the NVs to UNHCR after the start of the hearing in the Administrative Court on 10 June 2022.

Comments on the MoU and Notes Verbales

142. UNHCR notes that certain structural or legal features of the RSD process envisaged by the MOU and NVs do not exist or have never been used including:

    a. An appeal to the High Court of Rwanda (NV §5.3). This has never been attempted, see §76 above.

    b. A complaints system (NV §10). To the best of UNHCR's knowledge no complaints system exists for the RSD process.

c. Humanitarian protection option (MoU at §10.2) for those not recognised as refugees. UNHCR has never seen a grant of humanitarian (or subsidiary) protection and leave to remain on this basis to a person whose refugee claim has been refused. On the contrary, my colleagues in the Kigali office are aware of the case of a Middle Eastern national who has been refused refugee status and has no residence permit or other official document. He has not been removed but remains without permission in Rwanda. Without an official identity document, he expressed fear of being taken into custody at any time. In UNHCR's view owing to the serious violations of international humanitarian law, violations of human rights and ongoing armed conflict in his country of origin, this individual was likely to be in need of refugee protection. Further, in light of these conditions, and UNHCR's non-return advisory, the individual would have been a strong candidate for humanitarian protection. Yet there has not, to UNHCR's knowledge, even been a consideration of whether he should be granted some other form of leave.

d. Other safeguards and standards described in the Notes Verbales are not features of the existing system and are not part of the practice and experience of the officials currently operating the system. These include the provision of information concerning the asylum procedure (NV §3.1); transcription of interviews (NV §§4.4.1); the provision of written reasons for decisions (NV §4.9.2); the opportunity to make oral representations to the Ministry (NV §5.2) and the use of country of origin information (NV §4.5).

143. Rwanda's serious capacity issues cannot be addressed within a short space of time. Even if the safeguards of representation and High Court appeal are now put in place for UK-Rwanda arrangements, judges and lawyers do not have relevant experience. This raises a serious question about the effectiveness of any appeal. In any event, UNHCR does not consider that the possibility of an appeal to the High Court provides a sufficient safeguard against a decision-making process which is flawed from the outset.

144. Moreover, at the time of making this statement, UNHCR is unaware of any steps being initiated that might, after a sustained period of capacity building, eventually permit certain of the commitments in the Notes Verbales and MOU to be fulfilled[52]. UNHCR is not, for example, aware of interpreters, lawyers or decision makers being hired or trained by the Rwandan Government at present.

52 The Rwandan authorities have recently informed UNHCR Kigali that they have started recruitment and training of staff to increase capacity. At the time of making this statement, UNHCR has yet to see evidence that this capacity building has commenced.

145. Nor can the deficiencies be addressed by the creation of the Monitoring Committee in the MoU. The Terms of Reference for the Monitoring Committee are yet to be established, and no information is currently available on the potential scope of its work. In any event, given the non-binding nature of the MoU, UNHCR cannot see how the Monitoring Committee would act as a sufficient safeguard of fairness. Further, UNHCR has serious concerns that there is a lack of suitably qualified individuals in Rwanda who could impartially carry out the task on the Monitoring Committee, given that even the senior staff and officials currently tasked with RSD roles do not have sufficient training or expertise.

146. The current shortcomings in the Rwandan RSD process of lack of capacity and of unfairness and arbitrariness are likely to be worsened yet further with an influx of new asylum seekers, especially from countries with which Rwanda has very little or no experience, and who require interpretation in languages for which there are no interpreters on the ground.

147. In UNHCR's experience, even safeguards contained in Rwandan legislation (see §61 above concerning the duty for the RSDC to provide reasons for its decisions) are rarely complied with. However, even assuming that the assurances in the Notes Verbales were complied with (certain of which, such as the provision of sufficient lawyers qualified to advise and act on the RSD process, would take a number of years to achieve) many of the problems in Rwanda's RSD system are structural and not susceptible to change through a process such as the MOU or Notes Verbales. These include:

a. the involvement of a security agency in initial screening and the unacknowledged 'gatekeeper' role of the DGIE in the Rwandan RSD procedure;

b. the lack of a specialist body at the RSDC stage;

c. the lack of an independent appeal body at the MINEMA stage; and

e. the lack, to UNHCR's knowledge, of any complaints body.

J: CONCLUSION

148. I believe that Rwanda's RSD process is marked by acute unfairness and arbitrariness , some of which is structurally inbuilt; and by serious safeguard and capacity shortfalls, some of which can be remedied only by structural changes and long-term capacity building. I believe that asylum seekers transferred to Rwanda are at serious risk of both direct and indirect refoulement and will not have access to fair and efficient asylum procedures, adequate standards of treatment or durable solutions, in line with the requirements set out in international refugee law.

Statement of Truth

I believe that the facts stated in this witness statement are true. I understand that

proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.
Signed:
Name: Lawrence Bottinick
Date: 26 June 2022

Statement made on behalf of: UNHCR (Intervener)
Made by: L. Bottinick
Number of statement: Second
Exhibit: LB1
Date: 26 June 2022

CO/2032/2022, CO/2056/2022, CO/2077/2022, CO/2072/2022, CO/2094/2022, CO/2095/2022, CO/2098/2022, CO/2104/2022

IN THE HIGH COURT
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT
B E T W E E N:
THE QUEEN ON THE APPLICATION OF
AAA AND OTHERS

Claimants

-and-

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Defendant

-and-

THE UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES

Intervener

EXHIBIT LB1

This is the Bundle of Exhibits marked "**LB1**" referred to in the Witness Statement of Lawrence Bottinick dated 26 June 2022.

……
LAWRENCE BOTTINICK

REPUBLIC OF RWANDA

MINISITERI Y'IMICUNGIRE Y'IBIZA N'IMPUNZI

MINISTERE DE LA GESTION DES CATASTROPHES ET DES REFUGIES

MINISTRY OF DISASTER MANAGEMENT AND REFUGEES (MIDIMAR)

Kigali on [redacted]

Ref: [redacted]

[redacted]

Re: **Response to your letter**

Dear [redacted]

Reference is made to your letter dated [redacted] appealing on the decision of the Directorate General of Immigration and Emigration;

According to the article 8, paragraph 5 and 6, of the law n° 13ter/2014 of 21/05/2014 relating to refugees, stipulating that the department in charge of Immigration and Emigration shall review the case of the asylum seeker and grant him/her a temporary residence permit valid for three (3) months.

The department in charge of Immigration and Emigration shall submit the file of refugee status applicant to the Refugee Status Determination Committee within fifteen (15) days.

Based on article 11 of the law n° 13ter/2014 of 21/05/2014 relating to refugees that you have quoted in your letter, I would like to inform you that you can not make an appeal to the Minister of Disaster Management and Refugees on the decision taken by the Directorate General of Immigration and Emigration as your application hasn't been submitted to the Refugee Status Determination Committee for adjudication as provided in the above mentioned article.

Sincerely,

KAYUMBA Olivier
Permanent Secretary

Ce:
- Honorable Minister of Disaster Management and Refugees
  KIGALI

P.O.Box: 4386 KIGALI | Toll free: 170 | E-mail: info@midimar.gov.rw | Twitter handle: @MIDIMARRwanda

Statement made on behalf of: UNHCR (Intervener)
Made by: L. Bottinick
Number of statement: Second
Exhibit: LB2
Date: 26 June 2022

CO/2032/2022, CO/2056/2022, CO/2077/2022, CO/2072/2022, CO/2094/2022, CO/2095/2022, CO/2098/2022, CO/2104/2022

IN THE HIGH COURT
QUEEN'S BENCH DIVISION
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B E T W E E N:
THE QUEEN ON THE APPLICATION OF
AAA AND OTHERS

Claimants

-and-

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Defendant

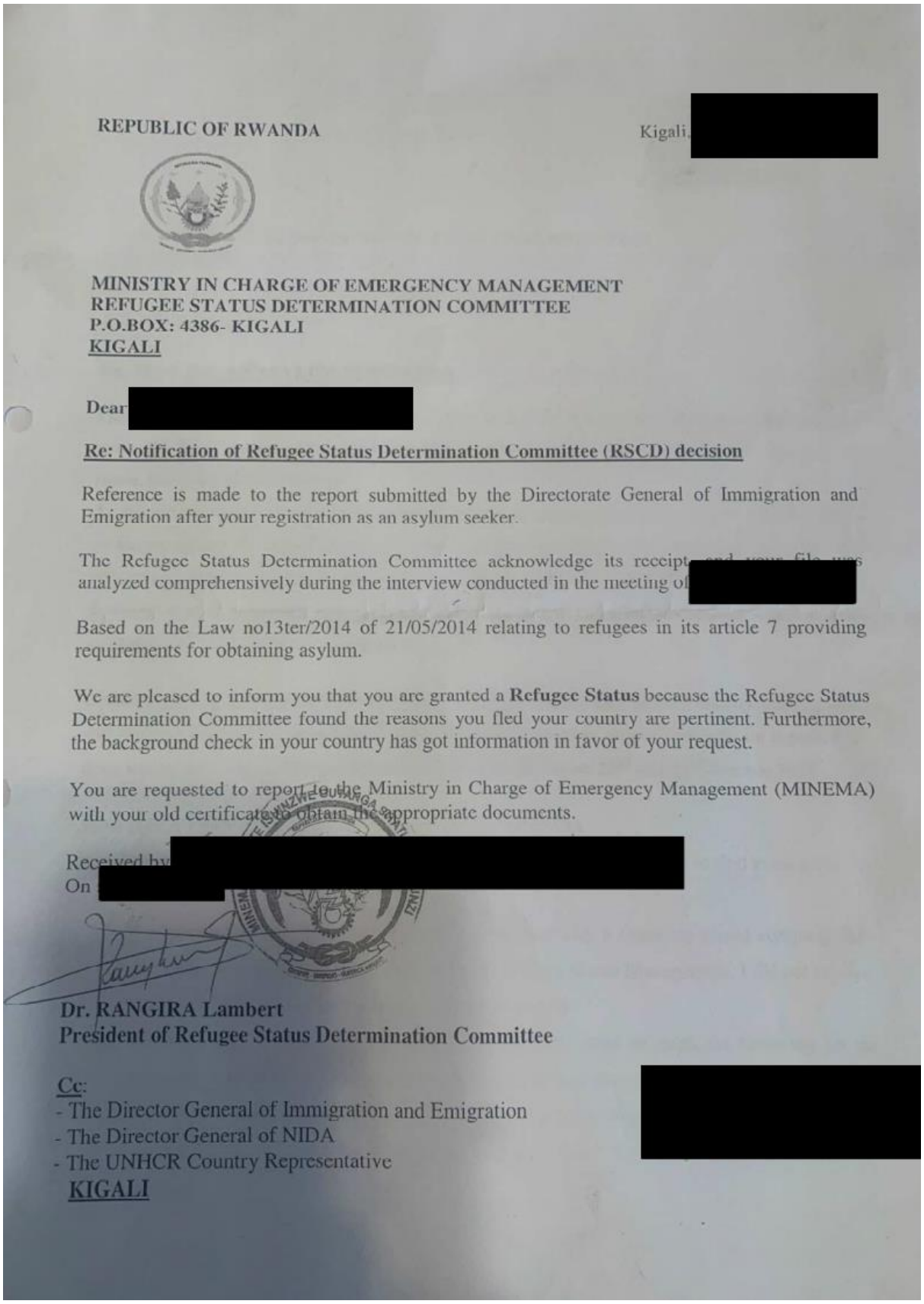
-and-

THE UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES

Intervener

EXHIBIT LB2

This is the Bundle of Exhibits marked "**LB2**" referred to in the Witness Statement of Lawrence
Bottinick dated 26 June 2022.
……



REPUBLIC OF RWANDA

Kigali, [redacted]

MINISTRY IN CHARGE OF EMERGENCY MANAGEMENT
REFUGEE STATUS DETERMINATION COMMITTEE
P.O.BOX: 4386- KIGALI
KIGALI

Dear [redacted]

Re: Notification of Refugee Status Determination Committee (RSCD) decision

Reference is made to the report submitted by the Directorate General of Immigration and Emigration after your registration as an asylum seeker.

The Refugee Status Determination Committee acknowledge its receipt and your file was analyzed comprehensively during the interview conducted in the meeting of [redacted]

Based on the Law no13ter/2014 of 21/05/2014 relating to refugees in its article 7 providing requirements for obtaining asylum.

We are pleased to inform you that you are granted a **Refugee Status** because the Refugee Status Determination Committee found the reasons you fled your country are pertinent. Furthermore, the background check in your country has got information in favor of your request.

You are requested to report to the Ministry in Charge of Emergency Management (MINEMA) with your old certificate to obtain the appropriate documents.

Received by [redacted]
On [redacted]

Dr. RANGIRA Lambert
President of Refugee Status Determination Committee

Cc:
- The Director General of Immigration and Emigration
- The Director General of NIDA
- The UNHCR Country Representative
KIGALI

[redacted]

LAWRENCE BOTTINICK

Statement made on behalf of: UNHCR (Intervener)
Made by: L. Bottinick
Number of statement: Second
Exhibit: LB3
Date: 26 June 2022
CO/2032/2022, CO/2056/2022, CO/2077/2022, CO/2072/2022, CO/2094/2022, CO/2095/2022, CO/2098/2022, CO/2104/2022

IN THE HIGH COURT
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT
B E T W E E N:
THE QUEEN ON THE APPLICATION OF
AAA AND OTHERS

Claimants

-and-

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Defendant

-and-

THE UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES

Intervener

EXHIBIT LB3

This is the Bundle of Exhibits marked "**LB3**" referred to in the Witness Statement of Lawrence
Bottinick dated 26 June 2022.
…….
LAWRENCE BOTTINICK

REPUBLIC OF RWANDA

Kigali [redacted]

MINISTRY IN CHARGE OF EMERGENCY MANAGEMENT
REFUGEE STATUS DETERMINATION COMMITTEE
P.O.BOX: 4386- KIGALI
KIGALI

Dear [redacted]

Re: Notification of Refugee Status Determination Committee (RSCD) decision

Reference is made to the report submitted by the Directorate General of Immigration and Emigration regarding your registration as an asylum seeker and granting you a provisional residence permit.

The Refugee Status Determination Committee acknowledge its receipt, and your file was analyzed comprehensively during the interview conducted in the meeting of [redacted] and based on the Law n°13ter/2014 of 21/05/2014 relating to refugees in its article 7 providing requirements for obtaining asylum.

We regret to inform you that the **Refugee Status requested was not granted** because you don't meet the eligibility criteria, and the reasons you provided during the interview were not pertinent.

Received by……..
On ..... /…….. / .....

MINEMA - KOMITE ISHINZWE GUTANGA SITATI Y'UBUHUNGIRO

RANGIRA Lambert
President of Refugee Status Determination Committee

Cc:
- The Director General of Immigration and Emigration
- The Director General of NIDA
- The UNHCR Country Representative

KIGALI

Statement made on behalf of: UNHCR (Intervener)
Made by: L. Bottinick
Number of statement: Second
Exhibit: LB4
Date: 26 June 2022

CO/2032/2022, CO/2056/2022, CO/2077/2022, CO/2072/2022, CO/2094/2022, CO/2095/2022, CO/2098/2022, CO/2104/2022

IN THE HIGH COURT
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT
B E T W E E N:
THE QUEEN ON THE APPLICATION OF
AAA AND OTHERS

Claimants

-and-

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Defendant

-and-

THE UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES

Intervener

EXHIBIT LB4

This is the Bundle of Exhibits marked "**LB4**" referred to in the Witness Statement of Lawrence
Bottinick dated 26 June 2022.
……
LAWRENCE BOTTINICK

Table of reasons for refusals in RSDC refusal letters available to UNHCR (2020-2022)

Edits in square brackets are added by UNHCR to ensure confidentiality

	RSDC Session Date	Decision letter date	Notification Date	Reason for refusal
1	31/03/2020	13/03/2020	not signed	because the reasons provided during the interview conducted were neither satisfactory nor pertinent
2	31/01/2020	13/03/2020	01/06/2020	because the reasons provided during the interview conducted were neither satisfactory nor pertinent, to convince the Committee how you fled from [country of origin omitted] to Rwanda
3	31/03/2020	13/03/2020	08/06/2020	because the reasons provided during the interview conducted were neither satisfactory nor pertinent
4	31/03/2020	13/03/2020	08/06/2020	because the reasons provided during the interview conducted were neither satisfactory nor pertinent/ You came to Rwanda to do business and look for job, you don't have any security threat in your country
5	31/01/2020	13/03/2020	08/06/2020	because the reasons provided during the interview conducted were neither satisfactory nor pertinent
6	31/03/2020	13/03/2020	not signed	because the reasons provided during the interview conducted were neither satisfactory nor pertinent
7	29/05/2020	08/06/2020	09/06/2020	because you are not meeting the eligibility criteria, family conflict alone is not a valid reason to flee your country
8	29/05/2020	08/06/2020	not signed	because the reasons you provided during the interview are not pertinent
9	29/05/2020	08/06/2020	15/06/2020	because the reasons you provided during the interview are not pertinent
10	29/05/2020	08/06/2020	09/06/2020	because the reasons you provided during the interview are not pertinent
11	29/05/2020	08/06/2020	09/06/2020	because the reasons you provided during the interview are not pertinent
12	14/08/2020	07/09/2020	not signed	because the reasons you provided during the interview are not pertinent
13	14/08/2020	07/09/2020	not signed	because the reasons you provided during the interview are not pertinent
14	14/08/2020	07/09/2020	not signed	because you are not meeting the eligibility criteria and the reasons you provided during the interview were not pertinent
15	14/08/2020	07/09/2020	not signed	because the reasons you provided during the interview were not pertinent
16	14/08/2020	07/09/2020	not signed	because the reasons you provided during the interview were not pertinent
17	29/05/2020	07/09/2020	not signed	because the reasons you provided during the interview were not pertinent
18	14/08/2020	07/09/2020	not signed	because the reasons you provided during the interview were not pertinent
19	14/08/2020	07/09/2020	not signed	because the reasons you provided during the interview were not pertinent
20	16/04/2021	22/04/2021	23/04/2021	because the reasons you provided during the interview were not pertinent
21	16/04/2021	29/04/2021	04/05/2021	because the reasons you provided do not align with national eligibility criteria related to provision of refugee status
22	16/04/2021	29/04/2021	04/05/2021	because the reasons you provided do not align with national eligibility criteria related to provision of refugee status
23	16/04/2021	29/04/2021	04/05/2021	because the reasons you provided do not align with national eligibility criteria related to provision of refugee status
24	16/04/2021	29/04/2021	04/05/2021	because the reasons you provided do not align with national eligibility criteria related to provision of refugee status
25	16/04/2021	29/04/2021	04/05/2021	because the reasons you provided do not align with national eligibility criteria related to provision of refugee status
26	16/04/2021	29/04/2021	04/05/2021	because the reasons you provided do not align with national eligibility criteria related to provision of refugee status

	RSDC Session Date	Decision letter date	Notification Date	Reason for refusal
27	28/05/2021	08/06/2021	11/05/2021	because the reasons you provided during the interview are not pertinent
28	28/05/2021	08/06/2021	09/06/2021	because the reasons you provided during the interview were not pertinent/ However, you are advised to approach the DGIE to explore other modalities to legally pursue your business activities in Rwanda
29	28/05/2021	08/06/2021	09/06/2021	because you don't meet the eligibility criteria and the reasons you provided during the interview were not pertinent
30	28/05/2021	08/06/2021	09/06/2021	because the reasons you provided during the interview were not pertinent/ However, you are advised to approach the DGIE to explore other modalities to legally pursue your business activities in Rwanda
31	28/05/2021	08/06/2021	09/06/2021	because you don't meet the eligibility criteria to be granted refugee status
32	28/05/2021	08/06/2021	29/06/2021	because you don't meet the eligibility criteria and the reasons you provided during the interview were not pertinent
33	28/05/2021	08/06/2021	not signed	because you don't meet the eligibility criteria and the reasons you provided during the interview were not pertinent
34	18/11/2021	31/12/2021	not signed	because the reasons provided during the interview were not pertinent
35	18/11/2021	31/12/2021	not signed	because the reasons provided during the interview were not pertinent
36	18/11/2021	31/12/2021	not signed	because the reasons provided during the interview were not pertinent
37	18/11/2021	31/12/2021	not signed	because the reasons provided during the interview were not pertinent
38	04/03/2022	18/03/2022	not signed	not re-granted because you are not meeting the eligibility criteria and the reasons why you fled your country [country of origin omitted] are not for protection but for work
39	04/03/2022	18/03/2022	not signed	not re-granted because you are not meeting the eligibility criteria and the reasons you fled your country [country of origin omitted] are not pertinent
40	04/03/2022	18/03/2022	not signed	because you are not meeting the eligibility criteria and the reasons why you fled your country [country of origin omitted] are not pertinent
41	04/03/2022	18/03/2022	not signed	because you are not meeting the eligibility criteria and the reasons why you fled your country [country of origin omitted] are not pertinent

	RSDC Session Date	Decision letter date	Notification Date	Reason for refusal
42	04/03/2022	18/03/2022	not signed	because you are not meeting the eligibility criteria and the reasons why you fled your country [country of origin omitted] are not pertinent
43	04/03/2022	18/03/2022	not signed	because the reasons why you fled your country [country of origin omitted] are not pertinent and valid
44	04/03/2022	18/03/2022	not signed	not re-granted because the reasons why you returned back are not pertinent and valid
45	04/03/2022	18/03/2022	not signed	not re-granted because the committee didn't revoke your refugee status *[NB: this was wrong as the person's status had ceased*]
46	04/03/2022	18/03/2022	not signed	because of your participation in rebels groups
47	04/03/2022	18/03/2022	not signed	because you are not meeting the eligibility criteria and the reasons why you fled your country [country of origin omitted] are not pertinent
48	04/03/2022	18/03/2022	not signed	because you are not meeting the eligibility criteria and the reasons why you fled your country [country of origin omitted] are not pertinent
49	04/03/2022	18/03/2022	not signed	not re-granted because the reasons why you returned back are not pertinent and valid
50	04/03/2022	18/03/2022	not signed	not re-granted because you are not meeting the eligibility criteria and the reasons you fled your country [country of origin omitted] are not pertinent
51	04/03/2022	18/03/2022	not signed	because you are not meeting the eligibility criteria and the reasons provided during the interview were not pertinent
52	04/03/2022	18/03/2022	not signed	because the reasons why you left the previous countries of asylum are not pertinent and valid
53	04/03/2022	18/03/2022	not signed	not re-granted because the reasons why you returned back are not pertinent and valid
54	04/03/2022	18/03/2022	not signed	not re-granted because the reasons why you returned back are not pertinent and valid
55	04/03/2022	18/03/2022	not signed	not re-granted because the reasons why you returned back are not pertinent and valid
56	04/03/2022	18/03/2022	not signed	because you are not meeting the eligibility criteria and the reasons provided during the interview were not pertinent

	RSDC Session Date	Decision letter date	Notification Date	Reason for refusal
57	04/03/2022	18/03/2022	not signed	because you are not meeting the eligibility criteria and the reasons provided during the interview were not pertinent
58	04/03/2022	18/03/2022	not signed	because you are not meeting the eligibility criteria and the reasons why you fled your country [country of origin omitted] are not pertinent
59	04/03/2022	18/03/2022	not signed	because you are not meeting the eligibility criteria and the reasons provided during the interview were not pertinent
60	04/03/2022	18/03/2022	not signed	because you are not meeting the eligibility criteria and the reasons why you fled your country [country of origin omitted] are only to seek how you can join easily your mother as a refugee
61	04/03/2022	18/03/2022	not signed	because you are not meeting the eligibility criteria and the reasons why you fled your country [country of origin omitted] are not pertinent
62	04/03/2022	18/03/2022	not signed	because you are not meeting the eligibility criteria and the reasons why you fled your country [country of origin omitted] are not pertinent
63	04/03/2022	18/03/2022	not signed	not re-granted because you are not meeting the eligibility criteria and the reasons you fled your country [country of origin omitted] are not pertinent
64	04/03/2022	18/03/2022	not signed	not re-granted because the reasons why you returned back are not pertinent and valid
65	04/03/2022	18/03/2022	not signed	because you not meeting the eligibility criteria and the reasons why you fled your country [country of origin omitted] are not for protection but for work
66	04/03/2022	18/03/2022	not signed	because the reasons why you fled your country [country of origin omitted] are not pertinent and valid
67	04/03/2022	18/03/2022	not signed	because you are not meeting the eligibility criteria and the reasons why you fled your country [country of origin omitted] are not pertinent
68	04/03/2022	18/03/2022	not signed	because you are not meeting the eligibility criteria and the reasons why you left your country of asylum [country of origin omitted] are not for protection

	RSDC Session Date	Decision letter date	Notification Date	Reason for refusal
69	04/03/2022	18/03/2022	not signed	because you are not meeting the eligibility criteria and there is no evidence for the reasons why you fled your country [country name omitted] since [date omitted] and didn't get a refugee status until now
70	04/03/2022	18/03/2022	not signed	because you are not meeting the eligibility criteria and the reasons why you left your country of asylum [country name omitted] were for family visit
71	04/03/2022	18/03/2022	not signed	because the reason why you fled your country [country of origin omitted] and again left your country of asylum [country name omitted] is not pertinent
72	04/03/2022	18/03/2022	not signed	because you are not meeting the eligibility criteria and the reasons provided during the interview were not pertinent
73	04/03/2022	18/03/2022	not signed	because the reasons you provided during the interview were not pertinent
74	04/03/2022	18/03/2022	not signed	because you are not meeting the eligibility criteria and the reasons why you fled your country [country name omitted] are only family conflicts
75	08/04/2022	18/05/2022	not signed	because you are not meeting the eligibility criteria and the reasons provided during the interview were not pertinent
76	06/05/2022	18/05/2022	24/05/2022	because you are not meeting the eligibility criteria and the reasons provided during the interview were not pertinent
77	06/05/2022	18/05/2022	24/05/2022	because you are not meeting the eligibility criteria and the reasons provided during the interview were not pertinent
78	06/05/2022	18/05/2022	24/05/2022	because you are not meeting the eligibility criteria and the reasons provided during the interview were not pertinent
79	06/05/2022	18/05/2022	23/05/2022	because you are not meeting the eligibility criteria and the reasons why you left your country were the family issues
80	06/05/2022	18/05/2022	24/05/2022	because you are not meeting the eligibility criteria and the reasons why you left your country were the family issues
81	08/04/2022	18/05/2022	24/05/2022	because you are not meeting the eligibility criteria and you escaped justice

	RSDC Session Date	Decision letter date	Notification Date	Reason for refusal
82	08/04/2022	18/05/2022	24/05/2022	not re-granted because the reasons why you returned back are not pertinent and valid
83	08/04/2022	18/05/2022	24/05/2022	because you are not meeting the eligibility criteria and you didn't explain your real nationality between [between country x and y]
84	08/04/2022	18/05/2022	not signed	because you are not meeting the eligibility criteria and the reasons provided during the interview were not pertinent
85	08/04/2022	18/05/2022	not signed	because you are not meeting the eligibility criteria and the reasons why you fled your country are the family conflicts
86	08/04/2022	18/05/2022	not signed	because you are not meeting the eligibility criteria and the reasons provided during the interview were not pertinent
87	06/05/2022	18/05/2022	24/05/2022	because you are not meeting the eligibility criteria and the reasons provided during the interview were not pertinent
88	06/05/2022	18/05/2022	24/05/2022	because the RSDC found that the reasons why you re-fled your country [country of origin omitted] are pertinent and valid

Statement made on behalf of: UNHCR (Intervener)
Made by: L. Bottinick
Number of statement: Second
Exhibit: LB5
Date: 26 June 2022

CO/2032/2022, CO/2056/2022, CO/2077/2022, CO/2072/2022, CO/2094/2022, CO/2095/2022, CO/2098/2022, CO/2104/2022

IN THE HIGH COURT
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT
B E T W E E N:
THE QUEEN ON THE APPLICATION OF
AAA AND OTHERS

Claimants

-and-
THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

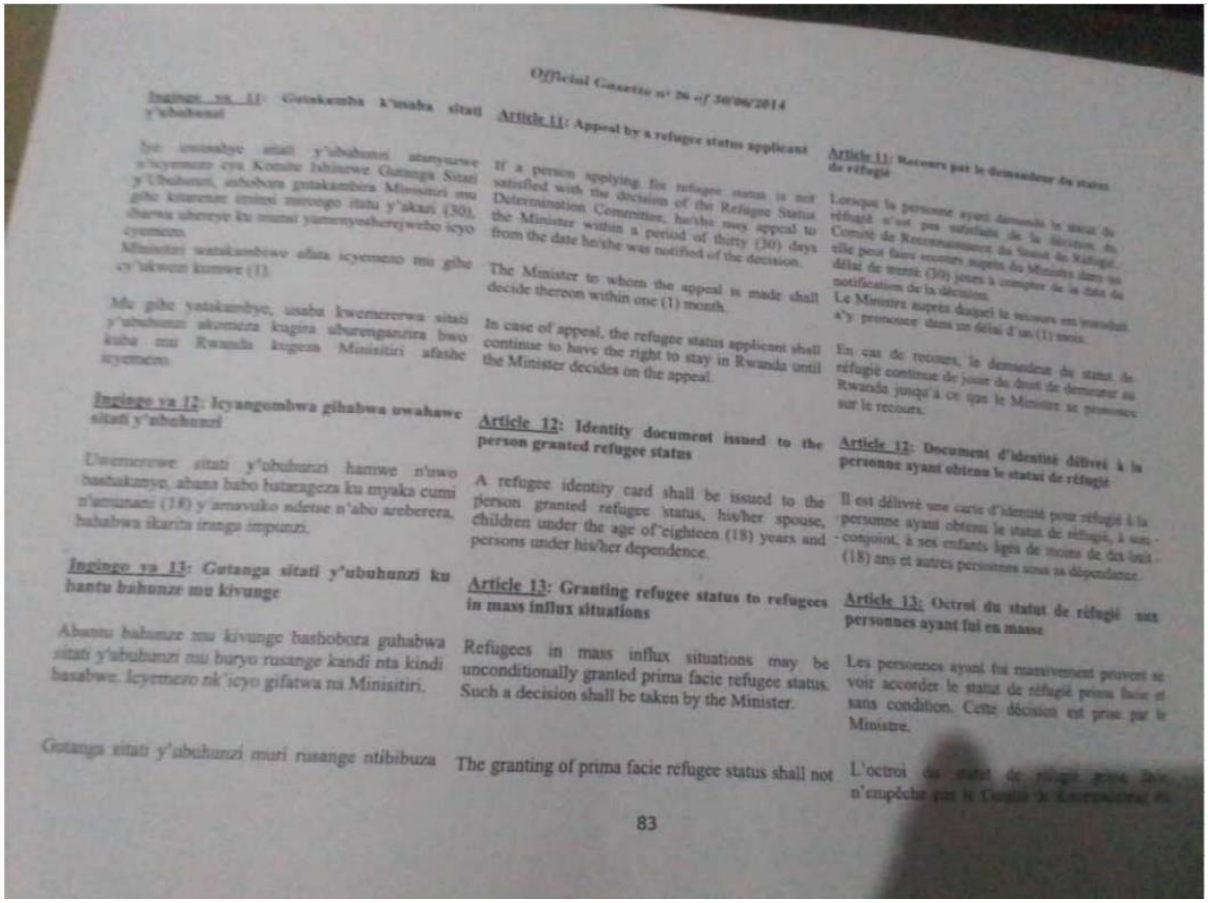
Defendant

-and-
THE UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES

Intervener

EXHIBIT LB5

This is the Bundle of Exhibits marked "**LB5**" referred to in the Witness Statement of Lawrence
Bottinick dated 26 June 2022.
…….
LAWRENCE BOTTINICK



Official Gazette n° 26 of 30/06/2014

Ingingo ya 11: Gutakamba k'usaba sitati y'ubuhunzi

Iyo umusabye sitati y'ubuhunzi atanyuzwe n'icyemezo cya Komite Ishinzwe Gutanga Sitati y'Ubuhunzi, ashobora gutakambira Minisitiri mu gihe kitarenze iminsi mirongo itatu y'akazi (30), iburwa uhereye ku munsi yamenyesherejweho icyo cyemezo.

Minisitiri watakambiwe afata icyemezo mu gihe cy'ukwezi kumwe (1).

Mu gihe yatakambye, usaba kwemererwa sitati y'ubuhunzi akomeza kugira uburenganzira bwo kuba mu Rwanda kugeza Minisitiri afashe icyemezo.

Article 11: Appeal by a refugee status applicant

If a person applying for refugee status is not satisfied with the decision of the Refugee Status Determination Committee, he/she may appeal to the Minister within a period of thirty (30) days from the date he/she was notified of the decision.

The Minister to whom the appeal is made shall decide thereon within one (1) month.

In case of appeal, the refugee status applicant shall continue to have the right to stay in Rwanda until the Minister decides on the appeal.

Article 11: Recours par le demandeur du statut de réfugié

Lorsque la personne ayant demandé le statut de réfugié n'est pas satisfaite de la décision du Comité de Reconnaissance du Statut de Réfugié, elle peut faire recours auprès du Ministre dans un délai de trente (30) jours à compter de la date de notification de la décision.

Le Ministre auprès duquel le recours est introduit s'y prononce dans un délai d'un (1) mois.

En cas de recours, le demandeur du statut de réfugié continue de jouir du droit de demeurer au Rwanda jusqu'à ce que le Ministre se prononce sur le recours.

Ingingo ya 12: Icyangombwa gihabwa uwahawe sitati y'ubuhunzi

Uwemerewe sitati y'ubuhunzi hamwe n'uwo bashakanye, abana babo batarengeza ku myaka cumi n'umunani (18) y'amavuko ndetse n'abo areberera, buhabwa ikarita iranga impunzi.

Article 12: Identity document issued to the person granted refugee status

A refugee identity card shall be issued to the person granted refugee status, his/her spouse, children under the age of eighteen (18) years and persons under his/her dependence.

Article 12: Document d'identité délivré à la personne ayant obtenu le statut de réfugié

Il est délivré une carte d'identité pour réfugié à la personne ayant obtenu le statut de réfugié, à son conjoint, à ses enfants légés de moins de dix-huit (18) ans et autres personnes sous sa dépendance.

Ingingo ya 13: Gutanga sitati y'ubuhunzi ku bantu bahunze mu kivunge

Abantu bahunze mu kivunge bashobora guhabwa sitati y'ubuhunzi mu buryo rusange kandi nta kindi basabwe. Icyemezo nk'icyo gifatwa na Minisitiri.

Article 13: Granting refugee status to refugees in mass influx situations

Refugees in mass influx situations may be unconditionally granted prima facie refugee status. Such a decision shall be taken by the Minister.

Article 13: Octroi du statut de réfugié aux personnes ayant fui en masse

Les personnes ayant fui massivement peuvent se voir accorder le statut de réfugié prima facie et sans condition. Cette décision est prise par le Ministre.

Gutanga sitati y'ubuhunzi muri rusange ntibibuza

The granting of prima facie refugee status shall not

L'octroi du statut de réfugié prima facie n'empêche pas le Comité [illegible]

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Statement made on behalf of: UNHCR (Intervener)
Made by: L. Bottinick
Number of statement: Second
Exhibit: LB6
Date: 26 June 2022

CO/2032/2022, CO/2056/2022, CO/2077/2022, CO/2072/2022, CO/2094/2022, CO/2095/2022, CO/2098/2022, CO/2104/2022

IN THE HIGH COURT
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT
B E T W E E N:
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AAA AND OTHERS

Claimants

-and-
THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Defendant

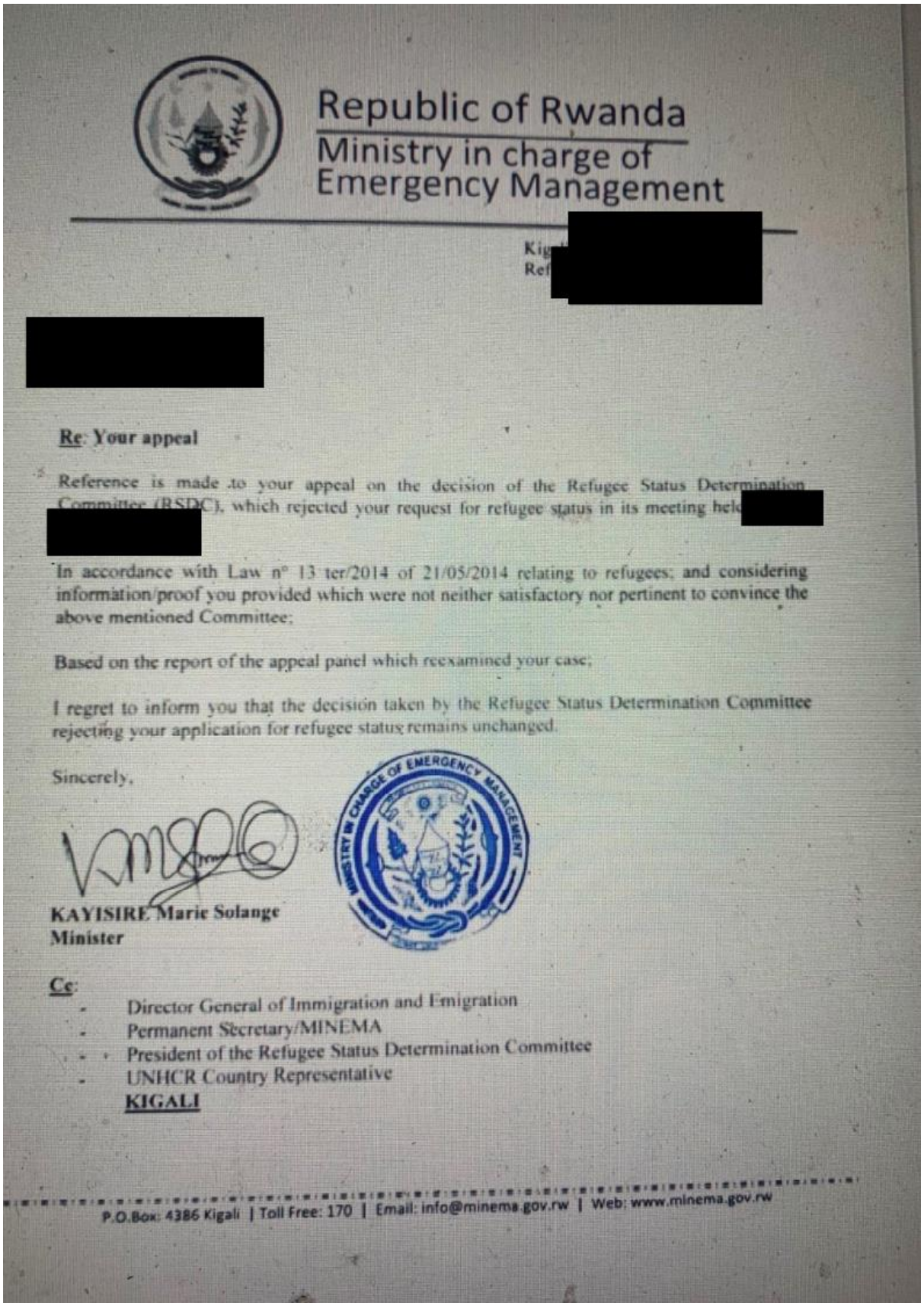
-and-
THE UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES

Intervener

EXHIBIT LB6

This is the Bundle of Exhibits marked "**LB6**" referred to in the Witness Statement of Lawrence Bottinick dated 26 June 2022

…….
LAWRENCE BOTTINICK



Republic of Rwanda
Ministry in charge of Emergency Management

Kig
Ref [redacted]

[redacted]

Re: Your appeal

Reference is made to your appeal on the decision of the Refugee Status Determination Committee (RSDC), which rejected your request for refugee status in its meeting held [redacted]

In accordance with Law n° 13 ter/2014 of 21/05/2014 relating to refugees; and considering information/proof you provided which were not neither satisfactory nor pertinent to convince the above mentioned Committee;

Based on the report of the appeal panel which reexamined your case;

I regret to inform you that the decision taken by the Refugee Status Determination Committee rejecting your application for refugee status remains unchanged.

Sincerely,

KAYISIRE Marie Solange
Minister

Cc:
- Director General of Immigration and Emigration
- Permanent Secretary/MINEMA
- President of the Refugee Status Determination Committee
- UNHCR Country Representative

KIGALI

P.O.Box: 4386 Kigali | Toll Free: 170 | Email: info@minema.gov.rw | Web: www.minema.gov.rw

Statement made on behalf of: UNHCR (Intervener)
Made by: L. Bottinick
Number of statement: Second
Exhibit: LB7
Date: 26 June 2022

CO/2032/2022, CO/2056/2022, CO/2077/2022, CO/2072/2022, CO/2094/2022, CO/2095/2022, CO/2098/2022, CO/2104/2022

IN THE HIGH COURT
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EXHIBIT LB7

This is the Bundle of Exhibits marked "**LB7**" referred to in the Witness Statement of Lawrence
Bottinick dated 26 June 2022.

…….
LAWRENCE BOTTINICK

UNHCR INTERNAL &CONFIDENTIAL
ERITREANS AND SUDANESE "RELOCATED" FROM ISRAEL TO RWANDA

SUMMARY NOTE
May 2016

General Background

- There are currently some 50,000 persons of concern to UNHCR in Israel, the majority from Eritrea (36,000) and Sudan and South Sudan (7,500) and the remainder from West African countries. Given the ongoing strife in Eritrea, Sudan and South Sudan, and taking into consideration their respective human rights records, the vast majority of these individuals are **not able to return to their country of origin** at this time.
- The State of Israel is party to the 1951 Refugee Convention, but it does not have national refugee legislation. Despite this, it has thus far provided these individuals with a form of temporary group protection, including protection against *refoulement*. However, the **protection environment** in the country has significantly **deteriorated** since end 2013 following the adoption of Amendment No. 4 to the Law on Prevention of Infiltration and the implementation of a series of stringent policies by the Government of Israel towards asylum-seekers and other persons of concern to deter their entry and stay.
- Among the other aspects, Amendment No.4 requires asylum-seekers already in the country to reside in the quasi-detention residence facility of Holot, located in the Negev desert, and introduces severe restrictions on their freedom of movement, a thrice daily reporting requirement and other stringent measures. Moreover, new asylum-seekers arriving in an irregular manner will automatically be detained for at least one year, as will people who have violated the rules of the Holot facility, or whose conditional release visas have expired. While access to renewing visas has improved, there are still reports of asylum-seekers not being able to renew them or their working visas are turned into conditional release visas.
- Following the introduction of this Amendment, Israeli Law enforcement units in Tel Aviv and other parts of Israel immediately started to arrest Eritrean asylum-seekers without a valid visa. Those arrested are first being detained at the Sharonin prison for a period up to one year, after which they will be transferred to Holot, for an indefinite period of time.
- At the same time, and in line with these developments, Israel has started implementing "**Voluntary Return Procedures**," and we understand it is on this basis that Immigration Officers are informing Eritreans currently detained at Sharonin facility or residing in Holot that anyone who wants to return to Eritrea can be registered, or otherwise they would remain in detention/continue to reside at Holot. Those outside detention or Holot are equally encouraged to return; otherwise, they need to take up residence at Holot (or detention if order is not followed).

- Likewise, Israel has allegedly been exploring with different African countries a **deal to relocate asylum-seekers** against the provision of assistance – which might also include arm deals -mindful that it cannot infringe the non-*refoulement* principle. Israeli Ministry of Interior (MoI) officers are allegedly informing Eritrean asylum-seekers to accept a financial package to voluntarily leave Israel for a Third Country. Linked to this, on April 10, *The Jerusalem Post* reported that the Israeli Prime Minister's Office does not confirm or deny a *Haaretz* report according to which Israel is financing flights and assisting irregular migrants to move to Rwanda and Uganda. "All actions comport with international law", stated the Prime Minister's Office. This unconfirmed report followed days after the State of Israe l informed a High Court of Justice's panel that two countries had agreed to take some of Israel's "migrants", but left the countries anonymous, at a hearing over whether to declare the state's policy on the matter unconstitutional. Migrants reportedly told *Haartez* that Israel paid for their trips and gave them a one-time payment of 3,500 USD, without assisting beyond that point.
- It should be noted that the situation regarding to access to the asylum procedures in Rwanda is becoming increasingly problematic for all individual asylum seekers and not only for those relocated from Israel. The national legal provision on the procedure for submission of individual asylum claims is article 8 of the Refugee Law of 2014: "A person who applies for refugee status must: 1° be on the Rwandan territory; 2° report immediately to the local authority nearest to his/her point of entry for the protection of fundamental human rights. The local authority to whom the asylum seeker reports shall take him/her to the nearest immigration and emigration office within twelve (12) hours. This office shall register the asylum seeker within twenty four (24) hours from his/her arrival. The department in charge of immigration and emigration shall review the case of the asylum seeker and grant to him/her a temporary residence permit valid for three (3) months. The situation in Rwanda is increasingly problematic for individual asylum-seekers in terms of access to asylum, length of the procedure and the quality of decision-making. The DG of Immigration and Emigration appears to be taking on a larger role than that which is afforded by the law, including by reviewing and turning away applications rather than submitting them to the NRSDC.
- Article 8 paragraph 2 of the Prime Minister's Order determining the organisation and functioning ofthe National Refugee Status determination committee and benefits granted to its members No 112/03 of 19/06/2015 provides that in case the DGIE fails to submit the asylum seeker's application to the Committee in the period provided for by the Law, the Committee can take a decision upon request by the Minister.
- It's worth to be mentioned that in an unofficial letter, the Honorable Minister of MIDIMAR in February 2015, mentions that "prior to submission of all asylum seekers to the Refugee Status Determination Committee, the department has to verify the status of these applications, especially for security reasons". This can constitute a further impediment for asylum seekers' access to the asylum procedure, especially in view to the lack of clarity regarding what aspects of

the asylum seekers' "status" will be examined. Additionally, in May 2016 in an oral communication with a UNHCR official, the Minister of MIDIMAR mentioned for the first time that the DGIE has the right to make decisions on asylum claims.

- Under the present legal framework, there is no provision on free legal aid to asylum-seekers at different stages of the process over and above the services available to all vulnerable individuals accessing the judicial procedure. The "Maison d'accèss à la Justice" has in place a programme to assist a certain number of vulnerable individuals. However, the challenge is capacity to take on cases (limited staffing) and knowledge of international refugee law.

Chronology of some of the main events (arrivals, departures and disappearances)

- On 17 March 2014, the UNHCR Representation in Kigali was contacted by **three** persons (young male adults) of **Eritrean** origin for assistance including asylum seekers, stating that they have been relocated from Israel to Rwanda in mid-February 2014. Since then additional nineteen Eritreans have approached the UNHCR Office in Kigali with similar requests - the last one in mid-August 2014 - bringing the total number of Eritreans who have approached the Office to **twenty two**. This group also informed the UNHCR Office in Rwanda that three additional Eritreans were being detained in Kigali. They were apparently arrested owing to lack of documentation. However, UNHCR could not trace them in any of the detention facilities/police posts in Kigali. This figure of twenty two does not include the ones who have landed at Kigali airport – as asserted by this group of Eritreans but have never reported to UNHCR. Their whereabouts are unknown. Eritreans continued to arrive from Israel to Rwanda at least until the end of last summer, as confirmed by the arrival of another three AS at the end of June and the arrival of other two individuals in Mid-August whose whereabouts are, however, no longer known. In sum, as of today seven known Eritreans out of the group of twenty two remain in Kigali.
- In addition to this group of Eritreans, **two** persons from South Sudan and **one** from Sudan have also approached the UNHCR Office in Kigali in the same period, stating that they have been relocated from Israel to Rwanda. Based on what they have told UNHCR, the circumstances of their relocation from Israel to Rwanda are similar to those of the group of Eritreans (see below).
- From the abovementioned 25 individuals, in September 2014, 13 individuals were still in contact with UNHCR Rwanda and they were receiving financial assistance.
- In 2014 It was reported by the Eritreans that one Eritrean disappeared a few days after his arrival and later another one also went missing on the 10.10.2014 approximately on 18.10.2014. Both persons contacted UNHCR from Kampala and reported that they had been taken against their will by unknown men straight to Kampala by road, without undergoing any control at the border and they were abandoned in random locations. Since then, they

have both attempted to approach UNHCR offices in Kampala. In total from October to December 2014, 7 reportedly relocated individuals reportedly disappeared.

- On the 20.10.2015 an Eritrean national also reportedly relocated from Israel approached UNHCR Kigali to ask help with regards to access to documentation and to the asylum procedure. The IC claimed that he lives in Kimisagara and is unemployed (see NFF in subfolder named protection issues).
- On the 19.10.2015 we received an Ethiopian national, allegedly relocated from Israel, who explained that he was registered in Israel as Eritrean national and who asked for assistance in order to be repatriated in Ethiopia. The IC claimed that he would face no persecution or other serious problems upon return. The PoC was finally registered as asylum seeker with DGIE, as he could not be assisted by IOM to be repatriated.
- On the 11.11.2015, the office received an Eritrean national PoC, asking for assistance for himself as well as for his family members who are still in Israel. When he approached UNHCR, he was alreadyregistered with the DGIE and he had received his temporary permit of stay as asylum seeker inRwanda. his 3 family members (wife and 2 minor children), who are on RST. After being fully informed, the PoC signed custody release forms to allow his family members to go on resettlement. The PoC has persistently asked for exceptional financial assistance and had been camping for weeks outside UNHCR office. The IC has repeatedly benefited from counseling.
- UNHCR Rwanda has received no new arrivals in 2016. UNHCR Rwanda has not been approached by any more recent arrival or older arrival seeking to be registered as asylum seekers and we do not have any information about whether new arrivals are allowed to stay in Rwanda, if they wish to.
- **9 PoCs among those who approached UNHCR (we estimate that in total 29 individual approached UNHCR over the past years) are believed to still be in Rwanda**: In September and October 2015, 10 individuals reportedly relocated from Israel to Rwanda that have approached UNHCR are now in possession of temporary stay permits provided by the Directorate General of Immigration andEmigration (DGIE), as they have now been registered as asylum seekers. An Eritrean national, who used to own a small restaurant in Kigali, reportedly decided to leave Rwanda illegally in late January or in February 2016 initially to Uganda, as he was disappointed about his professional prospects in Rwanda and his business was not profitable. As a result, 9 of the reportedly relocated asylum seekers are believed to still be in Rwanda

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<u>Circumstances of the Eritreans being “relocated” to Rwanda from Israel</u>

The Eritreans who have approached the UNHCR Office in Kigali are young male adults aged between 21 and 35. Most of them are ex-soldiers in Eritrea, where compulsory military service is in place, and have deserted at some point. **They all**

have similar stories and profiles, which, based on what they have reported to UNHCR, can be summarized as follows:

Flight from Eritrea to Israel

- Lack of democracy in Eritrea was stated by all of them as the reason for fleeing the country. All of them escaped to Ethiopia on foot in different years, starting from 2008. On foot they then moved to Sudan from where partially on foot and partially on rented transport they crossed the desert to reach the Sinai Peninsula in Egypt.
- They remained in the Sinai for 3/4 weeks, where they witnessed - and at times directly suffered - abuses and torture on other fellow colleagues by unknown perpetrators, identified however as belonging to the Arabic ethnicity. The time spent in Sinai served to collect money from relatives and friends abroad to pay smugglers who would facilitate their irregular crossing into Israel. They paid smugglers - Bedouins as they stated - in a range between 8,000 to 15,000 USD individually. But to their knowledge other colleagues were requested to pay up to 35,000 USD.
- Once crossed into Israel with the facilitation of these smugglers, they were immediately caught by the Israeli border police. Some of them were detained for two months at Saharonim detention facility, near Be'er Sheva, before being released and sent to Tel Aviv with a conditional release visa renewable every three months, which did not allow them to work in the country legally. In Tel Aviv they survived on occasional jobs, and some of them had to live in the streets.
- Starting from beginning of 2014, Israeli Law enforcement agents arrested them, in implementation of Amendment No. 4 (see above). While in detention, the Israeli Police allegedly communicated to them the following options:

  - Either "voluntary" repatriation to Eritrea or indefinite detention

  - Or, alternatively, relocation to a Third Country. In the latter case, Israel would provide them with required travel documents.

Relocation from Israel to Rwanda

- From mid-February 2014 they started being released in shifts and taken to the airport in Tel Aviv. No explanation was provided to them, including on their destination. Prior to their release, they were asked to sign a document whose content they did not understand since it was written in Hebrew language nor was any explanation on it given to them. None of them received a sum of 3,500 USD as apparently promised, except the one Eritrean who arrived in Kigali the first week of April.
- At the airport in Tel Aviv, the Israeli Immigration provided them with the following documents:

  - Electronic flight ticket to Rwanda via **Istanbul or Addis**

- Single Entry Visa Acceptance for one month issued by Immigration of the Republic of Rwanda stating “Holiday” as the purpose of their visit. This document is signed by, the former Director of DG Immigration & Emigration[1]

- According to them, once at the airport in Kigali, they were taken by Immigration Officers and with no explanation transported to the TECH Hotel in Kigali, where they remained from one to two nights on a pro-bono basis. At the TECH Hotel, all their documents, including the Single Entry Visa Acceptance, were withdrawn by supposedly Immigration. In turn some of them were given an *Attestation d’Immatriculation*. Some of these Eritreans have also reported that the Rwanda Immigration has now stopped issuing *Attestation d’Immatriculation* after some of them were allegedly caught at the border in an attempt to cross into Uganda/Tanzania.

- After their initial staying at the TECH Hotel, they were transferred, so they assert, to some private accommodations in Kigali where they are paying the rental from their own pocket. These accommodations were supposedly found by Immigration.

- **Relocation Grant:**

  As for all aspects of the treatment of relocated asylum seekers the practice regarding the provision of the relocation grant, promised by the Government of Israel seems to vary. The interviewed asylum seekers reported that some asylum seekers received the 3,500 usd before departing from Israel, whether others did not. At least one of the interviewed Eritrean asylum seekers did receive the grant. However, it seems that the majority of the relocated asylum seekers do not receive any financial assistance, according to their testimonies.

  The South Sudanese asylum seekers reported that they were promised the amount of 1,500 usd (rather than 3,500 usd), which they did not receive. It’s worth to be noted that during an interviewwith the Regional Refugee Coordinator and the Political Officer of the EU Embassy, 1 PoC from South Sudan, who had reported that he only received 1,500 usd, reported that he received 3,500 usd as relocation grant.

1 Note that these documents are courtesy of one Eritrean in this group who managed to make a copy and hide it to Immigration when the original documents were withdrawn upon arrival. The same Eritrean shared these copies with UNHCR when he approached our office – it can be argued that UNHCR was not supposed to know. The whereabouts of this individual are no longer known. UNHCR has never shared his and other Eritreans’ names/details with the Government of Rwanda.

Issues of concern

- Since their move to private accommodations in Kigali, these Eritreans - and also the Sudanese and South Sudanese - have been left on their own with no information, including why they have been taken to Rwanda. No assistance apparently is provided to them by the Government of Rwanda. They allege that an official from Rwanda Immigration – apparently the same person who was waiting for them at Kigali airport upon arrival and guided them through secondary immigration/check gate - makes random visits/calls to them.
- When asked by UNHCR whether they would consider returning to Eritrea, they categorically refused this option owing to **fear of persecution.** They further asserted that whilst it has **not** been **their free choice to relocate to Rwanda**, nonetheless, given the circumstances of their relocation, **they would like to apply for asylum in Rwanda**.

- Issues of concern to them are threefold:

A. Access to RSD (challenges in being registered)

- UNHCR officially informed the Minister of MIDIMAR about these arrivals and sought the Minister's advice, in view of their stated intention to consider requesting asylum inRwanda. The Minister replied that according to the standard procedure, they should be channeled through Immigration where their claims will be preliminary reviewed for onward submission to the NRSD[2], should there be a need (these letters are part of the enclosed dossier).
- A meeting ensued on 14 April 2014 between the Minister of MIDIMAR and the senior management of MIDIMAR and UNHCR to discuss issues related to these Eritreans. A request was made that a detailed dossier be prepared for the attention of the Minister of MIDIMAR. This dossier was prepared by UNHCR and shared with the Minister of MIDIMAR on 28 April 2014.
- Further to the MIDIMAR's letter, UNHCR informed the Eritreans and Sudanese about the RSD procedure in Rwanda under the existing asylum law. UNHCR also made several attempts with Immigration to get an appointment for them to have a possibility to lodge their asylum claim, but Immigration has never reverted with a clear answer/proposed time for appointment.
- Pending a reply from Immigration, on 25 June 2014 the group of Eritreans/Sudanese took the initiative of reporting to Immigration in Kigali to lodge their asylum claims. Once at the Immigration premises, the group did not find any assistance/guidance from Immigration – it so decided to contact UNHCR for support. UNHCR joined the group at the Immigration premises to provide help.

2 Since the enactment of law N° 13 ter/ 2014 of 21/05/2014 relating to refugees, the CNR has been replaced by the NRSDC, which has not yet been established.

- In spite of the UNHCR's intervention, the group of Eritreans/Sudanese was not allowed to lodge an asylum claim – they were even refused entrance to the premises and had to wait in the nearby parking lot for the outcome of discussions between UNHCR and the Immigration Officer.
- During these discussions, Immigration explained to UNHCR that it has security concerns about this group - also considering their background where most of them are apparently ex-combatants – and that admitting these individuals to RSD in Rwanda might be a pull factor for the many other Eritrean/Sudanese asylum seekers currently in Israel. The case of this group warrants thorough investigation before admission to the RSD procedure, Immigration added. To have a better understanding of this matter and preliminary explore possible ways forward, Immigration suggested that a meeting take place at the Director/Representative/Ministerial level between DG Immigration & Emigration, MIDIMAR and UNHCR. However, Immigration **has not taken any formal demarche to convene this meeting**. Instead Immigration has communicated through MIDIMAR that they are concerned that, if refugee status was to be recognized for this group, this could constitute a pull factor in the future.
- In summer 2014 the Eritreans have reported to UNHCR that the immigration officer had intensified his overnight visits to them. He has apparently told the Eritreans that – should they wish so – they might be transferred to one refugee camp in Rwanda where their behaviors could be monitored for three months after which Immigration could decide whether to grant them access to RSD.
- The fact that MIDIMAR has been reiterating that they cannot provide any assistance to these asylum seekers and especially the fact that they have been repeating that they cannot accept the request of some of these asylum seekers to be relocated to a refugee camp before their asylum claims are submitted by the DGIE, causes UNHCR not to be too optimistic that MIDIMAR will make use of the provision of Article 8 paragraph 2 of the Prime Minister's Order determining the organization and functioning of the National Refugee Status determination committee and benefits granted to its members No 112/03 of 19/06/2015 in the near future.

B. Registration of 10 PoCs reportedly relocated as asylum seekers by DGIE

- In October the Immigration official came to their houses and asked for photos and for them to sign a document in French. They were told that now, they are registered as asylum seekers and their claim will be submitted to the National RSD Committee for adjudication. They were promised by this person that they will be contacted until the end of the same week, in order to receive their temporary stay permit.

- Until the end of November 2015 all 10 PoCs from those who approached UNCHR who were at thetime believed to be in Rwanda, had received 3month temporary stay permit by the DGIE. The documents are signed by the Director of Refugee Affairs of the DGIE, but they are delivered to the PoCs by the immigration officer at their residences. The timing of the registration of the asylum claims by the DGIE coincided with the court hearing of the relevant legal pleadings submitted by UNHCR Israel.
- Until today (May 2016), the asylum claims have not been submitted by the DGIE to the NRSDC. Even though most of the individuals were registered as asylum seekers on the 7th of September 2015, the files of the asylum seekers have not yet been submitted to the secretariat of the National RSD Committee (NRSDC). We are reminding that the Rwandan law relating to refugees stipulates that the DGIE should submit asylum claims to the NRSDC within 15 days from their submission. As a result of this delay, MIDIMAR has not issued the attestation letters that are necessary for asylum seekers in Rwanda to access any form of assistance, including being relocated to a refugee camp. Four of the ten asylum seekers have submitted letters to MIDIMAR in January 2016, asking to be relocated to a refugee camp, as they are facing significant challenges in accessing any form of employment and we will keep you informed if there is any feedback from MIDIMAR concerning this request. Until today and despite UNHCR's advocacy, MIDIMAR has refused to accept such a relocation of the PoCs to a refugee camp.
- In February 2016 the 6 of the 9 PoCs still in Rwanda reportedly received new temporary stay permits by the DGIE. Two of them explained that about one month after they approached the DGIE and being denied to have their documents renewed, they were called by the immigration officer , the person who had received them at the airport. He subsequently met them at their homes and collected their documents and then brought them their new temporary permits. The DGIE opted not to renew the temporary permit, but rather to document that the asylum claim was registered on the 10 January 2016 for the first time. 6 of the PoCs shared copies of their new temporary stay permits. The Rwandan refugee law does not explicitly refer to the possibility of having a temporary stay permit renewed for the reason that the asylum claim is still pending for adjudication. This is in line with the very tight deadlines set by the law for the steps to be following by the government institutions involved. However, as the asylum claim is still pending for adjudication, the temporary permit should be renewed, so that the asylum seeker can be protected. The DGIE opted not to mention in the document that this is a renewal of the temporary permit issued on the 11.10.2015, but rather to mention the 10.01.2016 as the date or registration of the asylum claim.
  The PoCs have reported that immigration officer told them that he will call them again to arrange for new temporary stay permits, once the ones they currently hold expire. As you understand, this is a very unofficial arrangement, to say the least.

Recommendations/considerations (Senior Protection Officer)

- To address this stalemate with granting access to RSD, UNHCR to consider holding the above-mentioned suggested meeting to explain to Immigration the particular situation of this group of individuals, like it did with MIDIMAR on 14 April 2014. Having two different reporting lines and being separate institutions, Immigration does not necessarily listen to MIDIMAR. This disjunction between the two institutions is particularly apparent in the case of this group. A dossier similar to that prepared for MIDIMAR should also be shared with Immigration, as it is doubtful that MIDIMAR might done so.
- Putting aside for a moment the role that Rwanda Immigration has allegedly played in the relocation of the Eritreans/Sudanese – which however will have to be taken into consideration when looking at the broader picture and when considering to what extent this group can realistically find protection in Rwanda - Immigration is clearly overemphasizing the security concerns in this case. This group DOES NOT necessarily represents a threat for the country, but it is actually them escaping a situation of threat and insecurity in their own country and, therefore, need protection.
- It is also critical that UNHCR ensure that Immigration/MIDIMAR do not compare the situation of this group to that of the ex-M23 combatants in Rwanda - if this is what they are inclined to.
- Overall, the role of Immigration in the RSD process in Rwanda needs to be critically and holistically reviewed. If any role at all, Immigration should just work as a "post office" in the RSD and any eventual exclusion considerations should remain within the remit of the CNR only. The way Immigration in Rwanda interprets its role in the RSD process so far could, technically, lead to instances of *refoulement* when asylumseekers are denied access to RSD, or to unacceptable delays of referrals of asylum applications to the CNR.

C. Humanitarian assistance (food/shelter/IGAs)

- One of their immediate concerns related to food and shelter, as the PoCs did not have access to the official job market until they got registered as asylum seekers. Within the first months from arrival in Kigali, these individuals exhausted their financial means – some of them also started selling their belongings such as mobile phones to raise money for food. To address their **immediate** needs, UNHCR agreed and provides to them on humanitarian grounds since June 2014 30,000 RwF per month per person, as living subsistence.

  Additionally, all of the above-mentioned persons of concern remaining in Kigali are facing **shelter** issues, as they have no documentation

that would allow their access to the job market. UNHCR had agreed to cover the cost for their rent.

In January 2015, after the disappearance of 7 of those people of concern, financial assistance was only provided to 6 persons of concern. After discussions with the persons concerned, they expressed complaints that the amounts they received were not sufficient to cover their basic needs. As a result, our Associate Social Services Officer made an estimation of the minimum required amount to ensure appropriate living conditions and food security. The estimated amount was 45.000 RwFs per month. A home visit followed to better understand the specific needs of the persons of concern and it was concluded that this is the appropriate amount to cover their basic needs. It was decided by the protection unit that the operation would refrain from providing exceptional financial assistance to new PoCs approaching UNHCR to avoid creating As the assisted PoCs were registered as asylum seekers by the DGIE and in view of the budgetary restraints of the Rwandan operation, it was decided in October 2015 that exceptional financial assistance would face out until the end of 2015. Exceptional assistance to start small businesses (IGAs) was opted for instead. The decision of the office was communicated to the PoCs before the end of October 2015 and they were given 2 months to prepare small business plans. The plans were submitted with considerable delay and they were evaluated by the protection unit. 6 of the PoCs received assistance in February 2016 to start small businesses. The situation is being monitored by the Community Services sub-unit.

D. Personal security

- In 2014, their personal security concerns related to the fact that the Police had started arresting them (in some instances also by taking them away directly from their accommodations) allegedly because of lack of identification documents. Since all their ID documents were withdrawn upon arrival in Kigali, the Eritreans/Sudanese were restricting their movements in town and confining themselves to their respective houses, being afraid that they might be arrested by Law enforcement agents if found without ID. The alleged “transfers” of members of this group to Kampala against their will deteriorated these concerns. The last reported arrest due to lack of documentation took place in January 2015.
- On Friday 18 April 2014, the UNHCR Office in Kigali received a call from one of these Eritreans informing that unknown persons have **threatened them of deportation to Eritrea**. It so happened that during the Easter weekend eight of them reportedly disappeared, which has raised dramatic concern with their fellow colleagues about their whereabouts but also regarding their own personal security. Following this disappearance, the three who approached the UNHCR office in the end of June went missing and another one “disappeared” shortly after he arrived in Rwanda. In

October the two PoCs were allegedly “transferred” to Kampala-. As of today, seven **known Eritreans remain in Kigali** in addition to the **one Sudanese and two South Sudanese.**

- These individuals continue to be harassed by unknown agents. On 8 July, the two Sudanese living in a rented room in Kicukiro received an overnight visit from some seven individuals – so they reported to UNHCR. They were asked/questioned about lack of documents and threatened. The two Sudanese managed to escape the place – one of them decided to spend the night in front of the UNHCR Office gate in Kigali, whereas the other one found refuge at a friend’s house. Also the Eritreans reported continuous, random overnight visits by unknown agents at their accommodations. More recently, in early November, one Eritrean was stopped by men that belonged to the military forces or the Rwandan police and after being questioned about the lack of documents, he was requested to wait with these men for two hours and then he was let free. They are all concerned about their personal security – and they all are afraid that they might be deported to their countries of origin or pushed to illegally cross into Uganda as it has allegedly already happened to others.
- To address their security concerns, **they appealed to UNHCR for the issuance of some ID documents that could protect them until they are granted access to RSD**. UNHCR has considered exceptional issuance of some papers/documents attesting that these individuals are persons of concern to UNHCR so that some formal protection might be ensured. However, the Directorate of Immigration and Emigration has strongly opposed to the issuance of any such document by UNHCR.
- In October 2014 an Eritrean unregistered asylum seeker, contacted UNHCR Protection staff after arriving in Kampala. The IC suddenly disappeared few days earlier. Apparently he made his first application with UNHCR in Sudan and was then registered by Israeli authorities in 2008. The IC reported that he was taken to Uganda against his will by car. The men who put him in the car, did not were uniforms according to the IC. The IC reported that even though the car passed by the official border point, they were not controlled by Immigration officials in either of the two sides. The IC was left at a remote locations in the outskirts of Kampala and wondered for hours before finding some members of the local Eritrean community, who assisted him.
- The PoCs have reportedly that they have been discouraged to approach MIDIMAR (and possibly UNHCR) and reportedly been told that they shouldn’t have approached MIDIMAR, asking to be relocated to a camp, as both DGIE and MIDIMAR are part of the same government and that they should only speak to assigned DGIE officer. They were told that if they approach MIDIMAR again, the officer will not renew their documents. The PoCs did not mention being discouraged from talking to UNHCR, but we could suspect that this could be the case, as the PoCs have been sensitized numerous times to report any change in their documentation

status immediately and they did not mention anything, even though they have repeatedly been asked during the past months.

Recommendations

- UNHCR to ensure more proactive engagement of MIDIMAR vis-à-vis these individuals, including addressing their personal security concerns.

UNHCR's position

- **UNHCR does not consider Israeli's program for relocating asylum-seekers and refugees to third countries or transit arrangements in accordance with international refugee law and Israeli's obligations as a signatory to the 1951 Refugee Convention**
- UNHCR considers **any deportation to the country of origin**, whether from the country of asylum, a third country or transit country, of persons of concern, including asylum-seekers and refugees, **a violation of international refugee law and of States' obligations under the 1951 Refugee Convention.**
- In April 2015, UNHCR Overview of UNHCR's HQ shared with our office a document named: "Concerns regarding Israel's Policy of Forced Relocation of Eritreans and Sudanese to Third Countries", emphasizing on the protection Gaps in the Criteria for Relocation Asylum-Seekers to Third Countries such as the confidentiality of the agreements, the procedure and screening, the access to the asylum procedure, assurances for dignified living and the lack of transparent and objective monitoring of the relocations.

Final recommendation(s)

- UNHCR Rwanda to continue its advocacy, especially through pressure by the international community and submissions to UN Treaty bodies.
- UNHCR to advocate for more proactive engagement of MIDIMAR in ensuring their access to RSD and to expedite their cases through RSDC, possibly by making use of the option provided by article 8 of the Prime Minister's Order on the Establishment of NRSDC.
- Considering that Rwanda is allegedly involved in some form or another in these relocations from Israel and that access to asylum in Rwanda to these Eritreans/Sudanese has so far been denied – it might be worth considering whether Rwanda could be an ideal country of asylum for these individuals. Resettlement on fast track – if access to RSD is eventually granted, or even after mandate RSD is conducted by UNHCR if necessary and if adjudication on refugee status is positive – could be one possible solution for them (however, the pull factor implications will also need to be taken into account).

- In any case, alternative solutions should also be looked at holistically including with the proactive engagement of and guidance from DIP, RBA and MENA.
- More generally – and notwithstanding the political implications and sensitiveness of the case – the deterioration of the protection environment in Israel that seems the trigger of these relocations also requires to be addressed holistically.

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A8. Third Witness Statement of Lawrence Bottinick 27 July 2022

Third witness statement of Lawrence Bottinick dated 27 July 2022 (updating evidence removed 3rd August 2022)

United Nations High Commissioner for Refugees: Intervener
L Bottinick 3rd statement 27 July 2022
Exhibits: LB1/1-11

CO/2032/2022, CO/2056/2022, CO/2077/2022, CO/2072/2022, CO/2094/2022
CO/2095/2022, CO/2098/2022, CO/2104/2022

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
DIVISIONAL COURT
BETWEEN : -
THE QUEEN ON THE APPLICATION OF AAA & ORS
Claimants
-and-
THE SECRETARY OF STATE FOR THE HOME DEPARTMENT
Defendant
-and-
THE UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES
Intervener

THIRD WITNESS STATEMENT OF LAWRENCE BOTTINICK

I, Lawrence Bottinick, of UNHCR London, 10 Furnival St, London, EC4A 1AB, state as follows:

A: INTRODUCTION

1. I am authorised by the United Nations High Commissioner for Refugees ('**UNHCR**') to make this, my third witness statement, in UNHCR's intervention in these proceedings. Pursuant to the Court's grant of permission to UNHCR to supply reply evidence, for which UNHCR is grateful, I respond to the evidence served by the Secretary of State for the Home Department ('**SSHD**') between 5 and 7 July 2022 and then on 22 July 2022[1] which refers to matters described in

1 I refer to the witness evidence served by the SSHD on 22 July 2022 which seeks to correct, clarify or amplify her earlier evidence of 5-7 July 2022. In so far as the SSHD's 22 July evidence is responding to UNHCR's evidence, UNHCR understands that it will fall within the evidence in respect of which UNHCR has permission to reply pursuant to the Court's Order of 21 July 2022.

my second witness statement dated 26 June 2022 ('**LB2**'). In light of the volume of evidence served by the SSHD, the need for brevity in this reply evidence and moreover for the reasons explained at LB2 §§5-6, absence of comment in this statement on any particular matter should not be taken to mean that the matter is accepted.

2. As was the case for LB2, this statement has been prepared with substantial involvement from many people. There has been close engagement, including through numerous calls by telephone and Zoom, with UNHCR staff in Kigali and in UNHCR's Regional Bureau for the East, Horn of Africa, and Great Lakes in Nairobi, who have carefully reviewed the records and other information available to UNHCR based on the organisation's first-hand experience in Rwanda. There have also been many hours of liaison with UNHCR staff in Geneva; and in person discussions with my London colleagues. The statement has drawn on the legal expertise and knowledge within UNHCR from records and knowledge of staff. A draft of the statement has been reviewed by senior staff in UNHCR offices in Geneva, London, Kigali, and Nairobi, who have also commented, and provided authorisation. I am confident that this process has led to the most complete and accurate information that it is possible to provide the Court with regarding the current position in relation to the matters addressed, in the time available to produce this statement. It covers four key areas: (i) Statistics (Section B); (ii) Refoulement (Section C); (iii) the refugee status determination ('**RSD**') procedure in Rwanda (Section D); and (iv) UNHCR's expression of its concerns (Section E).

~~3. At Section F below, I also provide brief updating evidence on a small number of points where necessary to ensure that the Court has the correct information before it, in light of developments since LB2 and in line with UNHCR's duty to provide evidence that is as accurate and up to date as possible. That updating evidence is the subject of an application, as I understand it, by UNHCR's solicitor to the Court for permission.~~ (Paragraph 3 removed pursuant to Order by the Honorable Mr Justice Swift date 1 August 2022)

4. Below, I address in particular the Statements of Mr. Armstrong (I refer to his first, second and fourth witness statements as '**KA1**', '**KA2**' and '**KA4**', respectively) and to three documents emanating from the Government of Rwanda ('**GoR**') exhibited thereto. These three exhibits are the statement of the GoR in KA1, p. 522 et seq ('**GoR Statement**'), a written response from the GoR to specific paragraphs of LB2 (Exhibit KA (2) 4 to KA2, p. 13 et seq) ('**GoR Response'**) and an email from the GoR exhibited to KA4, p. 8 et seq ('**GoR Email**').

5. The facts and matters set out in this statement are within my own knowledge, or derived from information provided by UNHCR colleagues in the offices highlighted above, and a review of documents held by UNHCR. They are true to the best of my knowledge and belief. There is now produced and shown to me a bundle of exhibits which contain true copies of documents to which I will refer in this statement. I adopt the same defined terms as in LB2. Unlike in LB2, the case studies referred to in this statement are from the last six years.

B: STATISTICS

6. The witness statements of Martin Stares ('**MS1**'), §§26-30, and Kristian Armstrong (KA1), §89 (and its accompanying exhibits), make a number of points about statistics given by UNHCR. I respond to these below.

7. Mr Stares indicates that it would be helpful to understand more about the underlying statistics on which my previous statement was based (at LB2 §§62-64). As to those:

   a. As I noted in my previous statement (see e.g. LB2 §§18-19, 21, 47, and 62) UNHCR is not provided with comprehensive information concerning asylum claims and outcomes by the GoR. Instead, it has collated data from its knowledge of all of those who have approached UNHCR or its legal aid partners for advice, and from such information as the GoR provides to UNHCR.

   b. In MS1 §27, Mr Stares notes that at LB2 §22 I cite 333 cases which UNHCR was aware had passed through Rwanda's individualised RSD process since 2019, while at LB2 §63 I cite 156 outcomes. The reason for the difference is simply that the first figure (333) includes all RSD cases known to UNHCR between 2019 and 21 June 2022, at all stages of the RSD procedure; while the second figure (156) includes only those cases known by UNHCR which were decided by the RSDC between 2020 and 21 June 2022. The latter figure is smaller because it does not include asylum claims which were summarily rejected by the DGIE[2] (see §8 below); which were abandoned by the asylum seeker before any RSDC decision was made; or which remain pending.

   c. In respect of the comparison between UNHCR figures and figures from the GoR at KA1 p. 531 (the latter of which only appears to include cases processed by the RSDC), there are only limited differences. As to those differences:

      i. UNHCR's dataset covers the period from 2020 to 21 June 2022. The GoR's dataset begins earlier (from 2019).

      ii. The first table provided by the GoR (p. 531 KA1) appears not to be wholly accurate. It does not capture all nationalities, namely Yemen, Congo Brazzaville, Syria, Sudan set out in the second table (p. 532).

      iii. There are instances where UNHCR is aware that certain statistics put forward by GoR are not accurate. In particular, UNHCR is confident that the RSDC rejected three separate applications from Syrian asylum seekers (whereas only one case appears in the data provided by GoR).[3] UNHCR is also aware of two RSDC refusals for Afghan asylum seekers (rather than one, as set out in the GoR statistics).

      iv. UNHCR believes that it does not know about all RSDC cases because Rwanda has not shared with it all decisions by the RSDC. This may explain instances where *more* cases appear in the GoR's dataset.[4]

2 As I explained at LB2 §38 and also addressed at §8 and §§13-19 below, the DGIE operates an (unacknowledged) gatekeeping role in that the DGIE decides whether or not to refer individual claims to the RSDC (at the airport or inside Rwanda).

v. As to cases where *fewer* cases appear in the GoR's dataset, further to the instances of mistake set out above, there appears to be a difference in the way that UNHCR and the GoR count linked cases. In UNHCR's dataset, each adult individual is counted as a "case"[5]. It appears that the GoR may count a family group of related adults as a single "case". This, for example, would explain the difference between UNHCR's statistics for Yemen (which counts three "cases") and those of the GoR (which counts one). To UNHCR's knowledge, the Yemeni example includes three adult individuals from one family who had submitted separate but linked claims.

8. Mr Stares further seeks clarification (MS1 §29) of the "*scale and extent*" of the problem which UNHCR has identified of claims not being admitted to the DGIE (see LB2 §38a).

   a. I exhibit at **LB3/1** a table which sets out UNHCR's data about all cases of which it was aware which had passed through the RSD process in Rwanda between the start of 2020 and 21 June 2022 (this is to match the time period covered in the table exhibited to LB2).[6] The first column sets out the number of asylum claims which have come to UNHCR's attention as being rejected at DGIE level (that is, where a person sought to make an asylum claim but their claim was not referred by the DGIE to the RSDC). This is already a substantial minority of the total number of asylum applications known to UNHCR (8%)

   b. It is very likely that this is a significant *underrepresentation* of the true figure of rejections by the DGIE, which is why this table was not included with my previous statement. While UNHCR does, in particular recently, receive information from MINEMA about case outcomes at the RSDC level, that information is biased towards cases passed on by the DGIE (as only those would be determined by the RSDC). UNHCR does not, by contrast, receive any information from the GoR about cases which are rejected by the DGIE without being referred to the RSDC. For the latter category (DGIE rejections) UNHCR is exclusively reliant upon information from individual asylum seekers who contact UNHCR (directly or through UNHCR's legal partners, or through other individuals as occurred in the Afghan refoulement cases described at §108(b) of LB2) when their case is not progressed.

3 My colleagues in Kigali have seen copies of the refusal letters in all three cases. While those decisions do not refer toSyria (and are not exhibited as these would not add to the Court's information), my colleagues in Kigali have confirmedthat each decision relates to a separate Syrian national (with whom UNHCR remains in contact). None contains anydetailed reasons for refusal and each reflects the standard rejection template I discussed at LB2 §61d. I further discuss the Syrian cases at §32a. below. These three asylum applications from Syrian nationals were rejected by the RSDC despite the fact that "*UNHCR continues to characterise the flight of civilians from Syria as a refugee movement, with the vast majority of Syrian asylum-seekers continuing to be in need of international refugee protection, fulfilling the requirements of the refugee definition contained in Article 1A(2) of the 1951 Convention*", and advised against all returns to Syria at the relevant time. See: https://www.refworld.org/docid/606427d97.html.

4 The GoR's second table (exhibits to KA1, p. 532) has a total of 37 cases recognised for the period between 2020-2022 whereas the UNHCR table (p. 531) has a total of 36 cases recognised for that period.

9. At MS1 §27, Mr Stares states that the SSHD would like to explore what figures might be available from the period between 2014 and 2019. UNHCR does not have comprehensive data for that period. The overwhelming majority of asylum claims in this period were decided on a *prima facie* basis rather than through an individualised RSD procedure (see LB2 §22) and UNHCR had not begun to maintain its list of all asylum seekers known to it in Rwanda which has allowed for a more systematic data collection since the start of 2021 (see LB2 §62).

10. At MS1 §27, Mr Stares states that the SSHD would like to understand the basis for UNHCR believing that "*up to 40 cases*" are considered in one RSDC hearing. UNHCR is confident in this information and belief. There are two bases for UNHCR's belief. First, UNHCR received 40 decision letters by the RSDC, which all refer to a session date of 4 March 2022 and decision date of 18 March 2022. A summary of the refusal decisions arising from that session is set out in Exhibit LB4 to LB2.[7] The second basis for UNHCR's belief is confidential information which I regret cannot be disclosed (see LB2 §§5-6).

C: REFOULEMENT

11. Responding to UNHCR's concerns about refoulement, Mr Armstrong's statement (KA1 §§83- 89) and the exhibits thereto (pp. 519 and 525) show that the SSHD relies upon GoR assertions that they have never removed *"from its frontiers any asylum seeker to the country of origin or another country"* (p. 519); "*there has never been an incident of refoulement in Rwanda*" (p. 525*)* and specifically, "[*n]o Syrian or Afghani was refouled to Syria or Afghanistan"* (p. 526). GoR Response (p. 14) repeats the point that "*none were sent back to their countries of origin*", and also that "*individuals whose asylum claims are denied are neither deported nor forcibly removed*" (p. 19). In apparent reliance on these statements, the SSHD argues in her detailed grounds of defence, §8.8, that each individual returned from the airport was returned to a country where they had a right to reside.

12. I regret to say that these assertions are not factually accurate; and moreover, that these assertions and the SSHD's reliance upon them indicate a serious misunderstanding of the prohibition of refoulement.

13. **Airport cases**. In my previous statement (LB2 §108), I cited five instances, of which UNHCR is aware, of cases at the airport being denied admission to Rwanda and its asylum system[8] which in consequence led to refoulement or a serious risk thereof:

5 Unless they are married to another asylum seeker, in which case the couple (and any dependent children) are counted as one case.

6 ~~As I explain below, I have also provided an update on all RSDC decisions communicated to UNHCR since that date, exhibited in a separate table.~~ (Footnote 6 removed pursuant to Order by the Honorable Mr Justice Swift dated 1 August 2022) LB 3 August 2022

7 Please note the exhibit does not include the four positive decisions.

a. In February 2021, two Libyan nationals tried to claim asylum at the airport immediatelyafter they had been denied entry for business purposes and were then removed despite UNHCR's efforts. UNHCR was, shortly after their removal from Rwanda, able to track them to Tunisia,[9] from where they had initially departed. Both individuals sought to claim asylum in Tunisia but were denied access to asylum procedures and were stuck at Tunis airport. One of the individuals contacted UNHCR to say they had managed to travel to Mauritania. In the case of the other, UNHCR's intervention resulted in the Tunisian authorities eventually agreeing to release him to a shelter. In UNHCR's view, the denial of access to Rwanda's asylum procedures placed both these individuals at serious risk of refoulement.

b. In March 2022, two Afghan nationals were not permitted to make asylum claims at the airport, were thereafter expelled and ultimately refouled to Afghanistan. They could not remain in the countries en route because they had no right to reside there.

c. In April 2022 a Syrian national was prevented from making an asylum claim at Kigali airport and was removed to a third country. UNHCR understands that the individual was ultimately refouled to Syria because he was not allowed to remain in the third country.

14. UNHCR is therefore confident that, in the cases of the Afghan and Syrian nationals, their removal from Rwanda led to chain refoulement to destinations where UNHCR advises against all returns (which were moreover the asylum seekers' countries of origin, albeit return to the country of origin is not a legal pre-requisite for refoulement). Indeed, UNHCR sent two Notes Verbales to the GoR about the five asylum seekers (on 3 February 2021 concerning the Libyan cases; and then on 21 April 2022 concerning the Afghan and Syrian cases). The response from the GoR to the latter Note Verbale is annexed to KA1 at p. 519. As I explained in LB2 §108a, such Notes Verbales are diplomatic correspondence, ordinarily confidential between the parties. In light of the fact that the GoR's response has now been exhibited to KA1, UNHCR respectfully considers that it is now permissible and appropriate to disclose its own Notes Verbales, which are exhibited at **LB3/2**.

15. Neither the fact (if true) that these asylum seekers were in possession of forged passports,[10] nor the fact that they originally sought to enter Rwanda on business or visit visas, provides a lawful basis for summarily denying them access to the asylum process. Nor was that conduct rendered lawful by the fact that each of these asylum-seekers was removed to a transit destination (where they have no right to reside) rather than on a direct flight to their country of origin. It is

8 Albeit the materials provided by the SSHD - including GoR Response, pp. 14-15 and GoR Statement, §11 – omit reference to the fact that these people had attempted to access the asylum procedure.

9 Where they had been sent via Egypt.

wholly foreseeable that summary removals of asylum seekers to transit countries will result in chain refoulement to the country of origin (as UNHCR knows happened in the cases of the two Afghans and of the Syrian national).

16. As I indicated in LB2 (§30) it is very likely that there are other instances of airport refoulement of which UNHCR is unaware, given UNHCR's lack of presence and access at Kigali airport. This concern is now reinforced by the information provided in the GoR Response, which at§1.2-1.3 refers to four further Syrian nationals returned from Kigali airport. Neither I nor my colleagues in Kigali were aware of those cases prior to seeing the GoR Response.[11]

17. The following example sheds further light on the unreliability of access to Rwanda's asylum system. A Yemeni asylum seeker who attempted to claim asylum at the airport in September 2021 was denied access to the asylum procedure.[12] UNHCR, at the relevant time, advised against all returns to Yemen (and still does). The asylum seeker contacted UNHCR by email, as is exhibited at **LB3/3** but, before UNHCR in Kigali could intervene, he was placed on a flight to Addis Ababa. He then received assistance from UNHCR in Addis Ababa preventing his refoulement back to Yemen. My colleagues did not refer me to this case when preparing LB2 because UNHCR had not in that case intervened with the GoR; UNHCR now considers it necessary to refer to this case, in order to respond to the GoR's assertions about refoulement.

18. **Denial of access to asylum procedures / deportations**. The SSHD relies upon the assertions of the GoR (see, for example, exhibit to KA1, p. 385, row 12) that it does not deport individuals who are refused asylum. In this regard, the following information is relevant. In LB2, at §112, I described a separate category of refoulement (or attempted refoulement), of individuals who sought to claim asylum inside Rwanda and are nationals of a country with which the GoR enjoys close relations. All the individuals sought to make asylum claims with the DGIE but their claims were not then referred to the RSDC. The individuals were instead orally informed by the DGIE at a later date that they had no lawful basis to remain in Rwanda and a limited time to leave (between three days and a week). They were given no options of appeal. In particular:

10 I refer to the GoR's explanation at p. 391 of the exhibits to KA1 that "*Cases referred to by UNHCR are not recognised as refoulement because all those cases are foreigners who have been refused entry visa because they were using forged documents and thus, not meeting immigration entry requirements*."

11 I also note that the cases described at §1.3, which were not addressed in my previous statement (as UNHCR was not aware of them), refer to individuals who had forged Peruvian passports and the individuals being sent back to Beirut. §11 of the response attached to KA1 (p. 526) appears to suggest that the facts of these cases (Peruvian passports, residence in Lebanon) relate to the cases highlighted by UNHCR. This is incorrect.

12 This is a separate case from that referred to in GoR Statement, § 13.

a. The first case concerned a family who, after being told by the DGIE that they had a week to leave Rwanda, were then physically taken by the DGIE[13] to Tanzania, where they had no legal status. UNHCR managed to intervene by quickly arranging resettlement of those individuals to a third country (which was not Tanzania). UNHCR is confident that but for its intervention, this family would have been at serious risk of refoulement.

b. In the second case, an individual was also given instructions to leave Rwanda within days. He was then taken by the DGIE at the same time as the first case to the Tanzanian border, where he had no legal status, without the option of remaining in Rwanda. He subsequently sought protection in another neighbouring country.

c. In a very recent third case, a family, months after they originally submitted an asylum claim to the DGIE and without any decision on their claim, were told by the DGIE that they had to leave Rwanda within four days. UNHCR was able to obtain emergency resettlement for that family to a third country. On 31 May 2022, UNHCR sent to the GoR a Note Verbale, requesting a few days to allow for arrangements to be made for the family to be resettled and the GoR agreed. I exhibit the Note Verbale as **LB3/4**. Again, UNHCR considers that refoulement would have occurred without its intervention.

19. UNHCR is concerned that the cases described above form part of a pattern of denial of access to asylum procedures. In preparing this statement, my colleagues in Kigali made me aware of further information[14] held by UNHCR which I consider relevant to the GoR's denials relating to access to Rwanda's asylum system and risk of refoulement. This information relates to at least ten families (a total of at least 29 individuals[15]) who are nationals of the same country referred to immediately above and in LB2 §112. All had sought asylum, many after their government's embassy in Rwanda confiscated or failed to renew their passports. UNHCR is also aware that in at least one instance, an individual's passport was confiscated by the Rwandan authorities at the request of the national authorities of the country of origin. However, none of those asylum claims were referred by the DGIE to the RSDC.[16] This was despite the fact that, in UNHCR's view, given the profile of the individuals they were likely to be in need of international protection. Although a few families subsequently had their residence permits (which they had obtained previously, and on bases other than their asylum claim) extended, many were threatened with expulsion by the GoR. In at least two cases, asylum seekers were specifically threatened with

13 During the Covid-19 pandemic

14 LB2 was prepared under considerable time pressure, with my colleagues in Kigali and also in UNHCR's regional Horn of Africa office working late at night and on weekends to obtain relevant information. My colleagues were unable to retrieve the relevant information about these families (particularly since the UNHCR officer who had worked directly with these families is now working for UNHCR in a different region) before LB2 was produced. They subsequently continued to search through old files and emails. I was alerted to this episode and to UNHCR's recently - retrieved information in the course of discussions with my Kigali colleagues for the purposes of replying to the GoR's denial of refoulement practices in the SSHD's evidence.

15 UNHCR believes that more individuals from the same country were affected in this episode but has not been able to retrieve sufficient detailed information to describe those other cases here.

almost imminent refoulement and told that this was occurring at the request of their country of origin: they were told they had to leave Rwanda within 12 hours or face deportation to their country of origin. In those two cases, the asylum seekers managed to leave because they had valid travel documents; one of those was the individual whose passport had been confiscated by the Rwandan authorities; the passport was returned to him immediately before the deadline for his departure, enabling him to leave. Several other families felt compelled to leave Rwanda and seek asylum elsewhere. In UNHCR's view, the DGIE practice of denying these asylum seekers access to the RSD procedure placed them at serious risk of refoulement.

20. This episode does not appear consistent with the GoR's assertions that it has not refouled or otherwise treated refugees incompatibly with the Refugee Convention (see exhibit to KA1, p. 519-20; GoR Statement, p. 525 §10).

21. Moreover, as concerns the SSHD's reliance upon the GoR's assertion that "*none were sent back to their countries of origin*", in UNHCR's view, compelling asylum seekers to travel to neighbouring countries,[17] where they have no legal status creates a serious risk of chain refoulement.

D: THE GoR's DESCRIPTION OF THE RSD PROCESS IN RWANDA

22. Below, I address a number of further specific points arising out of the GoR Statement, Response and Email.

23. **Confidentiality.** The GoR Response p. 16,[18] indicates that it is "*standard practice in RSD*" to "*cross-check with embassies*" (the Response does not specify which embassies) including to "*gather background information on the applicant*." The GoR Response appears consistent with UNHCR's concerns over breaches of confidentiality in the Rwandan RSD procedure. However, the GoR Email states that

16 I am told by my Kigali colleagues that they have been able to ascertain that one individual from this cohort of 29 individuals, several years later approached the DGIE again in late 2021. On this second occasion, his case was forwarded to the RSDC. This is the only case of which UNHCR is aware where an asylum seeker (of any nationality) was able to submit a new claim having been previously refused under the RSD system. This asylum seeker did not, however, go through the full RSD process the first time – as his claim had not been referred to the RSDC. This is not, in UNHCR's view, an indication that Rwanda operates a system for considering fresh asylum claims based on fresh evidence or change of circumstances.

17 The countries include Tanzania (in the cases described at §18a and §18b above). As to Tanzania, see the concerns in UNHCR's February 2021 submission to the Universal Periodic Review: "*There is limited access to territory and cases of refoulement are regularly reported….The national asylum system lacks fairness and transparency and those allowed access to the national system face extremely high rejection rates, despite having fled from countries whose nationals are being widely recognised as refugees globally*."

18 In response to the concerns raised at LB2, §41h that the GoR will 'cross-check' with embassies of asylum seekers' countries of origin before making a decision.

"*This background information refers to the RSDC seeking information about a specific event/situation in the asylum seeker's country of origin "* from Rwandan embassies in those countries. As I explained in LB2 §41h, UNHCR remains concerned that asylum seekers' confidentiality is not respected. If confidentiality is not respected, that is a very serious flaw in the Rwandan RSD process. This would place the family members and associates of asylum seekers, left in the country of origin, at serious risk of reprisals and of abuses of fundamental rights. A practice of cross-checking with countries of origin also risks asylum claims being rejected on a flawed basis (because checks with national authorities may, intentionally on the part of the national authorities or not, yield inaccurateinformation, of which the asylum seeker is moreover unaware). Where asylum seekers are aware that confidentiality within the system is not assured, that is liable to inhibit full disclosure of the basis for an asylum claim, further undermining the fairness and effectiveness of the system.

24. **DGIE role**.

a. The GoR Response, p. 15 suggests that UNHCR has misrepresented Rwandan law. For the avoidance of doubt, UNHCR agrees with the GoR's statement that the DGIE is legally obliged to submit all asylum claims to the RSDC for determination and does not have the authority to reject a claim and to not refer an application to the RSDC. This is consistent with the analysis at LB2 §38 (see in particular §38e).

b. However, it appears that the GoR may treat claims for international protection by individuals summarily rejected by the DGIE as not amounting to asylum claims. The GoR states, in response to the SSHD's query about UNHCR's evidence of asylum seekers turned away at Kigali airport by the DGIE (exhibit to KA1, p. 391, row 27) that "[a]*ny person claiming asylum is processed by DGIE and issued with a temporary residence permit and DGIE submits the file to the RSDC.*" The same document then states that the DGIE "*may deny entry visa to a foreigner*" on three bases, relevantly if "*he/she has provided false information during the visa application at entry point*" or if it "*has reasonto believe that [the asylum-seeker] can be a threat to national security, public safety*." If by this the GoR means that the DGIE is authorised summarily to reject, for example on deception or public safety grounds, an asylum claim (or attempted asylum claim) without referring it to the RSDC for full determination, that is very concerning.

c. In any event, the issue raised in LB2 is that the DGIE operates a *de facto* gatekeeping role by deciding whether or not to refer individual claims to the RSDC, and as I set out above, a significant proportion of claims (whether made at the airport or inside Rwanda) are not admitted by the DGIE and progressed to the RSDC. That remains UNHCR's understanding.

d. The GoR Response states at p. 15 that the DGIE does not make any recommendation that may influence the outcome of the RSDC decision, and the RSDC takes decisions based on the information in the file and from the Eligibility Officer alone. That is not consistent with information which UNHCR has received from DGIE officers[19] as I set out at LB2 §40. (Indeed, as I explain further at §45 below, it appears that the DGIE may also influence the MINEMA appeal stage.)

25. **Eligibility Officer(s)**. MINEMA indicates that it currently employs two eligibility officers (exhibit to KA1, p. 390, row 24). To the extent that this discrepancy is relevant, as I set out in LB 2, §42, UNHCR is only aware of one. As to the query at MS 1 §28 about how UNHCR is aware of the eligibility officer's role, this stems from its interactions with asylum seekers and its partner organisations.

26. **Steps in the procedure**. No issue appears to be taken with UNHCR's observation that only on certain occasions will asylum seekers be interviewed by the RSDC.[20]

27. Meanwhile, a number of points in my statement are disputed as "*not true*" or "*not accurate*" (GoR Response pp. 15, 17). I confirm UNHCR's confident understanding and belief concerning:

    a. the brevity of DGIE interviews generally[21] and the lack of any systematic practice of informing asylum seekers of potential issues in their claims and allowing them to provide an explanation. (LB2 §41(a) and (b));

    b. not always notifying individuals of refusal of their claims by the RSDC (LB2 §61); and

    c. inadequate reasons for RSDC refusals and the failure to notify individuals routinely of rights of appeal (see LB2 §61a-e)[22].

28. **Legal advice and representation.** Regarding the SSHD and GoR's evidence (responding toLB2) concerning legal advice and representation, UNHCR makes a number of points:

19 And indeed also other GoR officials.

20 The RSD brochure for individuals transferred under the UK-Rwanda arrangement exhibited to KA2, p. 26 states "*If RSDC finds it necessary to have an interview with you*".

21 For completeness, I wish to add that one of UNHCR's staff, acting as an informal interpreter, and one of UNHCR's interpreters, did attend two longer DGIE interviews on 29 June and 20 July 2022 respectively. Further information about those interviews appears at §29a below.

22 Indeed, as I explain below at §46 UNHCR has recently been sent by MINEMA copies of RSDC refusal decisions which lack reasons or notification of appeal rights.

a. The GoR Response (exhibit to KA 2, p. 15) states that "*during the administrative phase of the process lawyers' role is limited: they can assist applicants in preparing their submissions to the RSDC but they cannot attend RSDC sessions*." That is consistent with UNHCR's experience (see LB2 §60 (j)). The GoR Statement likewise indicates that under the UK-Rwanda Arrangement only legal advice (rather than representation) will be given in the administrative phase (GoR Statement, §22). However, the subsequent GoR Email states that "*The legal representative of the asylum seeker is permitted to attend the interviews at DGIE level and any interview at the RSDC."* The GoR Email is thus inconsistent with the GoR's earlier assertions (and UNHCR's own experience) concerning lawyers' role at the DGIE and RSDC stages.

b. In GoR Response, p. 19 and GoR Statement §22, the GoR refers to arrangements with advocates and legal officers on refugee protection and asylum procedures. This, however, only appears to relate to claims under appeal at the High Court.

c. I confirm that to UNHCR's knowledge, currently only one legal officer at PFR regularly provides assistance on the Rwandan RSD process (with the backup of a lawyer), (LB2 §100), and that LAF's current involvement in the RSD process is minimal.

d. The SSHD's "working document" (exhibit to KA1, p.507) states that the GoR "*do not have a formal agreement with*" LAF or PRF. This appears inconsistent with information from the GoR (exhibit to KA1, p. 381, row 5), which refers to a "*tripartite agreement"* with LAF and PFR.

e. I note that the "working document" (exhibit to KA1, p. 507) states that transferred individuals can seek legal assistance "*at their own cost"* for advice or through NGOs during the initial stage (see also RSD brochure exhibited to KA2 pp. 24-27).

f. Although the "working document" refers to the willingness of LAF and PFR to provide advice at the initial stage at no cost, UNHCR is concerned that the organisations do not have sufficient capacity to assist with an influx of cases, for reasons I set out at LB2 §100.

29. **Transcripts/minutes of meeting.** UNHCR does not know of any practice of sharing a transcript or minutes of either DGIE or RSDC interviews with asylum seekers.

a. In relation to the DGIE stage, the GoR Email states that "*The interview is recorded electronically and at the end of the interview, the asylum seeker is presented with a written record (…). The asylum seeker verifies the information and can confirm the record with a signature or can amend the record by correcting the information or providing more information."* UNHCR has not seen any instances of this (either providing a written record to the asylum seeker and/or providing them with an opportunity to correct the record or give further information). A UNHCR staff member and a UNHCR interpreter

were requested to provide interpretation services at interviews at the DGIE on 29 June and 20 July 2022. There was no indication that the interviews were being recorded. No transcript or summary of the interview was presented (in writing or verbally) to the applicant for confirmation/clarification at the end of the interview.

b. In relation to the RSDC stage, the GoR Response at p. 15 appears to confirm that no formal transcript is taken during the "*administrative*" RSDC stage and "*only minutes are taken".* The GoR Email adds, which I understand to be an aspiration, that "*These minutes will be made available to the relocated individual attached to their notification of decision by the RSDC."* UNHCR has never seen any minutes of RSDC interviews being shared with asylum seekers or attached to their decision letters, including in the latest batch of decisions it received on 21 July 2022 (see §46 below).

30. **Information about appeals**. As I explain further below at §46, copies of RSDC decisions recently seen by UNHCR (of which I exhibit an example at **LB3/5**) show that there is still no practice of routinely informing asylum seekers refused by the RSDC of their appeal options. The GoR Response at p. 17 states that awareness raising regarding appeals is "*continuously done*", especially in camps, and some of the campaigns are undertaken by PFR and LAF. The proposed transferees will not be held in camps. In any event, my colleagues in Kigali are not aware of any such campaigns (indeed it is difficult to understand why these campaigns would be useful as individuals in camps predominantly already have refugee status on a *prima facie* basis).

31. **Appeals.** I confirm that UNHCR is still not aware of any appeals to the High Court (nor are any set out in the SSHD's evidence, as far as I can determine).[23] Reference is made to cases being transferred to the Intermediate Court in 2012-2014. However my colleagues in Kigali recall no such transfers of cases. In any event, this appears to refer to an earlier legislative scheme.

32. **Substantive concerns about specific groups of asylum seekers.**[24] I noted a number of areas of substantive concern in respect of GoR's treatment of asylum seekers in LB2. The SSHD has sought to answer these in evidence which I address in overview below.

a. **Middle Eastern asylum seekers.** At GoR Statement, §13, the GoR seeks to rebut the concerns I expressed about bias against asylum seekers from the Middle East by reference to two cases: one from Syria and one from Yemen. I have discussed these cases with colleagues in Kigali and a number of points require to be made*.*

23 Reference is made to cases being transferred to the Intermediate Court in 2012-2014. However my colleagues in Kigali recall no such transfers of cases. In any event, this appears to refer to an earlier legislative scheme.

i. As to the Syrian national described by GoR, UNHCR is aware of one individual, who after the refusal of his claim, was able to secure a Syrian passport (through unofficial channels) and, with it, obtain a work permit. It appears that this is the individual described by the GoR. However, UNHCR is additionally aware of two other Syrian asylum seekers whose applications were rejected at RSDC stage as I set out above at §7c.(ii). The latter two Syrians have received no grant of status and have not been offered any other form of stay after the refusal of their claims. Their temporary residence permits were not renewed. They were told that they could not obtain work permits without a passport, however, their Syrian passports have expired while in Rwanda[25]. UNHCR is very concerned about the practice by the Rwandan authorities of requiring failed asylum seekers to approach their country of origin for documents in order to obtain another basis of stay in Rwanda. Of these two Syrian nationals[26], one has managed to secure a passport. He has so far received no information about further arrangements for his stay in Rwanda.

ii. Second, as to the Yemeni asylum seeker described by GoR, UNHCR is concerned about the assertion (GoR Statement, §13, KA 1 p. 527) that the current position is satisfactory to her and that a dependent resident permit is sufficient. That asylum seeker is the victim of domestic violence and her immigration status is dependent on the abusive partner. She has sought independent refugee status and in UNHCR's view meets the definition of a refugee. She only renewed her dependent residence permit because she had not received a decision on her asylum claim and felt she had to ensure continuation of her legal stay in Rwanda. She still has not been notified of a decision by the RSDC.[27] It is thus inaccurate to say that the position is satisfactory to her.[28] Moreover, the GoR refers to a single Yemeni case, yet there are three separate family members who have all claimed asylum. The other two family members' temporary residence permits have expired and not been renewed. They thus have no regularised status at all at this stage. All are, in UNHCR's view, at risk not only from the general situation of conflict in Yemen [29] but also of persecution from non-state agents.

24 For completeness, I note the following statement in GoR Response p. 16: "*The example of persons from neighbouringcountries who were denied status can only be the dozens or so Burundians who returned to Rwanda upon learning that there was a repatriation package for Burundian refugees. They applied for refugee status to have access to repatriation packages. (…) UNHCR's views of an application's 'strength' is not considered by the RSDC unless the UNHCR has been invited in the proceedings".* The statement reinforces UNHCR's concerns about the GoR's lack of objectivity in assessing claims from nationals of certain countries, including Burundi. UNHCR is aware that those Burundian nationals included individuals who had already benefitted from the voluntary repatriation package (and, under its provisions, would not be able to benefit from it for the second time on return), but felt compelled to return to Rwanda because of further risks encountered in Burundi following their repatriation. In UNHCR's view, their new claims ought to have been considered on their merits. The reference to UNHCR's view on the strength of the claim not being considered *unless UNHCR has been invited to participate in proceedings* is not accurate: as I set out at LB2 §55 the RSDC has never consulted UNHCR on an individual case.

b. **LGBTIQ+ asylum seekers**. At LB2 §41(i) I explained that UNHCR has consistently received reports that LGBTIQ+ asylum seekers were not able to register their claims. GoR Response p. 16 states that this is *"demonstrably untrue*". This is because, it is said, refugee status has been granted to some LGBTIQ+ applicants.[30] As I noted in LB2, recently two LGBTIQ+ applicants have been able to progress their claims at the RSDC: the fact that this small number of recent applications has been permitted does not answer UNHCR's concern, which is based on reliable evidence. While the GoR Response at p. 19 notes that "*some*" LGBTQI+ applicants have stayed in Rwanda, this appears consistent with UNHCR's understanding that almost all have left Rwanda (see LB2 §113). UNHCR is aware, from information provided by asylum seekers and UNHCR's legal partners, that they did so because they were unable to progress their asylum claims.

33. **UNHCR's role and status in the procedure** . This is addressed in the GoR Response, p. 13 and in the GoR Statement §§7-9. As to the points therein:

a. UNHCR confirms the points made at LB2 §19, including that the GoR does not systematically inform UNHCR of all asylum claims and that asylum seekers who contact UNHCR or its legal partners do so at their own initiative.

b. GoR does not systematically inform UNHCR of all asylum seekers who live in camps[31] nor those who live in urban areas.

c. As the GoR accepts, cases concerning urban asylum seekers (the vast majority of RSD cases) are only communicated to UNHCR after a decision by the RSDC.[32]

d. It is stated by the GoR that its system for notifying UNHCR of asylum claims is being improved to become more systematic and instant.[33]. However, it appears to be at the discretion of the Eligibility Officer as to what information is shared with UNHCR and there is no 'instant' (or any) process of information sharing at the crucial DGIE stage.

25 There is no Syrian embassy in Rwanda: the individuals felt compelled to approach the Syrian authorities directly through informal channels.
26 Who do not appear to feature in the SSHD's evidence; a single case is mentioned at GoR Statement, §13.
27 UNHCR is confident that her claim was rejected because the decision appeared in the sample of refusal decisions sent to UNHCR by MINEMA's Eligibility Officer.
28 In any event, the asylum seeker decided to extend her residence permit when she had not been notified of the RSDC's decision on her case and felt she had to regularise her immigration status.
29 In relation to which UNHCR advises against any returns.
30 A point also made at GoR Statement, §12.
31 GoR Response p.13.
32 Ibid.
33 Ibid.

e. The GoR indicates that UNHCR is engaged as a *"long-term partner to contribute to capacity building, when needed*". While UNHCR remains committed to supporting asylum capacity development in Rwanda as for other countries, in line with its mandate, the degree to which UNHCR is engaged is at the GoR's election. As I explain at LB2 §90, the Rwandan authorities have not been receptive to UNHCR offers of assistance to build the capacity of the RSD system. This is addressed further at §42 below.

34. **Training.** There are a number of points that are relevant to training.

a. KA1, §51, refers to UNHCR training provided to the RSDC in 2018 and 2021, which training is asserted as not to have been "*partial*" at GoR Response, p. 18. As I explained in LB2, §92ff, the (basic) training in December 2021 was attended by 8 out of 11 RSDC members, some of whom attended only for part of the training and the entire training was moreover truncated.

b. At row 4 of the table exhibited to KA1, p. 380, it is asserted that the interviewing officers at the DGIE have received different trainings relevant to their positions. This includes reference to training by the International Institute of Humanitarian Law in San Remo, Italy ('**the San Remo Institute**'). As far as UNHCR is aware from updated information provided to it by the San Remo Institute, only four individuals from the DGIE have been to training at San Remo between 2017-2022; and of those, only one attended a training in refugee law.[34] The GoR's table also includes reference to training by the Institute of Legal Practice and Development ('**ILPD**'). To the best of UNHCR's knowledge, ILPD does not offer any training or programmes on refugee law (at least at this time)[35].

c. The GoR Response, p. 19 also refers to training from the University of Rwanda. As far as UNHCR is aware, there is no specific module offered by the University of Rwanda on refugee law. There are only two institutions in Rwanda (both private institutions) who offer a refugee law module, which is only offered to masters students: University of Lay Adventists of Kigali and Kigali Independent University.

d. The GoR Response, p. 19 also refers to training by institutions concerned with the RSD process including MINIJUST (Ministry of Justice) and MINAFFET (Ministry of Foreign Affairs and International Cooperation). To UNHCR's knowledge neither of those institutions has ever provided relevant training on RSD.

e. It is also stated (Witness Statement of Chris Williams ('**CW**'), §44) that DGIE members have received training from the International Organization for Migration ('**IOM**'). It is not the IOM's mandate to deal with RSD; and the IOM confirmed in correspondence to UNHCR that it has "*never provided nor planning to provide any trainings on refugee determination in Rwanda".* I exhibit the relevant email as **LB3/6**.

34 The other three individuals attended a course on Statelessness.

35 UNHCR's understanding is consistent with information on the ILPD website https://www.ilpd.ac.rw/index.php?id=2.

35. **Interpreters.** In KA4, §9, the SSHD has confirmed that "*it will be for the Government of Rwanda, rather than the UK, to inform relocated individuals, on arrival, of the translation services in Rwanda"*, that *"the Government of Rwanda will inform relocated individuals of the availability of translation support via a combination of in-person translators and, where unavailable, the big word"* (the translation service used by the SSHD in the UK) and that "*The Government of Rwanda have informed the Home Office that primarily remote translation will be provided via ordinary telephone calls."* Unfortunately, the provision of remote interpretation, especially over the phone, via the Big Word, does not address UNHCR's concerns over appropriate access to interpreters, for the following reasons:

    a. A number of officials involved with the RSD process, at all levels, do not speak fluent English (see LB2 §46 regarding the Eligibility Officer and LB2 §41i where I describe language difficulties during an interview for an LGBTIQ+ asylum seeker). Most of these officials speak Kinyarwanda as a first language (and many speak French, not English, as a second language). My colleagues in Kigali were told by an interpreter who has attended several RSDC interviews that RSDC panel members speak Kinyarwanda among themselves during the session.[36] English-speaking interpreters provided remotely from the UK would not be able to assist decision makers who do not have a fluent understanding of English; nor could they ensure that the asylum seekers understand everything which is said by the RSDC in languages other than English.

    b. It appears that it will be at the GoR's discretion to decide whether an interpreter is needed. I have already explained in LB2 that the use of professional interpreters during the RSD process in Rwanda is rare, and if the asylum seekers can speak some of Rwanda's three official languages or someone is available to unofficially interpret, no interpreter will be contacted (see §41d, §60, §102-3).

36. **Status of failed asylum seekers.** I understand from e.g. the exhibit to KA2, p. 27 that the GoR has indicated that if asylum is not granted to individuals they can stay in Rwanda as a legal resident. At present, UNHCR is aware of no 'catch-all' immigration status that would apply to rejected asylum seekers in Rwanda whether as a matter of practice (as no such residence permits have been granted) or law (as it is not clear what the basis in Rwandan law would be). Moreover, in UNHCR's experience, a valid passport is required to get any form of residence permit (including a work permit), and thus to access services and the labour market. As far as UNHCR's experience at present is concerned, refused asylum seekers (including as explained at §32(a)(i) above, individuals from Syria) are sometimes left in limbo without any regularised status.

[36] In the interpreter's experience, interviews have been as short as 15-20 minutes, only two or three committee members ask questions and the role of others in the session is not clear. The interpreter observed that the RSDC did not appear familiar with country-of-origin information or details of individual cases.

37. **Status of individuals in the asylum system.** GoR asserts that the average time for processing a claim is three months,[37] however UNHCR is concerned about the immigration status of asylum seekers whose cases are pending but are sometimes delayed far beyond that period. When working with me for the purpose of preparing this statement my colleagues from Kigali spoke to an asylum seeker (from a Middle Eastern country where UNHCR advises against all returns) whose case was submitted to the DGIE over nine months ago. His temporary residence permit expired and was not renewed. Although he was informed that his case had been passed on to RSDC (and so his case should have gone through the Eligibility Officer), when the applicant contacted the Eligibility Officer about the case, she did not have details of his case. He remains in Rwanda without any residence permit or right to work despite having asked the DGIE and MINEMA repeatedly about progress with his case.

E: UNHCR'S EXPRESSION OF ITS CONCERNS

38. The GoR Statement, §15 (KA1 p. 529) states the following: *"UNHCR has on numerous occasions expressed its appreciation of the Government of Rwanda inclusive refugee policies, qualifying them as 'exemplary'. UNHCR's recently held concerns have not been communicated to the Government of Rwanda despite years of mutual cooperation. The Government of Rwanda remains open to consult with UNHCR to address these new concerns."* There are two points to make about this statement.

39. **First**, it is correct that UNHCR has expressed its appreciation of the GoR's treatment of refugees. In particular, UNHCR has praised the treatment of individuals *prima facie* recognised as refugees[38] as "*exemplary*"; and praised Rwanda's "*favourable protection environment*".[39]

40. **Second**, however, UNHCR has held and expressed long-standing concerns about the Rwandan individual RSD. That is apparent, in particular, from the Notes Verbales set out above, and from UNHCR's submissions in the 2020 Universal Periodic Review of Rwanda, at p. 4. The latter document explains, in respect of RSD procedures, that "*while the legal framework is progressive, its implementation appears challenging in practice*". Specific concerns are raised regarding the fact that there is only one eligibility officer, that UNHCR is not invited to attend RSDC discussions, that the basis of RSD decisions are not known, that the appeal process does not appear to be independent, that there have been minimal appeals, that some asylum seekers continue to face challenge upon submissions of their asylum requests and that ultimately such practices place asylum seekers at the risk of detention and deportation.[40]

37 See GoR Statement, §4, which states that the RSD process on average takes less than 3 months, including the Ministerial Appeal.

38 As explained at LB2 §22a , those have historically represented the vast majority of asylum seekers in Rwanda.

39 UNHCR's Rwanda Country Refugee Response Plan ('CRRP') January-December 2021. The purpose of the CRRP is to raise funds from international donors (states and organisations) in order to support the GoR in meeting the urgent humanitarian needs of over 100,000 refugees in Rwanda.

41. UNHCR has raised with the GoR the issues of capacity-building and training; of airport refoulement; the need, disputed by the GoR, to treat a person as an asylum seeker as soon as s/he verbally declares an intention to claim asylum[41]; and the need for reliable first instance decisions. UNHCR has raised such concerns in regular discussions with the GoR, including in the context of enquiries on individual cases.

42. Mr Stares has asked at MS §28 whether UNHCR has asked to attend interviews at the DGIE. I am not aware of any formal requests by UNHCR to attend a DGIE interview. I can confirm that UNHCR has however asked specifically about attending RSDC meetings and more generally about access to the RSD process on a number of occasions since at least 2019. For example, following UNHCR raising the point in a meeting, my UNHCR colleague did send to a senior staff member of MINEMA an email indicating that UNHCR could observe RSDC meetings, as exhibited at **LB3/7**. This was again raised in the training sessions which I address in LB2 §92ff. I note that it is also referred to at exhibit 6 to CW, p. 54, which indicates that the SSHD recognises that "*UNHCR have lobbied for a permanent place on the RSD Committee*"[42] but that "*GoR are clear that they do not want the UNCHR (sic) to play a supervisory role*".

~~F: UPDATES L.B 3 August 2022~~ (Section F removed pursuant to Order by the Honorable Mr Justice Swift dated 1 August 2022)

~~43. As indicated above, UNHCR seeks the Court's permission to update the Court on the relevant position since LB2.~~

~~44. **First**, as I said in LB2 (LB2 §75), as of 26 June 2022, UNHCR was unaware of any successful appeals to the MINEMA Minister. However, on 27 June 2022 (a day after LB2 was served), my colleagues in Kigali received an email with documents from MINEMA. These related to six recent appeals. The documents included four successful appeal decisions. These were the first instances of appeals allowed by MINEMA of which my colleagues are aware.[43]~~

~~45. One of the decisions had attached to it a document in Kinyarwanda which appears to be a MINEMA report. I exhibit that document and an official translation as **LB3/8**. It indicates that in two cases, the MINEMA appeal panel could not reach a decision and wished to discuss the case~~

40 See likewise UNHCR's comment in its Rwanda Country Refugee Response Plan January-December 2021 to the effect that "*access to the asylum continues to remain challenging for individuals other than prima facie recognitions*".

41 Rather than the current approach of the GoR of treating an asylum claim as having been made only once it is referred from the DGIE to the RSDC. My Kigali colleagues tell me that RSD decision-makers informed them of this approach at the December 2021 workshop and that this was also stated by senior MINEMA and DGIE officials at meetings.

42 UNHCR seeks observer status, not to be a voting member.

"*with the Migration officials who have received him"* (which my colleagues understand is a reference to the DGIE) "*to discuss…the appropriate decision to be taken"*. This adds to UNHCR's concern over MINEMA's independence of other bodies in the RSD procedure (LB2 §136); and reinforces concerns that the DGIE has (unacknowledged or informal) influence on RSD decision-making (LB2 §§38-40). UNHCR has not been sent copies of the decisions in the cases which the MINEMA panel considered had to be discussed with the DGIE.

46. Second, I exhibit as **LB3/9** a table of 40 RSDC decisions of which my colleagues in Kigali were notified by MINEMA on 21 July 2022 (a day after the Court's judgment of 20 July 2022 permitting UNHCR to adduce Reply evidence). These decisions come from two different RSDC meetings dated 3 June 2022 and 8 July 2022. I exhibit as **LB3/10** a comparison of rejection and recognition rates across the different RSDC sessions since 4 March 2022. (I have included this time period because it is only since the March 2022 session that MINEMA has been sending to UNHCR substantial batches of RSDC decisions.[44]) There is a sharp rise in RSDC acceptance rate from the previous sessions in 2022 (10% in March 2022 session, 25% in May 2022 and 29 % in June 2022) to the 8 July session (81%). As the decisions sent to UNHCR on 21 July 2022 include only one case of a Middle Eastern asylum seeker (a Yemeni national) this does not materially affect UNHCR's views expressed at §64 LB2 concerning anomalously high rejection rates for asylum seekers of Afghan and Middle Eastern nationalities. It is difficult to draw any conclusions, or identify any trend, from this very recent single batch of decisions (from the 8 July 2022 session) showing a much higher acceptance rate than previously established. Nor can UNHCR speculate as to why this one batch had a particularly high acceptance rate. In UNHCR's view, what is needed for reliable RSD determinations in Rwanda is structural change (to ensure impartial, independent decisionmaking by specialist bodies); further legal change (to eliminate protection gaps and introduce clarity); and long-term capacity-building (including the recruitment and training of relevant personnel). UNHCR is concerned that the reasons for the refusals among this 21 July 2022 batch of decisions are in many instances inadequate in that they could not permit an effective, informed challenge (cases continue to be refused on the basis that "*you are not meeting the eligibility criteria and the reasons why you fled your country are not pertinent*"). This is despite the indication in the SSHD's evidence

43 For completeness, at §58a of LB2 I referred to a case study of an asylum seeker who had been refusedasylum without an RSDC interview (her only interview was the briefDGIE interview). Since my statement was prepared,my colleagues in Kigali were informed that the asylum seeker had been invited to an interview at the MINEMA appeal stage. They do not know the final outcome of that case.

44 Prior to March 2022, MINEMA had only occasionally sent to UNHCR a small number of decisions.

that the GoR would amend its approach to supplying reasons.[45] I exhibit as **LB3/11** a table showing reasons provided for the refusals in the 21 July 2022 batch of decisions. I note also that none of the refusal letters inform the refused asylum seeker of any avenue of appeal, despite the assertion by the GoR that this information is communicated with RSDC rejections.[46] I exhibit as **LB3/5** an example of a refusal letter from the latest batch of decisions.

47. Third, I said in my previous statement (LB2 §105) that UNHCR has only ever provided interpreters in Tigrinya or Arabic as part of the RSD process. As recently as 19 July 2022, UNHCR was approached and provided an Arabic-speaking interpreter for a DGIE interview. In June 2022, a UNHCR staff member (not a professional interpreter), provided, upon the DGIE's request, interpretation services at a DGIE interview for a family seeking asylum[47] who spoke a language not commonly spoken in Rwanda. The staff member reported to my colleagues in Kigali that the DGIE interviewing officer appeared to misunderstand key elements of the claim made by the family, which was based on gender-based violence and religious conversion. Further, although the female family member was the main asylum seeker, the interviewing officer directed questions solely to the male asylum seeker. Last week, the GoR also approached a UNHCR staff member in Kigali (not a professional interpreter) to provide interpretation for a Farsi-speaking asylum seeker as the GoR was not able to source an interpreter elsewhere.

48. **Changes to RSD process**. Finally, I can confirm that, to UNHCR's knowledge:

a. There have been no recent changes in practice regarding reasoned decisions (or any decisions being notified at all) by the DGIE.

b. There have been no recent changes in practice regarding reasoned decisions by the RSDC.

c. As for decision-making by MINEMA, for the first time UNHCR became (after my statement in LB2) aware of four successful appeals (see §44 above).

d. Save for one example where a PFR member was able to observe a DGIE interview regarding an LGBTIQ+ applicant,[48] there have been no recent changes in practice regarding access by UNHCR or its legal partners to any stage of the RSD procedure.

e. UNHCR is not aware of attempts to hire or train further lawyers for assistance to asylum seekers in the RSD process. UNHCR is not privy to any discussions which the GoR has had with the Rwandan Bar Association and so cannot comment on assertions in this respect.

[45] GoR Response, KA2 p. 17: *"Templates are being adjusted to provide detailed reasons on the notification".*

[46] Ibid, *"When the applicant receives a notification after the RSDC has taken a decision, if it is a refusal, she/he is informed about the right to appeal."*

[47] That family were granted a temporary residence permit by the DGIE a few days after the interview.

[48] See LB2, §19d, §41c.

f. There have been no further UNHCR trainings requested or which have taken place, for personnel dealing with asylum seekers, whether at DGIE, RSDC or MINEMA level. UNHCR also is not aware of training being provided by other organisations with whom UNHCR works in Rwanda or elsewhere.

g. UNHCR has not seen – other than informal requests from non-professional interpreters to assist prior to the originally planned flight pursuant to the UK-Rwanda Arrangement – any evidence of attempts to hire or train further interpreters in Rwanda for assistance in the RSD process.

h. UNHCR is not aware of any development of a humanitarian protection visa for failed asylum seekers who qualify on other grounds; nor any development of a catchall, residual residence permit for failed asylum seekers

G: CONCLUSION

49. As the GoR has confirmed (see GoR Statement, §16) the MoU represents a continuation of Rwanda's RSD system and not a parallel RSD process.

50. UNHCR is concerned that the GoR's response to UNHCR's evidence has not acknowledged current problems of lack of capacity, training or expertise; of arbitrariness, lack of due process or unfairness. Rather, the GoR's response has: (i) denied the existence of facts of which UNHCR is certain, including in respect of refoulement and access to asylum (see e.g. §13 above); or (ii) acknowledged the facts but denied that these constitute a breach of the Refugee Convention even where these manifestly do (see §§14-18, §20 above on refoulement and access to asylum).

51. None of this indicates that the problems noted by UNHCR, including the refoulement or attempted refoulement of in-country asylum applicants refused by the DGIE, or the summary expulsion of asylum seekers transferred under a previous transfer Arrangement (in that case with Israel), are now historic.

52. For those reasons, and for the reasons already given in LB2, UNHCR remains of the view that:

    a. The Memorandum of Understanding and Notes Verbales between the UK and the GoR and the commitments described in the SSHD's evidence do not suffice to establish an accessible, reliable or fair asylum system in Rwanda; and

    b. There is a real risk of direct and indirect refoulement for those transferred to Rwanda under the UK-Rwanda Arrangement.

Statement of Truth

I believe that the facts stated in this witness statement are true. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

Signed:

Name: Lawrence Bottinick
Date: 27 July 2022

Statement made on behalf of: UNHCR (Intervener)
Made by: L. Bottinick
Number of statement: Third
Exhibit: LB3/1
Date: 27 July 2022

CO/2032/2022, CO/2056/2022, CO/2077/2022, CO/2080/2022, CO/2072/2022, CO/2094/2022, CO/2095/2022, CO/2098/2022, CO/2104/2022

IN THE HIGH COURT

QUEEN'S BENCH DIVISION

DIVISIONAL COURT

B E T W E E N:

THE QUEEN ON THE APPLICATION OF

AAA AND OTHERS

Claimants

-and-

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Defendant

-and-

THE UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES

Intervener

EXHIBIT LB3/1

This is the Bundle of Exhibits marked "**LB3/1**" referred to in the Witness Statement of Lawrence Bottinick dated 27 July 2022.

…….
LAWRENCE BOTTINICK

Table LB3/1: Overview of cases within the RSD procedure known to UNHCR for 2020 to 2022 (as of 21 June 2022)

This is a summary of all cases known to UNHCR from (a) information on the refugee registration database (b) information shared by the Government of Rwanda (c) information provided by individual asylum seekers and (d) information provided by legal partners.

Nationality	Number	%	Rejected at DGIE Level Number	Rejected at DGIE %	Processed by RSDC	Processed by RSDC %	Missing/Pending RSDC Decision Number	Missing/Pending RSDC Decision %	Claim Abandoned Number	Claim Abandoned %	Control
Afghanistan	9	2.8%	2*	22%	2	22%	5	56%	0	0%	100%
Burundi	142	44.5%	4	3%	57	41%	79	55%	2	1%	100%
Cameroon	9	2.8%	2	22%	5	56%	2	22%	0	0%	100%
CAR	2	0.6%	0	0%	0	0%	2	100%	0	0%	100%
Chad	3	0.9%	0	0%	0	0%	3	100%	0	0%	100%
DRC	66	20.7%	3	5%	50	76%	13	20%	0	0%	100%
Egypt	2	0.6%	0	0%	1	50%	0	0%	1	50%	100%
Eritrea	22	6.9%	1	5%	18	82%	2	9%	1	5%	100%
Ethiopia	18	5.6%	7	39%	5	28%	6	33%	0	0%	100%
Kenya	2	0.6%	1	50%	1	50%	0	0%	0	0%	100%
Lebanon	1	0.3%	0	0%	1	100%	0	0%	0	0%	100%
Libya	2	0.6%	2*	100%	0	0%	0	0%	0	0%	100%
Nigeria	3	0.9%	0	0%	1	33%	2	67%	0	0%	100%
Palestine	1	0.3%	0	0%	1	100%	0	0%	0	0%	100%
Republic of Congo	1	0.3%	0	0%	1	100%	0	0%	0	0%	100%
Pakistan	1	0.3%	0	0%	0	0%	1	100%	0	0%	100%
Somalia	2	0.6%	0	0%	0	0%	2	100%	0	0%	100%
South Sudan	13	4.1%	0	0%	4	31%	9	69%	0	0%	100%
Sudan	3	0.9%	0	0%	2	67%	1	33%	0	0%	100%
Syria	6	1.9%	1*	17%	3	50%	2	33%	0	0%	100%
Tanzania	1	0.3%	0	0%	0	0%	1	100%	0	0%	100%
Turkey	5	1.6%	3	60%	1	20%	0	0%	1	20%	100%
Uganda	1	0.3%	0	0%	0	0%	1	100%	0	0%	100%
Yemen	4	1.3%	0	0%	3	75%	1	25%	0	0%	100%
Total	319	100.0%	**26**		**156**		**132**		**5**		
% of total applications				**8%**		**49%**		**41%**		**2%**	

*Cases rejected at Kigali International Airport. Note that this table does not include the Yemeni national who tried to enter Rwanda through Kigali airport in September 2021. While UNHCR consider it likely this individual was also refused access to asylum procedures by DGIE, UNHCR does not have enough detail to confirm this.

**The data does not include the MINEMA appeal stage. As of 21 June 2022 (the end of the period covered by this data) or indeed 26 June 2022 (the date the second statement of Lawrence Bottinick was finalised) UNHCR was not aware of any appeals to MINEMA which had been allowed.

Statement made on behalf of: UNHCR (Intervener)
Made by: L. Bottinick
Number of statement: Third
Exhibit: LB3/2
Date: 27 July 2022

CO/2032/2022, CO/2056/2022, CO/2077/2022, CO/2080/2022, CO/2072/2022, CO/2094/2022, CO/2095/2022, CO/2098/2022, CO/2104/2022

IN THE HIGH COURT

QUEEN'S BENCH DIVISION

DIVISIONAL COURT

B E T W E E N:

THE QUEEN ON THE APPLICATION OF

AAA AND OTHERS

Claimants

-and-

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Defendant

-and-

THE UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES

Intervener

EXHIBIT LB3/2

This is the Bundle of Exhibits marked "**LB3/2**" referred to in the Witness Statement of Lawrence Bottinick dated 27 July 2022.

…….
LAWRENCE BOTTINICK

UNHCR
United Nations High Commissioner for Refugees
Haut Commissariat des Nations Unies pour les réfugiés

UNHCR Representation in Rwanda
Nyarutarama Road, KG 9 Ave, n 60
P.O BOX 867

Notre/Our Code: [redacted]

The Office of the United Nations High Commissioner for Refugees (UNHCR) in Rwanda presents its compliments to the Ministry of Foreign Affairs and International Cooperation of the Republic of Rwanda and wishes to draw attention to the situation of [redacted] and [redacted] both nationals of Libya who are currently located within the international zone of Kigali international airport. UNHCR is aware of their expressed request for international protection.

UNHCR notes that Rwanda is a State Party to the 1951 Convention relating to the status of Refugees and its 1967 Protocol, the International Covenant on Civil and Rights, as well the 1984 Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment as well as the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa. These instruments prohibit the removal of an individual to a place where the person risks treatment proscribed by these instruments. UNHCR therefore wishes to express concern over reports received that the abovementioned two Libyan nationals are scheduled to be deported on the 4th or 5th February 2021, via Egypt to Tunisia, where the applicants have expressed a fear of being at protection risk and possible deportation to Libya. UNHCR understands that no assessment has taken place yet of the risks which [redacted] and [redacted] claim to face. This removal would therefore be inconsistent with Rwanda's obligations under the foregoing Conventions and the principle of non-refoulement.

UNHCR seeks assurances from the Rwanda authorities that all necessary measures will be taken to ensure that the deportation of [redacted] and [redacted] will not be implemented, until such time as their claims for international protection have been properly and fairly assessed by the competent authorities of Rwanda, namely the National Refugee Status Determination Committee. We understand that their deportation is imminent, and we would therefore appreciate your urgent attention and consideration.

The Office of the United Nations High Commissioner for Refugees in Rwanda avails itself of this opportunity to renew to the Ministry of Foreign Affairs and International Cooperation of the Republic of Rwanda the assurances of its highest consideration.

REPRESENTATION IN RWANDA
UNHCR
Kigali

February 3, 2021

Cc: Ministry in Charge of Emergency Management

UNHCR
United Nations High Commissioner for Refugees
Haut Commissariat des Nations Unies pour les réfugiés

UNHCR Representation in Rwanda
Nyarutarama Road KG 9 Ave n 60
P.O BOX 867

Notre/Our Code : [redacted]

NOTE VERBALE

The Representation in Rwanda of the Office of the United Nations High Commissioner for Refugees (UNHCR) presents its compliments to the Ministry in Charge of Emergency Management (MINEMA) of the Republic of Rwanda, and wishes to draw attention to repeated instances of chain refoulment and denial of admission to Rwandan territory, particularly at the Kigali International Airport in the past few weeks.

UNHCR notes that Rwanda is a State Party to the 1951 Convention relating to the status of Refugees and its 1967 Protocol, the International Covenant on Civil and Political Rights, as well the 1984 Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment as well as the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa. Rwanda's own law, and in particular Article 21 of Law N° 13ter/2014 of 21/05/2014 relating to refugees is highlighted in this regard. These instruments prohibit the removal of an individual to a place where the person risks treatment proscribed by these instruments. UNHCR therefore wishes to express serious concerns over reports at the Kigali International Airport that, several individuals who expressed their need for international protection have been denied access to the territory and asylum in Rwanda. The removal of these individuals is at variance with Rwanda's obligations under the foregoing Conventions, national law and the principle of non-refoulment.

In recent weeks, UNHCR is aware of at least three individuals who were unable to lodge their asylum application contrary to the Rwandan laws and international obligations. In March 2022, two Afghan individuals were removed, while a Syrian individual was removed on 19 April 2022. All asylum-seekers, including those at the airport, must be given access to asylum procedures allowing for a fair, transparent and efficient determination of their claim. Until such determination is made by the relevant Rwandan authorities according to the Rwandan Law (by the competent body of the National Refugee Status Determination Committee (NRSDC)), it must be assumed that the individual is a refugee and should not be removed from the territory.

UNHCR wishes to reiterate its position on returns to Afghanistan[1] and Syria[2], shared with the authorities, on the basis of which UNHCR considers that people fleeing the ongoing conflict in Afghanistan and Syria may need international protection in accordance with the 1951 Convention relating to the Status of Refugees, and should not be forcefully removed.

---

[1] UN High Commissioner for Refugees (UNHCR), UNHCR Position on Returns to Afghanistan, August 2021, available at: https://www.refworld.org/docid/611a4c5c4.html
[2] UN High Commissioner for Refugees (UNHCR), *International Protection Considerations with regard to people fleeing the Syrian Arab Republic, Update VI*, March 2021, HCR/PC/SYR/2021/06, available at: https://www.refworld.org/docid/606427d97.html

UNHCR

UNHCR seeks assurances from the Rwanda authorities that all necessary measures will be taken to ensure that the decisions on deportation and refoulment of individuals wishing to seek asylum in Rwanda are immediately suspended, until such time as the individual claims for international protection have been transparently and fairly assessed by the competent authorities of Rwanda, namely the NRSDC. UNHCR stands ready to engage further at technical level with competent authorities at MINEMA, DGIE and NRSDC. UNHCR is ready to support capacity development of DGIE at the airport and work closely with the authorities to develop Standard Operating Procedure regarding referral of the asylum seekers at the airport, as well as facilitating immediate communication and access of persons of concern to UNHCR Rwanda.

The Representation in Rwanda of the Office of the United Nations High Commissioner for Refugees (UNHCR)avails itself of this opportunity to renew to the Ministry in Charge of Emergency Management the assurances of its highest consideration.

Kigali,21April 2022

REPRESENTATION IN RWANDA
UNHC
Kigali

Ministry in Charge of Emergency Management
Republic of Rwanda
Cc:

-Director General of Immigration and Emigration (DGIE)

Statement made on behalf of: UNHCR (Intervener)
Made by: L. Bottinick
Number of statement: Third
Exhibit: LB3/3
Date: 27 July 2022

CO/2032/2022, CO/2056/2022, CO/2077/2022, CO/2080/2022, CO/2072/2022, CO/2094/2022, CO/2095/2022, CO/2098/2022, CO/2104/2022

IN THE HIGH COURT

QUEEN'S BENCH DIVISION

DIVISIONAL COURT

B E T W E E N:

THE QUEEN ON THE APPLICATION OF

AAA AND OTHERS

Claimants

-and-

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Defendant

-and-

THE UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES

Intervener

EXHIBIT LB3/3

This is the Bundle of Exhibits marked "**LB3/3**" referred to in the Witness Statement of Lawrence Bottinick dated 27 July 2022.

…….
LAWRENCE BOTTINICK

Subject: RE: EMERGENCY Yemeni Refugee Deportation'

From: [redacted]@unhcr.org>
Sent: Friday, 8 October 2021 14:01
To: [redacted]<[redacted]@unhcr.org>
Cc: [redacted]@unhcr.org>; [redacted]@unhcr.org>; [redacted]
<[redacted]@unhcr.org>; [redacted]@unhcr.org>
Subject: RE: EMERGENCY Yemeni Refugee Deportation'

Dear [redacted]

This is to update you and the colleagues on the case of the Yemeni individual stranded at the Bole International airport in Addis Ababa.
Finally, he was granted a letter from the immigration authorities at the Bole airport that allows him to register with ARRA. He was released today, but the registration process will be completed by next week Monday/Tuesday.

Many thanks, [redacted]

From: [redacted]@unhcr.org>
Sent: 23 September 2021 11:34
To: [redacted]@unhcr.org>
Cc: [redacted]@unhcr.org>; [redacted]@unhcr.org>; [redacted]
<[redacted]@unhcr.org>
Subject: FW: EMERGENCY Yemeni Refugee Deportation'

Dear [redacted]

I'm writing to let you know that we have received the below from the PoC. It seems he has access to his email and whatsapp again in case you need to directly contact him.

Is there any update by the way?

Kind regards,
[redacted]

From: [redacted]@gmail.com>
Sent: Wednesday, 22 September 2021 15:11
To: [redacted]@unhcr.org>
Subject: Re: EMERGENCY Yemeni Refugee Deportation'

Hello sir,

I'm still at Addis Ababa airport trying to win some time by not paying the cost of the deporting flight ticket.
You can contact me on my WhatsApp [redacted]
Thank you for your support

Regards,
[redacted]

From: [redacted]@gmail.com>
Sent: Saturday, 18 September 2021 23:38
To: [redacted]@unhcr.org>
Cc: [redacted]@unhcr.org>
Subject: Re: EMERGENCY Yemeni Refugee Deportation'

Attention: This email is from an external sender. Please be careful with any links or attachments.

I want to update you on my case. I was refused the right to apply for asylum in Kigali, which of course is against the national refugee law. I was forced to get on a plane to Addis Ababa, where they also refused me the right to apply for asylum, not even allowing me to speak to an immigration agent and saying they have too many refugees in their country and that they will send me to Yemen. This is also clearly in violation of Ethiopian refugee law. They then forced me to pay for the deportation flight before giving me my passport. Rwandan immigration authorities said that there is nothing preventing me from returning to Kigali ... can you please let me know the progress of any advocacy UNHCR is able to do with the Rwandan government so I can return to demand asylum ?? I 100% meet the criteria in Rwandan refugee law given the situation of the war in Yemen.

Warmest,
[redacted]

On Sat, 18 Sep 2021, [redacted]@gmail.com> wrote:

> I remain at Kigali airport where I continue to be threatened with deportation and not being allowing to claim asylum even when I tell them this is my right under Rwandan law, and that I meet eligibility criteria as a refugee. Please can someone from UNHCR contact me on my WhatsApp number : [redacted]
>
> And I can't receive phone calls here but Whatsapp call
>
> . Here also is a copy of my passport :
>
> Warmest,
> [redacted]
>
> On Sat, 18 Sep 2021, [redacted]@gmail.com> wrote:
>
> > I am a refugee with Yemeni nationality currently at Kigali airport wanting to claim asylum, but immigration authorities are saying that they will deport me tonight without allowing me this right to request asylum. I even have a negative PCR covid result as required by the country. I have an open UNHCR refugee case in [redacted] (see photo of my refugee card attached). This was the first country where I could enter, but they are not signatories to the Refugee Convention and do not provide asylum to any refugee, so I wanted to try to gain asylum in Rwanda believing that this country was open to refugees. Can you please help me to avoid immediate deportation so that I can register as a refugee in Rwanda ?
> >
> > Warmest,
> > [redacted]

2

Statement made on behalf of: UNHCR (Intervener)
Made by: L. Bottinick
Number of statement: Third
Exhibit: LB3/4
Date: 27 July 2022

CO/2032/2022, CO/2056/2022, CO/2077/2022, CO/2080/2022, CO/2072/2022, CO/2094/2022, CO/2095/2022, CO/2098/2022, CO/2104/2022

IN THE HIGH COURT

QUEEN'S BENCH DIVISION

DIVISIONAL COURT

B E T W E E N:

THE QUEEN ON THE APPLICATION OF

AAA AND OTHERS

Claimants

-and-

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Defendant

-and-

THE UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES

Intervener

EXHIBIT LB3/4

This is the Bundle of Exhibits marked "**LB3/4**" referred to in the Witness Statement of Lawrence Bottinick dated 27 July 2022.

…….
LAWRENCE BOTTINICK

UNHCR
United Nations High Commissioner for Refugees
Haut Commissariat des Nations Unies pour les réfugiés

UNHCR Representation in Rwanda

Nyarutarama Road, KG 9 Ave, n 60
PO Box 867

Notre/Our Code : [redacted]

The Office of the United Nations High Commissioner for Refugees (UNHCR) presents its compliments to the Ministry in Charge of Emergency Management (MINEMA) of the Republic of Rwanda and wishes to advocate for granting few more days before the removal of four [redacted] asylum seekers, [redacted]

As a background, the said family submitted their asylum application on 31 December 2021 to DGIE (in presence of UNHCR staff). They received a call on Thursday, 26 May 2022 to go to the DGIE office on Friday, 27 May 2022 for a meeting. During the meeting, they were informed by DGIE that they have to leave Rwanda by Wednesday, 1 June 2022. The final decision from RSDC is not yet available. Given that the family has no valid travel document and the Government cannot issue one and considering their status of asylum seekers, UNHCR has been trying to secure an emergency solution (resettlement). The family has been accepted by [redacted] and their travel arrangement will be processed soonest by IOM. However, given the extremely short notice, our office will need few days to finalize travel arrangement to allow them leave in a safe and dignified manner. Therefore, UNHCR is appealing to your good office to advocate for reconsidering the removal time.

The Office of the United Nations High Commissioner for Refugees (UNHCR) in Rwanda, avails itself of this opportunity to renew to the Ministry in Charge of Emergency Management of the Republic of Rwanda the assurances of its highest consideration.

31 May 2022

REPRESENTATION IN RWANDA
UNHCR
The UN Refugee Agency
Kigali

CC: Director General of Immigration and Emigration (DGIE)
Ministry of Foreign Affairs and International Cooperation (MINAFFET)

Statement made on behalf of: UNHCR (Intervener)
Made by: L. Bottinick
Number of statement: Third
Exhibit: LB3/5
Date: 27 July 2022

CO/2032/2022, CO/2056/2022, CO/2077/2022, CO/2080/2022, CO/2072/2022, CO/2094/2022, CO/2095/2022, CO/2098/2022, CO/2104/2022

IN THE HIGH COURT

QUEEN'S BENCH DIVISION

DIVISIONAL COURT

B E T W E E N:

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THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Defendant

-and-

THE UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES

Intervener

EXHIBIT LB3/5

This is the Bundle of Exhibits marked "**LB3/5**" referred to in the Witness Statement of Lawrence Bottinick dated 27 July 2022.

…….
LAWRENCE BOTTINICK

REPUBLIC OF RWANDA

Kigali, 18th July 2022

MINISTRY IN CHARGE OF EMERGENCY MANAGEMENT
REFUGEE STATUS DETERMINATION COMMITTEE
P.O.BOX: 4386- KIGALI
KIGALI

Dear [redacted]

Re: Notification of Refugee Status Determination Committee (RSCD) decision

Reference is made to the report submitted by the Directorate General of Immigration and Emigration regarding your registration as an asylum seeker and granting you a provisional residence permit.

The Refugee Status Determination Committee acknowledge its receipt, and your file was analyzed comprehensively again in the meeting of 8th July 2022 and based on the Law no13ter/2014 of 21/05/2014 relating to refugees in its article 7 providing requirements for obtaining asylum.

We regret to inform you that the **Refugee Status requested was not granted** because you are not meeting the eligibility criteria and the reasons provided during the interview were not pertinent.

Received by……..
On ..... /..... / .....

NYIRARUKUNDO Ignatienne
President of Refugee Status Determination Committee

Cc:
- The Director General of Immigration and Emigration
- The UNHCR Country Representative
  KIGALI

Statement made on behalf of: UNHCR (Intervener)
Made by: L. Bottinick
Number of statement: Third
Exhibit: LB3/6
Date: 27 July 2022

CO/2032/2022, CO/2056/2022, CO/2077/2022, CO/2080/2022, CO/2072/2022, CO/2094/2022, CO/2095/2022, CO/2098/2022, CO/2104/2022

IN THE HIGH COURT

QUEEN'S BENCH DIVISION

DIVISIONAL COURT

B E T W E E N:

THE QUEEN ON THE APPLICATION OF

AAA AND OTHERS

Claimants

-and-

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Defendant

-and-

THE UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES

Intervener

EXHIBIT LB3/6

This is the Bundle of Exhibits marked "**LB3/6**" referred to in the Witness Statement of Lawrence Bottinick dated 27 July 2022.

…….
LAWRENCE BOTTINICK

From: [redacted]@iom.int>
Sent: 18 July 2022 14:43
To: [redacted]
Cc: [redacted]
Subject: RE: Question on training/capacity development for IOM

Attention: This email is from an external sender. Please be careful with any links or attachments.

Dear [redacted]

Doing fine, thank you, and hope the same with you.

Thanks for reaching out. As to your request below, we have never provided nor planning to provide any trainings on refugee determination in Rwanda.

We conversely worked on the enhancement of the country's counter trafficking response through:

- Awareness raising campaigns targeting refugees – with a focus on women and girls – in the six refugees camps of Kigeme, Mugombwa, Gihembe, Nyabiheke, Mahama and Kiziba
- Capacity building interventions for relevant protection actors, ranging from staff working at refugee camps to Isange One Stop Center counsellors and government/district officials.

Hope this information is of help.
Please, feel free to revert with queries, if any.

Best regards,
[redacted]

[redacted]
International Organization for Migration – IOM
Kigali – Rwanda (UTC +2)
[redacted]
Website | Facebook | Twitter

IOM UN MIGRATION | 70 YEARS

From: [redacted]@unhcr.org>
Sent: Monday, July 18, 2022 2:42 PM
To: [redacted]@iom.int>
Cc: [redacted]@iom.int>; [redacted]@unhcr.org>; [redacted]@unhcr.org>; [redacted]@unhcr.org>; [redacted]@iom.int>
Subject: FW: Question on training/capacity development for IOM
Importance: High

Dear [redacted]

I hope this finds you doing well.

I received your contact details from [redacted] in Geneva. We work together in the [redacted] Team and other [redacted]

I am kindly seeking your help gathering information on capacity building in Rwanda.

UNHCR is intervening in the court challenge to the UK-Rwanda Arrangement, and one issue we have flagged in *UNHCR Analysis of the Legality and Appropriateness of the Transfer of Asylum- Seekers under the UK-Rwanda arrangement*, 8 June 2022, available at: https://www.refworld.org/docid/62a31cc24.html, is the need for capacity development of all actors involved in the Rwandan national asylum system.

UNHCR has provided very limited training on refugee determination in Rwanda, but we are wondering whether IOM or others may have done so, or may have been asked to do so. Hence, I would like to ask you kindly:

a) Has IOM provided any training to actors involved in the asylum system in Rwanda? If so, on what subjects? To whom? And when?
b) If not, are you planning to do any training in the near future? If so, to whom and on what topics?

Needless to say that we would really greatly appreciate your prompt support.

Many thanks in advance and best wishes,

[redacted]

[redacted]
UNHCR HQ Rue de Montbrillant 94, 1201 Genève
www.unhcr.org

Statement made on behalf of: UNHCR (Intervener)

Made by: L. Bottinick
Number of statement: Third
Exhibit: LB3/7
Date: 27 July 2022

CO/2032/2022, CO/2056/2022, CO/2077/2022, CO/2080/2022, CO/2072/2022, CO/2094/2022, CO/2095/2022, CO/2098/2022, CO/2104/2022

IN THE HIGH COURT

QUEEN'S BENCH DIVISION

DIVISIONAL COURT

B E T W E E N:

THE QUEEN ON THE APPLICATION OF

AAA AND OTHERS

Claimants

-and-

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Defendant

-and-

THE UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES

Intervener

EXHIBIT LB3/7

This is the Bundle of Exhibits marked "**LB3/7**" referred to in the Witness Statement of Lawrence Bottinick dated 27 July 2022.

…….
LAWRENCE BOTTINICK

[redacted]

From: [redacted]
Sent: Monday, 1 November 2021 09:58
To: [redacted]@minema.gov.rw
Cc: [redacted]
Subject: Areas of support by UNHCR on RSD

Dear [redacted]

As requested in our meeting, I'm sharing the relevant articles of the Refugee Convention and the Prime Minister's order regrading participation of UNHCR as an observer in the NRSDC sessions and identifying areas of increased collaboration and information sharing between UNHCR and the GoR, in order to fulfil UNHCR's mandated supervisory role(including advisory role, monitoring and promotion of quality in terms of the consistency and fairness of decision-making); and also promoting fulfilment of Rwanda's obligations under Article.35 (1) of the 1951 Convention.

Article 35 (1) of the 1951 Refugee Convention: Co-operation of the national authorities with the United Nations: *The Contracting States undertake to co-operate with the Office of the United Nations High Commissioner for Refugees, or any other agency of the United Nations which may succeed it, in the exercise of its functions, and shall in particular facilitate its duty of supervising the application of the provisions of this Convention."*

Article II(1) of the 1967 protocol contains the same obligations in relation to the UNHCR's functions, including its "*duty of supervising the application of the present Protocol*".

The above is also envisaged in Article 7 of the Prime Minister's Order No 112/03 of 19/06/2015 Determining The Organisation And Functioning Of The National Refugee Status Determination Committee And Benefits Granted To Its Members "*The Committee may invite in its meetings* ***the agency of United Nations for Refugees in Rwanda****, any other person or organ from whom or which it may seek advice on certain issues on the agenda. The* ***invitee may give his/her opinion but shall not be allowed to vote***."

I am happy to discuss the above further, as well as any additional ways in which UNHCR can support the RSD process in Rwanda during our future meetings and exchanges.

Many thanks and kind regards,
[redacted]

EXHIBITS LB3/8 - LB3/11:

Removed pursuant to Order by the Honourable Mr Justice Swift dated 1 August 2022

L.B. 3 August 2022

Back to Contents

A9. UNHCR Written Observations in the Supreme Court, 18 September 2023

Written Observations in the Supreme Court dated 18th September 2023 (cross references added 27 September 2023)

UKSC 2023 0093/0094/0095/0096/0097

IN THE SUPREME COURT OF THE UNITED KINGDOM

ON APPEAL FROM THE COURT OF APPEAL (CIVIL DIVISION)

B E T W E E N:

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

- and -

AAA (SYRIA) AND OTHERS

Respondents

- and -

THE UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES

Intervener

OBSERVATIONS OF THE
UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES ("UNHCR")

ANGUS McCULLOUGH KC
LAURA DUBINSKY KC
DAVID CHIRICO
JENNIFER MacLEOD
AGATA PATYNA
GEORGE MOLYNEAUX
JOSHUA PEMBERTON

Instructed by Baker & McKenzie LLP

Acting pro bono

18 September 2023

Cross-references to the Bundles added 27 September 2023

Glossary

CJEU	Court of Justice of the European Union
DGIE	Directorate General of Immigration and Emigration in Rwanda
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
GoR	Government of Rwanda
LCJ	Lord Chief Justice
MINEMA	Ministry in charge of Emergency Management
MoU	Memorandum of Understanding
MR	Master of the Rolls
Refoulement Table	Table of instances of refoulement and threatened refoulement cited in UNHCR's evidence (handed up by UNHCR at Divisional Court hearing)
Refugee Convention	The 1951 Convention relating to the Status of Refugees and its 1967 Protocol
RSD	Refugee Status Determination. In the Rwandan context, this term is used to refer to individualised (rather than *prima facie*) decision-making on asylum claims.
RSDC	Refugee Status Determinations Committee, the body with the primary role in determining refugee status in Rwanda
SSHD	Secretary of State for the Home Department
TCTA	Third Country Transfer Agreement, by which asylum-seekers are transferred from one state to another without prior determination of their asylum claims
UK-Rwanda Arrangement	The Migration and Economic Development Partnership and a Memorandum of Understanding and *Notes Verbales* between the UK and Rwanda and domestic Immigration Rules and legislation (described at §§18-27 of the Divisional Court's judgment), pursuant to which transfers would occur.
VP	Vice President of the Court of Appeal

References

AP1	1st witness statement of Mr Andrew Patrick, filed by the SSHD in these proceedings

AWC	Appellant's Written Case
CA	Court of Appeal's judgment of 29 June 2023
CA Obs	UNHCR's Observations of 14 April 2023 before the Court of Appeal
CW1	1st witness statement of Mr Chris Williams, filed by the SSHD in these proceedings
DC	Divisional Court's judgment of 19 December 2022
DC Obs	UNHCR's Observations of 19 August 2022 before the Divisional Court
FC1	1st witness statement of Mr Finnlo Crellin, filed by the SSHD in these proceedings
KA1	1st witness statement of Mr Kristian Armstrong, filed by the SSHD in these proceedings
LB2, LB3	2nd/3rd witness statement of Mr Lawrence Bottinick, filed by UNHCR in these proceedings

Cross-references to the Core, Authorities and Appendix Bundles are in the form [Core/tab/page], [Auths/tab/page] and [App/tab/page] respectively 1

INTRODUCTION and SUMMARY

1. UNHCR first became aware of the UK-Rwanda Arrangement when it was announced on 14 April 2022, and has since then consistently expressed grave concerns about its safety and legality. UNHCR maintains its unequivocal warning against the transfer of asylum-seekers to Rwanda under the UK-Rwanda Arrangement. UNHCR is grateful for permission to maintain its intervention in these proceedings.

2. UNHCR observes:

   (1) UNHCR has unique expertise and experience in identifying the minimum safeguards necessary for a fair and reliable RSD system generally; evaluating adequacy and risks in national RSD systems; assessing how (and with what impediments or, conversely, ease and speed) capacity and capability can be built in such systems; evaluating TCTAs; and in the practical realities of Rwanda's RSD system.

   (2) UNHCR considers that there is a real risk of direct and indirect refoulement for those transferred to Rwanda under the UK-Rwanda Arrangement, contrary to Article 33(1) of the Refugee Convention [Auths/27.15/p 3959] and Article 3 ECHR [Auths/27.16/p 3987]. The assurances and commitments given by the GoR do not suffice to establish an accessible, reliable or fair asylum system in Rwanda. The Court of Appeal majority did not err in its conclusion to that effect (CA §§53, 105, 109-110, 272-273, 286, 293 [App/26.7/pp 490, 501, 502, 551, 554, 556]).

   (3) The SSHD did not discharge her procedural obligation of "*thorough examination*" of the "*accessibility and functioning of the receiving country's asylum system and the safeguards it affords in practice*" (*cf*. *Ilias and Ahmed v Hungary* (2020) 71 EHRR 6, §§139, 141 [Auths/27.98/p 7817]).

3. These observations, along with UNHCR's evidence in the High Court and observations in the Courts below, express UNHCR's considered organisational view. When evaluating UNHCR's evidence and observations, it should be borne in mind that, for the reasons explained at LB2 §§5-6 [App/26.76/pp 2805-2806], UNHCR (i) will not lightly make public statements critical of any state where it operates; and (ii) does not generally comment on the good faith of such states. UNHCR has addressed the position as at July 2022, in accordance with the Divisional Court's direction.

UNHCR'S MANDATE AND EXPERTISE

4. UNHCR's mandate and expertise are addressed at CA Obs §§3-4 [App/26.43/pp 2190-2191] and CA §94 [App/26.7/p 498]. In summary:

   (1) UNHCR is entrusted by the UN General Assembly with supervision of the interpretation and application of the Refugee Convention: see the Statute of the Office of UNHCR [Auths/27.103/p 7894] and LB2 §9 [App/26.76/pp 2807-2808]. UNHCR's guidance concerning the interpretation and application of the Refugee Convention "*"should be accorded considerable weight", in the light of the obligation of member states under article 35 of the Convention to facilitate*

its duty of supervising the application of the provisions of the Convention": *Al-Sirri v SSHD* [2012] UKSC 54; [2013] 1 AC 745, §36 [Auths/27.47/p 5404].

(2) UNHCR has been permanently on the ground in Rwanda since 1993, and had 332 staff there at the time of its evidence for these proceedings (LB2 §§10-12 [App/26.76/p 2808]). UNHCR's role in Rwanda includes assisting asylum-seekers and refugees; supporting NGOs working with the asylum system; interaction with officials charged with asylum decision-making; and coordination with MINEMA over camp management. UNHCR has no official role in Rwanda's RSD system and is denied observer status in RSDC sessions (despite provision for this in Rwandan law: LB2 §§19(d)(iii), 55 [App/26.76/pp 2811, 2823]; LB3 §42 [App/26.84/p 2911]). However, the Rwandan authorities have, albeit intermittently, sent UNHCR copies of asylum decisions, and UNHCR receives information from asylum-seekers and NGOs, and through communications with relevant officials. UNHCR is therefore able to collate data and gain insight concerning the practical realities of Rwanda's RSD system. See e.g. LB2 §§10-21, 55, 90-97 [App/26.76/pp 2808-2811, 2823, 2836-2838]; LB3 §§33(e), 42 [App/26.84/pp 2907, 2911].

5. As the majority of the Court of Appeal concluded, after a review of leading authorities, "*particular importance*" should be attached to UNHCR's "*evidence and opinions*", and all the more so when they "*relat*[e] *to matters within its particular remit or where it has special expertise in the subject matter*" (CA §§86-87, 136; see also §§13(iii), 105 [App/26.7/pp, 496-497, 511; see also 475, 501]). The LCJ likewise recognised UNHCR's *"unrivalled practical experience of the working of the asylum system in Rwanda"* (CA §467 [App/26.7/p 607]). UNHCR emphasises the following:

(1) UNHCR's work is independent, dispassionate and "*entirely nonpolitical*": see Art. 2 of the Statute of the Office of UNHCR [Auths/27.103/p 7894] and *NA (Sudan) v SSHD* [2016] EWCA Civ 1060, [2017] 3 All ER 885, §207 [Auths/27.59/p 5805]. As the LCJ noted at CA §467 [App/26.7/p 607], UNHCR has an "*institutional interest*" in the outcome of these proceedings (because of its mandate and "*long years of engagement*" in Rwanda), but there is no suggestion that its concerns about the UK-Rwanda Arrangement have in any way clouded the independence of its reports or evaluation.[1]

[1] UNHCR respectfully disagrees with the suggestion (albeit made expressly without criticism) at CA §467 [App/26.7/p 607] that it has "*assumed the mantle of claimant*" in these proceedings. UNHCR has complied strictly with the obligations applicable to an intervener's role, and its evidence and submissions have been conscientiously limited to those issues on which it considers that it is in a position to provide authoritative assistance to the court. The centrality of its role in these proceedings arises not from the assumption of the mantle of a principal party but from (i) UNHCR's mandate; (ii) its acknowledged experience and expertise; and (iii) the fact that UNHCR is presently the sole reliably informed, independent source of evidence concerning Rwanda's RSD system.

(2) This Court has recognised that UNHCR has "*unique and unrivalled expertise…in the field of asylum and refugee law*", and that "*special regard*" should be paid to "*the facts which* [UNHCR] *reports and … the value judgments* [UNHCR] *arrives at within* [its] *remit*". This reflects UNHCR's experience, geographical reach and organisational size, which enable it to "*assemble and monitor information … and … apply to it standards of knowledge and judgment which are ordinarily beyond the reach of a court*": *R (EM (Eritrea)) v SSHD* [2014] UKSC 12, [2014] AC 1321, §§71-72 [Auths/27.52/pp 5608-5609], approving *R (EM (Eritrea)) v SSHD* [2012] EWCA Civ 1336, [2013] 1 WLR 576, §41 [Auths/27.46/p 5362]. See also *R (Tabrizagh) v SSHD* [2014] EWCA Civ 1398, §§19-21 (permission decision but citable: §33) [Auths/27.56/pp 5700, 5703].

(3) The courts have consistently distinguished between (i) situations in which UNHCR identifies defects in an asylum system and recommends a 'case-by-case' assessment before any transfer takes place; and (ii) the far rarer situations, such as the present, in which UNHCR unequivocally recommends against all transfers under the UK-Rwanda Arrangement. Thus, for example, in *MSS v Belgium and Greece* (2011) 53 EHRR 2 the Grand Chamber attached "*critical importance*" to UNHCR's "*unequivocal plea for the suspension of transfers to Greece*" (§349 [Auths/27.91/p 7358]). In other cases, the absence or withdrawal of such a plea has been emphasised: *R (Tabrizagh) v SSHD* [2014] EWHC 1914 (Admin), §§87-88, 167 [Auths/27.53/pp 5627, 5644]; *R (HK (Iraq) and others) v SSHD* [2017] EWCA Civ 1871, §§28, 30-31, 36-37 [Auths/27.62/pp 6012-6013, 6015].

6. The SSHD accepts that *"UNHCR's views about the past are entitled to respect and consideration, in the light of its practical experience of the past working of the Rwandan asylum system"* (AWC §88.2 [Core/21/p 291]), but asserts that (i) UNHCR lacks expertise relevant to assessing the risk that persons transferred under the UK-Rwanda Arrangement would be refouled (AWC §88.2 [Core/21/p 291]); (ii) there is *"no constitutional basis for according any particular degree of respect to* [UNHCR's] *views"* since UNHCR is not *"democratically accountable"* (AWC §88.2 [Core/21/p 291]); and (iii) the authorities do not show that *"particular weight should be given to the UNHCR's views on the issues that arise in this case"* (AWC §88.4 [Core/21/p 292]). As to these contentions:

(1) UNHCR's expertise is not confined to *"the past"*. UNHCR's evidence, grounded in its knowledge of Rwanda's RSD system, addressed the position right up to the temporal cut-off imposed by the Divisional Court (i.e. July 2022), which was after the point at which the first transfers to Rwanda had been scheduled to occur. Moreover, UNHCR draws upon over seven decades of institutional experience in evaluating RSD systems' capacity and capability (encompassing skills, experience and reliability, as well as ability to cope with numbers: CA §261 [App/26.7/pp 546-547]), and the remedial steps and time required to address deficiencies and risks. UNHCR's expertise in such assessments is unrivalled, including in the context of TCTAs.

(2) Assessments of capacity, capability and prospects of improvement can be distinguished from any assessment of "*good faith and intentions to deliver*", as the LCJ noted (CA §§470-471 [App/26.7/p 608]).

(3) Assurances and monitoring are integral to UNHCR's work. UNHCR routinely negotiates and enters into memoranda of understanding with states in which it operates, incorporating assurances concerning steps to be taken by each party. For example, as recorded in the recitals of the MoU under consideration in this case [App/26.52/p 2365], UNHCR is party to a tripartite MoU with the GoR and the African Union for the operation in Rwanda of the Emergency Transit Mechanism (the second such MoU entered into by UNHCR with the GoR). UNHCR's experience and published guidance also include the monitoring of assurances of compliance with Refugee Convention obligations in receiving states (see e.g. UNHCR Note on Diplomatic Assurances and International Refugee Protection August 2006 [Auths/27.105/p 7937] and Ex Com Conclusions Nos.18 (§h), 40 (§l), 68 (§s), 101 (§q) [Auths/27.104/pp 7908, 7918, 7922, 7936]).

(4) That UNHCR is unelected is of no significance in this context. The SSHD cites cases in which courts have deferred to governmental assessments engaging national security (AWC §§77, 79[Core/21/pp 287-288]) such as whether a person's deportation or deprivation of citizenship status would be "*conducive to the public good*" for the purposes of ss.3(5)(a), 15(3) Immigration Act 1971 or s.40(2) British Nationality Act 1981(*SSHD v Rehman*[2001] UKHL 47, [2003] 1 AC 153 [Auths/27.32/p 4563]; *R (Begum) v SIAC* [2021] UKSC 7, [2021] AC 765 [Auths/27.76/p 6578]). The Courts emphasised in those cases that, in the context of terrorist threats to national security, it is particularly important that the decision-maker assessing what is "*conducive tothe public good*" has the legitimacy and accountability conferred by the democratic process (as Lord Hoffmann observed in the wake of the 9/11 attacks in *Rehman*at §62 [Auths/27.32/p 4605]; see likewise Lord Reed in *Begum*at §70 [Auths/27.76/pp 6608-6609]), i.e. that evaluation of what is in the interests of the community is primarily a question for those elected by the community.[2] National security is "*a matter of judgment and policy*" entrusted by Parliament to the executive (Lord Hoffmann in *Rehman*at §50 [Auths/27.32/p 4602]; Lord Reed in *Begum*at §§56, 67 [Auths/27.76/pp 6604-6605, 6608]). This case is notanalogous since, as Lord Hoffmann emphasised in *Rehman*at §54, "*European jurisprudence makes it clear that whether deportation is in the interest of national security is irrelevantto rights under article 3*" [Auths/27.32/p 4603]. Rather the question of whether there is a substantial risk that an individual, if expelled, would face torture or inhuman or degrading treatment is "*a question of evaluation and prediction based upon evidence.*

2 The same applies to the analogous question of whether there exists a public emergency threatening the life of the nation, i.e. the issue in *R (A) v SSHD* [2004] UKHL 56, [2005] 2 AC 68 (cited at AWC §77 [Core/21/pp 287–288]).

In answering such a question, the executive enjoys no constitutional prerogative" (*Ibid*; [Auths/27.32/p 4603] and see also Lord Reed in *Begum*at §§57, 69 [Auths/27.76/pp 6605, 6608]). In any event, there is a *"constitutional"*basis for according weight to UNHCR's conclusions: UNHCR's mandate derives from its Statute [Auths/27.103/p 7894], and Article 35 of the Refugee Convention obliges the UK to facilitate UNHCR's duty to supervise the application of the Convention [Auths/27.15/p 3960].

(5) A central issue in this case is whether there is a real risk that asylum-seekers transferred to Rwanda would not receive proper consideration of their asylum claims there, and would be refouled in consequence. UNHCR's assessments of the risk that persons transferred under other TCTAs would not receive proper consideration of their claims and/or would be refouled were accorded substantial weight in *MSS* (§§160, 173-195, 300, 302, 347-349 [Auths/27.91/pp 7321-7323, 7328-7331, 7348, 7358]) and *Ilias* (§§159-160, 163 [Auths/27.98/pp 7820-7821]). UNHCR respectfully suggests that the same should apply here.

INADEQUACY OF THE RWANDAN RSD SYSTEM

7. UNHCR's institutional view is summarised in LB2 at §148 [App/26.76/p 2856]:

"*Rwanda's RSD process is marked by acute unfairness and arbitrariness, some of which is structurally inbuilt; and by serious safeguard and capacity shortfalls, some of which can be remedied only by structural changes and long-term capacity building. …asylum seekers transferred to Rwanda are at serious risk of both direct and indirect refoulement and will not have access to* 5 *fair and efficient asylum procedures, adequate standards of treatment or durable solutions, in line with the requirements set out in international refugee law.*"

8. UNHCR has, for that reason, consistently and unequivocally warned against any transfers under the UK-Rwanda Arrangement: see UNHCR's written observations for the Court of Appeal interim relief hearing at §7 [App/26.74/p 2789]; DC Obs §§2.9, 60 [App/26.35/pp 2074, 2099]; CA Obs §§6, 55 [App/26.43/pp 2191-2193, 2213].

9. The SSHD outlines how the Rwandan RSD system is supposed to work, but does not engage with UNHCR's evidence of its inadequacies in practice (AWC §§64-67 [Core/21/p 285]). Those inadequacies include the following, which were emphasised by one or both of the majority of the Court of Appeal, as set out below with references to the relevant parts of UNHCR's underlying evidence and previous observations:

(1) The DGIE (a subdivision of Rwanda's National Intelligence and Security Service) conducts the initial,and in many cases only,interviews with asylum claimants. These interviews arebrief, andofferasylum-seekers no adequateopportunity to explain an asylum claim, respond to potentially adverse points, or provide more than minimal documentation. See CA §§95, 164-167, 264(1) [App/26.7/pp 498-499, 518-520, 547]; also DC Obs §§18(6),

18(7) [App/26.35/pp 2081, 2082]; LB2 §§29, 34,37,38(c), 41(a)-(b), (e)-(g) [App/26.76/pp 2814, 2815, 2816, 2818, 2819];LB3 §27(a) [App/26.84/p 2902].

(2) The DGIE refers asylum claims to the RSDC for determination, and such determinations may then be reviewed by MINEMA. At none of these stages is an asylum-seeker entitled to make representations through a lawyer. See CA §§95, 174, 188-189, 233, 264(2) [App/26.7/pp 498-499, 521, 526, 538, 547]; also DC Obs §18(5) [App/26.35/p 2080-2081]; LB2 §§20, 41(c), 60(j), 74, 99 [App/26.76/p 2811, 2818, 2826, 2832, 2838]; LB3 §28(a) [App/26.84/p 2903].

(3) The RSDC (the primary decision-maker) lacks sufficient skills or experience to make reliable decisions on asylum claims. This is apparent from (i) "*evidence about its conduct of interviews, the limited support available to it, and the evidence of apparently aberrant outcomes*", including a "*surprisingly high rejection rate of claimants from known conflict zones*"; and (ii) the provision of "*often perfunctory and inadequate"* reasons, where any reasons are given at all. See CA §§95-96, 186-187, 190-201, 264(3) [App/26.7/pp 498-499, 525-526, 526-529, 547]; also DC Obs §18(8)-(10) [App/26.35/p 2082-208]; LB2 §§38(b), 49-53, 58, 61, 65(a), 68, 90-97 [App/26.76/pp 2816, 2822–2823, 2824–2825, 2826–2828, 2830, 2831, 2836–2838]; exhibits LB2/3 [App/26.79/p 2863] and LB2/4 [App/26.80/pp 2865-2871] and LB3/5 [App/26.89/p 2929].[3] There are indications that RSDC members may hold a "*bias against claimants from the Middle East and Afghanistan*" (CA §196-200 [App/26.7/pp 528-529])[4]; and most rejection letters of which UNHCR is aware simply state: *"We regret to inform you that the Refugee Status requested was not granted because you don't meet the eligibility criteria and the reasons you provided during the interview are not pertinent"* (LB2 §61(d) [App/26.76/p 2827] and exhibit LB2/3 [App/26.79/p 2863]).[5]

(4) The GoR suggested that certain NGOs could provide legal assistance at the DGIE, RSDC and MINEMA stages. However, the relevant NGOs lack capacity to do so. See CA §§238, 264(4) [App/26.7/pp 539, 548]; also DC Obs §18(5) [App/26.35/pp 2080-2081]; LB2 §100 [App/26.76/pp 2838-2839]; LB3 §28(b)-(f) [App/26.84/p 2903].[6]

(5) There is an avenue of appeal to the High Court, but this is "*wholly untested*". See CA §§95, 212, 264(5) [App/26.7/pp 498-499, 531, 548]; also DC Obs §18(11) [App/26.35/pp 2084-2085]; LB2 §§76-78 [App/26.76/p 2833]; LB3 §31 [App/26.84/p 2904].[7] See further §§20-21 below.

3 The reasoning at the MINEMA stage is no better (LB2 §73 [App/26.76/p 2832]; and exhibit LB2/6 [App/26.82/p 2875]).

4 Equivalent concerns were identified in relation to DGIE officials: CA §156 [App/26.7/p 516]. The LCJ "*share*[d] *the concerns identified by the UNHCR about whether* […] *what are reported as ingrained attitudes of scepticism towards claims made by Middle Eastern nationals will be influential*" (CA §502 [App/26.7/pp 617–618]).

5 The cursory nature of the RSDC's examination of asylum claims is further indicated by UNHCR's evidence that the RSDC has dealt with up to 40 cases in a single sitting (CA Obs §8(2) [App/26.43/pp 2194-2195]; LB2 §54 [App/26.76/p 2823]; LB3 §10 [App/26.84/p 2895]).

6 It is unfortunate that, when preparing its country assessment documents, the Home Office did not meet with the NGO which is the key stakeholder in the RSD process: LB2 fn. 32 [App/26.76/p 2839].

(6) "[T]*he level of training made available to the key players in the asylum process … is not sufficient to equip them to perform their functions properly*". Lack of training affects all levels of the asylum system in Rwanda, including, UNHCR notes, the High Court, and is relevant to the issues listed above. See CA §§99, 245-260 (the quotation is at §259) [App/26.7/pp 500, 541-546 (546)]; also DC Obs §18(9) [App/26.35/p 2083]; LB2 §§49, 53, 89-98, 145 [App/26.76/pp 2822, 2823, 2835-2838, 2855]; LB3 §§34 [App/26.84/pp 2907-2908] and exhibit LB3/6 [App/26.90/pp 2931-2932].[8]

10. The majority of the Court of Appeal particularly focussed on the foregoing issues because (i) they were unaddressed in the Asylum Process *Note Verbale*; and/or (ii) their resolution would require significant steps which had yet to be taken (CA §§92, 264-265 [App/26.7/pp 498, 547-548]). The evidential context to which the majority referred (although inevitably without citing each item, given the "*massive body of evidence"* (CA §93) [App/26.7/p 498]) included the following:

(1) UNHCR provided evidence, uncontested in these proceedings, that persons transferred under the Israel-Rwanda TCTA were routinely and clandestinely expelled from Rwanda (including some from the airport upon their arrival), prevented from making asylum claims, and subjected to grossly intimidating treatment (threats of deportation, and overnight visits both by unknown agents and by individuals recognised as DGIE officials) following which those transferred became too frightened to move around or simply disappeared: the result was large-scale indirect refoulement. See LB2 §§119-129 [App/26.76/p 2846-2850]; exhibit LB2/7, p.13 [App/26.83/p 2889]; and the Refoulement Table [App/26.37/p 2101ff]. See also CA §§101, 152-156 [App/26.7/pp 500, 515–516].

(2) UNHCR has identified many further instances of refoulement or threats of refoulement from Rwanda, including by DGIE officials summarily rejecting asylum claims made both at theborder and from inside the country; requiring asylum-seekers to depart Rwanda withindays under threat of expulsion to their country of nationality;and taking asylum-seekers to or over the border of neighbouring stateswhere they had no right to reside. The cases of which UNHCR is aware are listedin the Refoulement Table [App/26.37/p 2101ff] (and see also DC Obs §§18(1)-(2), 21.1-21.2 [App/26.35/pp 2079, 2087]; LB2 §§29-30, 108-112 [App/26.76/pp 2814, 2840 – 2844]; LB3 §§13-19

7 The majority of the Court of Appeal also expressed doubts about the independence of the Rwandan High Court: CA §§100, 220-221 [App/26.7/pp 500, 534]. That is not a matter on which UNHCR will express a view, (i) since UNHCR's evidence relates to the matters of which it has direct experience or has been able to collate specific information from asylum-seekers, Rwandan officials and its legal partners in Rwanda; (ii) given the untested nature of the High Court appeal; and (iii) for the reasons relating to diplomatic sensitivity given at LB2 §§5-6 [App/26.76/pp 2805–2806].

8 Contrary to the VP's understanding (CA §§239-240 [App/26.7/p 540]), registered lawyers in Rwanda will *not* necessarily have completed any training on refugee law. On the limited opportunities to study refugee law in Rwanda, see LB3 §34(c) [App/26.84/p 2908].

[App/26.84/pp 2896-2900]), and there are"*verylikely*" to have been others which have not come to UNHCR's attention (LB2 §§30, 112 [App/26.76/pp 2814, 2843-2844]; LB3 §16 [App/26.84/pp 2897-2898]). The cases known to UNHCR embrace a range of circumstances and the material facts are again undisputed by the GoR.[9]

(3) The cases of which UNHCR is aware include 34 individuals from a country with which Rwanda enjoys close bilateral relations('Country X'), who sought to claim asylum inside Rwanda but whose claims were peremptorily rejected by the DGIE. At least three of these asylum-seekers were forcibly expelled to the Tanzanian border; another two were instructed to leave Rwanda within days; another at least two were threatened with direct expulsion to their country of origin. In at least one case, the Rwandan authorities confiscated the individual's passport at the request of the authorities of the individual's country of nationality. See LB2 §112 [App/26.76/pp 2843-2844]; LB3 §§18-19 [App/26.84/pp 2898-2900]; case studies 7-40 in the Refoulement Table [App/26.37/pp 2104-2105] and CA §§96-97, 151, 154, 156[App/26.7/pp 499, 515, 516, 516].

(4) The SSHD contends that there is "*no risk*" of persons transferred under the UK-Rwanda Arrangement being turned away at the airport (AWC §107 [Core/21/pp 297–298]). UNHCR does not suggest that such incidents offer a blueprint for the precise form that refoulements of transferees would take (CA Obs fn. 84 [App/26.43/p 2203]). The 'real risk' standard does not require identification of a precise precedent for feared future events.[10] Here, the evidence of refoulements in the recent past is indicative of (i) the opacity and "*acute unfairness and arbitrariness*" that mark Rwanda's RSD system (LB2 §148 [App/26.76/p 2856]); and (ii) the serious risk of asylum decisions being influenced by Rwanda's external relations, other bias and/or the DGIE's unofficial role. The pre-approval of transfers does not adequately address those risks, not least since ulterior considerations may materialise after entry.

(5) The DGIE's role in rejecting asylum claims has been acknowledged to UNHCR in the past, by the relevant Minister (exhibit LB2/7, p.3 [App/26.83/p 2879]) and more recently by DGIE officials (LB2 §40 [App/26.76/p 2817]). That role persists, as evidenced by incidents of actual or threatened

9 The GoR's position on the incidents described in UNHCR's evidence is summarised in the Refoulement Table, right-hand column [App/26.37/pp 2101-2107]. The SSHD alludes to *"controversies"* between UNHCR and the GoR (AWC §§88.1, 88.3 [Core/21/p 291]), but UNHCR's evidence on the material facts was uncontroversial.

10 When assessing the existence of a real risk, evidence of past events potentially indicative of future risk cannot be excluded from consideration purely because those events occurred in a context which was distinct or uncertain (see e.g. *Bugdaycay v SSHD* [1987] 1 AC 514 at 533-534 [Auths/27.21/pp 4253-4254]). See also *MAH (Egypt) v SSHD* [2023] EWCA Civ 216 §§53, 56 [Auths/27.85/pp 6972-6973] citing *Karanakaran v SSHD* [2000] 3 All ER 449.

refoulement which continued to occur during and after the negotiation of the UK-Rwanda Arrangement (Refoulement Table, case studies 3-5, 10-11 [App/26.37/pp 2102-2103, 2104]).[11] Its significance for the operation of the UK-Rwanda Arrangement is underlined by the evidence that the DGIE, where it has allowed an asylum claim to proceed, provides its own analysis and recommendations to the official decision-making body, the RSDC, without giving any copy to the claimant (DC Obs §18(8) [App/26.35/pp 2082-2083]; LB2 §§40, 65(e) [App/26.76/p 2817, 2830]; LB3 §24(d) [App/26.84/p 2902]).

11. The GoR's responses to UNHCR's evidence were concerning, particularly in two respects:

    (1) First, the GoR admitted that asylum claims are summarily rejected at Rwanda's borders, but denied that this constitutes refoulement: see the GoR's response to LB2 §29 [App/26.121/pp 3212-3213]; GoR's statement of 2 July 2022, §11 [App/26.120/p 3206]; exhibit KA1/47, rows 21, 27 and 34 [App/26.123/pp 3253, 3256-3257, 3263–3264]. As the majority of the Court of Appeal noted, this indicates a significant misunderstanding of the prohibition on refoulement under the Refugee Convention, and thus of the GoR's obligations (CA §§94-97, 146-149, 156 [App/26.7/498-499, 513-514, 516]). See also DC Obs §§21.1, 27 [App/26.35/pp 2087, 2088-2089] and CA Obs §27 [App/26.43/p 2203].

    (2) Second, the GoR denied the existence of facts of which UNHCR is certain, and upon which UNHCR's evidence was accepted by the majority of the Court of Appeal. In particular, the GoR (i) denies that there has ever been any incident of refoulement from Rwanda (see §10 of the GoR's statement of 2 July 2022 [App/26.120/3205]); (ii) denies that the DGIE rejects asylum claims without submitting them to the RSDC, on the basis that such summary rejection would be unlawful (see the GoR's response to LB2 §38(a)-(c) [App/26.121/p 3214], *cf*. DC Obs §18(2) [App/26.35/p 2079]; LB3 §24 [App/26.84/pp 2901-2902]; CA §§95, 158-160 [App/26.7/pp 498-499, 517-518]); and (iii) denies either that the DGIE makes any recommendations, or (implausibly) that any recommendations it makes would influence the RSDC (see the GoR's response to LB2 §40 [App/26.121/p 3214], *cf*. CA §§95, 161-163 [App/26.7/pp 498-499, 518]; DC Obs §18(8) [App/26.35/pp 2082-2083]; LB2 §40 [App/26.76/p 2817]; LB3 §24(d) [App/26.84/p 2902]). The failure to acknowledge the existence of problems in Rwanda's RSD system is a serious obstacle to effective reform thereof, and the UK-Rwanda Arrangement does not address the issues identified here. See CA Obs §8(1) [App/26.43/p 2194]; CA §§95, 169 [App/26.7/pp 498-499, 520].

11 A sixth case (case study 6) [App/26.37/p 2103] occurred after agreement to enter technical talks was reached on 5 August 2021: see AP1 §27 [App/26.61/p 2696].

12. The majority of the Court of Appeal considered that the Divisional Court had not given UNHCR's criticisms of Rwanda's RSD system the consideration they merited (CA §§95, 144, 270 [App/26.7/pp 498-499, 513, 550]). Indeed, UNHCR notes that the Divisional Court substantively addressed neither the individual instances of actual or narrowly averted refoulement identified in UNHCR's evidence, nor their cumulative significance (*cf*. CA §§96, 145-156 [App/26.7/pp 499, 513-516]); was silent concerning evidence of the GoR's misunderstanding of the prohibition of refoulement (*cf*. CA §§97, 148-149 [App/26.7/pp 499, 514]); and, with two exceptions, expressed no conclusions concerning UNHCR's account and evaluation of the failures of Rwanda's RSD system to meet core minimum standards (*cf*. CA §§95, 261 [App/26.7/pp 498-499, 546-547]; see also CA Obs §§24-25, 28, 30, 41 [App/26.43/pp 2202, 2203, 22042, 209]). The Divisional Court's approach appears to have resulted from (i) its self-misdirection (contrary to the approach distilled by the MR at CA §§86-87 [App/26.7/pp 496-497]) that UNHCR's evidence "*carries no special weight*" in this case or generally (DC §71 [App/26.14/pp 676-677]; CA Obs §§14-21 [App/26.43/pp 2196-2201]); and (ii) its implicit acceptance (DC §§62, 64, 71 [App/26.14/pp 673, 674–675, 676-677]) of the SSHD's case, advanced before each Court, that the assurances render "*the past*" "*at best, peripherally relevant*" (AWC §16 [Core/21/pp 269-270]). The first judicial evaluation of the practical realities of Rwanda's RSD system consequently occurred in the Court of Appeal (except on the "*two matters*" considered by the Divisional Court, namely confidentiality and the state of Rwandan law: DC §§55-56 [App/26.14/pp 670-671]).

INADEQUACY OF THE ASSURANCES

13. The legal principles relevant to assurances given by a receiving state are addressed by UNHCR at DC Obs §§32-33 [App/26.35/p 2091] and CA Obs §§32-35 [App/26.43/pp 2205–2206]. A list of mandatory but non-exhaustive factors to be considered where applicable is set out in *Othman v UK* (2012) 55 EHRR 1 at §189 [Auths/27.93/pp 7519-7520]. They include the specificity or otherwise of the assurances (§189(2)); whether or not they bind the receiving state (§189(3)); the receiving state's past record in abiding by assurances (§189(7)); and whether compliance is objectively verifiable (§189(8)).

14. For the reasons below, as concluded by the majority of the Court of Appeal, the assurances given by the GoR provide no sufficient answer to the basic and fundamental defects in the Rwandan RSD system, or to the consequent serious risks of refoulement:

(1) The SSHD does not appear to dispute that there is recent evidence of significant inadequacies in the Rwandan RSD system, including in the treatment of persons transferred under the Israel-Rwanda TCTA. Under *Othman* (see §13 above) there was a legal requirement to consider the apparent non-compliance with that TCTA. It follows that the likely practical effectiveness or otherwise of assurances given now must be scrutinised particularly closely.[12]

(2) The SSHD's response to the evidence of inadequacies and failures in the RSD system is to assert that, in light of the assurances, evidence of past problems is *"at best, peripherally relevant"* (AWC §16; see also §§84, 88.3 [Core/21/pp 269-270, 290, 291]). That approach has no basis in principle or in the evidence. As to principle, there is "*an obligation to examine whether assurances provide, in their practical application, a sufficient guarantee*" and "[*t*]*he weight to be given to assurances from the receiving state depends, in each case, on the circumstances prevailing at the material time"* (*Othman*, §187 [Auths/27.93/p 7519], emphasis added; see also *Saadi v Italy* (2009) 49 EHRR 30, §148 [Auths/27.93/p 7276]). As to evidence, the GoR has stressed that no "*parallel*" RSD system will be created for persons transferred under the UK-Rwanda Arrangement (see the GoR's statement of 2 July 2022, §16 [App/26.120/p 3208] and that "*the process is already in operation – this is not a new process*" (see exhibit CW1/6 [App/26.119/p 3201]). This is important because, as the MR observed, "*the structural institutions that gave rise to past violations remain in Rwanda today*" (CA §104 [App/26.7/p 501]):[13] the problems are not simply historic.

(3) Certain of the most serious defects in the existing system are not addressed in the assurances at all. Indeed, the assurances were designed with only *"some of the past concerns in mind"* (AWC, §16 [Core/21/p 270]), inevitably so given the failure to elicit UNHCR's views concerning the safety of the UK-Rwanda Arrangement before it was finalised (see §37 below). As the majority of the Court of Appeal variously identified at §§104 and 264 [App/26.7/pp 501, 547-548], the unaddressed defects include (i) the way in which initial interviews are conducted by the DGIE;[14] (ii) the absence of any opportunity for an asylum-seeker to present their case through a lawyer at any stage prior to a High Court appeal; (iii) the shortcomings in RSDC decision-making; (iv) the lack of capacity of NGOs to provide legal assistance; and (v) the untested and potentially flawed High Court appeal process. UNHCR would add that (vi) the assurances do not guarantee that

12 The contrary conclusion at DC §68 [App/26.14/p 676] was an error of law, as the majority of the Court of Appeal implicitly concluded: see CA §§101, 152-156 [App/26.7/pp 500, 515-516].

13 See *Chahal v United Kingdom* (1997) 23 EHRR 413 at §103 [Auths/27.89/pp 7213-7214], where the Grand Chamber found it "*most significant that no concrete evidence has been produced of any fundamental reform or reorganisation*" of the key agency responsible for past abuses.

14 That the DGIE would continue to conduct initial interviews, and generally play a central role in the RSD process, is apparent from the 'pre-departure assurance' document [App/26.118/p 3181].

UNHCR will have access to transferees or to observe the RSD process;[15] and (vii) the Asylum Process *Note Verbale* expressly permits the GoR to deny asylum-seekers' legal representatives access to relevant documents (§8.2 [App/26.53/p 2382]) on very broad grounds. See also DC Obs §48 [App/26.35/pp 2093-2094]; CA Obs §38 [App/26.43/pp 2207-2208].

(4) *R (Yogathas) v SSHD* [2002] UKHL 36, [2003] 1 AC 920, which the SSHD cites at AWC §14 [Core/21/p 269], is not analogous. It concerned whether the SSHD was wrong to conclude that Germany would determine asylum claims in accordance with the Refugee Convention. It did not concern a situation in which (i) a state with a history of non-compliance with the Convention had given bilateral assurances about how it would handle claims in future; and (ii) there was a need to examine the state's capacity and capability to comply with such assurances.

15. If reliable, fair decisions are to be consistently delivered and the assurances complied with, the Rwandan RSD system needs structural change;[16] long-term capacity and capability development; and the modification of various practices and beliefs (DC Obs §§43, 50 [App/26.35/p 2092-2093, 2094]; LB2 §142(c) [App/26.76/p 2854]).[17] However:

(1) UNHCR is concerned over the suitability of assurances for situations requiring complex, long-term change in an RSD system.[18] In particular (i) such changes are susceptible to delay or derailment; (ii) it is difficult to assess in advance the practical effectiveness of assurances about profound and complex changes yet to begin;[19] and (iii) where, as here, an RSD system is seriously flawed, any changes which are achieved pursuant to assurances may not endure if the TCTA is terminated or all` owed to lapse.[20]

13 See *Chahal v United Kingdom* (1997) 23 EHRR 413 at §103 [Auths/27.89/pp 7213-7214], where the Grand Chamber found it "*most significant that no concrete evidence has been produced of any fundamental reform or reorganisation*" of the key agency responsible for past abuses.

14 That the DGIE would continue to conduct initial interviews, and generally play a central role in the RSD process, is apparent from the 'pre-departure assurance' document [App/26.118/p 3181].

15 *Cf*. Michigan Guidelines on Protection Elsewhere (2007), §16 [Auths/27.108/p 8026]: one 'minimum' requirement of a TCTA is that it '*grant UNHCR …unhindered access to transferred refugees in order to monitor compliance with the receiving state's responsibilities towards them'*.

16 E.g.: (i) the lack of any provision or precedent, to UNHCR's knowledge, in Rwanda for grants of Humanitarian Protection (LB2 §142(c) [App/26.76/p 2854], DC Obs §43 [App/26.35/pp 2092-2093]); (ii) the fact that the RSDC is non-specialist and rotating in composition (LB2 §65(a) [App/26.76/p 2830]) and at the same time excludes assistance from specialist lawyers (LB2 §60(j) [App/26.76/p 2826]; LB3 §28 [App/26.84/p 2903]); (iii) the lack of any guaranteed hearing, the exclusion of lawyers and the rarity of any interview before MINEMA (LB2 §§71, 74 [App/26.76/p 2832]); (iv) the unclear but pivotal role of the Eligibility Officer who appears to conduct *ad hoc* interviews (LB2 §§43-44 [App/26.76/pp 2820-2821]) which are not clearly subject to the procedural safeguards (e.g. interpreters, ability to correct the record) in the assurances (CA §180 [App/26.7/p 523]); and (v) the lack of any provision, to UNHCR's knowledge, for the making of fresh claims on the basis of a change of circumstances by previously rejected asylum-claimants (LB2 §87 [App/26.76/p 2835]). Further changes that would appear necessary to comply with the assurances as those are interpreted by the SSHD include the creation of a 'catch-all' immigration status to permit the regularisation in Rwanda of rejected asylum-seekers, and a mechanism to obtain such regularisation without a valid passport (see §28 below).

(2) UNHCR in any event considers the assurances given in this case insufficient. The assurances are aspirational in nature (particularly in relation to such matters as "*appropriately trained*" decision-makers and "*objective and impartial*" decisions: Asylum Process Note Verbale §§4.2, 4.6.2 [App/26.53/p 2380]); predicated upon changes yet to occur; assure no timescale; and supply little detail concerning the practical steps or allocations of responsibilities by which fundamental changes will be achieved (see LB2 §144 [App/26.76/p 2855]; DC Obs §§41, 45 [App/26.35/pp 2092, 2093]). In any event, the assurances provide no solution for persons transferred in the short term. As the majority of the Court of Appeal observed, the fact that resources are to be provided under the UK-Rwanda Arrangement "*does not mean that the problems in the Rwandan system can be resolved in the immediate term*" (CA §271, and also §§98, 262-263 [App/26.7/pp 550-551, 499-500, 547][21]) and there is "*simply insufficient evidence to demonstrate that officials would be trained adequately to make sound, reasoned, decisions"* (CA §§99, §265 [App/26.7/pp 500, 548]). See also DC Obs §§41-45 [App/26.35/pp 2092-2093]; CA Obs §§37-38 [App/26.43/pp 2206-2208] and LB2 §§143-144 [App/26.76/p 2855].

(3) Assurances can carry little if any weight where the giver of the assurance does not understand the standards assured. The GoR has shown that it does not understand (i) the meaning of refoulement, i.e. the fundamental abuse which the assurances are intended to prevent; or (ii) the reasons why its present RSD system is inadequate, and therefore the changes that are needed. See CA §169 [App/26.7/p 520]; §10 above; DC Obs §27 [App/26.35/pp 2088-2089]; CA Obs §41 [App/26.43/p 2209]. The absence of acknowledgment by the GoR of current serious flaws in Rwanda's RSD system casts doubt on whether those will be rectified; or indeed whether Rwandan domestic laws and standards (references to which permeate the assurances: see e.g. MoU §§2.1, 7.1, 9.1.1, 9.1.3, 10.1, 10.2, 17.1 [App/26.52/pp 2367, 2368, 2369, 2371] and Asylum Process *Note Verbale* §7.3 [App/26.53/2382]) will be considered to authorise these. UNHCR's concern is reinforced by the GoR's insistence that "*this is not a new process*" (see exhibit CW1/6 [App/26.119/p 3201]).

17 UNHCR is unaware of any previous case before the English courts (or ECtHR or CJEU) in which a transferring state has successfully relied on assurances, by a receiving state, that (i) a new asylum procedure will be brought into effect in the future; or (ii) fundamental changes to the existing system, or significant increases in the capacity of that system, will be implemented in the future.

18 UNHCR considers assessing assurances "*in their practical application*" (see §14(2) above) requires examination of whether and to what extent extant deficiencies and risks are suitable for assurances (UNHCR Diplomatic Assurances Note §§20, 33-34, 37 [Auths/27.105/pp 7945, 7950, 7951]).

19 The logical consequence of the SSHD's argument as to the limited relevance of the past (see §§12 and 14(2) above) is that the more aspirational the assurances, and the less a court can assess them "*in their practical application"* (see §14(2) above), the greater the reliance to be placed on the receiving state's future compliance: that subverts the principles in *Saadi* and *Othman* and the *"thorough examination"* required by *Ilias*.

(4) The assurances expressly confer no rights on individuals and are not legally binding on the parties (MoU §2.2 [App/26.52/p 2367]), contrary to UNHCR's long-standing position that TCTAs are "*best governed by a legally binding instrument, challengeable and enforceable in a court of law by the affected asylum-seekers*": see UNHCR Guidance Note on Bilateral and/or Multilateral Transfer arrangements for asylum-seekers §3(v) [App/27.106/7958]. The inability of transferees to enforce the assurances in the Rwandan courts (particularly in relation to standards which are not reflected fully or at all in Rwandan law) significantly dilutes their utility as safeguards.

(5) The SSHD asserts that *"capacity building is catered for in the process"*, since the GoR is able to control how many persons are transferred under the UK-Rwanda Arrangement (AWC §§15, 85-87, 95 [Core/21/pp 269, 290-291, 295]). This is not a sufficient safeguard, since (i) the inadequacies of the Rwandan RSD system mean that, absent fundamental reform, it cannot be relied upon to determine any number of claims fairly; (ii) the GoR's failure to acknowledge existing inadequacies means that it cannot be relied upon to identify a need to 'turn off the tap' on transfers; and in any event (iii) any turning off of the tap is liable to occur too late for persons already transferred whose claims have yet to be determined.

OBSERVATIONS ON SPECIFIC POINTS IN THE SSHD'S GROUNDS 2 AND 3

16. The SSHD's Grounds 2 and 3 criticise specific aspects of the reasoning of the majority of the Court of Appeal. None of those criticisms discloses any error by the majority. UNHCR sets out below its observations on the matters raised by the SSHD.

(a) Monitoring (SSHD's Ground 2, §12.1; AWC §§90-100)

17. Concerning informal monitoring, UNHCR observes:

(1) *"*[C]*lose informal monitoring"* by UNHCR (AWC §17 [Core/21/p 270]) cannot be relied upon. While UNHCR has been able to accumulate evidence over time of fundamental defects and serious failures in the Rwandan RSD system, UNHCR lacks the systematic access required to confirm their correction or the cessation of refoulements. UNHCR has not generally been permitted to attend DGIE interviews or meetings of the RSDC, and is unlikely to know the true extent of refoulement from Rwanda (LB2 §§18-21, 30, 111 [App/26.76/pp 2810-2811, 2814, 2843]; LB3 §§8(b), 16 [App/26.84/pp 2895, 2897-2898]). The UK-Rwanda Arrangement does not change the position. Indeed, the GoR is said to be "*clear that they do not want the UNCHR* [sic] *to play a supervisory role*" (exhibit CW1/6 [App/26.119/p 3200]).

20 It is unclear how MoU §17 [App/26.52/2371] would operate in the event of termination or lapse, for example as concerned monitoring of or resources for compliance with the assurances concerning the RSD process.

21 UNHCR notes that it is unclear on the evidence what proportion, if any, of the funds transferred is ring-fenced for use in supporting the RSD process. Only a broad outline of the arrangements has been provided: see KA1 §16(iii) [App/26.60/p 2656].

(2) Nor does informal monitoring by individual transferees (AWC §98 [Core/21/p 295]) or "*others with general or specific interests*" (AWC §17 [Core/21/p 270]) offer an effective safeguard. *"Others"* will not have reliable access to observe the process, and asylum-seekers cannot be relied upon to know what they should monitor, especially given that they may be unfamiliar with refugee law, illiterate and/or unable to speak any of Rwanda's official languages. They may in any event be reluctant to raise complaints while in Rwanda out of fear (well-founded or otherwise) that they may be subjected to serious detriment as a result. In connection with the latter, UNHCR draws attention to the events at Kiziba camp (LB2 §116 [App/26.76/p 2845]); discouragement by the DGIE of complaints to others by those transferred from Israel, coupled with threats not to renew residence permits (exhibit LB2/7, p.13 [App/26.83/p 2889]); and the intention that the DGIE will handle complaints about the asylum procedure under the UK-Rwanda Arrangement ('pre-departure assurance' document, §10 [App/26.124/3270]).

18. As to formal monitoring mechanisms, in addition to the inherent difficulties in the assurances noted at §§14-15 above, UNHCR observes:

(1) Formal monitoring is generally ill-equipped to identify whether asylum-seekers who 'go missing' have left voluntarily or under compulsion.[22] Nor can it detect violations in all individual cases: e.g. the Monitoring Committee will review only 10% of paperwork, and interview 10% of transferees (see the Committee's Terms of Reference, 'Monitoring Process' section [App/26.131/pp 3452-3453]). If formal monitoring does uncover abuses, it may do so too late to avert irreparable harm, especially for the initial transferees (see CA §98 [App/26.7/pp 499-500]).

(2) Formal monitoring is unlikely reliably or effectively to detect any continuation of practices such as the provision of unofficial recommendations by the DGIE and the apparent influence of considerations of Rwanda's external relations upon RSD decision-making (see §§10(3)-10(5)above), given that such matters may well not be formally recorded.

(3) These concerns are compounded by the intermittent nature of the Committee's meetings ("*at least twice a year, but four times in the first year*") and reports (quarterly for the first two years): Committee's Terms of Reference, p.3 [App/26.130/p 3449]. There is also a lack of clarity concerning the Committee's methodology, in particular (i) the frequency of its checks; (ii) whether and if so how attendances at RSD processes would be unannounced; (iii) how and by whom the sample of 10% of transferees would be selected for interview; and (iv) how their confidentiality would be guaranteed and any fears about complaining allayed, especially given that the DGIE sits on the body to which the Committee reports (Joint Committee Terms of Reference, 'Membership' section [App/26.127/pp 3436-3438]; note also the points at §17(2) above).

22 UNHCR supplied evidence of departures under compulsion in the context of the Israel-Rwanda TCTA: §10(1) above.

(4) The continuous presence of at least one Home Office officer at the British High Commission (AWC §92 [Core/21/p 293-294]) is not a corrective to the apparently intermittent nature of the Monitoring Committee's role. Any monitoring role for the Home Office liaison officer is unclear: the MoU describes the function of the liaison officers posted in both parties' diplomatic missions as "*to facilitate co-ordination under this arrangement*" (MoU §§13.4, 13.5 [App/26.52/2371]), and the liaison officers themselves do not describe their role as entailing any formal monitoring (FC1 §§5-6 [App/26.65/pp 2735-2736], CW1 §4 [App/26.63/p 2707]). Despite the access assured (without specificity) at MoU §13.5 [App/26.52/p 2371], a presence in Rwanda since 10 February 2022 (FC1 §§4, 7 [App/26.65/pp 2735-2736]), and the *Ilias* duty, those Home Office liaison officers do not appear to have observed at first hand any stages of the Rwandan RSD process for the purposes of (i) negotiating assurances; (ii) preparing the SSHD's policy documents or evidence in this case; or, vitally, (iii) assessing readiness for the 14 June 2022 proposed flight. Events during their stay in post also do not indicate any effective monitoring.[23]

(b) Incentives (SSHD's Ground 2, §12.1; AWC §88.3)

19. The following specific points indicate that limited weight should be placed on incentives here:

(1) The effectiveness of an incentive is premised on the entity intended to be incentivised understanding correctly what they are supposed to do; and a reliable mechanism for identifying non-compliance. However, (i) the GoR does not fully understand the concept of refoulement, and thus its obligations under the Refugee Convention (§11(1) above);and (ii) the monitoring mechanisms proposed cannot be relied upon to identify non-compliance (§§17-18above).

(2) At least five of the case studies in the Refoulement Table [App/26.37/p 2101ff] relate to the period while the UK-Rwanda Arrangement was being negotiated and after it was concluded (see §10(5) and fn.11 above). Refoulements thus

23 It is unclear whether the Home Office officers saw RSD decisions in a language which they understood: it was recorded in May 2022 that, while they were shown documents stated to be from the RSD process, "*due to privacy concerns, timing, language barriers and the scope of experience of the MINEMA official, the HO team were unable to obtain further detail from the source on the substance of the documents"*' ('Rwanda: country information on the asylum system', §4.5.4 [App/26.57/p 2429]). This failure was described by the Independent Advisory Group on Country Information reviewer as "*extremely surprising (and worrying*)" (IAGCI Report, p116 [App/26.126/p 3400]). Moreover: (i) while the Home Office Operational Lead was posted in Kigali, 3 individuals were refouled from Rwanda to Syria and Afghanistan in March and April 2022 (LB3 §§13-14 [App/26.84/pp 2896-2897]); (ii) UNHCR's notification of those incidents at a meeting with the Home Office Operational Lead on 25 April 2022 was not reflected in the SSHD's Country Policy Information Note (LB2 §136 [App/26.76/p 2852]); and (iii) the SSHD relied on other demonstrably incorrect information from the GoR as indicating Rwanda's readiness for transfers – e.g. CW1 §44 [App/26/63/pp 2716-2717] referred to information that the DGIE had received training from the International Organisation for Migration, which subsequently stated that it has "*never provided nor* [is] *planning to provide"* such training (exhibit LB3/6 [App/26.90/2931]). To UNHCR's knowledge, the training and hiring of Rwandan RSD officials, lawyers and interpreters did not in fact begin in this period (LB2 §144 [App/26.76/p 2855]).

continued at a time when the GoR might be thought to have had strong incentives to demonstrate compliance with its obligations under the Refugee Convention. The SSHD is therefore incorrect to assert that the UK-Rwanda Arrangement, and its incentives, provides "*a firebreak"* from the past (AWC §88.3 [Core/21/p 291]).

(3) Airport pushbacks continued in the face of warnings by UNHCR that these constituted refoulement (LB2 §108 [App/26.76/pp 2840-2842]). The GoR's failure to heed these warnings is all the more notable given its obligation under Article 35 of the Refugee Convention [Auths/27.15/p 3960] to cooperate with UNHCR.

(4) It is rightly not suggested by the SSHD that Israel would have (i) entered into an agreement with Rwanda which authorised the treatment which eventuated; and/or (ii) lied to those transferred about the conditions and protections to which they were entitled under the agreement (UNHCR's uncontested evidence being that transferees received very different treatment to that which they were promised: LB2 §124 [App/26.76/pp 2847-2849]); or indeed that Rwanda realistically would have entered into such an agreement without any incentive being provided by Israel.

(c) The avenue of appeal to the High Court (SSHD's Ground 2, §§12.3-12.4; AWC §110, 112)

20. The existence of an avenue of appeal to the Rwandan High Court is not a panacea for the defects in earlier stages of the RSD procedure. The jurisdiction and procedure of the High Court in an asylum appeal are in material respects unclear, as noted at LB2 §§77-78 [App/26.76/p 2833]. There is no evidence concerning (i) the extent to which the High Court would take as a presumptive starting point the material which had been assembled by the DGIE and/or RSDC; (ii) the approach that the High Court would take to findings made by the RSDC (whether on a recommendation from the DGIE or otherwise), e.g. whether the onus would be on the appellant to show that such findings should be overturned; or (iii) the test which would be applied on the admissibility of new evidence. If, e.g., the High Court took as its starting point the findings of the RSDC and/or restricted the admissibility of fresh evidence, the appeal would not cure defects at earlier stages.

21. Even if the appeal provided for an entirely *de novo* hearing with no restrictions on the admission of fresh evidence, it could not be relied upon to cure such defects, since defects in the initial interview process are likely to have enduring significance, given the importance of statements actually or imputedly made (or not made) in interview in subsequent assessments of credibility.[24]

[24] There is no indication that records of interviews would be inadmissible in an appeal to the High Court. Indeed, the response of the GoR quoted at CA §215 [App/26.7/p 532] suggests the opposite, since it refers to the wide range of admissible evidence.

(d) The Court of Appeal did not apply an inappropriately high standard (SSHD's Ground 2, §12.5; AWC §§113-115)

22. The SSHD asserts that the VP imposed "*a greater burden than is supported by the Strasbourg case law"* in his conclusion that "*the nature and extent of the training of officials involved in the asylum process should have been assessed in depth, with reference to documents and records so far as available, as part of the investigations carried out when the* [UK-Rwanda Arrangement] *was still in gestation*" (CA §260 [App/26.7/p 546]; AWC §113 [Core/21/p 299]). If the SSHD means to criticise the VP's reference to the need for "*in depth*" examination by the SSHD, when confronted with UNHCR's evidence of serious deficiencies in the training of RSD officials in Rwanda (see §9(6) above) and apparent inaccuracies in the account of training completed or underway (see fn. 23 above), that "*burden*" was consistent with the *Ilias* obligation of "*thorough examination*". Alternatively, if the SSHD's criticism is directed to the requirement of properly trained RSD personnel, that is an essential minimum component of a safe and effective RSD system (DC Obs §18(9) [App/26.35/p 2083]; *MSS* §301 [Auths/27.91/p 7348]). On either basis, the VP did not err.

23. The SSHD criticises the VP's conclusion that it is "*a serious defect in the process*" that the RSDC will not entertain submissions from a legal representative (CA §189 [App/26.7/pp 526]; AWC §114 [Core/21/p 300]). The right to be heard, including through a legal representative, is one of the irreducible minimum components of a fair RSD system, and effective availability of legal counsel is required (DC Obs §18(5) [App/26.35/pp 2080-2081]; *MSS* §301 [Auths/27.91/p 7348]; *Hirsi Jamaa v Italy* (2012) 55 EHRR 21, O-127 [Auths/27.94/p 7611]). It is immaterial that (as the SSHD notes) public funding is not normally available for lawyers to attend asylum interviews in the UK, since in the UK claimants' lawyers are funded and permitted to make representations prior to any substantive decision on an asylum claim, both pre- and post-interview.[25] By contrast, there is no opportunity for a lawyer to make representations to the RSDC: see §9(2) above.

24. The VP did not err in his concern over the paucity of reasons in Rwandan RSD decisions (CA §192 [App/26.7/p 527]; AWC §115.3 [Core/21/p 301]; and §9(3) above). He properly noted the assurance to provide "*reasons for the decision in both fact and law*" (CA §191 [App/26.7/p 527]); the training that would be required for decision-makers to supply adequate reasons (CA §194 [App/26.7/p 527]); and the lack of evidence that reasons had recently become more detailed (CA §193 [App/26.7/p 527]). Indeed, UNHCR's evidence showed no change in practice after the UK-Rwanda Arrangement was agreed (exhibit LB2/4 [App/26.80/p 2865ff]), or even by late July 2022 (exhibit LB3/5 [App/26.89/p 2929]), despite the SSHD's position that the "*arrangements, with all the practical incentives and support to ensure compliance with them, are now in fact in place*" (AWC §88.3 [Core/21/p 291]).

25 See *R (Dirshe) v SSHD* [2005] EWCA Civ 421, [2005] 1 WLR 2685, §§11, 14 [Auths/27.35/pp 4758-4759] concerning UK practice and the importance of that safeguard.

25. The SSHD criticises the VP for describing as "*not satisfactory*" any failure to show an asylum-seeker a copy of any analysis or recommendations that the DGIE has provided to the RSDC about their case (CA §163 [App/26.7/p 518]; AWC §115.1 [App/26.7/p 518]). There was no error in the VP's assessment. It is a basic feature of a fair decision-making process that a person should know the true basis of an adverse decision, in order to enable them to challenge the decision effectively (DC Obs §18(10) [App/26.35/p 2084]). The paucity of reasoning in RSDC decisions and unacknowledged nature of the DGIE's role in the Rwandan RSD process mean that there can be no confidence that the reasons supplied will properly reflect the influence of any analysis or recommendations from the DGIE.

26. The SSHD criticises the VP for describing as "*unsatisfactory*" the fact that the *Notes Verbales* say nothing about agreement of a transcript if there is a gap in time between an RSDC interview and a decision on an asylum claim (CA §187 [App/26.7/p 525-526]; AWC §115.2 [Core/21/p 300]). Again, the VP did not err. Provision and agreement of a transcript of any interview are in practice important in enabling an asylum-seeker to correct errors and as a basis for any submissions that they wish to make (DC Obs §18(7) [App/26.35/p 2082]). *(e) "Practical unlikelihood of refoulement" (SSHD's Ground 2, §12.6 and AWC §§101-105)*

27. As the VP noted, it is a "*prima facie surprising"* argument that *"it does not matter if Rwanda's asylum system is inadequate because RIs whose claims are wrongly refused will in every case be allowed to stay*" (CA §286 [App/26.7/p 554]). The majority did not err in rejecting that argument.

28. As to prospects of regularisation, UNHCR is unaware of any 'catch-all' immigration status in Rwanda that would allow regularisation of a rejected asylum-seeker and none has been identified by the GoR or SSHD (LB3 §36 [App/26.84/p 2909]; DC Obs §30.3 [App/26.35/p 2090]). Nor does the MoU guarantee regularisation for those whose claims are rejected. Instead, it offers "*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*", with *"the same rights as other individuals making an application under Rwandan immigration law*s", failing which they may be "*removed from Rwanda*" (MoU §§10.3.1-10.3.2, 10.5 [App/26.52/pp 2369-2370]; Support *Note Verbale* §16.2 [App/26.54/p 2391]). Moreover UNHCR's evidence indicates that rejected asylum-seekers who seek permission to remain in Rwanda on other grounds (e.g. a work permit) require valid passports (which at least some Respondents are understood to lack: CA §470 [App/26.7/p 608]). That requirement has placed individuals in need of international protection in the position of seeking a passport from their state of feared persecution or being unable to regularise their status: LB3 §§32(a)(i), 36 [App/26.84/pp 2905, 2909]; DC Obs §30.3 [App/26.35/p 2090]

29. As to a lack of returns agreements between Rwanda and the Respondents' states of nationality, the SSHD is wrong to assert that removal without such an agreement is impossible (AWC §§104-5 [Core/21/pp 296-297]). There is no need for a 'returns agreement' to expel an individual to their state of nationality: see e.g. Art 13(2) Universal Declaration of Human Rights [Auths/27.14/p 3923]; Art 12(4) International Covenant on Civil and Political Rights [Auths/27.17/p 4022]. Moreover, the GoR has indicated an intention to issue travel documents to all transferees whose asylum claims are rejected "*in case they want to return to their country of origin*" (exhibit KA1/47, row 22 [App/26.123/p 3253]) which does appear to have a basis in Rwandan law.[26] In any event, returns agreements to expel asylum-seekers are in UNHCR's experience relatively rarely used globally and are apparently unused in Rwanda. All examples of actual or narrowly averted refoulement from Rwanda described in the Refoulement Table [App/26.37/p 2101ff] took place, to UNHCR's knowledge, without returns agreements. Instead, UNHCR commonly encounters, including in Rwanda, as described in UNHCR's evidence, the forcible expulsion of asylum-seekers (whether or not they have a passport) to neighbouring states (Refoulement Table Rows 7-9, 41-75 [App/26.37/pp 2104-2106]; some expulsions being overland to Tanzania and Uganda, others by air to Uganda); or the effective compulsion of asylum-seekers to leave, either by threats of forcible expulsion, or because their continued stay is otherwise rendered intolerable.[27] That conduct foreseeably leads to chain refoulement where the individual lacks an entitlement to reside in that neighbouring state (see e.g. LB2 fn. 50 [App/26.76/p 2849]; Refoulement Table, cases 41-43 [App/26.37/p 2105]). Moreover, the SSHD's argument (AWC §§5.2, 105 [Core/21/pp 266-267, 297]) and the LCJ's reasoning (CA §498 [App/26.7/p 616] concerning returns agreements relate to dangers arising out of returns to asylum-seekers' states of nationality, but serious harm prohibited by Article 3 ECHR and persecution contrary to the Refugee Convention may also (and in UNHCR's experience do) occur in transit.[28]

30. As for the assurance that Rwanda will regularise the status of those whom there is "*no prospect*" of removal to a state where they have a right to reside (MoU §10.4 [App/26.52/p 2370]), in light of §§28-29 above it is unclear in what circumstances the GoR would consider there to be "*no prospect*"[29] of removal.

26 Law No.57/2018 of 13 August 2018 on Immigration and Emigration in Rwanda, Arts. 22-24 [Auths/27.102/pp 7892-7893].

27 Actual or threatened refoulement from Rwanda has occurred where individuals were subjected to intimidatory treatment or were denied a renewal of their temporary residence permit, leaving them at risk of detention and forcible expulsion (LB3 §19 [App/26.84/pp 2899-2900]; Refoulement Table, cases 12-40 [App/26.7/p 2104]).

28 The UK-Rwanda Arrangement is likely to increase people-smuggling and asylum-seekers' exposure to "*dangerous journeys and life threatening conditions*", not least since the "*natural route*" overland from Rwanda towards Europe would take them through South Sudan and Libya where they are "*at serious risk of arbitrary detention, torture and enslavement*" (LB2 §129 [App/26.76/p 2850]).

31. A *"policy of no deportation*" (AWC §106 [Core/21/p 297]) is neither contained in the assurances nor reflected in the evidence of Rwandan practice. On the contrary, (i) the MoU expressly envisages that transferees whose claims are refused will be removed, as do the *Notes Verbales* (MoU §§10.3.2, 10.4 [App/26.52/pp 2369-2370], Support *Note Verbale* §16.3.2 [App/26.54/p 2391]; Asylum Process *Note Verbale* §5.6 [App/26.53/p 2381]);[30] and (ii) UNHCR has supplied extensive detail of expulsions or effectively compelled departures of rejected asylum-seekers from Rwanda, the material facts of which are not in dispute, including after signature of the MoU (above, §10).

32. Finally, UNHCR highlights a deeper objection to the SSHD's arguments that regardless of inadequacies in Rwanda's RSD process, "*either way any protection needs will be fully met*" by non-removal or other forms of residence permits (AWC §104 [Core/21/pp 296-297]). An ordinary residence permit does not protect from refoulement because it can be withdrawn at will and provides no security of status. That is in contrast with refugee status which, under Article 1C Refugee Convention, may be ceased only on limited bases, which must be strictly interpreted: *R (Hoxha) v Special Adjudicator* [2005] UKHL 19, [2005] 1 WLR 1063, §§65-66 [Auths/27.36/p 4782].[31] The temporal problem of ordinary residence permits generally is *a fortiori* here given the limited duration of the UK-Rwanda Arrangement (five years: MoU §23.1 [App/26.52/p 2373]) and the lack of clarity over any protections for transferees whose claims are rejected if the Arrangement is cancelled or not renewed (see Support *Note Verbale* §§11.3, 16.3 [App/26.54/pp 2390-2391]). Indeed, that is no doubt why the definition of a *"safe third country"* in paragraph 345B Immigration Rules [Auths/27.13/pp 3917-3918] was predicated upon (among other things) the possibility of requesting and obtaining refugee status "*in accordance with the Refugee Convention in that country*". *(f) Weight to be accorded to the UK government's assessment of assurances (SSHD's Ground 3, AWC §§75-89)*

33. The extent to which a court should defer to an assessment made by the executive depends on the context, including what is being assessed and the extent to which it falls within the decision-maker's expertise: see, e.g., *P3 v SSHD* [2021] EWCA Civ 1642, [2022] 1 WLR 2869, §§122, 126, 135 [Auths/27.78/pp 6682-6684].

29 In English law the threshold of no prospect of removal (for the analogous purpose of determining whether a person who cannot be removed is thereby entitled to the grant of a residence permit) is high and may not be met notwithstanding the impracticability of removal for a period of years: *R (Khadir) v SSHD* [2005] UKHL 39, [2006] 1 AC 207, §§6, 32 [Auths/27.37/pp 4794, 4801].

30 Rwandan law also provides for the detention and expulsion of unlawfully present foreigners: DC Obs fn. 183 [App/26.35/p 2088].

31 UNHCR's advice on such decisions may be sought by the state of refuge: see e.g. paragraph 358C Immigration Rules [Auths/27.13/p 3919].

34. To the best of UNHCR's knowledge, the UK government (understandably given the unprecedented nature of the present proposals) does not have significant expertise in the reform of RSD systems in foreign states, or in Rwanda's RSD system specifically. Accordingly, no particular degree of deference is due to the UK government's assessment of the extent of the challenges associated with addressing inadequacies in Rwanda's RSD system, or the capacity and capability of the GoR to meet such challenges. See the LCJ's comments at CA §471 [App/26.7/p 608]. As to the SSHD's arguments to the contrary:

    (1) The SSHD suggests that the UK government has relevant expertise from *"direct involvement in the negotiation, implementation, and formal monitoring"* of the UK-Rwanda Arrangement (AWC §78; see also §81 [Core/21/pp 288-289]). However, (i) in circumstances where no transfers have been made under the UK-Rwanda Arrangement, it has not in any meaningful sense been implemented, let alone been subject to *"formal monitoring"*;and (ii) the UK government's involvement in negotiations does not mean that it has significant expertise in the practical operation of Rwanda's RSD system, or the prospects for reform thereof. Indeed, in responding to UNHCR's evidence about the operation of that system in the present proceedings, the SSHD has had to place extensive reliance on hearsay statements obtained from the GoR, rather than knowledge held by the UK government itself.

    (2) The SSHD refers to cases in which the courts have deferred to government assessments of threats to national security, *"for reasons of both institutional capacity and democratic accountability"* (AWC §§77, 79 [Core/21/pp 287-288]). Such cases are not analogous. The government's *"institutional capacity"* to assess threats to national security reflects its long experience of doing so, and its access to intelligence; by contrast, the government has limited expertise in the present context (see immediately above). As to *"democratic accountability"*, see §6(4) above.

THE ILIAS DUTY

35. Article 3 ECHR imposes a procedural duty on a state which proposes to transfer asylum-seekers to a third country under a TCTA to conduct a *"thorough examination"* of *"the accessibility and functioning of the receiving country's asylum system and the safeguards it affords in practice"* (*Ilias*, §§130, 134-141 [Auths/27.98/pp 7815-7817]; emphasis added). An analogue duty arises under the Refugee Convention, for the same fundamental purpose of averting onward refoulement of transferees (see DC Obs §§11-16 [App/26.35/pp 2077-2078]). The SSHD did not conduct the requisite *"thorough examination"*, and the Divisional Court erred in finding otherwise.[32] Two aspects of the SSHD's failure are particularly striking.

32 The majority of the Court of Appeal did not determine the *Ilias* point, and it is therefore the Divisional Court's judgment which falls to be examined.

36. First, there was no meaningful investigation by the SSHD of the terms of the Israel-Rwanda TCTA or of its operation in practice. There was "*no evidence*" that these points were investigated during negotiations for the MoU (DC §68 [App/26.14/p 676]). That failure persisted after UNHCR supplied evidence (in LB2) of the way in which persons transferred under that TCTA had been treated, as summarised at §10(1) above. The Divisional Court considered that to be a "*permissible approach*" by the SSHD and that "*we do not consider it discloses any error of law*" (DC §68 [App/26.14/p 676]; *cf.* CA §101 [App/26.7/p 500]), but the Divisional Court did not determine for itself whether the *Ilias* standard had been met. In UNHCR's view, it is not "*permissible*", when assessing the efficacy of assurances obtained for the purpose of a TCTA, to disregard evidence of large-scale and gross abuses arising out of a recent TCTA: both *Ilias* and *Othman* (see §189(7) [Auths/27.93/p 7520]) required investigation of those matters. For the obvious relevance of non-compliance with any earlier assurance, see also *Zabolotnyi v Mateszalka District Court, Hungary* [2021] UKSC 14, [2021] 1 WLR 2569, §46 [Auths/27.77/p 6645]. The SSHD now asserts that "*it appears*" that under the Israel-Rwanda TCTA incentives were "*very different*" and that there was no "*monitoring of an equivalent nature*" (AWC §108 [Core/21/p 298]). Those assertions are made without evidence, and concern matters which remain to be investigated, as a consequence of the SSHD's failure to comply with the *Ilias* duty.

37. Second, the SSHD conducted no *"thorough examination"* of Rwanda's other recent history of refoulement or the GoR's lack of understanding of the fundamental prohibition of such conduct. Far from the assurances being informed by "*active and careful consideration of the core concerns raised by the UNHCR"* (*cf*. AWC §§11, 88.3 [Core/21/pp 268, 291]), UNHCR was notified of the UK-Rwanda Arrangement only after it had been concluded.[33] At the meeting in Kigali on 21 March 2022 to which the SSHD refers (AWC §11 [Core/21/p 268]), UNHCR was not informed of the proposed UK-Rwanda Arrangement and critical information concerning (among other points) Rwanda's full and most recent history of refoulement was consequently not elicited (LB2 §§131-136 [App/26.76/pp 2851-2852], and see also CA §268 [App/26.7/pp 548-549]). When in the course of these proceedings the evidence of refoulement in LB2 was put to the GoR, it did not dispute the material facts, but denied on legally misconceived grounds that they amounted to refoulement: see §11(1) above. There is no evidence that the SSHD probed or even noted the GoR's misunderstanding of the critical standards supposedly assured by the UK-Rwanda Arrangement; she instead repeated and relied upon the same legally erroneous denials in her pleadings (Amended Detailed Grounds of Defence, §8.8 [App/26.26/p 1318]).

33 It is understood that the (undated) *Notes Verbales* were concluded on the same date as the MoU: see Amended Detailed Grounds of Defence, §§3.7-3.8 [App/26.26/pp 1279-1281].

CONCLUSION

38. For the reasons above it is UNHCR's position on this appeal that:

(1) The majority of the Court of Appeal did not err (i) in concluding that there were substantial grounds for thinking that asylum-seekers removed to Rwanda would face a real risk of refoulement contrary to Article 33(1) of the Refugee Convention and Article 3 ECHR; or (ii) in its evaluation of the weight to be accorded to the SSHD's assessment of the likelihood of the GoR complying with the assurances given.

(2) The SSHD failed to comply with the *Ilias* duty.

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A10. UNHCR Refoulement Table 6 October 2023

Refoulement table handed up by UNHCR to Divisional Court (updated references to Supreme Court bundles- 6 October 2023

Table of instances of refoulement and threatened refoulement cited in UNHCR's evidence and notes of meetings with the SSHD

UPDATED WITH REFERENCES TO SC BUNDLES 6/10/2023

General notes:

1. This table covers instances of refoulement or threatened refoulement of individuals who claimed asylum (or sought to) under the RSD system. It does not cover refoulement under the prima facie system. The total number are likely to be a significant underrepresentation as UNHCR is likely to be unaware of all airport refoulement cases or in-country summary rejections, see e.g. LB2 §33 [App/26.76/p 2815], LB2 §62 [App/26.76/p 2828], LB2 §111 [App/26.76/p 2843], LB3 §8b [App/26.84/p 2898], LB3 §16 [App/26.84/pp 2897-2898]. See further LGBTIQ+ asylum seekers at LB2 §113 [App/26.76/p 2844].
2. References in square brackets are to pages in the Appendix Bundle for the Supreme Court hearing.
3. Note some individuals in cases 12-40 were granted residence permits subsequent to threats of refoulement and/or refusal to process their asylum claim

Case study number	Country of origin (*denotes Middle Eastern country + denotes reliance on unspecified security concerns[1])	Category	Date	Bundle reference	Final / last known destination (underlined text denotes refoulement to country of origin)	Is the evidence contested?
1-2	Libya*+	Airport[2]	February 2021	LB2 §§108a **[App/26.76/pp 2841-2842]** LB3 §13a **[App/26.84/p 2896]** Annex A to CPIN **[App/26.59/p 2626]**.[3] Confirmed by contemporaneous *note verbale* **[App/26.86/p 2919]**	Tunisia via Egypt **[App/26.86/p 2919]**.[4] (Denied access to asylum and stuck at airport, 1 managed to go to Mauritania, 1 still assisted by UNHCR.)	No. GoR accepts that the Libyans were removed (at least to Cairo) **[App/26.121/p 3213]**, §2 and appears to accept that they sought to claim asylum, albeit on the GoR's account, asylum was sought after entry was denied and they were travelling on false documents, **[App/26.122/pp 3234-3235]**. In contemporaneous communications between UNHCR and MINEMA, MINEMA accepted that the Libyans had sought to claim

1 See LB2 §109 [App/26.76/p 2843] and §114 [App/26/76/pp 2844-2845].
2 Cases in each category in this table are arranged to follow the order in which they appear in UNHCR's evidence (apart from cases for which exact numbers are unknown, which appear at the bottom of the table).
3 Note however fn.36 at [App/26.76/p 2841] stating that the interview note at Annex A is inaccuratee in parts on this point.
4 See Note Verbale at [App/26.86/p 2919].

Table of instances of refoulement and threatened refoulement cited in UNHCR's evidence and notes of meetings with the SSHD

Case study number	Country of origin (*denotes Middle Eastern country + denotes reliance on unspecified security concerns[4])	Category	Date	Bundle reference	Final / last known destination (underlined text denotes refoulement to country of origin)	Is the evidence contested?
						asylum (LB2 §§108a, **[App 26.76/p 2841]**). However, GoR maintains that asylum is *'not applicable when entry has already been denied'*: LB2 §§108a **[App 26.76/p 2841]**; see also GoR **[App/26.116/p 3174]**.
3-4	Afghanistan*+	Airport	24 March 2022	LB2 §§108b **[App/26.76/p 2842]** LB3 §13b **[App/26.84/p 2897]** See also **[App/26.73/p 2784]** (note of April 2022 Kigali meeting) Confirmed by *note verbale* **[App/26.86/pp 2920-2921]**	Afghanistan	No. GoR accepts that the individuals claimed asylum **[App/26.122/pp 3241-3242]**[5] and were removed to Dubai **[App/26.121/p 3213]** (from where UNHCR knows both individuals were then chain-refouled to Afghanistan).
5	Syria*+	Airport	19 April 2022	LB2 §§108c **[App/26.76/p 2842]** LB3 §13c **[App/26.84/p 2897]** Confirmed by *note verbale*	Syria	No. GoR accepts the individual claimed asylum **[App/26.122/pp 3241-3242]**[6] and was removed to Turkey **[App/26.121/p 3213]** (from where, according to

5 Response to query about '3 cases of refoulement'relied upon by UNHCR (it is assumed that this response is to the three cases mentioned in April 2022 Kigali meeting [App/26.73/p 2784] where case studies 3-5 were referred to as '3 recent cases of refoulement/return to countries UNHCR advise against'.)

6 See footnote 6 above

Table of instances of refoulement and threatened refoulement cited in UNHCR's evidence and notes of meetings with the SSHD

Case study number	Country of origin (*denotes Middle Eastern country + denotes reliance on unspecified security concerns[1])	Category	Date	Bundle reference	Final / last known destination (underlined text denotes refoulement to country of origin)	Is the evidence contested?
				[App/26.86/pp 2920-2921] See also [App/26.73/p 2784]		UNHCR, the individual was then refouled to Syria).[7]
6	Yemen*	Airport	September 2021	LB3 §17 [App/26.84/p 2898] See also emails at Exhibit LB3/3 [App/26.87/pp 2923-2924]	Ethiopia (UNHCR intervened to prevent onward refoulement to Yemen).	No (evidence submitted after last evidence from SSHD).
7-8 (at least 2 individuals)	A country with which Rwanda enjoys close bilateral relations.	DGIE refusal & expulsion	Between 2020 and 2022	LB2 §112 [App/26.76/pp 2843-2844] LB3 §18a [App/26.84/p 2898]	Resettled to third country by UNHCR after forcible expulsion to Tanzanian border.	No[8]
9		DGIE refusal & expulsion	Between 2020 and 2022	LB2 §112 App/26.76/pp 2843-2844]	Sought asylum in neighbouring third country after forcible expulsion to Tanzanian border.	No[9]

7 GoR also refers to two separate incidents involving four Syrian individuals being returned to Lebanon and Nigeria / Ethiopia [App/26.120/p 3206], §11, [App/26.121/p 3213], §§1.2 and 1.3. These incidents were not known to UNHCR. These cases bring the total number of Syrians who were refouled or possibly refouled by the GoR to 5.

8 The relevant paragraph of LB2 is not directly addressed in GoR response at [App/26.121/p 3218]. However, see generic denial that 'individuals whose asylum claims are denied are neither deported nor forcibly removed' [App/26.121/p 3218]

9 As above

Table of instances of refoulement and threatened refoulement cited in UNHCR's evidence and notes of meetings with the SSHD

Case study number	Country of origin (*denotes Middle Eastern country + denotes reliance on unspecified security concerns[1])	Category	Date	Bundle reference	Final / last known destination (underlined text denotes refoulement to country of origin)	Is the evidence contested?
				LB3 §18b **[App/26.84/pp 2898-2899]**		
10-11 (at least 2 individuals)	A country with which Rwanda enjoys close bilateral relations.	DGIE refusal & threatened expulsion (expulsion only avoided through UNHCR intervention)	May 2022	LB2 §112 **[App/26.76/pp 2843-2844]** LB3 §18c **[App/26.84/p 2899]** Evidenced by *note verbale* **[App/26.88/p 2927]**	Resettled to third country by UNHCR after it was permitted to intervene following instruction to leave Rwanda within 4 days.	No[10]
12-40 (29 known to UNHCR individuals)[11]		DGIE refusal & (in many cases) threatened expulsion and denial of access to asylum procedure	Pre-2020	LB3 §19 **[App/26.84/pp 2899-2900]** See also reference to removal at Annex A to CPIN (March 2022 Kigali meting) **[App/26.59/p 2630]**	Various (most left to seek asylum elsewhere because of threats of almost imminent expulsion/refoulement to country or origin)[12]. At least two threatened with expulsion to country of origin. At least one told his passport was confiscated at the country of origin's request.	No (evidence submitted after last evidence from SSHD).

10 As above.

11 All were denied access to the asylum procedure. UNHCR is aware that many were also threatened with expulsion but cannot state with confidence that all 29 were threatened.

12 Not all of the individuals left as some families were granted residence permit on a different basis

Table of instances of refoulement and threatened refoulement cited in UNHCR's evidence and notes of meetings with the SSHD

Case study number	Country of origin (*denotes Middle Eastern country + denotes reliance on unspecified security concerns[1])	Category	Date	Bundle reference	Final / last known destination (underlined text denotes refoulement to country of origin)	Is the evidence contested?
41-43 (3 individuals)	Eritrea	Israel-Rwanda arrangement	November 2015	LB2 §125, fn 50 [App/26.76/p 2849]	Kenya (detained there for illegal entry after first being taken to the Ugandan border[13]). Scheduled to be refouled to Eritrea; only prevented by last minute UNHCR intervention in Nairobi.	No
44-50 (7 individuals)	Eritrea	Israel-Rwanda arrangement	November 2015	LB2 §125, fn 50 [App/26.76/p 2849]	Uganda (taken to the border)[14]; obtained no protection or documentation there and planned to go to South Sudan.	No
51-62 (12 individuals)	Eritrea	Israel-Rwanda arrangement	January 2016	LB2 §125, fn 50 [App/26.76/p 2849]	Uganda (taken there by Rwandan officials after their documents were confiscated, they were taken to a guarded house and threatened with further detention), some went to Kenya and Ethiopia after that.	No
63-74 (12 individuals)	Eritrea	Israel-Rwanda arrangement	January 2016	LB2 §125, fn 50 [App/26.76/p 2849]	Uganda (kept at Kigali airport and put on a flight to Uganda).	No

13 With the apparent participation or acquiescence of the Rwandan authorities: the individuals were initially separated at the airport, taken to a different section and their documents were taken from them. They were then taken to a guarded house, not allowed to leave and then taken to the Ugandan border (each was made to pay $250).

14 As above.

Table of instances of refoulement and threatened refoulement cited in UNHCR's evidence and notes of meetings with the SSHD

Case study number	Country of origin (*denotes Middle Eastern country + denotes reliance on unspecified security concerns[1])	Category	Date	Bundle reference	Final / last known destination (underlined text denotes refoulement to country of origin)	Is the evidence contested?
75	Sudan*	Israel-Rwanda arrangement	January 2016	LB2 §125, fn 50 **[App/26.76/p 2849]**	Uganda (kept at Kigali airport and put on a flight to Uganda).	No
76-90	Eritrea and Sudan*	Israel-Rwanda arrangement [disappeared individuals]	*Information provided to UNHCR following contact with Eritrean and Sudanese nationals in March 2014*	LB2 §124a **[App/26.76/pp 2847-2848]**	Unknown.	No
Unknown (dozens[15])	Eritrea	Israel-Rwanda arrangement	From 2015	LB2 §125 **[App/26.76/p 2849]**	Uganda (taken there by Rwandan officials).	No
Unknown (80 interviewed by UNHCR)	Eritrea and Sudan*	Israel-Rwanda arrangement	*Interviews conducted in Italy between November 2015 and December 2017.*	LB2 §124c **[App/26.76/pp 2848-2849]**	Italy (via dangerous routes including South Sudan and Libya).	No

15 The individuals grouped under this heading are likely to include the individuals listed in case studies 41-75 above.

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