



**House of Lords International Agreements Committee
Inquiry into UK – Rwanda Asylum Agreement
Bar Council written evidence**

About Us

The Bar Council represents approximately 17,000 barristers in England and Wales. It is also the Approved Regulator for the Bar of England and Wales. A strong and independent Bar exists to serve the public and is crucial to the administration of justice and upholding the rule of law.

Question 1: What is your overall assessment of whether the changes to the asylum partnership arrangements made by the new Agreement, including its legal form, are likely to meet the concerns raised by the Supreme Court?

This is (part of) the ultimate question likely to be raised before the courts in future legal proceedings and it relies upon a host of matters that fall outside the Bar Council's remit and knowledge. We simply note that ordinarily courts scrutinising treaties will look at past practice, compliance and evidence of ability to deliver when considering the effectiveness of their stated terms.

Question 2: How strong and effective are the protections for persons relocated to Rwanda set out in the Agreement?

Access to independent and effective lawyers is a cornerstone of access to the courts and thus to a meaningful remedy. This will depend upon the facts on the ground. We note that any legal representation provided to an asylum seeker within Rwanda pursuant to the Treaty wants for a method of ensuring that it is independent and effective, not least when conditions in Rwanda are in issue. There is no guarantee of such representation. Moreover, as regards communication with UK lawyers, there is no guarantee that this will be enabled nor that it will meet our common law standard of effective access to justice.

Question 3: What is your view of the enforcement mechanisms in the Agreement including the dispute settlement procedure, the enhanced independent Monitoring Committee, and the provision for lodging individual complaints? Do you consider that there are any essential supplementary conditions for this to be an effective process?

Additional arrangements are stated to be made, however, those arrangements are evidently untested and dependent upon effective implementation and scrutiny.

If the benchmark is to be UK standards of justice, it is only if the provisions of the Treaty that impacted on asylum seekers as directly effective provisions were justiciable in the domestic law of the UK and of Rwanda would there be an effective process to ensure lawful conduct in the operation of its provisions and human rights compliance. This would include whether they were able to obtain remedies ordinarily available by way of interim and final relief in judicial review proceedings.

Question 4: The Agreement establishes a new asylum appeal body with co-presidents and judges of mixed nationality. What are your views on the design of this body and how it might function in practice?

The intention to deploy foreign judges alongside Rwandan judges and to deploy independent experts may be a useful development, however, absent evidence of implementation, training, and monitoring, it is not possible to assess the effectiveness of the proposed reform. Assurances alone are insufficient; it is the assessment of evidence of practice that provides the necessary safeguard by reference to the concerns raised by the Supreme Court.

Question 5: Although offshore processing is not new, are there precedents for requiring that claims must be for asylum in a third country?

This is not 'offshoring' of claims processing - it is the transfer of such claims and the transportation of claimants to Rwanda for that purpose. The clear intention and terms of the Memorandum of Understanding and the Treaty is not that asylum-seekers who claim asylum in the UK have their claims processed there and are returned to the UK if successful, albeit that there is a provision for transfer back to the UK. Instead, generally, transfer to Rwanda ends the UK's jurisdiction over the asylum seeker concerned. We are unaware of any precedents of such a system.

Question 6: Are there any other aspects of the Agreement which you would like to draw to the attention of the International Agreements Committee?

Article 4 provides for the UK to determine the timing of requests for transfer but there is no provision thereafter as to the number of persons Rwanda will approve for transfer and on what basis. Absent provision as to capacity, the size of the UK asylum seeker population to be transferred under the Treaty (and thus who is subject to the Treaty) is unclear. Rwanda is not obliged to approve transfers (Article 5). Further, there is no guarantee of effective legal advice while in the UK before being made subject to transfer.

Article 11 does not specify the conditions for the UK to request an asylum seeker's return to the UK after transfer to Rwanda.

We have not addressed the Safety of Rwanda (Asylum and Immigration) Bill as we were not asked to do so here. We have submitted our briefing for Second Reading of the Bill to the Committee separately.

The Bar Council
January 2024